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11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

13 CITY AND COUNTY OF SAN
 14 FRANCISCO,

15 Plaintiff,

16 vs.

17 ALEX M. AZAR II et al.,

Defendants.

No. C 19-02405 WHA

Related to

No. C 19-02769 WHA

No. C 19-02916 WHA

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

20 Plaintiff,

21 vs.

22 ALEX M. AZAR II et al.,

23 Defendants.

**NOTICE OF SUPPLEMENTAL
 FILING**

Hon. William Alsup

Hearing: October 30, 2019, 8:00 a.m.

Phillip Burton Federal Building & United
 States Courthouse, Courtroom 12, 19th
 Floor,
 450 Golden Gate Ave., San Francisco, CA
 94102

24 COUNTY OF SANTA CLARA et al.,

25 Plaintiffs,

26 vs.

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

28 Defendants.

1 Defendants submit this notice to inform the Court that they have supplemented the administrative
2 record (AR) produced to the Court and Plaintiffs on July 22, 2019. Defendants made the supplemental
3 materials available to Plaintiffs today through a file transfer protocol that allows Plaintiffs to download
4 them. The supplemental materials are described in the attached index. Attached to this notice are the notice
5 of manual filing the supplemental AR, a supplemental certification that the AR is complete, a declaration
6 executed by Bradley P. Humphreys (counsel for Defendants), and an index to supplemental AR materials.

7 Dated: August 19, 2019

Respectfully Submitted,

8 JOSEPH H. HUNT
9 Assistant Attorney General

10 JAMES M. BURNHAM
11 Deputy Assistant Attorney General

12 CHRISTOPHER A. BATES
13 Senior Counsel to the Assistant Attorney
14 General

15 MICHELLE BENNETT
16 Assistant Branch Director
17 Civil Division

18 /s/ Benjamin T. Takemoto
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 19 *through* ATTORNEY GENERAL
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MANUAL FILING NOTIFICATION

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

28 Defendants.

1 The administrative record for the above captioned cases was not e-filed for the following reason(s):

- 2 1. Unable to Scan Documents: The supplemental administrative record is over 2 GB.
3 Accordingly, Defendants are manually filing two copies. Through courier delivery service, two
4 copies will be sent to the Office of the Clerk of Court. Plaintiffs in each of the above captioned
5 cases have already been provided with copies via file transfer protocol.
- 6 2. Physical Object (please describe)
- 7 3. Non-Graphic/Text Computer File (audio, video, etc.) on CD or other media
- 8 4. Item Under Seal in Criminal Case
- 9 5. Conformance with the Judicial Conference Privacy Policy (General Order 53)
- 10 6. Other (please describe)

11 Dated: August 19, 2019

Respectfully Submitted,

12 JOSEPH H. HUNT
13 Assistant Attorney General

14 JAMES M. BURNHAM
15 Deputy Assistant Attorney General

16 CHRISTOPHER A. BATES
17 Senior Counsel to the Assistant Attorney
18 General

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22 /s/ Benjamin T. Takemoto
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on August 19, 2019, copies of the certified supplemental administrative record were sent through courier delivery service from the Federal Programs Branch office at 1100 L St. NW, Washington, DC 20005 to Plaintiffs' counsel at the following addresses:

Sara J. Eisenberg
Chief of Strategic Advocacy
San Francisco City Attorney's Office
City Hall, Rm. 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102-4602

Neli Nima Palma
California Department of Justice
Office of the Attorney General
1300 I St., Ste. 125
Sacramento, CA 94244-2550

I also certify that on August 19, 2019, copies of the certified supplemental administrative record were sent to Plaintiffs' counsel via file transfer protocol. Counsel for the *Santa Clara* Plaintiffs accepted service via this method.

/s/ Benjamin T. Takemoto
BENJAMIN T. TAKEMOTO

CERTIFICATION

I, Luis E. Perez, state as follows:

1. I am Deputy Director of the Conscience and Religious Freedom Division of the Office for Civil Rights at the U.S. Department of Health and Human Services (HHS). I am familiar with the rule entitled *Protecting Statutory Conscience Rights in Health Care: Delegations of Authority*, 84 Fed. Reg. 23,170 (May 21, 2019) (2019 Final Rule), and the process by which HHS considered materials in finalizing that rule.
2. I certify to the best of my personal knowledge that the materials described below, together with the administrative record materials that Defendants provided on July 22, 2019, in the above captioned case (consisting of 546,163 pages), and with those publicly available materials otherwise referenced in the 2018 Proposed Rule, 83 Fed. Reg. 3,880 (Jan. 26, 2018) and in the 2019 Final Rule, which were referenced in the July 22, 2019, certification of the administrative record, constitute the complete administrative record for the 2019 Final Rule. The materials described below are as follows:
 - a. Materials regarding conscience protections in U.S. foreign assistance, including the United States President's Emergency Plan for AIDS Relief (PEPFAR) (approximately 119 pages).
 - b. Certain complaint records that were intended to be included in the administrative record on July 22, 2019 (approximately 43 pages).
 - c. Excel spreadsheets of meta-data automatically-generated by the E-Rulemaking Initiative's Federal Docket Management System for the public submissions on the 2018 NPRM, *Protecting Statutory Conscience Rights in*

Health Care; Delegations of Authority (Proposed Rule), 83 Fed. Reg. 3,880 (Jan. 26, 2018).

