

1 Brian R. Chavez-Ochoa
Chavez-Ochoa Law Offices, Inc.
2 4 Jean Street, Suite 4
Valley Springs, CA 95252
3 (209) 772-3013
(209) 772-3090 Fax
4 chavezochoa@yahoo.com

5 David A. Cortman, AZ Bar No. 029490*
Kevin H. Theriot, AZ Bar No. 030446**
6 Kenneth J. Connelly, AZ Bar No. 025420*
Alliance Defending Freedom
7 15100 North 90th Street
Scottsdale, Arizona 85260
8 (480) 444-0020
(480) 444-0028 Fax
9 dcortman@ADFlegal.org
10 ktheriot@ADFlegal.org
kconnelly@ADFlegal.org

11 *Counsel for Defendant-Intervenor*

12
13 **IN THE UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15 THE STATE OF CALIFORNIA, et al.,

16 *Plaintiffs,*

17 v.

18 ERIC D. HARGAN, in his official capacity
as Acting Secretary of the U.S. Department
19 of Health and Human Service, et al.,

20 *Defendants,*

and,

21 THE LITTLE SISTERS OF THE POOR
22 JEANNE JUGAN RESIDENCE,

23 *Defendant-Intervenor,*

and,

24 MARCH FOR LIFE EDUCATION AND
25 DEFENSE FUND,

26 *Defendant- Intervenor.*

27 **Pro hac vice forthcoming*

*** Pro hac vice granted*

Case No. 4:17-cv-05783-HSG

**DEFENDANT-INTERVENOR MARCH
FOR LIFE’S MOTION FOR ORDER
THAT ITS MOTION TO INTERVENE
BE ADJUDICATED WITHOUT A
HEARING.**

Date: March 01, 2018

Time: 2:00 pm

Dept.: Courtroom 2

Judge: Hon. Haywood S. Gilliam, Jr.

[N.D. Cal. Civil L. R. 7-11]

28
Proposed Defendant-Intervenor March for Life’s Motion for Order that its
Motion to Intervene be Adjudicated Without a Hearing (4:17-cv-05783-HSG)

1 **INTRODUCTION**

2 Proposed Defendant-Intervenor March for Life (“March for Life”) hereby moves this Court,
3 pursuant to Northern District of California Local Rule 7-11, for an order that its motion to intervene
4 be adjudicated without a hearing. This motion is based upon the following Memorandum of Points
5 and Authorities and the Declaration of Kevin Theriot.

6 **MEMORANDUM OF POINTS AND AUTHORITIES**

7 **BACKGROUND**

8 The Plaintiff States filed this action on October 6, 2017 (Dkt. No. 1), their Amended
9 Complaint (Dkt. No. 24) on November 1, 2017, and their Motion for Preliminary Injunction
10 (Dkt. No. 28) on November 9, 2017. Shortly thereafter, on November 9, 2017, Plaintiff States filed
11 a Motion to Shorten time (Dkt. No. 30), seeking to accelerate the hearing date on its motion. This
12 Court granted Plaintiff States’ motion on November 10, 2017 (Dkt. No. 32).

13 On November 21, 2017, Defendant-Intervenors Little Sisters of the Poor (“LSOP”) filed their
14 Motion to Intervene (Dkt. No. 38). On that same day, LSOP filed their own Motion to Shorten
15 Time (Dkt. No. 39), seeking to accelerate the hearing on their motion to coincide with the new
16 date for Plaintiff States’ hearing on their Motion for Preliminary Injunction. This Court granted
17 LSOP’s motion on November 27, 2017 (Dkt. No. 48).

18 On December 8, 2017 March for Life filed its Motion to Intervene (Dkt. No. 87).

19 On December 12, 2017 this Court held a hearing as to Plaintiff States’ Motion for Preliminary
20 Injunction and LSOP’s Motion to Intervene (Dkt. No. 100). This Court subsequently granted
21 Plaintiff States’ Motion for Preliminary Injunction on December 21, 2017, and granted LSOP’s
22 Motion to Intervene on December 29, 2017 (Dkt. No. 115). Briefing on March for Life’s Motion
23 to Intervene was completed on that same day (Dkt. No. 113).

