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

15 **STATE OF CALIFORNIA, BY AND THROUGH**  
 16 **ATTORNEY GENERAL XAVIER BECERRA,**

17 Plaintiff,

18 v.

20 **ALEX AZAR, IN HIS OFFICIAL CAPACITY AS**  
 21 **SECRETARY OF THE U.S. DEPARTMENT OF**  
 22 **HEALTH & HUMAN SERVICES; U.S.**  
**DEPARTMENT OF HEALTH AND**  
**HUMAN SERVICES; DOES 1-100,**

24 Defendants.

**DECLARATION OF ELIZABETH  
 FORER IN SUPPORT OF A MOTION  
 FOR A PRELIMINARY INJUNCTION**

Date: April 18, 2019  
 Time: 12:30 p.m.  
 Dept: Courtroom 5, 17<sup>th</sup> Floor  
 Judge: The Honorable Edward M.  
 Chen  
 Trial Date: Not set  
 Action Filed: March 4, 2019

1 I, Elizabeth B. Forer, declare as follows:

2 1. I am the Chief Executive Officer and Executive Director of Venice Family  
3 Clinic (VFC), in Los Angeles, California. I have been in this position for over 25 years, and have  
4 worked at VFC since 1994. Prior to joining VFC, I served for five years as Executive Director of  
5 Settlement Health and Medical Services, a nonprofit community health center in East Harlem,  
6 New York. I am a California HealthCare Foundation Health Leadership Fellow, and I am an  
7 active member of the Community Clinic Association of Los Angeles County and the California  
8 Primary Care Association. I hold a B.A. in English from Northwestern University, and a  
9 Master's in Social Work and a Master's in Public Health from Columbia University School of  
10 Social Work and the Mailman School of Public Health.

11 2. As the Chief Executive Officer and Executive Director of VFC, my role is to  
12 provide leadership for VFC's mission, goals, and objectives. I am responsible for managing the  
13 resources and operations of VFC, by providing oversight of program development, strategic  
14 planning, marketing, and fiscal management to ensure coordination of customer service and high  
15 quality care across all clinic sites.

16 3. This declaration is based on my personal knowledge, through my various roles  
17 as a public health advocate, including over two decades of having worked at VFC. If called and  
18 sworn as a witness, I could and would testify competently to the information in this declaration.

19 4. VFC is a private, nonprofit, community-based health center founded in 1970 to  
20 meet the healthcare needs of low-income residents of Venice, California and the surrounding Los  
21 Angeles community. VFC's mission is to provide quality primary healthcare to people in need.

22 5. As a Federally Qualified Health Center (FQHC), VFC plays a unique and  
23 central role in the healthcare delivery system by providing high-quality, affordable, and  
24 coordinated care to medically underserved persons, including low-income individuals and those  
25 who face significant geographic, transportation, and socioeconomic barriers to care.

26 6. Today, with twelve clinic sites, VFC is the medical home for people who might  
27 otherwise go without critically needed healthcare services. VFC serves about 27,136 patients at  
28 clinic sites throughout Venice, Santa Monica, Mar Vista, Inglewood, and Culver City. VFC is the

1 first choice in affordable healthcare for low-income, uninsured and homeless families and  
2 individuals. Our patient population is as diverse as their needs, from infants, children and  
3 teenagers, to adults and seniors. While our patients are most highly concentrated in the Westside  
4 of Los Angeles, many come from across Los Angeles County seeking trusted and affordable  
5 quality care.

6 7. VFC focuses on providing fully integrated primary healthcare services, which  
7 include comprehensive medical care, dental, mental health, substance use treatment and health  
8 education, as well as family planning services. In 2017-2018, VFC provided over 125,771 total  
9 patient visits: 83,299 primary and specialty care; 10,462 mental health; 11,934 dental care;  
10 14,309 health education; and 4,805 Children First Early Head Start visits. Other services include  
11 diagnosis, treatment, medications, follow-up care, and laboratory tests. A wide array of specialty  
12 care services is also offered by volunteer clinical providers, including cardiology, dermatology,  
13 ear/nose/throat, neurology, ophthalmology, optometry, among many others.

14 8. At VFC, we place particular emphasis on the needs of women, children, the  
15 homeless, and those with chronic diseases.

16 9. VFC offers in-clinic, shelter, and street-based outreach and care for people  
17 experiencing homelessness. Annually, we provide critical health services to over 4,000 homeless  
18 individuals.