3. Additionally, based on HHS's review, and the representations of counsel for Defendants in the accompanying declaration of Bradley Humphreys, to the best of my knowledge and in good faith, I certify that the materials described in the accompanying Supplemental Index constitute a compilation of publicly available materials that were cited in the 2019 Final Rule, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23,170 (Mar. 21, 2019), and the 2018 NPRM Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 83 Fed. Reg. 3,880 (proposed Jan. 26, 2018), *excluding* statutes, regulations, Federal Register citations, legal cases, Executive Orders, the congressional record, and unenacted bills.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on August 19, 2019



Luis E. Perez
Deputy Director

DECLARATION OF BRADLEY P. HUMPHREYS

I, Bradley P. Humphreys, state as follows:

1. I am a Trial Attorney in the Federal Programs Branch of the Civil Division, United States Department of Justice, and I represent Defendants in the cases challenging the rule entitled *Protecting Statutory Conscience Rights in Health Care: Delegations of Authority*, 84 Fed. Reg. 23,170 (May 21, 2019) (Final Rule).

2. I submit this declaration, along with the accompanying supplemental certification Luis E. Perez, Deputy Director of the Conscience and Religious Freedom of the Office for Civil Rights (OCR), in response to the Court's August 16, 2019 Order in *State of New York, et al. v. U.S. Department of Health and Human Services*, No. 1:19-cv-0476 (S.D.N.Y), ECF No. 158.

3. To facilitate supplementation of the administrative record for the rulemaking at issue in these cases, my colleagues and I in the Federal Programs Branch worked with counsel and staff at the U.S. Department of Health & Human Services' Office of General Counsel and OCR.

4. In response to inquiries from the plaintiffs in these cases related to the completeness of the administrative record, and in order to respond to those inquiries expeditiously, my colleagues and I in the Federal Programs Branch assisted with gathering publicly available sources cited in the rule challenged in these cases, *Protecting Statutory Conscience Rights in Health Care: Delegations of Authority*, 84 Fed. Reg. 23,170 (May 21, 2019) (Final Rule), and the accompanying 2018 Notice of Proposed Rulemaking (NPRM), *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 83 Fed. Reg. 3880 (Jan. 26, 2018), *excluding* statutes, regulations, Federal Register citations, legal cases, Executive Orders, the congressional record, and unenacted bills.

5. OCR provided us a list of sources cited in the Final Rule and the NPRM. My

colleagues and I worked to compile the items on OCR's list, not including statutes, regulations, Federal Register citations, legal cases, Executive Orders, the congressional record, and unenacted bills, with the goal of compiling all such sources.

6. For websites publicly cited in the rulemakings in the scope of the Supplemental Index, we have included a screenshot of the website as close in time as possible to the date that was cited in the relevant rule or proposed rule. When no date was cited, we have included a screenshot of the website as close in time as possible to the date on which the relevant rule or proposed rule was published. If we were able to locate an archived screenshot of the relevant website, we included it. Otherwise, a current screenshot of the relevant website was included.

7. After compiling the publicly available materials described above, we provided the documents to OCR for them to review in order to ensure that the versions we collected were the same versions considered by OCR during the rulemaking process.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 19, 2019

Respectfully submitted,


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(D.C. Bar No. 988057)
Trial Attorney, U.S. Department of Justice
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Counsel for Defendants

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000546205 - 000546342	Department of Justice Title VI Legal Manual
000546343 - 000546344	<i>Federal Marketplace Progress Fact Sheet</i> , CCIIO, May 31, 2013
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000546595 - 000546630	Bureau of Labor Statistics, <i>Occupational and Employment Statistics, Occupational Employment and Wages</i> , May 2016
000546631 - 000546632	<i>Abortion is Legal, but What Percentage of ObGyns Will Provide One?</i> , Freakonomics (August 24, 2011, 1:57 p.m.)
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000546635 - 000546636	HHS-5161-1 Form (OMB No. 0990-0317) (expiration date 1/31/2017)
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000546733 - 000546733	LI Hospital issues abortion apology to nurses, N.Y. Post (Apr. 28, 2010)
000546734 - 000546776	U.S. Conference of Catholic Bishops, <i>Ethical and Religious Directives for Catholic Health Services</i> (Nov. 17, 2009)
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000546795 - 000546796	Letter from California Department of Managed Health Care, Re: Limitations or Exclusions of Abortion Services
000546797 - 000546806	Bob Egelko, <i>California's assisted-dying loophole: Some doctors won't help patients die</i> , San Francisco Chronicle (Aug. 12, 2017)
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000547186 - 000547186	Administration for Community Living, AIDD Protection and Advocacy (PADD) Awards for the States/Territories FY 2017 Annual Allocation, https://www.acl.gov/sites/default/files/about-acl/2017-06/PADD-2017.pdf
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000547716 - 000547717	U.S. Census, 2012 NAICS Definition, 621399 Offices of All Other Miscellaneous Health Practitioners
000547718 - 000547999	Indian Health Service, FY 2019 Justification of Estimates for Appropriations Committees (2018)
000548000 - 000548094	Guidance for Regulatory Impact Analysis, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 2016
000548095 - 000548097	Executive Office of the President, Office of Management and Budget, M-18-24, Memorandum for Heads of Executive Departments and Agencies, <i>Strategies to Reduce Grant Recipient Reporting Burden</i> (Sept. 5, 2018)
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000548444 - 000548444	U.S. Census Bureau, Statistics of U.S. Businesses, 2015, NAICS code 611310 (Colleges, Universities, and Professional Schools)
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000548727 - 000548742	Luisa Blanchfield, <i>Abortion and Family Planning-Related Provisions in U.S. Foreign Assistance Legislation and Policy</i> , Congressional Research Service (Jan. 24, 2017)
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000548785 - 000548829	A Firm Foundation: the PEPFAR Consultation on the Role of Faith-based Organizations in Sustaining Community and Country Leadership in the Response to HIV/AIDS (2012)
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