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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 COUNTY OF SANTA CLARA, TRUST
15 WOMEN SEATTLE, LOS ANGELES LGBT
16 CENTER, WHITMAN-WALKER CLINIC,
17 INC. d/b/a WHITMAN-WALKER HEALTH,
18 BRADBURY-SULLIVAN LGBT
19 COMMUNITY CENTER, CENTER ON
20 HALSTED, HARTFORD GYN CENTER,
21 MAZZONI CENTER, MEDICAL STUDENTS
22 FOR CHOICE, AGLP: THE ASSOCIATION
23 OF LGBTQ+ PSYCHIATRISTS, AMERICAN
ASSOCIATION OF PHYSICIANS FOR
HUMAN RIGHTS d/b/a GLMA: HEALTH
PROFESSIONALS ADVANCING LGBTQ
EQUALITY, COLLEEN MCNICHOLAS,
ROBERT BOLAN, WARD CARPENTER,
SARAH HENN, and RANDY PUMPHREY,

Plaintiffs,

vs.

25 U.S. DEPARTMENT OF HEALTH AND
26 HUMAN SERVICES and ALEX M. AZAR, II,
27 in his official capacity as SECRETARY OF
HEALTH AND HUMAN SERVICES,

Defendants.

No. 19-cv-2916 NC

**DECLARATION OF PHUONG H.
NGUYEN, M.D., INTERIM CHIEF
MEDICAL OFFICER, SANTA CLARA
VALLEY MEDICAL CENTER, IN
SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION**

1 I, Phuong H. Nguyen, M.D., declare:

2 1. I am a resident of the State of California. I submit this declaration in support of the
3 County of Santa Clara's ("County"), and its co-plaintiffs', Motion for Preliminary Injunction. I
4 have personal knowledge of the facts set forth in this declaration. If called as a witness, I could
5 and would testify competently to the matters set forth herein.

6 2. I currently serve as Interim Chief Medical Officer for the Santa Clara Valley
7 Medical Center ("Valley Medical Center"). I have been employed by Valley Medical Center in
8 various capacities for a total of nineteen (19) years, and I have practiced as an obstetrician/
9 gynecologist in a clinical capacity throughout my employment with Valley Medical Center. As
10 of March 1, 2019, when the County of Santa Clara assumed operations of O'Connor Hospital and
11 St. Louise Hospital, I became Interim Chief Medical Officer of the single consolidated medical
12 staff for the three hospitals.

13 3. The County of Santa Clara Health System operates three hospitals—Valley
14 Medical Center, O'Connor Hospital, and St. Louise Hospital under a single consolidated hospital
15 license and with a single consolidated medical staff. The consolidated medical staff includes
16 1202 physicians and advance practice providers at Valley Medical Center, 681 physicians and
17 advance practice providers at O'Connor Hospital, and 262 physicians and advance practice
18 providers at St. Louise Hospital. As Interim Chief Medical Officer, I supervise the consolidated
19 medical staff, including overseeing the recruitment, hiring, training, scheduling, and supervision
20 of physicians.

21 4. Valley Medical Center has policies that allow medical staff, including physicians,
22 who have a religious or moral objection to providing certain patient care to request not to
23 participate in that care. Those policies are being made applicable to physicians who provide care
24 at O'Connor and St. Louise hospitals as part of the integration of those hospitals into the
25 County's Health System. The County has procedures in place to determine whether such
26 objections can reasonably be accommodated, in light of circumstances such as staffing levels, and
27 to take into account religious objections in scheduling and staffing decisions. Our policies make
28 clear that patient care must not be compromised. For example, in an emergency an objecting

1 physician would need to provide care until the physician can be relieved. Similarly, for end-of-
2 life care decisions involving medically ineffective care or other healthcare instructions for which
3 a physician has an objection, the objecting physician must assist in the transfer of the patient to
4 another provider.

5 5. It would create staffing challenges if the hospitals could no longer reassign
6 objecting staff members or shift their hours to accommodate or account for their religious
7 objections. It is necessary to assign certain personnel to specific shifts to ensure that there are
8 sufficient non-objecting staff to provide patient care. And if a person's religious objection is
9 incompatible with their current role, reassignment to a different role may be necessary. While we
10 strive to achieve mutually agreeable, voluntary reassignments, schedule changes, and other
11 accommodations whenever possible, in some instances we require the flexibility to make
12 assignment or scheduling decisions without the objecting staff member's consent.

13 6. Further, there are some circumstances in which no accommodation would be
14 possible. For example, if a receptionist objected to informing people that our hospitals provide
15 contraceptive and abortion care and refused to transfer inquiries about such care to another
16 receptionist, I cannot think of any accommodation that would avoid compromising patient access
17 to care. And even if a receptionist were willing to transfer all calls about contraceptive or
18 abortion care to another receptionist, this could require double staffing, at the cost of a second
19 salary. It would be operationally unworkable for the County of Santa Clara Health System if an
20 employee retains a unilateral right to veto a reassignment.

21 7. Delaying necessary health care can trigger immediate and long-term costs to the
22 County and communities nationwide. Under current County policies, patients seeking care for
23 routine procedures that a provider may have a religious or moral objection to providing are
24 promptly transferred to another provider or are initially scheduled to be served by a provider who
25 does not object. If a regulatory change impedes the County's ability to ensure the timely
26 provision of care for such patients, the resulting delays may exacerbate their medical needs,
27 resulting in increased costs for treatment. Since the County is a safety-net provider, many of
28 those increased costs would be borne by the County—either directly, where the County absorbs

1 the cost of care for uninsured or underinsured patients, or indirectly because federal health
2 insurance programs like Medicaid and Medicare rarely cover the full cost of treatment.

3 8. Delays in care may also lead to malpractice claims, which are costly to defend and
4 may lead to expensive settlements or court-ordered damages, at potentially great cost to the
5 County. County physicians and other providers are bound by medical ethics to act in the best
6 interest of our patients. Delaying care because a provider did not register a religious or moral
7 objection in advance is in conflict with those ethical obligations. Patients whose medical
8 conditions are worsened by delays or denials of care may experience preventable adverse
9 outcomes such as long-term injury or even death as a result.

10 9. For example, a patient could present at Valley Medical Center with vaginal
11 spotting, pain, missed period, and positive home pregnancy test in the context of having an intra-
12 uterine device as a contraceptive method—a condition many Valley Medical Center physicians
13 are qualified and willing to manage and treat. If an employee or physician were to turn that
14 patient away from the hospital, based on moral or religious convictions, without referring her to a
15 willing physician or otherwise providing any information about appropriate treatment, the patient
16 could be denied prompt care, the County could be exposed to liability, and its providers could be
17 in violation of their ethical and legal duties. Health care professionals are legally and ethically
18 obligated to provide their patients with complete and accurate information about their treatment
19 options.

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

22 Dated: June 4, 2019

Respectfully submitted,

23 
24 PHUONG H. NGUYEN, M.D.