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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.**
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,

24 Defendants,

25 and,

26 **THE LITTLE SISTERS OF THE POOR,**
JEANNE JUGAN RESIDENCE; MARCH
 27 **FOR LIFE EDUCATION AND DEFENSE**
FUND,

28 Defendant-Intervenors.

4:17-cv-05783-HSG

DECLARATION OF JONATHAN
WERBERG

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

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
24

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26 ¹ U.S. Census Bureau; American Community Survey, 2011-2013 American Community Survey
27 3-Year Estimates, Table B27004; generated using American FactFinder;
28 <<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
5 4. Thus, considering only women of child-bearing age, and not spouses or daughters
6 of other insureds, the Exemption Rules could impact up to approximately 1.16 million women in
7 New York State.

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

13
14 6. Hobby Lobby Stores, Inc. is a for-profit national arts and crafts store chain with
15 28,000 employees across the United States. In New York State, Hobby Lobby has eighteen store
16 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;
<<http://factfinder2.census.gov>>; (October 10, 2017).

23 ³ Agency for Healthcare Research and Quality. Percent of private-sector enrollees that are
24 enrolled in self-insured plans at establishments that offer health insurance by firm size and State
(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).

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

27 ⁵ "Hobby Lobby Stores on Forbes Lists," [https://www.forbes.com/companies/hobby-lobby-
28 stores/?list=largest-private-companies#56cf4fa16cee/](https://www.forbes.com/companies/hobby-lobby-stores/?list=largest-private-companies#56cf4fa16cee/), accessed December 6, 2018.

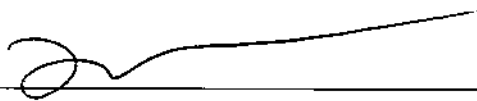
1 7. Nyack College, an affiliate of the Christian and Missionary Alliance, is a liberal
2 arts college in New York, with approximately 3,000 students enrolled in its programs; the college
3 employs approximately 1,100 people.⁶

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.
10

11
12
13 I declare under penalty of perjury that the foregoing is true and correct and of my own
14 personal knowledge.

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

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18 
19 Jonathan Werberg
20 Director of Research and Analytics
21 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).