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 14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
 15 **SAN FRANCISCO DIVISION**

16 CITY AND COUNTY OF SAN FRANCISCO,
 Plaintiff,
 17 v.
 18 ALEX M. AZAR II, *in his official capacity as*
Secretary of Health and Human Services,
 19 *et al.,*
 Defendants.

Case Nos. 3:19-cv-2405-WHA
 3:19-cv-2769-WHA
 3:19-cv-2916-WHA

**DEFENDANTS’ RESPONSE TO
 ORDER RE USE OF TERM
 “ENTITY”**

Judge: Hon. William H. Alsup

20 STATE OF CALIFORNIA, by and through
 ATTORNEY GENERAL XAVIER
 21 BECERRA,
 Plaintiff
 22 v.
 23 ALEX M. AZAR, et al.,
 Defendants.

24 COUNTY OF SANTA CLARA, et al.
 Plaintiffs,
 25 v.
 26 U.S. DEPARTMENT OF HEALTH AND
 HUMAN SERVICES, et al.,
 27 Defendants.

1 On November 8, 2019, the Court ordered the parties to “advise the Court of the extent to which
2 HHS contends (or has contended) that ‘entity’ as used in the Church Amendment should be construed to
3 include ‘health care entity’ as defined in the challenged rule.” Order, ECF No. 144. Defendants
4 respond as follows:

5 The Rule provides a two-pronged definition of “health care entity.” 84 Fed. Reg. 23,264
6 (§ 88.2). One definition applies for purposes of the Coats-Snowe Amendment,¹ and one definition
7 applies for purposes of the Weldon Amendment and section 1553 of the Affordable Care Act.² Neither
8 definition of “health care entity” applies for purposes of the Church Amendments. In other words, HHS
9 has not and does not contend that “entity” as used in the Church Amendments should be construed using
10 the definition of “health care entity” in the Rule.

11 Separate from its definition of “health care entity,” the Rule also provides a definition of
12 “entity,”³ which is not challenged by Plaintiffs. The Church Amendments contain the term “entity,” but
13 not the term “health care entity.” *See, e.g.*, 42 U.S.C. § 300a-7(c)(1) (“No *entity* which receives a grant,
14 contract, loan, or loan guarantee [under certain programs] may (A) discriminate in the employment,
15 promotion, or termination of employment of any physician or other health care personnel, or”
16 (emphasis added)). It is HHS’s position that “entity” in the Church Amendments should be defined as
17 provided by the definition of “entity” in the Rule. There may be examples which would satisfy both the
18 definition of “health care entity” in the Rule and the definition of “entity” in the Rule, such as an
19 individual physician. Whether such entities are considered “entities” under the Church Amendments
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22 ¹ *See* 84 Fed. Reg. 23,264 (“*Health care entity* includes: (1) For the purposes of the Coats-Snowe
23 Amendment (42 U.S.C. 238n) and the subsections of this part implementing that law (§ 88.3(b)), an
individual physician or other health care professional, [definition continues]”).

24 ² *See* 84 Fed. Reg. 23,264 (“*Health care entity* includes . . . (2) For the purposes of the Weldon
25 Amendment . . . Patient Protection and Affordable Care Act section 1553 (42 U.S.C. 18113), and to
sections of this part implementing those laws (§ 88.3(c) and (e)), an individual physician or other health
care professional [definition continues]”).

26 ³ *See* 84 Fed. Reg. 23,263 (§ 88.2) (“Entity means a ‘person’ as defined in 1 U.S.C. 1; the
27 Department; a State, political subdivision of any State, instrumentality of any State or political subdivision
thereof; any public agency, public institution, public organization, or other public entity in any State or
28 political subdivision of any State; or, as applicable, a foreign government, foreign nongovernmental
organization, or intergovernmental organization (such as the United Nations or its affiliated agencies).”).

1 would be determined by reference to the Rule’s definition of “entity” and not the Rule’s definition of
2 “health care entity.”

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4 Dated: November 12, 2019

Respectfully Submitted,

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9 */s/ Rebecca M. Kopplin*

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