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 CITY AND COUNTY OF SAN FRANCISCO

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 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

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 18 CITY AND COUNTY OF SAN
 FRANCISCO,

19 Plaintiff,

20 vs.

21 ALEX M. AZAR II, Secretary of U.S.
 22 Department of Health and Human Services;
 23 ROGER SEVERINO, Director, Office for
 Civil Rights, Department of Health and Human
 24 Services; U.S. DEPARTMENT OF HEALTH
 AND HUMAN SERVICES; and DOES 1-25,

25 Defendants.
 26

Case No. 3:19-cv-2405-JCS

**DECLARATION OF SHIVAUN M. NESTOR IN
 SUPPORT OF CITY AND COUNTY OF SAN
 FRANCISCO'S MOTION FOR
 PRELIMINARY INJUNCTION**

Hearing Date: July 12, 2019
 Time: 10:30 a.m.
 Judge: Hon. Joseph C. Spero
 Place: Courtroom G, 15th Floor
 Trial Date: Not set

1 I, Shivaun M. Nestor, declare as follows:

2 1. I have personal knowledge of the facts set forth in this declaration and, if called as a
3 witness, could and would testify competently to the matters set forth below.

4 2. I am the Director of the Family Planning and Preconception Health Program
5 (“FPPHP”) in the Maternal, Child and Adolescent Health (“MCAH”) Section of the San Francisco
6 Department of Public Health (“SFDPH”). I have served in this role since October 2014.

7 3. Prior to becoming Director of FPPHP, I served as a trainer and health program
8 coordinator in for FPPHP for ten years. Prior to that, I worked as a community health educator for
9 SFDPH and a health educator for Planned Parenthood. I received a Masters of Public Health from San
10 Jose State University.

11 4. MCAH focuses on the most vulnerable children and families, filling what would
12 otherwise be a serious public health gap. Its aim is to reduce health disparities and improve health
13 outcomes by strengthening the public health systems and services that address the root causes of poor
14 health.

15 5. FPPHP offers a wide range of services to patients through SFDPH’s Community Health
16 Network, including reproductive life planning; reproductive health exams; birth control counseling
17 and prescriptions; emergency contraception; preconception health screening and education; pregnancy
18 tests, counseling, and referral; testing and treatment for sexually transmitted infections (“STIs”);
19 testing and counseling for HIV; and sexual health education and counseling. FPPHP offers these
20 services at no or low cost to women, men, and adolescents in the City and County of San Francisco.

21 6. Approximately 40% of the patients served by SFDPH’s Title X-funded clinics are
22 Latinx, approximately 35% are Asian or Pacific Islander, approximately 20% are African-American,
23 and the remainder are white, mixed race, or Middle Eastern. Almost 100% of SFDPH’s Title X
24 patients are at 250% of the federal poverty level (“FPL”) or below. Only 1% of SFDPH’s Title X
25 patients have private health insurance, while 47% are on Medi-Cal (California’s Medicaid program),
26 and the remainder are either uninsured or enrolled in California’s Family Planning, Access, Care, and
27 Treatment (“Family PACT”) program.

1 7. I am familiar with the new U.S. Department of Health and Human Services (“HHS”)
2 regulations entitled, “Protecting Statutory Conscience Rights in Health Care; Delegations of
3 Authority” (the “Final Rule”).

4 8. Based on my years of experience and interactions with hundreds of employees and
5 patients, I anticipate that the Final Rule will embolden both front-line FPPHP staff, such as
6 receptionists, as well as nurses and clinicians, to refuse to “assist in the performance” (as that term is
7 defined in the Final Rule) of many types of sexual and reproductive health care services for our
8 patients. This will deter patients or potential patients who they come to our clinics seeking help from
9 accessing time-sensitive and important sexual and reproductive health care, which will negatively
10 impact both individual patient outcomes and public health.

11 9. If SFDPH loses U.S. Department of Health and Human Services (“HHS”) due to a
12 finding of non-compliance with the Final Rule, the impact on individual and public health will also be
13 significant. SFDPH receives Title X funding from HHS through Essential Access Health. In calendar
14 year 2018, SFDPH received a total of \$234,286 in Title X funding from HHS, which it used to fund
15 family-planning projects for 6,623 patients at 10 sites/clinics. In addition to family-planning services,
16 these 10 sites/clinics also offer other types of care, including primary care.