24 On January 5, 2018, the parties, including Defendant-Intervenor LSOP, filed their Joint Case
25 Management Statement (Dkt. No. 124). In that statement the federal government averred that it
26 “may appeal the preliminary injunction issued by the Court,” the deadline for which is February
27

1 19, 2018. (Dkt. No. 124 at 3, 6). March for Life’s hearing on its Motion to Intervene is currently
2 set for March 1, 2018 (Dkt. No. 87).

3 **ARGUMENT**

4 Northern District of California Local Rule 7-1(b) provides that “[i]n the Judge’s discretion,
5 or upon request by counsel and with the Judge’s approval, a motion may be determined without
6 oral argument” Under the circumstances present here, deciding March for Life’s Motion to
7 Intervene without a hearing would be appropriate, because if it is granted intervention by this Court
8 it will then be permitted to participate in an appeal in a timely and complete fashion.

9 The Court has already reached a decision with respect to Plaintiff States’ Motion for
10 Preliminary Injunction and LSOP’s Motion to Intervene, and did so after permitting accelerated
11 hearings for both. But the Court’s swift handling of these motions now means that an appeal may
12 commence before March for Life has had a chance to even put forth its case for its proposed
13 intervention at its scheduled hearing. The federal government must notice its appeal by February
14 19, 2018, but March for Life would not be heard by March 1, 2018 under the current schedule.
15 Under such a scenario, even if this Court were to grant March for Life’s motion on a similar
16 timetable, that decision would necessarily come some time after an appeal may already have
17 commenced, which given the pace of this case may ultimately constitute significant delay in March
18 for Life’s attempt to participate—and have its voice heard—in any potential appeal.

19 Deciding March for Life’s motion without a hearing would likely prevent such prejudice.
20 Moreover, it would economize judicial resources and respect the time commitments of the current
21 parties to the case. March for Life—the only prospective defendant-intervenor in this case that is
22 a non-religious non-profit benefiting from the Moral IFR—believes it has proffered to this Court
23 valid reasons to merit intervention. Because this Court has already adjudicated LSOP’s motion to
24 intervene, it would seem that this Court could forgo a hearing on March for Life’s Motion to
25 Intervene and render a decision without further ado.

26 It can hardly be argued that any party will be prejudiced by granting March for Life’s
27 instant motion. All parties have already had ample notice of March for Life’s Motion to Intervene,

1 upon which briefing was completed almost three weeks ago. Accordingly, given the present
2 timeline and the equities discussed herein, March for Life believes that this Court can reach a
3 decision without a hearing on the matter.

4 Federal defendants consent to March for Life's requested relief, and Defendant Intervenor
5 LSOP has indicated that it has no objection to it. *See* Theriot Declaration. Plaintiff States,
6 however, have indicated they do not consent to have March for Life's motion conducted without
7 a hearing, but would be willing to stipulate to a hearing date in advance of the federal government's
8 appeal deadline. *Id.*

9 **CONCLUSION**

10 March for Life respectfully requests that this Court grant its motion and order that its
11 motion to intervene be adjudicated without a hearing. In the alternative, March for Life would
12 request the relief to which Plaintiff States have indicated they would be willing to stipulate.

13 Respectfully submitted this 17th day of January, 2018.

14 By: s/Kevin H. Theriot

15 Kevin H. Theriot, AZ Bar No. 030446**
16 Alliance Defending Freedom
17 15100 North 90th Street
18 Scottsdale, Arizona 85260
19 (480) 444-0020
20 (480) 444-0028 Fax
21 ktheriot@ADFlegal.org

22 Brian R. Chavez-Ochoa
23 Chavez-Ochoa Law Offices, Inc.
24 4 Jean Street, Suite 4
25 Valley Springs, CA 95252
26 (209) 772-3013
27 (209) 772-3090 Fax
28 chavezchoa@yahoo.com

Counsel for Proposed Defendant-Intervenor

** *Pro hac vice granted*

1 Brian R. Chavez-Ochoa
Chavez-Ochoa Law Offices, Inc.
2 4 Jean Street, Suite 4
Valley Springs, CA 95252
3 (209) 772-3013
(209) 772-3090 Fax
4 chavezochoa@yahoo.com

