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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,**

Plaintiffs,

v.

17 **ALEX M. AZAR, II, IN HIS OFFICIAL**
 18 **CAPACITY AS SECRETARY OF THE U.S.**
 19 **DEPARTMENT OF HEALTH & HUMAN**
 20 **SERVICES; U.S. DEPARTMENT OF**
 21 **HEALTH AND HUMAN SERVICES; R.**
 22 **ALEXANDER ACOSTA, IN HIS OFFICIAL**
 23 **CAPACITY AS SECRETARY OF THE U.S.**
 24 **DEPARTMENT OF LABOR; U.S.**
 25 **DEPARTMENT OF LABOR; STEVEN**
 26 **MNUCHIN, IN HIS OFFICIAL CAPACITY AS**
 27 **SECRETARY OF THE U.S. DEPARTMENT OF**
 28 **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-005783

**DECLARATION OF MASSEY
 WHORLEY IN SUPPORT OF THE
 COMMONWEALTH OF VIRGINIA'S
 MOTION FOR PRELIMINARY
 INJUNCTION**

1 I, Massey S. J. Whorley declare:

2 1. I am over the age of 18 and competent to make this declaration.

3 2. I have been the Director of Innovation and Strategic Initiatives at the Virginia
4 Department of Social Services since July 2018. Previously, I served as the Senior Policy Advisor
5 to Governors Ralph S. Northam and Terence R. McAuliffe in the Office of the Governor of
6 Virginia. Prior to September 2016, I was a Senior Policy Analyst at the Commonwealth Institute
7 for Fiscal Analysis, a nonpartisan organization that provides analyses of fiscal and economic
8 policies and their implications for Virginians, especially low- and middle-income residents, where
9 I managed the Health Care and Tax portfolios.

10 3. Plan First is Virginia's limited benefit family planning program that covers all
11 birth control methods provided by a clinician and some birth control methods obtained with a
12 prescription, such as contraceptive rings, patches, birth control pills, and diaphragms.

13 4. In general, women in families with income below 200 percent of the applicable
14 federal poverty guideline are eligible for Plan First.

15 5. As of October 1, 2018, 136,074 individuals were enrolled in Plan First per
16 information compiled by the Department of Medical Assistance Services (DMAS).

17 6. Total spend on Plan First in State Fiscal Year 2018 (July 1, 2017 through June 30,
18 2018) was \$7,239,586, according to DMAS records.

19 7. According to DMAS records, two of the top five providers in fiscal year 2017
20 were the Medical College of Virginia and the University of Virginia Hospital systems, both of
21 which are part of state-supported health systems.

22 8. Virginia does not have a contraceptive equity law. That is, there is no state
23 requirement that insurance plans offer contraceptive coverage to women at zero cost to them.

24 9. I am familiar with the final rules that the U.S. Health and Human Services
25 Department, in conjunction with the U.S. Department of Labor and U.S. Department of Treasury,
26 issued on November 7, 2018 (FRs). Under the FRs, any employer could claim a religious or
27 moral objection to providing contraceptive coverage and leave their employees without free
28

1 contraceptive coverage. This expanded exemption would effectively make contraceptive
2 coverage optional.

3 10. Women impacted by the FRs who are eligible for Plan First may be expected to
4 enroll in Plan First, resulting in an increase in enrollees in this state-supported program which
5 would have a corresponding fiscal impact.


6 11. State providers, such as the Medical College of Virginia Hospital and the
7 University of Virginia Hospital, do not recover 100 percent of the cost of the care they provide
8 under Plan First. Accordingly, an increase in women seeking services from these two hospital
9 systems under Plan First will have an additional impact on Virginia's financial obligations.

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

Executed on December 7, 2018, in Richmond, Virginia.



MASSEY S. J. WHORLEY
Director of Innovation and Strategic Initiatives
Virginia Department of Social Services