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 through Attorney General Xavier Becerra*

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

12  
 13 CITY AND COUNTY OF SAN FRANCISCO,  
 14 Plaintiff,

No. C 19-02405 WHA  
 No. C 19-02769 WHA  
 No. C 19-02916 WHA

15 vs.

16 ALEX M. AZAR II, et al.,  
 17 Defendants.

**DECLARATION OF PETE  
 CERVINKA IN SUPPORT OF  
 PLAINTIFF'S MOTION FOR  
 SUMMARY JUDGMENT AND IN  
 SUPPORT OF THEIR OPPOSITION  
 TO DEFENDANTS' MOTION TO  
 DISMISS OR, IN THE  
 ALTERNATIVE, FOR SUMMARY  
 JUDGMENT**

18 STATE OF CALIFORNIA, by and through  
 ATTORNEY GENERAL XAVIER BECERRA,  
 19 Plaintiff,

20 vs.

21 ALEX M. AZAR, et al.,  
 22 Defendants.

Date: October 30, 2019  
 Time: 8:00 AM  
 Dept: 12  
 Judge: Hon. William H. Alsup  
 Action Filed: 5/2/2019

23 COUNTY OF SANTA CLARA et al.,  
 24 Plaintiffs,

25 vs.

26 U.S. DEPARTMENT OF HEALTH AND  
 HUMAN SERVICES, et al.,  
 27 Defendants.

1 I, Pete Cervinka, declare:

2 1. I am a resident of the State of California. I am over the age of 18 and have  
3 personal knowledge of all the facts stated herein. If called as a witness, I could and would testify  
4 competently to the matters set forth below.

5 2. I am currently employed by the California Department of Social Services (CDSS)  
6 and have served CDSS for ten years. I have served as the Chief Deputy Director since 2016 and  
7 before that, in the same role as the Program Deputy Director for Benefits and Services, beginning  
8 in 2009.

9 3. CDSS is one of twelve departments and five offices within the California Health  
10 and Human Services Agency and is responsible for overseeing the administration of public social  
11 service benefit programs serving 6.3 million of California's most vulnerable residents. Our  
12 mission is to serve, aid, and protect needy and vulnerable children and adults in ways that  
13 strengthen and preserve families, encourage personal responsibility, and foster independence.  
14 CDSS has a total annual budget of \$32.5 billion of federal, state and county funding to support its  
15 programs. Of this amount, approximately \$13 billion are directed to child welfare programs and  
16 the In-Home Supportive Services Program, as described further below.

17 4. As Chief Deputy Director, I oversee programs including, but not limited to, child  
18 welfare, cash and food assistance, housing and civil rights, and Medicaid home- and community-  
19 based care. My responsibilities include policy development, program implementation and  
20 oversight, federal compliance, and associated fiscal and budgetary matters.

21 5. CDSS has identified specific programs that receive federal funding and would be  
22 subject to the requirements of the regulations set forth in the final rule, Protecting Statutory  
23 Conscience Rights in Health Care; Delegations of Authority, RIN 0945-AA10, published on May  
24 21, 2019 by the U.S. Department of Health and Human Services (HHS) (Rule). These programs  
25 include: In-Home Supportive Services (IHSS), Refugee and Entrant Assistance, Deaf Access  
26 Program, Title IV-B (Child Welfare) and Title IV-E (Foster Care) of the Social Security Act.

1           6.       If CDSS were determined to be non-compliant with the above-noted federal rule,  
2 the loss of federal funding—as identified for each program described below—would be  
3 significant and would put the health and safety of California’s most vulnerable populations at  
4 risk.