5 David A. Cortman, AZ Bar No. 029490*
Kevin H. Theriot, AZ Bar No. 030446**
6 Kenneth J. Connelly, AZ Bar No. 025420*
Alliance Defending Freedom
7 15100 North 90th Street
Scottsdale, Arizona 85260
8 (480) 444-0020
(480) 444-0028 Fax
9 dcortman@ADFlegal.org
10 ktheriot@ADFlegal.org
kconnelly@ADFlegal.org

11 *Counsel for Defendant-Intervenor*

12
13 **IN THE UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

14
15 THE STATE OF CALIFORNIA, et al.,

16 *Plaintiffs,*

17 v.

18 ERIC D. HARGAN, in his official capacity
as Acting Secretary of the U.S. Department
19 of Health and Human Service, et al.,

20 *Defendants,*

and,

21 THE LITTLE SISTERS OF THE POOR
22 JEANNE JUGAN RESIDENCE,

23 *Defendant-Intervenor,*

24 and,

25 MARCH FOR LIFE EDUCATION AND
DEFENSE FUND,

26 *Defendant- Intervenor.*

27 **Pro hac vice forthcoming*

28 *** Pro hac vice granted*

Case No. 4:17-cv-05783-HSG

**DECLARATION OF KEVIN THERIOT
IN SUPPORT OF MARCH FOR LIFE'S
MOTION FOR ORDER THAT ITS
MOTION TO INTERVENE BE
ADJUDICATED WITHOUT A
HEARING.**

1 I, Kevin Theriot, declare as follows:

2 1. I am Senior Counsel, Vice President of the Center for Life at Alliance Defending
3 Freedom. I am an attorney representing March for Life in this Matter.

4 2. I have personal knowledge of all facts stated in this declaration, and if called to testify, I
5 could and would testify competently thereto.

6 3. March for Life's Motion for Order that its Motion to Intervene be Adjudicated Without a
7 Hearing is made on the ground that March for Life believes a hearing is unnecessary to enable
8 this Court to rule on its Motion to Intervene. Moreover, forgoing the hearing would prejudice no
9 party and economize judicial resources, and would also permit March for Life to receive a
10 decision on its motion in time to potentially take full part in any appeal that might be initiated.

11 4. Pursuant to Local Rule 7-11(a) my colleague and co-counsel for March for Life, Ken
12 Connelly, e-mailed all current parties to the case to inquire as to their respective positions
13 regarding the instant motion. Counsel for the federal government indicated that they consented
14 to the motion; counsel for Defendant-Intervenor Little Sisters of the Poor indicated that they did
15 not object; and Counsel for Plaintiff States indicated that they objected but would stipulate to a
16 hearing date in advance of the current February 19 deadline for the federal government to appeal
17 this Court's grant of their motion for preliminary injunction.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on January 17, 2018.

20 /s/ Kevin Theriot
Kevin Theriot

21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

THE STATE OF CALIFORNIA, et al.,

Plaintiffs,

V.

ERIC D. HARGAN, in his official capacity
as Acting Secretary, et al.,

Defendants,

and,

THE LITTLE SISTERS OF THE POOR
JEANNE JUGAN RESIDENCE,

Defendant-Intervenor,

and,

MARCH FOR LIFE EDUCATION AND
DEFENSE FUND
JEANNE F. MANCINI,

Defendant-Intervenor.

**Pro hac vice forthcoming*

*** Pro hac vice granted*

Case No. 4:17-cv-05783-HSG

**[PROPOSED] ORDER GRANTING
DEFENDANT-INTERVENOR MARCH
FOR LIFE'S MOTION FOR ORDER
THAT ITS MOTION TO INTERVENE
BE ADJUDICATED WITHOUT A
HEARING.**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

Pending before the Court is Proposed Defendant-Intervenor March for Life’s Motion for Order that its Motion to Intervene be Adjudicated Without a Hearing. After due consideration, this Court GRANTS the motion.

SIGNED this ____ day of January, 2018.

HAYWOOD S. GILLIAM, JR.
U.S. District Judge