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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.**

4:17-cv-05783-HSG

**DECLARATION OF JONATHAN
WERBERG**

Plaintiffs.

4

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, Jonathan Werberg, declare:

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3 1. I am currently the Director of the Department of Research and Analytics at the
4 Office of the Attorney General for the State of New York (“OAG”), having previously served as
5 the Senior Data Scientist. I have been at the OAG since May 2015. I assist, support and
6 supervise in a wide variety of investigations and cases, including several ongoing investigations
7 related to health and health care access. I am frequently called upon to analyze public and private
8 datasets to quantify the impacts of particular policies. Prior to this position, I spent ten years at
9 1199 SEIU United Healthcare Workers East, a union of health care workers based in New York
10 with over 400,000 members. I served in various research and analysis capacities, including the
11 final three years as the Research Director of a department with 20 staff. In those roles, I
12 conducted and oversaw dozens of analyses of health care policies. I am very familiar with health
13 care, health insurance and demographic data. I am a 2003 graduate of the Massachusetts Institute
14 of Technology with a Bachelors of Science degree in Urban Planning. I submit this declaration in
15 support of the Complaint in the above-captioned lawsuit challenging the Defendants’ Exemption
16 Rules.

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18 2. Based on publicly available data, there are approximately 1.16 *million* women in
19 New York State who are currently covered by self-funded employer plans.

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21 3. This number is based on the following analysis: According to the U.S. Census
22 Bureau, 2,540,725 women of child-bearing age, defined as 12 to 44-years old, reside in New
23 York State and possess employer-based health insurance.¹ Approximately 2,154,535 women in
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27 ¹ U.S. Census Bureau; American Community Survey, 2011-2013 American Community Survey
3-Year Estimates, Table B27004; generated using American FactFinder;
<<http://factfinder2.census.gov>>; (October 10, 2017).

1 New York State with health insurance work in the private sector.² According to the most recent
 2 estimates from HHS' Medical Expenditure Panel Survey, approximately 54 percent of private-
 3 sector employees in New York are enrolled in self-insured plans.³

4 4. Thus, considering only women of child-bearing age, and not spouses or daughters
 5 of other insureds, the Exemption Rules could impact up to approximately 1.16 million women in
 6 New York State.

7 5. There are a number of employers in New York State that have been identified to
 8 me as likely to use the exemptions provided by the Exemption Rules because of their involvement
 9 in previous litigation challenging religious exemptions to the federal contraceptive coverage
 10 mandate. I have looked at information about these three employers to estimate the number of
 11 New York workers employed by each.

12 6. Hobby Lobby Stores, Inc. is a for-profit national arts and crafts store chain with
 13 28,000 employees across the United States. In New York State, Hobby Lobby has eighteen store
 14 locations⁴ and employs approximately 720 people.⁵

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21 ² See U.S. Census Bureau; American Community Survey, 2016 American Community Survey 1-
 22 Year Estimates, Table S0201; generated using American FactFinder;
 23 <<http://factfinder2.census.gov>>; (October 10, 2017).

24 ³ Agency for Healthcare Research and Quality. Percent of private-sector enrollees that are
 25 enrolled in self-insured plans at establishments that offer health insurance by firm size and State
 26 (Table II.B.2.b.1), year 1996-2016: 2016 (July 2017). Medical Expenditure Panel Survey
 Insurance Component Tables. Generated using MEPSnet/IC. (October 10, 2017).

27 ⁴ Parrish, Tory N. "Hobby Lobby opens 2 LI locations as part of nationwide expansion"
 28 Newsday, updated May 29, 2018, accessed December 6, 2018.

29 ⁵ "Hobby Lobby Stores on Forbes Lists," <https://www.forbes.com/companies/hobby-lobby-stores/?list=largest-private-companies#56cf4fa16cee>, accessed December 6, 2018.

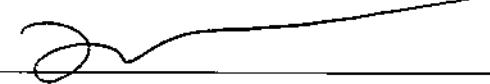
1 7. Nyack College, an affiliate of the Christian and Missionary Alliance, is a liberal
2 arts college in New York, with approximately 3,000 students enrolled in its programs; the college
3 employs approximately 1,100 people.⁶

4 8. The Charles Feinberg Center for Messianic Jewish Studies, an affiliate of Biola
5 University, is a Master of Divinity graduate program in New York. Biola University nationally
6 has approximately 1,000 students.⁷

7 9. Thus, according to my research and analysis, there will be a substantial number of
8 New York women who may lose health plan coverage for contraceptives as a result of these
9 Exemption Rules.

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

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15 Executed on December 16, 2018 in New York, New York.

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18 Jonathan Werberg
19 Director of Research and Analytics
20 New York State Office of the Attorney General

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26 ⁶ Nyack College IRS Form 990 for Fiscal Year ending June 30, 2017.

27 ⁷ Fall 2015 enrollment in Biola University's Talbot School of Theology was 1,110
28 students. Biola Univ. Office of Institutional Research, *Biola University Fall 2015 Enrollment
Summary*, BIOLA UNIV. 1, 5 (2015).