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11 **IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 THE STATE OF CALIFORNIA; THE STATE
13 OF DELAWARE; THE STATE OF
MARYLAND; THE STATE OF NEW YORK;
14 THE COMMONWEALTH OF VIRGINIA;
15 THE STATE OF WASHINGTON,

16 Plaintiffs,

17 v.

18 ALEX M. AZAR, II, IN HIS OFFICIAL
19 CAPACITY AS SECRETARY OF THE U.S.
DEPARTMENT OF HEALTH & HUMAN
20 SERVICES; U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES; R. ALEXANDER
21 ACOSTA, IN HIS OFFICIAL CAPACITY AS
22 SECRETARY OF THE U.S. DEPARTMENT OF
LABOR; U.S. DEPARTMENT OF LABOR;
23 STEVEN MNUCHIN, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF THE U.S.
24 DEPARTMENT OF THE TREASURY; U.S.
DEPARTMENT OF THE TREASURY;
25 DOES 1-100,
26

NO. 4:17-cv-05783-HSG

DECLARATION OF DR. JUDY
ZERZAN-THUL

1 Defendants,

2 and,

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

7 Defendant-Intervenors.

8 I, Dr. Judy Zerzan-Thul, declare as follows.

9 I am over the age of 18 and have personal knowledge of all the facts stated herein.

10 1. I am the Chief Medical Officer for the Washington State Health Care Authority
11 (HCA) and have been employed in this position since August 20, 2018. I am responsible for
12 assessing and improving the quality of care for State-purchased health care programs, including
13 Apple Health (which is commonly referred to as Medicaid) and the Employee and Retirees
14 Benefits program.
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16 2. Prior to joining HCA, I was employed as the Chief Medical Officer for the State of
17 Colorado Department of Health Care Policy and Financing for nine years. In that capacity, I was
18 responsible for providing clinical guidance for Colorado Medicaid and the Children's Health
19 Insurance Program, including pharmacy and medical benefits, measuring and improving quality,
20 and data analysis.
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22 3. I obtained my M.D. degree from Oregon Health & Science University. I also hold
23 a Master's degree in Public Health from the University of North Carolina. I am Board Certified
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1 in Internal Medicine and I have over twenty years of experience as a medical doctor. I have an
2 active current license to practice medicine in the states of Colorado and Washington.

3 4. The Health Care Authority administers federally and state funded medical
4 assistance programs under the name Washington Apple Health, which is commonly referred to
5 as Medicaid. Apple Health provides integrated health care services that promote health,
6 wellbeing, and quality of life for almost 1.8 million Washington residents. As part of that
7 mission, and as required by the Federal Government in order to participate in Medicaid, Apple
8 Health provides coverage for reproductive health services including family planning and
9 pregnancy related services for eligible Washington residents through a variety of programs.
10 Family planning services include all FDA approved contraceptive methods and the clinical
11 services necessary for clients to safely and effectively use their chosen contraceptive method.
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13 5. Eligibility for Apple Health programs is based on several factors, including age,
14 household size, tax filing status, pregnancy status, and income level. For example, childless
15 adults are generally eligible up to 133% of the Federal Poverty Level (FPL), whereas pregnant
16 women are eligible up to 193% of the FPL. Children under 19 are eligible up to 312% of the
17 FPL. Through Apple Health, the Health Care Authority also administers a Family Planning Only
18 Demonstration Waiver Program (FPO) that is an agreement with the Federal Government to
19 provide coverage of family planning specific services for women and men otherwise ineligible for
20 Medicaid, up to 260% of the FPL. Because FPL is established by income level and
21 family/household size, generally a woman with a spouse and two children would qualify at a higher
22 income level than a woman with no spouse or children.
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1 6. In 2016, the Health Care Authority and its contracted Managed Care
2 Organizations spent \$32,506,774.07 in combined federal and state dollars for coverage of family
3 planning services for Apple Health clients enrolled in programs receiving federal funding.

4 7. The Health Care Authority serves as a secondary payor for services not otherwise
5 fully covered by employer or higher education sponsored health plans for those clients that have both
6 primary health coverage and Apple Health coverage. In 2016, the Health Care Authority provided
7 secondary Apple Health coverage for 120,328 clients who had primary health coverage from other
8 sources such as employer-sponsored coverage and student coverage. Of the total Apple Health clients
9 that have primary health coverage from sources other than Apple Health, 69,652 are women, 38,336
10 of which are ages 15-44.

11 8. If employers or colleges and universities in Washington choose to no longer cover
12 contraception for their employees and students pursuant to the federal government's newly-
13 created and expanded exemptions to the Affordable Care Act's contraceptive mandate, the cost
14 of family planning services will shift to the State for employees who have or will seek and be
15 qualified for Apple Health coverage as secondary insurance through the Health Care Authority.

16 9. Women who lose access to contraceptive coverage through employer and college
17 or university sponsored insurance plans may be unable to afford their current form of
18 contraception and have an unintended pregnancy. The potential for women to reduce or stop
19 working due to pregnancy could change the families' income, potentially causing these families
20 to become eligible for one of the Apple Health programs. The change in family size due to a new
21 birth could also cause these families to become eligible for one of the Apple Health programs.
22 This could result in an increase in state expenditures related to pregnancy and future family
23 planning services.
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10. In 2016, the Health Care Authority and its contracted Managed Care Organizations spent on average \$9,886 per delivery. Additionally, there are pregnancy services costs for pregnancy losses prior to 20 weeks gestation. Apple Health covered 42,516 deliveries in 2016. Approximately 30% of Medicaid-funded births in 2013 were from unintended pregnancies.

11. The Affordable Care Act's implementation correlates with a decrease in the FPO program enrollment. The number of enrollees receiving FPO services dropped by 71% from the 2012-13 fiscal year to the 2014-15 fiscal year. By the 2016-17 fiscal year there was a further drop of 48% in enrollees. Enrollment would be expected to increase if the expanded contraceptive exemptions are allowed to take effect.

12. The State of Washington Public Employees Benefits Board (PEBB) Program purchases and coordinates health benefits for more than 300,000 eligible public employees and retirees. PEBB members may elect to add their spouse or state-registered domestic partner to their health plan if they lose contraception coverage through their own employer's health plans. When state employees do so, it will cost the State additional money to provide health coverage for those spouses and state-registered domestic partners.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 17 day of December 2018 at Olympia, Washington.


DR. JUDY ZERZAN-THUL

