

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

8
 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 11

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

17 Plaintiffs,

18 v.

19 **ALEX M. AZAR, II, IN HIS OFFICIAL**
 20 **CAPACITY AS SECRETARY OF THE U.S.**
 21 **DEPARTMENT OF HEALTH & HUMAN**
 22 **SERVICES; U.S. DEPARTMENT OF**
 23 **HEALTH AND HUMAN SERVICES; R.**
 24 **ALEXANDER ACOSTA, IN HIS OFFICIAL**
 25 **CAPACITY AS SECRETARY OF THE U.S.**
 26 **DEPARTMENT OF LABOR; U.S.**
 27 **DEPARTMENT OF LABOR; STEVEN**
 28 **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 JULIE
RABINOVITZ

1 I, Julie Rabinovitz, declare:

2 1. I am President and CEO at Essential Access Health, where I have worked since
3 2011.

4 2. Essential Access Health is the administrator of California’s Title X federal family
5 planning program, the nation’s largest and most diverse Title X system. Essential Access Health
6 supports the delivery of core family planning and related preventive health services for over
7 1,000,000 low-income patients in 38 of California’s 58 counties. Essential Access Health is
8 committed to ensuring all individuals have access to affordable, high-quality family planning and
9 sexual health services, including contraceptive services and supplies.

10 3. I am familiar with the two final rules on contraceptive access published in the
11 *Federal Register* on November 15, 2018 (Final Rules).¹ The Final Rules discriminate against
12 women by allowing virtually any employer to deprive women of basic contraceptive coverage,
13 and would create barriers and inequities for women seeking essential and time-sensitive health
14 care. The Final Rules will also result in more women seeking care from Title X-funded clinics
15 across the state. This will divert critical resources away from the uninsured, low-income patients
16 the program was designed to serve. All Title X sites are Family PACT providers.

17 **Access to Contraception**

18 4. Before the Affordable Care Act (ACA), one in seven women with private health
19 insurance and nearly one-third of women covered by Medicaid either postponed or went without
20 needed services in the prior year because they could not afford it.² Prior to the law’s enactment,
21 women spent between 30% and 44% of their total out-of-pocket health costs on birth control.³
22 Out-of-pocket costs prevented many women, not just low-income women, from accessing
23 preventive services, including contraception.⁴ The gap between men and women who struggled
24

25 ¹ “Religious Exemptions and Accommodations for Coverage of Certain Preventive
26 Services Under the Affordable Care Act,” 83 Fed. Reg. 57536 (Nov. 15, 2018) and “Moral
27 Exemptions and Accommodations for Coverage of Certain Preventive Services Under the
28 Affordable Care Act,” 83 Fed. Reg. 57592 (Nov. 15, 2018).

² Kaiser Family Foundation. Women’s Health Care Chartbook. 2011.

³ *Id.*

⁴ Su-Ying Liang et al., Women’s Out-of-Pocket Expenditures and Dispensing Patterns for

1 to access needed care was in fact widest among adults with moderate incomes.⁵ By contrast,
 2 eliminating cost barriers has helped increase access to contraception for women with employer-
 3 sponsored coverage.⁶ Because of the birth control benefit, women saved more than \$1.4 billion in
 4 out-of-pocket costs on birth control pills in 2013 alone.⁷

5 5. The goal of preventive health care is to help people control, track, and better
 6 manage their life-long health, and the health of their families. Similarly, the goal of prevention of
 7 unintended pregnancy is to help women time and space their pregnancies, or prevent pregnancy
 8 altogether, in accordance with their own desires and to improve maternal, child, and family health
 9 outcomes.⁸ Contraception enables women to prevent unintended pregnancy and control the
 10 timing of a desired pregnancy. In addition, access to birth control is particularly critical for
 11 women with underlying chronic, physical and psychological conditions that can be exacerbated
 12 by pregnancy. Unintended pregnancy rates are higher in the United States than in most other
 13 developed countries, with approximately 45% of pregnancies unintended nationwide.⁹ Nearly
 14

15 Oral Contraceptive Pills between 1996 and 2006, 83 *CONTRACEPTION* 491, 531 (2010); see also
 16 Inst. of Med. of the Nat'l Acads., *Clinical Preventive Services for Women: Closing the Gaps* 19
 17 (2011), <https://www.nap.edu/read/13181/chapter/1>. Another study of 11,000 employees with
 18 employer-sponsored coverage found that cost-sharing reduced use of pap smears, preventive
 19 counseling, and mammography. Geetesh Solanki et al., *The Direct and Indirect Effects of Cost-
 20 Sharing on the Use of Preventive Services*, 34 *HEALTH SERVS. RESEARCH* 1331, 1342-43 (2000);
 21 1342-43; see also David Machledt & Jane Perkins, *Medicaid Premiums & Cost-Sharing* 2-3
 22 (2014), [http://www.healthlaw.org/publications/search-publications/Medicaid-Premiums-
 23 CostSharing#.WgCFehNSzeQ](http://www.healthlaw.org/publications/search-publications/Medicaid-Premiums-CostSharing#.WgCFehNSzeQ).