19 10. VFC has been a Title X provider since 1993. We deeply value the support the  
20 Title X network provides California health centers like VFC, and the flexibility which annual  
21 Title X grants give us to expand our budget and make family planning services accessible to our  
22 patients.

23 11. VFC received Title X funding through Essential Access Health. In 2017, VFC  
24 received about \$142,198 in Title X funds. As a sub-recipient of Essential Access, VFC has been  
25 audited by Essential Access staff. Essential Access staff perform site visits every three years to  
26 ensure that Title X funds are correctly managed and disbursed.

27 12. Each year Title X allows us to meet the needs of more low-income patients in  
28 need of family planning services. In 2017, VFC saw a total of 3,995 Title X patients, 95% of

1 whom were women, 20% who were adolescents (15 to 19 year olds), and 80% who lived at or  
2 below 100% of the federal poverty line. Of our Title X patients, over 36% were uninsured.

3 13. Our Title X grant dollars are spread throughout three of our clinic sites, partially  
4 supporting the salaries of 5 physicians, advanced practice nurses and health educators, as well as  
5 education outreach materials. In this way, we leverage Title X funds to provide educational services  
6 that have a lasting benefit to the community and informs them of available sexual and reproductive  
7 health services. Title X funding also allows us to provide technical assistance and training for our  
8 staff, which in turn allows us to administer services more effectively.

9 14. Through the work of our Title X-supported health educator and other case  
10 managers, we are able to provide sexual and reproductive health education and outreach that links  
11 patients to family planning services which include sexually transmitted diseases/sexually  
12 transmitted infections (STDs/STIs) and HIV testing, cancer screenings, pregnancy testing, prenatal  
13 care, and referrals for adoption or abortion services.

14 15. As a health center, our evidence-based best practices require that all family  
15 planning care is integrated into primary care. Our family planning visits often stem from primary  
16 care visits, such as a women's wellness visit, asthma, or diabetes check-ups. Title X helps ensure  
17 that all of our providers are trained in sexual and reproductive health services, which allows VFC  
18 to deliver higher quality health services that can more comprehensively inform patients about their  
19 overall health.

20 16. I am familiar with the U.S. Department of Health and Human Services (HHS)'s  
21 final Rule, "Compliance with Statutory Program Integrity Requirements," issued on March, 04,  
22 2019.

23 17. As a subgrantee, VFC is deeply concerned about the broad impact of the Rule's  
24 drastic changes and conditions to Title X funding. If implemented, the Rule would significantly  
25 conflict with our mission and best practices of providing high quality integrated health services to  
26 our community. The Rule's new requirements would delay access to care, and impede the  
27 comprehensive administration of reproductive health services. This will lead to negative health  
28 outcomes such as higher rates of unintended and teenage pregnancies, as well as higher rates of

1 STDs and STIs in the greater Los Angeles area. Therefore, and in spite of the significance of  
2 Title X funds at our sites, VFC will be forced to forego its Title X grant.

3 18. According to the preamble of the Rule, VFC's use of Title X funds  
4 demonstrates the supposed need for the Rule's drastic new conditions on the use of Title X funds.  
5 84 Fed. Reg. 7774. The Rule singles out education and outreach activities as inappropriate use of  
6 funds supposedly aimed at building infrastructure for purposes prohibited by Title X, such as  
7 support for abortion services. *Id.*

8 19. Based on my experience and the work of VFC, however, the use of Title X  
9 funds to build this kind of human capital "infrastructure" is entirely aligned with what I  
10 understand to be the broader purpose of the Title X program: to expand the availability of family  
11 planning services to low-income communities. Plainly put, what the Rule calls infrastructure is  
12 an essential component of making real the availability of services for our communities.

13 20. As discussed, VFC offers critical medical care for vulnerable populations like  
14 the homeless. Using Title X funds, VFC is effective in reaching this population because we are  
15 able to meet patients where they are. Our health educator coordinates outreach teams that go into  
16 the community with tangible resources, like condoms and basic educational materials distributed  
17 by our trained physician's assistants, nurse practitioners, and care coordinators. Other outreach  
18 teams make regular visits to homeless shelters. Often, it takes multiple conversations and visits to  
19 a shelter or street-corner until these prospective patients feel safe enough to come to one of our  
20 twelve clinics for family planning or other healthcare services.

21 21. Title X dollars are truly indispensable in helping VFC build a relationship with  
22 the community and in turn getting patients inside the clinic doors to access family planning  
23 services. The special populations Title X was designed to target require more effort and intensive  
24 outreach.

