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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

OREGON ASSOCIATION OF  
HOSPITALS AND HEALTH SYSTEMS,

Plaintiff,

v.

STATE OF OREGON; OREGON  
HEALTH AUTHORITY; and SEJAL  
HATHI, in her official capacity as Director  
of Oregon Health Authority,

Defendants.

Case No.: 3:22-cv-01486-SI

DECLARATION OF REBECCA  
HULTBERG IN SUPPORT OF  
PLAINTIFF'S SUPPLEMENTAL  
BRIEFING IN RESPONSE TO MARCH  
11, 2024, ORDER

I, REBECCA HULTBERG, declare:

1. I am the President and Chief Executive Officer of Hospital Association of Oregon. I make this declaration based on my personal knowledge of the facts and circumstances described below.

2. Oregon Association of Hospitals and Health Systems d/b/a Hospital Association of Oregon (the "Association"), is a statewide, nonprofit association founded in 1934. The Association's mission is to ensure all Oregonians have excellent, dependable hospitals in their communities today, tomorrow, and for decades to come. The Association's members consist of Oregon's 61 community hospitals.

3. To further its mission and goals, and to support its members, the Association supports Oregon’s hospitals so they can support their communities; educates government officials and the public on the state’s health landscape and works collaboratively with policymakers, community based organizations and the health care community to build consensus on and advance health care policy benefiting the state’s four million residents. The Association spends its own resources to pursue its mission.

4. HB 2362, which created the Health Care Market Oversight (“HCMO”) program, has materially impacted the Association and its ability to pursue its mission. Rather than address the many health policy issues affecting its members and Oregon communities, the Association has had to divert its resources—including money, staff time, and other resources—to address HB 2362. That diversion of resources was necessary given HB 2362’s broad and uncertain scope, and the significant impacts of the law and its enforcement on the Association’s members, who have expressed substantial concerns about the impact and meaning of HB 2362.

5. The Association’s diversion of resources has included: addressing members’ concerns and questions about HB 2362, and how it could be interpreted and administered, through member outreach, communications, and education; expending staff time and resources attempting to understand and explain the law and OHA’s varying interpretive positions; and interacting with OHA and the legislature to address the law’s infirmities. The Association’s costs of its member-outreach and education efforts related to HB 2362 will continue.

6. If HB 2362 had not been passed and the HCMO had not been created, the Association would have been able to devote more time and resources to the myriad other priorities, emergencies, and pressing policy issues affecting Oregon hospitals. HB 2362 has impaired the Association’s ability to pursue other priorities in pursuit of its overall mission and goals.

7. The vague and uncertain requirements of HB 2362 and the potential for enforcement, civil penalties, and conditions imposed by OHA have had a material effect on the

Association's members' decision-making regarding transactions potentially subject to the law's requirements.

8. The Association's members will investigate and pursue transactions potentially subject to HB 2362 in the coming year. According to OHA's website, for example: "On August 16, 2023, OHSU and Legacy Health, two large health systems in Oregon, announced plans to combine. To date, OHA has not received a notice related to this transaction and has not begun a HCMO review. (Per HCMO regulations, OHA begins to review a transaction after a notice is received.)" Oregon Health Authority, Transaction Notices and Reviews, available at <https://www.oregon.gov/oha/hpa/hp/pages/hcmo-transaction-notices-and-reviews.aspx>. The Association's members will have to expend resources to determine whether and how the law may apply, to assess their compliance obligations, and to avoid potential penalties.

9. Defendants have actively enforced HB 2362 and the HCMO program. OHA has reported a review of 11 transaction notices in 2023. Oregon Health Authority, Health Care Market Oversight, 2023 Annual Report, <https://www.oregon.gov/oha/hpa/hp/pages/health-care-market-oversight.aspx> (accessed last on March 22, 2024). With respect to the Kroger-Albertsons transaction, OHA's website states: "This transaction is currently undergoing HCMO review." Oregon Health Authority, 013 Kroger-Albertsons, <https://www.oregon.gov/oha/hpa/hp/pages/hcmo-013-kroger-albertsons.aspx> (accessed last on March 22, 2024).

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

DATED: March 25, 2024

*/s/ Rebecca Hultberg*

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REBECCA HULTBERG