5       **In-Home Supportive Services**

6           7.       The IHSS program is a Medicaid benefit program that provides in-home assistance  
7 to eligible aged, blind, and individuals with disabilities as an alternative to out-of-home care and  
8 enables recipients to remain safely in their own homes. The purpose of the program is to allow  
9 vulnerable elderly and disabled Californians to avoid costly and unnecessary institutionalized care  
10 and to receive necessary services in their homes and communities. IHSS services include:  
11 paramedical services; accompaniment to medical appointments; personal care such as bowel and  
12 bladder care, bathing, and certain medical services under the direction of a physician; domestic  
13 and related services such as meal preparation, housecleaning, laundry, and grocery shopping; and  
14 protective supervision. Over 502,000 IHSS providers are employed to provide services to more  
15 than 594,000 IHSS recipients. More than 98 percent of the IHSS recipient population receives  
16 IHSS as a Medi-Cal (Medicaid) benefit, for which CDSS will receive approximately \$6 billion in  
17 federal funding for state fiscal year 2018-19.

18           8.       A reduction in federal funding would place IHSS recipients at serious risk of  
19 institutionalization, resulting in both violations of their *Olmstead* rights and increased costs to the  
20 State, counties and federal government.

21       **Child Welfare and Foster Care Programs**

22           9.       Titles IV-B and IV-E of the Social Security Act provide significant funding to  
23 California’s child welfare system. The federal Foster Care Program, authorized by Title IV-E of  
24 the Social Security Act, helps to provide safe and stable out-of-home care for children who have  
25 been abused or neglected, until they are safely returned home, placed permanently with adoptive  
26 families, exit foster care to a guardianship with a relative, or age out of California’s foster care  
27

1 system. Title IV-E funds, in conjunction with state and local funds, are used to provide monthly  
2 maintenance payments for the daily care and supervision of children in foster care; adoption  
3 assistance payments; kinship guardianship assistance payments; administrative costs of activities  
4 necessary to implement the program; training of staff and foster care providers; recruitment of  
5 foster parents; and costs related to the design, implementation and operation of a state-wide child  
6 welfare case management and data system. CDSS received approximately \$2.2 billion in federal  
7 funding under Title IV-E in state fiscal year 2018-19.

8 10. Title IV-B provides funding for child welfare services that focus on the prevention  
9 of, and response to, child abuse and neglect. This funding supports services and programs which:  
10 1) prevent the neglect, abuse, or exploitation of children [through the Child Abuse Prevention and  
11 Treatment Act program and the Community-Based Child Abuse Prevention program, for which  
12 CDSS received a combined \$14.5 million in state fiscal year 2018-19]; 2) promote the safety,  
13 permanence and well-being of children in foster care and adoptive families, as well as to provide  
14 training, professional development and support to ensure a well-qualified workforce [for which  
15 CDSS received \$29.2 million under Title IV-B Part I in state fiscal year 2018-19]; and  
16 3) provides funding for states to operate coordinated child/family support and preservation  
17 services, and seeks to promote adoption and support services that prevent child maltreatment  
18 among at-risk families [through the Promoting Safe and Stable Families program, for which  
19 CDSS received \$33.4 million for administrative and assistance payments in state fiscal year  
20 2019]. Thus, CDSS received a total of \$77.1 million dollars in federal funding for these  
21 programs.

22 11. Losing Title IV-E and IV-B federal funding would be devastating to children and  
23 families served by California's child welfare system. Necessary services and supports would be  
24 substantially reduced or eliminated, placing children at further risk of abuse or neglect.

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1 **Refugee and Entrant Assistance**