25 22. For example, a VFC patient receives on average about ten minutes of  
26 counseling in the course of a routine, initial family planning visit. However, VFC patients who  
27 are homeless and dealing with multiple health barriers, or who are young and ill-informed, often  
28 require more than the typical ten-minute visit in order to understand the type of services available

1 to them, including social services or our clinics' applicable privacy protections. Homeless  
2 patients (including homeless traveling youth), need to discuss the many intersecting issues in their  
3 lives, and are likely to have more mental health concerns. For adolescents, our clinicians often  
4 need to spend time correcting misinformation received from peers and social media.

5           23. Title X-funded providers fill these gaps. Case managers and health educators  
6 review the information provided by the clinician and make sure all the patient's questions have  
7 been fully answered, sometimes calling the physician back to spend more time with the patient, if  
8 necessary. Case managers encourage patients to call with follow-up questions or issues that arise  
9 after the visit. In addition, case managers schedule appointments and follow up on missed  
10 appointments. All of this is critical to establishing rapport with patients and cultivating a trusting  
11 relationship that incentivizes patients to attend clinic sites regularly.

12           24. For FQHCs like VFC, leveraging our use of Title X funds through outreach is  
13 reasonable and a cost effective way to maximize the impact of our services. For example, in  
14 2017, through our various education and outreach presentations, we were able to reach 1,297  
15 individuals who otherwise may not have received healthcare services at all. Although programs  
16 like Family Planning, Access, Care, and Treatment (Family PACT) are available to reimburse  
17 family planning services for most of our patients, it is Title X that helps fund our case managers  
18 and health educators, who have been trained through Essential Access Health's Title X-funded  
19 community health worker training programs. Title X funds thus have a multiplier effect which  
20 benefits our communities and broadens the access to family planning services.

21           25. Despite all these benefits to our patients, if the Rule is implemented, we will  
22 likely have to leave the Title X program. The Rule's attempt to rearrange how providers and  
23 health centers administer health services is practically impossible, ethically reprehensible, and  
24 legally problematic for VFC.

25           26. The Rule's ban on referrals for abortion care contravenes the basic ethical and  
26 professional duties of VFC healthcare providers, who are tasked with providing unbiased and  
27 comprehensive reproductive health information, including comprehensive, non-directive options  
28

1 counseling. For VFC providers, this represents a complete lack of respect for evidence-based  
2 care and medicine in terms of contraception care and abortion.

3 27. VFC integrates primary care with family planning services, such that discussing  
4 a patient's family planning options might be critical to other aspects of their wellbeing and having  
5 appropriate and timely referrals is vital. Providing patients with all the necessary information is  
6 part of providing comprehensive counseling.

7 28. Our patients rely on our providers' and case managers' assistance. When  
8 issuing referrals, our case managers direct patients to providers they can trust, clinics that are  
9 financially accessible, in their neighborhoods, and often even help secure scheduling  
10 appointments. For patients who are intimidated, unfamiliar, new to the healthcare system, or face  
11 language barriers, these are critical aspects of services that ensure patients can access the  
12 healthcare they need. Gagging what our providers can say to our patients would inevitably  
13 compromise VFC's commitment to excellent quality care.

14 29. Additionally, the new requirement that allows only a medical doctor or advance  
15 practice provider to perform counseling and referrals to pregnant patients is contrary to our  
16 practice and needs. A large percentage of our providers who issue referrals are midlevel  
17 providers, many of whom do have advanced medical degrees, such as nurse practitioners, social  
18 workers, and physicians. Depending on who the patient sees after obtaining their pregnancy  
19 results, however, often it is a case manager or a health educator who provides patients with  
20 appropriate information and referrals. Although these personnel do not have advanced medical  
21 degrees, they do have a significant level of training and education in women's health services  
22 provided by Essential Access Health, and they are able to competently provide this critical  
23 counseling and referral service.

24 30. As an FQHC, it is purely impractical to operate our 12 clinics without reliance  
25 on both midlevel professional clinicians and trained personnel to provide counseling and referral  
26 services, and it is contrary to our best practices for efficient and timely delivery of services.  
27 Complying with this requirement would create significant barriers for VFC clinic sites that would  
28



1 not be able to provide the volume of services we administer everyday. This will directly impact  
2 the number of patients our clinics will be able to see, leading to significant delays in services.

