XAVIER BECERRA, State Bar No. 118517
Attorney General of California
KATHLEEN BOERGERS, State Bar No. 213530
Supervising Deputy Attorney General
NELI N. PALMA, State Bar No. 203374
KARLI EISENBERG, State Bar No. 281923
Deputy Attorneys General
1300 I Street, Suite 125
Sacramento, CA 94244-2550
Telephone: (916) 210-7913
Fax: (916) 324-5567
E-mail: Karli.Eisenberg@doj.ca.gov
Attorneys for Plaintiff the State of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

THE STATE OF CALIFORNIA; THE STATE OF DELAWARE; THE STATE OF MARYLAND; THE STATE OF NEW YORK; THE COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

ALEX M. AZAR, II, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; R. ALEXANDER ACOSTA, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF LABOR; U.S. DEPARTMENT OF LABOR; STEVEN MNUCHIN, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE U.S. DEPARTMENT OF THE TREASURY; U.S. DEPARTMENT OF THE TREASURY; DOES 1-100,

Defendants,

and,

THE LITTLE SISTERS OF THE POOR, JEANNE JUGAN RESIDENCE; MARCH FOR LIFE EDUCATION AND DEFENSE FUND,

Defendant-Intervenors.

4:17-cv-05783-HSG

DECLARATION OF MARI CANTWELL

I, Mari Cantwell, declare:

1. I am the Medicaid Director for the State of California and Chief Deputy Director of Health Care Programs at the California Department of Health Care Services (DHCS). I have held the Chief Deputy position since 2013 and the State Medicaid Director position since 2015. I have worked in the field of health care policy and finance for almost 20 years. Prior to the position I hold now, I served as the Deputy Director of Health Care Financing for DHCS, and previously as the Vice President of Finance Policy for the California Association of Public Hospitals and Health Systems. I hold a B.A. in Public Policy from Brown University, and a Masters in Public Policy with a focus in Health Policy from the University of California, Los Angeles.

2. As the State Medicaid Director and Chief Deputy Director of Health Care Programs at DHCS, my responsibilities include the management of California's Medicaid program under title XIX of the federal Social Security Act, referred to in California as "Medi-Cal." In this role, I oversee the Office of Family Planning (OFP) which is responsible for developing family planning policy in Medi-Cal and administering family planning-related programs in the purview of DHCS.

3. The OFP is charged by the California Legislature "to make available to citizens of the State who are of childbearing age comprehensive medical knowledge, assistance, and services relating to the planning of families." Cal. Welf. & Inst. Code § 14501(a). The purpose of family planning is to provide women and men a means by which they decide for themselves the number, timing, and spacing of their children. Family planning services are a covered Medi-Cal benefit for individuals eligible for full scope coverage under the Medi-Cal State Plan.

4. In addition to the availability of family planning services for traditional Medi-Cal eligible individuals, the OFP also administers the Family Planning, Access, Care, and Treatment (Family PACT) program. Family PACT is California's innovative approach to provide comprehensive family planning services to eligible low income men and women that do not otherwise qualify for full scope Medi-Cal coverage. In 2015-16, the most recent fiscal year for which data is available, Family PACT served approximately 1.16 million income eligible men and women of childbearing age at no cost through a network of approximately 2500 public and private providers. Services include comprehensive education, assistance, and services relating to family planning.

5. Family PACT works to achieve the following key objectives: (1) to increase access to publicly-funded family planning services for low-income California residents who have no other source of health care coverage for family planning, (2) to increase the use of effective contraceptive methods by clients, (3) to promote improved reproductive health, and (4) to reduce the rate, overall number, and cost of unintended pregnancies.

6. When established by the California Legislature in 1996, Family PACT was funded solely through the California State General Fund. From December 1999 through June 2010, California received additional funding from the Centers for Medicare and Medicaid Services (CMS) through a Section 1115 Demonstration Waiver. In March 2011, California received federal approval to transition Family PACT to the Medi-Cal State Plan as an optional eligibility category pursuant to 42 U.S.C. 1396a(a)(10)(A)(ii)(XXI), retroactive to July 2010.

7. Family PACT serves clients that are (1) California residents (2) with an income at or below 200% of the federal poverty guidelines (3) who have no other source of health care coverage for family planning services and (4) have a medical necessity for family planning services. Clients can receive services the day that they enroll. Enrollment must be renewed annually.