17 10. SFDPH uses HHS Title X funds to support a variety of projects to improve patient
18 access and quality of care, including provider training, technical assistance, public education and
19 outreach, and special projects to address emerging public health challenges.

20 11. SFDPH uses HHS Title X funding to develop training programs that have greatly
21 improved the quality and effectiveness of care offered at SFDPH’s Title X clinics. Using these HHS
22 funds, SFDPH trains approximately 20–30 clinical staff members every year with respect to key
23 aspects of their services, including contraceptive counseling and prescriptions, STI testing and
24 treatment, harm reduction approaches, and pregnancy testing and counseling. SFDPH also provides
25 smaller training to specific clinics upon request. Without Title X funding from HHS, SFDPH’s ability
26 to provide these trainings will be greatly inhibited.

27 12. SFDPH is using HHS Title X funds to develop protocols for registered nurses (“RNs”)
28 to dispense oral emergency contraceptives. One such protocol that is currently pending will enable

1 registered nurses to dispense pills, patches, and contraceptive rings. These protocols will significantly
2 expand patient access to important contraceptive methods.

3 13. SFDPH has also used HHS Title X funds to support the training of primary care
4 physicians on the implantation of long-acting reversible contraceptive (“LARC”) devices, such as
5 intrauterine devices (“IUDs”), which are an important and effective contraceptive option for many
6 patients. Developing competency in the implantation of IUDs is time-consuming and expensive, so
7 many primary care physicians without obstetric-gynecological expertise would not have the resources
8 to become trained on their own. But with Title X funds, primary care physicians in SFDPH’s Title X-
9 funded clinics have developed that expertise and can provide high-quality family-planning care to their
10 patients. Indeed, thanks to these HHS funds, all but one of the Title X-funded clinics that serve adult-
11 aged patients in SFDPH’s network are able to provide same-day LARC access. Without these,
12 SFDPH would be greatly hampered in its ability to support the training of physicians in the use of
13 these important contraceptive methods, leaving patients served by the SFDPH network with a lower
14 standard of care.

15 14. SFDPH uses HHS Title X funds to educate the public on important topics relating to
16 family planning and reproductive health. For example, SFDPH uses these HHS funds to support its
17 “Go Folic” project to increase community awareness of the importance of folic acid supplementation,
18 which prevents birth defects. SFDPH also uses the funds to support a public education campaign to
19 combat chlamydia, whose rates have increased in San Francisco and across California. And with HHS
20 Title X funds, SFDPH has partnered with the San Francisco Unified School District, Planned
21 Parenthood, and other youth-serving health agencies to make San Francisco a leader in developing
22 evidence-based sex education curricula and outreach. Indeed, thanks to those public education and
23 outreach efforts, we now frequently see adolescents visiting Title X clinics seeking birth control *before*
24 they become sexually active—a major public-health accomplishment. Without HHS funds, SFDPH
25 would face significant obstacles in supporting these public education campaigns.

26 15. Finally, SFDPH uses HHS Title X funds to support special projects to address
27 emerging public health challenges. For example, when teen pregnancy rates increased in certain
28 middle schools and high schools, SFDPH used these funds to start “pop-up” clinics at those schools

1 where students could access contraceptive, reproductive, and sexual health care. SFDPH has also used
2 these funds to conduct “secret shopper” studies at clinics in SFDPH’s network to ensure that the
3 clinics were providing access to same-day pregnancy testing and emergency contraception. With the
4 information learned from the “secret shopper” project, SFDPH implemented policies to ensure that
5 clinics provide pregnancy testing and emergency contraception within 24 hours of a patient’s request.

6 16. Without HHS funds, SFDPH will have to substantially curtail all of the projects
7 discussed above, which will undermine MCAH’s mission and lead to a lower quality of care offered to
8 our patients.

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10 I declare under penalty of perjury that the foregoing is true and correct and that this declaration
11 was executed on June 3, at San Francisco, California.

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14 Shivaun M. Nestor
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