3 31. Furthermore, it would be unacceptable and financially impossible for VFC's  
4 three Title X funded clinic sites to build entirely separate adjoining sites just to deliver the quality  
5 of care we are committed to, which sometimes entails discussion of and referrals for abortion as  
6 the healthcare option it is. This would also be confusing for our patients and generate a stigma  
7 around reproductive care that we have worked to avoid by integrating primary care services at our  
8 clinics.

9 32. If VFC is forced to forgo Title X funding, however, our providers would lose  
10 out on the reliable and trusted expertise and knowledge provided by our state grantee, Essential  
11 Access Health, to the Title X network. Through its superb family planning community health  
12 worker trainings, Essential Access has for years enhanced our ability to provide accurate, cutting  
13 edge information and best practices. Our medical assistants and health educators benefit greatly  
14 from trainings dealing with counseling techniques, insertions for long- acting reversible  
15 contraceptives such as intrauterine devices (IUDs), or clinical protocols and best practices. I do  
16 not know how we could possibly replace or replicate this support VFC receives through the Title  
17 X program.

18 33. Aside from the loss to our own family planning budget by forgoing Title X  
19 funding, VFC is highly concerned that these Title X grants will now be reallocated to crisis  
20 pregnancy centers, many of which we know provide inaccurate information to patients. This  
21 would directly undermine the foundation we have worked to build around an accurate  
22 understanding of sexual and reproductive healthcare options, which encourage our community  
23 members to want to seek out services at our clinics.

24 34. Implementation of the Rule in our program would undermine our patients'  
25 reliance on and trust in VFC providers. Many of our patients are also immigrants, domestic  
26 violence victims, and individuals seeking asylum for whom the patient-provider relationship and  
27 trust is central to their seeking services. Through our twelve clinics, VFC provides patients a  
28 secure place to seek critical care, including a culturally sensitive environment by providing



1 bilingual information. In fact, 30% of our patients have a Limited English Proficiency, and  
2 therefore, all of our support clinical staff are English and Spanish speakers.

3 35. The Rule's attempt to dictate what providers can share with patients would  
4 severely damage the patient-provider relationship. A gag rule would signal to patients that they  
5 are not free to disclose to their provider all the different factors potentially impacting their health,  
6 or their consideration or questions regarding services like abortion.

7 36. The Rule runs counter to our commitment to high quality services with respect  
8 to other aspects of our care as well. For example, VFC has a substance abuse program that is  
9 integrated into primary care, where we disclose the various services available to them because of  
10 their dependency. If we were to cut back on providing integrated, comprehensive care for our  
11 patients, it would impact our patients' ability to be open with their providers about the questions  
12 and concerns they have, or services they need. This would attach further stigma to already  
13 marginalized populations in our healthcare system, particularly victims of crime or undocumented  
14 patients who may feel vulnerable seeking care.

15 37. We understand that multiple barriers exist for special populations. As such,  
16 VFC has different efforts focused on meeting patients where they are. For example, as part of our  
17 outreach efforts, VFC operates a Labor Day Program where health educator teams provide  
18 educational materials with a particular focus on sexual and reproductive health education that  
19 helps connect individuals and families to family planning services at our clinic. Day laborers  
20 congregate in certain areas of the community to get picked up for carpentry, construction, or  
21 gardening jobs, and VFC uses this as an opportunity to provide individuals with workshops while  
22 they wait for work. We believe efforts such as this, focused on providing accurate and  
23 comprehensive information about contraceptives and reproductive health, helps reduce the  
24 STI/STD and unintended pregnancy rates in our communities, particularly for individuals who  
25 might otherwise lack the resources, time, or awareness to seek out services themselves.

26 38. Ultimately, the ramifications of the Rule will have life long impacts on our  
27 most vulnerable patients: the uninsured, women, young people, communities of color, and  
28 LGBTQ individuals who already face inequalities in the healthcare system. VFC, like all

1 healthcare providers, must be allowed to uphold our ethical and moral obligation to deliver  
2 comprehensive care aligned with best medical practice and grounded in scientific evidence.

3           39. If this Rule is implemented, VFC will be forced to forgo meaningful Title X  
4 funding and program participation, in order to maintain our clinic’s commitment to providing the  
5 same level of excellent healthcare. The loss of education and outreach efforts, including the  
6 educational and outreach infrastructure that enables VFC’s delivery of family planning services,  
7 will mean less access to quality reproductive healthcare for our patients in Los Angeles, higher  
8 risks for STI/STD rates, and unintended pregnancies.

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

Executed on March 21, 2019, in Los Angeles, California.



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Elizabeth B. Forer  
Chief Executive Officer, Executive Director  
Venice Family Clinic

SA2018101519