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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.

No. 4:17-05783-HSG

**DECLARATION OF PHUONG H.
NGUYEN, M.D., MEDICAL DIRECTOR
FOR PHYSICIAN SERVICES FOR SANTA
CLARA VALLEY MEDICAL CENTER, IN
SUPPORT OF PLAINTIFF STATE OF
CALIFORNIA'S MOTION FOR
PRELIMINARY INJUNCTION**

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.

1 I, Phuong H. Nguyen, M.D., declare:

2 1. I currently serve as Medical Director for Physician Services for the Santa Clara Valley
3 Medical Center (SCVMC). I have been employed by SCVMC in various capacities for a total of
4 nineteen (19) years, and I have practiced as an obstetrician/gynecologist in a clinical capacity
5 throughout my employment with SCVMC.

6 2. I submit this Declaration in support of the State of California's Motion for Preliminary
7 Injunction. I have personal knowledge of the facts stated herein and, if called as a witness, I could
8 testify to them competently under oath.

9 3. Santa Clara County is located at the southern end of the San Francisco Bay and is home
10 to 1.9 million residents who rely on the County to provide essential services such as health care,
11 assistance for youth and the elderly, and a wide array of social services.

12 4. The County owns and operates SCVMC, a comprehensive public healthcare delivery
13 system that provides critical healthcare services, including many no- and low-cost contraceptive and
14 sexually transmitted disease (STD) services to county residents regardless of their ability to pay.

15 5. SCVMC is the only public safety-net healthcare provider in Santa Clara County, and the
16 second largest such provider in California. SCVMC operates a 731 licensed bed hospital, eleven
17 ambulatory care clinics, medical and dental mobile units, along with specialized centers that provide
18 trauma, burn, rehabilitation, renal, acute inpatient psychiatric, and ambulatory care. It has
19 approximately 6,500 employees, including more than 350 physicians who train more than 180
20 residents and fellows per year as a graduate medical education provider and teaching institution.
21 SCVMC is a Level 1 Adult Trauma Center and Level 2 Pediatric Trauma Center. Its burn and
22 rehabilitation centers have been nationally recognized, and its ambulatory specialty center and renal
23 care center are state of the art.

24 6. SCVMC provides a full range of inpatient and outpatient health services, including
25 emergency and urgent care, adult and pediatric primary care services, behavioral health services,
26 comprehensive adult and pediatric specialty services, Level III neonatal intensive pediatric services,
27 women's health services, comprehensive oncology services, and other critical health care services
28 for any resident of the County, regardless of ability to pay.

1 7. SCVMC provides the vast majority of the health care services available to poor and
2 underserved patients in the County. In fiscal year 2017-18, there were more than 800,000 outpatient
3 visits to SCVMC's primary care, express care, specialty clinics, and emergency department, and
4 over 120,000 days of inpatient stays in the hospital. Patients who are uninsured, reliant on Medi-
5 Cal, or on Medicare were responsible for approximately 88% of outpatient visits and approximately
6 85% of inpatient days.

7 8. The County also provides health care and related services through its Public Health
8 Department. The mission of the County Public Health Department is to promote and protect the
9 health of the county's entire population. None of Santa Clara County's fifteen cities and towns have
10 a health department. All fifteen cities and towns, and all the county's residents, rely on the Public
11 Health Department to perform essential public health functions including preventing and controlling
12 the spread of infectious diseases such as STDs.

13 9. The County provides contraceptive services to county residents regardless of their ability
14 to pay through SCVMC and the Public Health Department. SCVMC's Ambulatory Care Clinics
15 provide a full range of reversible contraceptive services, including family planning counseling,
16 prescriptions for barrier contraception, birth control pills, intrauterine device and birth control
17 implant insertions, emergency contraceptives, and abortion services. In addition, SCVMC provides
18 female and male sterilization procedures to patients that desire them. Free condoms are distributed
19 by the Public Health Department by its STD/HIV Prevention & Control program through the
20 program's clinical sites as well as through outreach events to the community.

21 10. The County also provides safety-net services as a provider for California's Family
22 Planning, Access, Care, and Treatment (PACT) Program. Through the Family PACT Program, a
23 network of 2,200 providers—including the County—offer comprehensive family planning services
24 at no cost to low-income people. These services include all FDA-approved forms of contraception,
25 emergency contraception, pregnancy testing and counseling, preconception counseling, sterilization,
26 certain infertility services, STD testing and treatment, cancer screening, HIV screening, and
27 individualized reproductive health education and counseling. Funding for Family PACT services is
28 provided by California and the federal government as part of California's Medicaid program, but the

1 reimbursements paid to Family PACT providers do not cover the full costs of providing these
2 services.

3 11. Thousands of Santa Clara County residents are insured through self-funded employer
4 health plans. Under the final rules, employers offering self-funded health plans can drop
5 contraceptive coverage with minimal or even no notice to employees and beneficiaries, potentially
6 leaving thousands of county residents without coverage for necessary contraceptive services.

7 12. This loss of coverage would likely strain the County's already thinly stretched family
8 planning resources, require the County (at significant expense) to both expand its no- and low-cost
9 contraceptive and STD services, and absorb many of the immediate and long-term costs of
10 unintended pregnancies on county residents, their families, and communities.