8. Family PACT enrollees receive services through various clinician providers, including private physicians in individual or group settings, nonprofit community-based clinics, OB/GYNs and physicians representing general practice, family practice, internal medicine, and pediatrics. Planned Parenthood provides approximately 35% of the family planning visits that are reimbursed by Family PACT. Medi-Cal licensed pharmacies and laboratories also participate by referrals from enrolled Family PACT clinicians.

9. Family PACT benefits include all FDA approved contraceptive methods and supplies, family planning counseling and education, sexually transmitted infection (STIs) testing and treatment, HIV screening, cervical cancer screening, male and female permanent contraception, and limited infertility services.

10. California and the federal government jointly fund the majority of costs for the Family PACT program according to applicable Federal Medical Assistance Percentage (FMAP) rates

provided in Medicaid. Eligible family planning services and testing for STIs under Family PACT are reimbursed at a ninety percent FMAP rate. The diagnosis and treatment of STIs and other family planning-related services under Family PACT are reimbursed at a fifty percent FMAP rate. California provides the remainder of the funding needed to provide services to Family PACT enrollees.

11. Beginning in January 2014, when the Patient Protection and Affordable Care Act (ACA) was first implemented, many Family PACT clients became eligible for full scope Medi-Cal for the first time. A smaller proportion became eligible for subsidized private insurance through Covered California, if they met corresponding eligibility parameters including the required income threshold. Family PACT clients who transitioned to full scope Medi-Cal and coverage through Covered California were able to receive family planning services with their new coverage.

12. In addition, ACA regulations increased access to family planning services by generally requiring employers to provide insurance coverage for contraception at no cost to the employee. This coverage is subject to exemptions for churches and accommodations for nonprofits and closely-held for-profit corporations that claim a religious objection. Under the accommodation, the responsibility for contraceptive coverage is passed from the employer to the insurer, ensuring seamless coverage for the employee.

13. The ACA's implementation correlates with a decrease in Family PACT enrollees. The number of clients Family PACT served in 2014-15— approximately 1.38 million—decreased 17.9% from the previous fiscal year. Similarly, in 2015-16, the number of Family PACT clients decreased to approximately 1.16 million, representing a 15.9% decrease from 2014-15 and a 31% decrease from 2013-14.

14. In particular, the number of Family PACT clients between 139% and 200% of the federal poverty guidelines decreased from 126,170 in 2013-14 to 99,712 in 2014-15 and 92,811 in 2015-16. This represents a 21% decrease from 2013-14 to 2014-15, a 6.9% decrease from 2014-15 to 2015-16, and a 26.4% decrease from 2013-14 to 2015-16.

15. It is my understanding that under the two final rules issued by the U.S. Health and Human Services Department, in conjunction with the U.S. Department of Labor and U.S. Department of Treasury, on November 15, 2018 (Final Rules), certain employers could claim a religious or moral objection to providing contraceptive coverage and leave their employees without access to "no cost" contraceptive coverage. This expanded exemption would effectively make contraceptive coverage optional for certain employers and their employees.

16. After considering this change in the law prescribed by the Final Rules, I believe that some California women and covered dependents who could lose coverage could become eligible for the Family PACT program, provided they meet other requirements such as having income at or below 200% of the federal poverty level.

17. If, as a result of the Final Rules, additional individuals become eligible for and enroll in Family PACT, this will result in increased financial obligations for California's Medi-Cal program.

18. It is my understanding that the federal government suggests that women affected by the Final Rules should seek out services at Title X clinics. In California, in order for a clinic to receive Title X funding, that clinic must also be a Family PACT provider. Accordingly, all individuals in California who visit clinics that receive Title X funding are screened for Family PACT eligibility. Since more women may visit family planning clinics that receive Title X funding because of the broad exemptions created by the Final Rules, more women may be screened for Family PACT, and more women may be placed in the Family PACT program. As a result, state dollars may be diverted to provide care for this patient population that should instead be receiving contraceptive coverage through their employer-sponsored insurance.

1 I declare under penalty of perjury that the foregoing is true and correct and of my own
2 personal knowledge.
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4 Executed on December 14, 2018, in Sacramento, CA.
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8 Mari Cantwell
Chief Deputy Director, Health Care Programs
9 California Department of Health Care Services
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