IN THE UNITED STATES COURT OF FEDERAL CLAIMS

COMMON GROUND HEALTHCARE COOPERATIVE, Plaintiff, v. THE UNITED STATES, Defendant.	)	No. 17-877 Filed: February 9, 2026

ORDER

Following a years-long negotiation, the parties in this class action agreed to a settlement of the Cost-Sharing Reduction ("CSR") claims for the 2017–2018 and 2019 benefit years. The settlement resulted in an actuarial methodology for calculating each class member's damages. The parties first advised the Court that they reached tentative agreement on the proposed methodology on September 29, 2023. *See* Joint Status Report, ECF No. 202. To effectuate that methodology, each class member was required to gather and submit certain data needed to compute the insurer's damages, including providing an attestation to the United States regarding the Metal Levels for which each class member loaded CSR costs into premiums for each benefit year 2018–2020. *See id.* at 1–2; *see also* Joint Status Report at 2–3, ECF No. 218.

Over the course of more than a year, the vast majority of class members provided the necessary documentation. However, "a small number of 2017-2018 CSR Class and 2019 CSR Class Members did not [provide attestations], despite repeated requests and other efforts to contact them from Class Counsel." Mot. for Approval of Atty's Fees (CSR Claims Settlement) at 12, ECF No. 290. On April 7, 2025, the Court granted the parties' request to divide the CSR classes into subclasses, including the "Not-Pursuing-Claims-Beyond-2017 Subclass" consisting of this small number of unresponsive class members. *See* Order, ECF No. 258; *see also* Joint Mot. to Divide 2017-2018 CSR and 2019 CSR Classes into Subclasses at 6, ECF No. 256 (defining a subclass for the eight class members who had not, as of April 3, 2025, informed Class Counsel or the Government whether they intended to pursue their claims for any benefit years beyond the 2017 benefit year). Class Counsel represented in the motion that it would "attempt one more time to contact these class members to notify them that the proposed class settlement will soon be submitted to the Representative of the Attorney General for approval and that they therefore have one last opportunity to provide necessary paperwork to join the proposed settlement methodology." ECF No. 256 at 6–7.

On November 6, 2025, the Court granted final approval of the settlement agreement between the Government and the Settlement Class. *See* Order, ECF No. 294. At the fairness hearing conducted to consider final approval, Class Counsel represented that it last attempted to contact the Not-Pursuing-Claims-Beyond-2017 Subclass about their positions on settlement earlier in 2025 but did not receive a meaningful response. Oral Arg. Tr. at 17:19–18:18, ECF No. 296. Subsequently, Class Counsel received a communication from one subclass member (Aspirus Health Plan, Inc.) indicating that it intends to settle its claims, if possible, utilizing the agreed-to methodology. *See* Joint Status Report at 2–3, ECF No. 298.

On December 29, 2025, the Court ordered the seven Not-Pursuing-Claims-Beyond-2017 Subclass members who, as of that date, had not responded to Class Counsel's communications to provide their positions on whether they intended to settle their claims for benefit years 2018–2020 utilizing the proposed methodology, intended to move forward with litigating their claims, or intended to seek voluntary dismissal of their claims. *See* Order at 2, ECF No. 300. The Court expressly warned that any Not-Pursuing-Claims-Beyond-2017 Subclass member that did not respond to Class Counsel with its position by the Court's January 30, 2026 deadline would have its claims dismissed for failure to prosecute under Rule 41(b) of the Rules of the United States Court of Federal Claims ("RCFC"). *See id.* at 2–3. The Court also ordered Class Counsel to file a declaration confirming service of the Court's December 29, 2025 Order on the seven Not-Pursuing-Claims-Beyond-2017 Subclass members, advising the Court of the position of each subclass member that responded to Class Counsel, and identifying any subclass members that did not respond. *See id*. at 2.

Pursuant to that order, on January 30, 2026, Class Counsel submitted a declaration representing that it directed the claims administrator to mail and email copies of the Court's December 29, 2025 Order to all Not-Pursuing-Claims-Beyond-2017 Subclass members. *See* Decl. of Adam B. Wolfson at ¶ 3, ECF No. 301. Class Counsel advised that one subclass member, Aspirus Health Plan, Inc., responded and was currently reviewing the Government's proposed settlement papers. *Id.* ¶ 4. Another subclass member, Medica Insurance Company, responded and indicated that it intends to voluntarily dismiss its claims. *Id.* ¶ 6. Besides these two subclass members, Class Counsel reported that no other subclass members responded to Class Counsel or the claims administrator. *Id.* ¶ 7.

RCFC 41(b) allows the Court to dismiss a plaintiff's case *sua sponte* "[i]f the plaintiff fails to prosecute or to comply with [the court's] rules or a court order." Both circumstances are satisfied here where the non-responsive Not-Pursuing-Claims-Beyond-2017 Subclass members have repeatedly failed to respond to Class Counsel in a manner that has impeded the resolution of their claims and where they did not comply with the Court's December 29, 2025 Order directing them to respond to counsel to indicate whether, and if so how, they intended to move forward. Parties have a duty to monitor their case and remain in communication with their attorneys. *See Breen v.*

Peters, No. 05-654, 2008 WL 11498146, at *2 (D.D.C. Aug. 15, 2008); *Ake v. Mini Vacations, Inc.*, 174 F.R.D. 110, 112 (M.D. Fla. 1997). When a party fails to communicate with its attorney and consequently fails to comply with the rules and orders of the Court, the Court has grounds to dismiss the party's case for failure to prosecute under Rule 41(b). *See, e.g.*, *Touradji v. United States*, No. 20-863, 2022 WL 1669053, at *2 (Fed. Cl. May 25, 2022) (dismissing plaintiff's case where plaintiff did not respond to former attorney's mailing regarding show cause order); *Grundy v. FCA US LLC*, No. 20-CV-11231, 2021 WL 8315417, at *1 (E.D. Mich. Nov. 8, 2021) (dismissing plaintiff's case for failure to communicate with attorney and respond to discovery requests); *Bristol Petroleum Corp. v. Harris*, 901 F.2d 165, 165–66 (D.C. Cir. 1990) (explaining that a court may "exercise[e] its authority effectively to enforce its own orders designed to advance the expeditious processing of lawsuits"). Courts have found that Rule 41(b) is a proper vehicle for dismissal when a party fails to comply with an order that "provide[s] the plaintiff with sufficient notice that a dismissal is imminent and that failure to respond will likely be fatal to its case." *Coakley & Williams Constr., Inc. v. United States*, No. 11-191, 2012 WL 2866291, at *2 (Fed. Cl. July 13, 2012) (citing *Kadin Corp. v. United States*, 782 F.2d 175, 176 (Fed. Cir. 1986)).

Accordingly, the following six Not-Pursuing-Claims-Beyond-2017 Subclass members who failed to respond to Class Counsel as directed by the Court's December 29, 2025 Order are dismissed without prejudice under RCFC 41(b) for failure to prosecute:

1. Premier Health Plan, Inc.
2. Prominence Healthfirst of Texas, Inc.
3. Community Health Plan of Washington
4. New Mexico Health Connections
5. Prominence Healthfirst
6. Group Health Cooperative of South Central Wisconsin

Class Counsel shall serve a copy of this order on the above-listed entities by no later than February 17, 2026.

SO ORDERED.

Dated: February 9, 2026

/s/ Kathryn C. Davis
KATHRYN C. DAVIS
Judge