24 ⁵ Sheila D. Rustgi et al., *The Commonwealth Fund, Women at Risk: Why Many Women
 25 Are Forgoing Needed Health Care* 4 (2009),
 26 [http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2009/May/Wome
 27 n%20at%20Risk/PDF_1262_Rustgi_women_at_risk_issue_brief_Final.pdf](http://www.commonwealthfund.org/~media/Files/Publications/Issue%20Brief/2009/May/Women%20at%20Risk/PDF_1262_Rustgi_women_at_risk_issue_brief_Final.pdf). Finding that sixty-
 28 five percent of women with incomes between \$20,000 and \$39,999 experienced problems
 accessing health care services because of cost.

⁶ Adam Sonfield et al., *Impact of the Federal Contraceptive Coverage Guarantee on Out-
 of-Pocket Payments for Contraceptives: 2014 Update*, 91 *CONTRACEPTION* 44, 45-47 (2014).

⁷ Nora V. Becker and Daniel Polsky, *Women Saw Large Decrease In Out-Of-Pocket
 Spending For Contraceptives After ACA Mandate Removed Cost Sharing*, *Health Affairs*, 34,
 no.7 (2015):1204-1211. Available at
<http://content.healthaffairs.org/content/34/7/1204.full.pdf+html>.

⁸ *Women's Preventive Services Initiative, Recommendations for Preventive Services for
 Women* 83 (2016), available for download at [https://www.womenspreventivehealth.org/final-
 report/](https://www.womenspreventivehealth.org/final-report/).

⁹ *Finer LB and Zolna MR, Declines in unintended pregnancy in the United States, 2008–
 2011*, *New England Journal of Medicine*, 2016, 374(9):843–852.

1 half (48%) of all pregnancies (393,000) in California are unintended. The U.S. has the highest
2 rate of maternal mortality in the developed world, and contraception is considered a major factor
3 in reducing rates of maternal mortality and morbidity.¹⁰ Contraceptive efficacy in preventing
4 unintended pregnancy is well established and supported by numerous research studies.¹¹

5 6. Insurance coverage of contraception is critical to ensuring women can use it.
6 Unintended pregnancy rates are highest among those least able to afford contraception,
7 particularly those who face additional barriers to accessing health care services including
8 economic instability and/or discrimination based on race, ethnicity, gender identity, or sexual
9 orientation.

10 7. The Final Rules place obstacles to receiving seamless contraceptive care that is
11 free of cost-sharing, placing the rules in conflict with Congressional intent to reduce barriers to
12 contraception for women across the United States. The result will be a lack of continuity of care
13 and unequal protections for women employed by companies that refuse to cover contraceptives.

14 **Final Rules' Impact on Government-sponsored Programs**

15 8. The Final Rules assert that existing government-sponsored programs, such as
16 Medicaid and Title X, can serve as alternatives for individuals who will lose access to
17 contraceptive coverage without cost sharing. We expect that more women will come to Title X
18 clinics for care under these Final Rules. Medicaid and Title X were created to serve low-income
19 populations who would otherwise lack a pathway to care without out-of-pocket expenses. These
20 vital publicly-funded public health programs were not designed to absorb the needs of higher
21 income, privately insured individuals.

22 9. Enacted in 1970, Title X is the nation's only dedicated source of federal funding
23 for family planning services. While Title X-funded health centers provide care to all patients,
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26 ¹⁰ Murray, J.L., Wang, H., Kassebaum, N., "Sharp Decline in Maternal and Child Deaths
27 Globally, New Data Show." Institute for Health Metrics and Evaluation. University of
28 Washington. 2016.

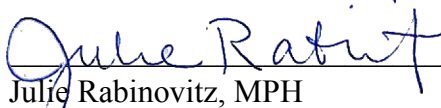
¹¹ Trussell J. Contraceptive failure in the United States. *Contraception*. 2011;83(5):397-404.

1 federal law requires them to give priority to “persons from low-income families.” Low-income
2 individuals receive services at low or no cost depending on their family income.

3 10. In 2016, 64% of Title X patients had incomes at or below the federal poverty level
4 (FPL) that is currently \$25,100 for a family of four. An additional 24% had incomes at or below
5 101% and 250% of the federal poverty level. In California, 86% of Title X patients served last
6 year had incomes at or below 250% FPL. Despite gains made in expanding health care coverage,
7 half of all Title X patients served by the program last year remained uninsured.

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

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12 Executed on December 10, 2018 in Berkeley, CA.

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15 Julie Rabinovitz, MPH
16 President and CEO
17 Essential Access Health
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