2 12. CDSS administers the Refugee Entrant Assistance program on behalf of the  
3 federal government. This program serves refugees and other eligible immigrants who do not  
4 qualify for Temporary Assistance for Needy Families, Supplemental Security Income, or  
5 Medicaid programs and meet the income and resource eligibility standards of the program. The  
6 purpose of this program is to assist refugees and other eligible immigrants, such as asylees, Cuban  
7 and Haitian entrants, Special Immigrant Visa arrivals, and trafficking victims, to become  
8 employed and self-sufficient as quickly as possible and to integrate successfully into their  
9 receiving communities. Under the program, refugees and eligible individuals can receive refugee  
10 cash assistance and refugee medical assistance during their first eight months in the US, as well as  
11 a broad range of social services intended to help refugees obtain employment, achieve economic  
12 self-sufficiency, and further their social integration. The refugee social services programs include  
13 programs for elder care, school impact services, youth mentoring programs, employment training  
14 and English language acquisition services. Service providers offer a range of support to eligible  
15 recipients to further their social integration, including counseling focused on communication,  
16 stress management, and conflict resolution; employment case management; interpretation and  
17 translation; assistance with citizenship and naturalization; and assistance in connecting with  
18 health care providers.

19 13. CDSS received approximately \$21.6 million from the federal Refugee Entrant  
20 Assistance Grant in federal fiscal year 2018-19. The loss of this federal funding would have an  
21 immediate negative impact on newly arrived refugees and other eligible individuals and their  
22 families, who receive support and services during their first eight months in the United States.  
23 These initial few months are critical to vulnerable individuals, who are experiencing cultural  
24 acclimation and learning to navigate a new society. The loss of federal funding would impact  
25 supports that include cash aid, employment, medical, and language services that provide critical  
26 pathways to self-sufficiency and prevent increased poverty for this already vulnerable population.

1 **Deaf Access Program**

2 14. The Deaf Access Program was created in 1980 to ensure that California's public  
3 social service programs are able to meet the communication needs of deaf and hard of hearing  
4 children, adults, and families. Meeting the communication needs of this population assists them  
5 in achieving economic independence and in fully participating in society. The services provided  
6 by the Deaf Access Program include sign language interpretation, advocacy, job development and  
7 placement, counseling, information and referral and community education.

8 15. CDSS received approximately \$3 million in state fiscal year 2019 and the loss of  
9 this federal funding would greatly reduce the above-noted services.

10 **CDSS Potential Budgetary Consequences**

11 16. It is unclear, based on the regulatory language of the Rule, how OCR will  
12 interpret, implement, and enforce monetary consequences for noncompliance with the Rule and  
13 underlying conscience laws. The Rule specifies that OCR has authority to terminate federal  
14 financial assistance or other federal funds, in whole or in part. The potential total loss of federal  
15 funding for the above-described programs administered by CDSS would be approximately  
16 \$8.3 billion. A sudden disruption in the receipt of these federal funds would create budgetary  
17 chaos and have damaging effect on the State of California, its residents, and persons newly  
18 arriving to the state.

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1           17. In developing its annual budgets, CDSS does so with the expectation that it will  
2 receive the federal funds which are put at risk under the Rule, and to which it is entitled to under  
3 its agreements with federal agencies and Congressional intent for these programs. The California  
4 state budget is developed in January, revised in May of each year, and enacted by the Legislature  
5 in July. The budget for programs administered by CDSS is based upon projected program  
6 caseload and expenditure trends and considers the availability of state revenues and anticipated  
7 federal funds. These federal and state resources are considered in the determination of baseline  
8 funding necessary for critical state and county program operations and in decision-making on  
9 major policy changes, investments, and priorities for the State. Once budget commitments are  
10 made and enacted through legislation, it is difficult for California counties to seek additional  
11 funding or redirect revenues to cover any shortfalls. The long-lasting negative impacts of funding  
12 reductions is devastating to counties, service providers, and the vulnerable program recipients. A  
13 sudden disruption in anticipated federal funds, should they be terminated in whole or in part due  
14 to the rule, would cause budgetary and operational chaos, in addition to the adverse human  
15 impacts noted above.

16           I declare under penalty of perjury under the laws of the United States and the State of  
17 California that the foregoing is true and correct to the best of my knowledge.

18           Executed on September 10, 2019, in Sacramento, California.

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21 Pete Cervinka  
22 Chief Deputy Director  
23 California Department of Social Services  
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