11 13. The final rules will likely increase demand for the County's no- and low-cost
12 contraception and STD services as employers take advantage of the expanded exemption to
13 eliminate coverage for contraceptive care. For example, as more employers eliminate contraceptive
14 coverage under the final rules, more low-income people will likely seek family planning services
15 through Family PACT, and the costs to the County will increase. Similarly, the County will likely
16 see increased use of SCVMC's Ability to Pay Determination (APD) Program, which reduces the
17 liabilities of certain indigent patients for services received from SCVMC, in accordance with their
18 ability to pay. Patients who lack employer-provided insurance coverage for contraceptives and who
19 are not eligible for other insurance may apply for the APD program, and more are likely to do so
20 under the final rules, at direct cost to the County.

21 14. The County's health system already operates at a significant deficit because of the
22 volume of uncompensated costs it incurs in serving uninsured and under-insured patients. For
23 example, during Fiscal Year 2017-18, SCVMC received approximately \$131.8 million in subsidies
24 from the County's General Fund so it could continue to provide critical healthcare services to
25 uninsured and under-insured patients. The final rules are likely to increase uncompensated costs and
26 widen the health system's operating deficit, further straining the County's General Fund.

27 15. In addition to causing direct financial strain on state and local governments, non-profit
28 health care providers, and scores of individuals, the final rules will likely also exacerbate public

1 health concerns in the County. When people are less able to access contraceptive services, STD
2 rates are likely to increase and the need for STD-related services rises. Thus, the rules are likely to
3 increase the need for the County's free and low-cost services for STD prevention and treatment.

4 16. The County's Public Health Department provides a range of STD-related services,
5 including sexual health counseling, STD prevention supplies, STD screening, STD treatment, and
6 HIV pre-exposure and post-exposure prophylaxis. The fees the clinic collects do not cover the costs
7 of providing STD-related services, and these costs are likely to increase due to these rules.

8 17. These services are critical to protecting public health. The County has experienced a rise
9 in chlamydia, gonorrhea, and syphilis. Between 2010 and 2017, cases of chlamydia steadily
10 increased over time from 271.3 cases per 100,000 people in 2010 to 392.7 cases in 2017, and
11 gonorrhea rates increased by nearly fourfold from 33.1 cases per 100,000 people in 2010 to 126.4
12 cases in 2017, with a 26% rapid increase from 2016 to 2017. Rates of early syphilis diagnoses
13 nearly tripled from 6.2 cases per 100,000 people in 2010 to 21.1 cases in 2017. There was a sharp
14 57% increase in the number of early syphilis cases between 2015 and 2016. The number of early
15 syphilis cases in 2017 was 16% higher than the number in 2016. HIV/AIDS is another serious
16 public health concern in the County. In 2015, there were 2,734 people living with HIV/AIDS in the
17 County, and in 2017, that number had risen to 3,361 people living with HIV/AIDS in the County.
18 The rules are likely to exacerbate these serious public health problems and increase the burden on
19 the County to address and prevent the spread of these diseases.

20 18. The effects of congenital syphilis illustrate the potentially devastating impact of the loss
21 of insurance coverage for contraceptive services due to the final rules. When a pregnant woman's
22 syphilis infection is not caught during pregnancy, babies often contract congenital syphilis and suffer
23 devastating clinical outcomes, including heart problems, blindness, deafness, bone deformities, and
24 death. Prenatal care is an extremely effective defense against these devastating outcomes: 98
25 percent of cases of congenital syphilis can be prevented when a pregnant woman is treated. For this
26 reason, state law requires health care providers to screen all pregnant patients for syphilis at their
27 first prenatal encounter—ideally during the first trimester. Early detection leads to earlier treatment,
28 which can reduce risks of morbidity to the pregnant patient and fetus, and thereby significantly

1 reduce costs to the infant's family and public healthcare providers like the County. Even late
2 prenatal detection carries enormous public health and economic benefits: an additional screening for
3 syphilis in the third trimester results in fewer maternal and neonatal adverse outcomes, as well as an
4 estimated national cost-savings of \$52 million per year. Healthcare for nonpregnant women of
5 childbearing age—whether through Medicaid, CHIP, or otherwise—mitigates these risks, since the
6 greater the incidence of early syphilis in these women and the greater the risk of unintended
7 pregnancies, the greater the risk for the public health and individual health harms associated with
8 congenital syphilis.

9 19. Decreased access to contraception under these rules is also likely to increase unintended
10 pregnancies, triggering immediate and long-term costs to the County and communities nationwide.
11 As the safety-net healthcare provider, the County funds many of the medical services associated with
12 unintended pregnancies, which disproportionately affect young, low-income, minority women,
13 without higher education who are likely to rely on County-funded services if their employer
14 eliminates contraceptive coverage. The County is also burdened by the long-term costs of
15 unplanned pregnancies, which can limit individuals' ability to succeed in education and the
16 workplace and to contribute as taxpayers and citizens.

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18 I declare under penalty of perjury that the foregoing is true and correct and of my own
19 personal knowledge.

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21 Executed on December 11, 2018 in San José, California.

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Phuong H. Nguyen, M.D.,
Medical Director, Physician Services
Santa Clara Valley Medical Center

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