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12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 STATE OF CALIFORNIA, *et al.*,

15 Plaintiffs,

16 v.

17 XAVIER BECERRA, Secretary of Health and
Human Services, *et al.*,

18 Defendants,

19 and,

20 THE LITTLE SISTERS OF THE POOR,
JEANNE JUGAN RESIDENCE, *et al.*,

21 Defendant-Intervenors.

Case No. 4:17-cv-05783-HSG

**INTERVENOR'S NOTICE OF
MOTION AND MOTION TO
INTERVENE, WITH
MEMORANDUM OF POINTS
AND AUTHORITIES**

Date Filed: September 2, 2022
Hearing Date: January 19, 2023,
2:00pm
Judge: Hon. Haywood S. Gilliam, Jr.

1 **TO THE PARTIES, AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 19, 2023 at 2:00 p.m., in Courtroom 2 of the
3 above-entitled court, located at 1301 Clay Street, Oakland, the St. Mary's Home of the
4 Little Sisters of the Poor in Chicago, Illinois (hereinafter "the Little Sisters Chicago"),
5 will and hereby moves this Court to permit them to intervene in this action in order to
6 defend their right to practice their faith free from crippling fines, a right guaranteed to
7 them in *Zubik v. Burwell*, 136 S. Ct. 1557 (2016), *Little Sisters of the Poor Saints Peter*
8 *and Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), and extended to them under a
9 regulation challenged in this action.

10 Pursuant to Federal Rule of Civil Procedure 24, proposed Defendant-Intervenor seeks
11 permissive intervention, or in the alternative, intervention as of right.

12 Intervenor-Defendants Little Sisters of the Poor Jeanne Jugan Residence and March
13 for Life consent to the motion, Federal Defendants take no position on the motion, and
14 Plaintiffs oppose the motion.

15 For almost a decade, the Little Sisters have sought a religious exemption from the
16 crippling fines imposed by the federal government's contraceptive mandate. As a direct
17 result of the Little Sisters' lawsuit, the federal government revised its regulations to
18 exempt the Little Sisters and religious employers like them. But Plaintiff States are
19 continuing to press a lawsuit to take away the Little Sisters' religious exemption, even
20 after the Supreme Court rejected their primary arguments and upheld that exemption
21 more than two years ago.

1 In 2017 this Court allowed the Little Sisters' San Pedro Home (the "San Pedro Home")
2 to intervene in this case to represent the interests of the 21 homes operated by the Little
3 Sisters across the United States, 12 of which are located in the jurisdictions that have
4 brought this lawsuit. This litigation has gone on for nearly five years, and now, for
5 reasons unrelated to this lawsuit, the Little Sisters are considering the sale of the San
6 Pedro Home. The Little Sisters bring this motion to intervene on behalf of St. Mary's
7 Home in Chicago, Illinois to continue maintaining the interests of the Sisters.

8 Little Sisters Chicago are entitled to permissive intervention because they have a
9 claim which shares a common question of law and fact with Plaintiffs' claims, have
10 independent grounds for jurisdiction, and made a timely motion to intervene. The Little
11 Sisters Chicago are also entitled to intervention as of right because this motion is timely,
12 they have a significant protectable interest that is at stake in this litigation, the relief
13 that Plaintiff States seek would impede their ability to protect that interest, and the
14 current parties will not adequately protect their interest.

15 **WHEREFORE**, the Little Sisters Chicago pray that this Court grant intervention in
16 this action. This request is based on this Notice of Motion and Motion, the accompanying
17 supporting Memorandum of Points and Authorities, the supporting declaration of
18 Mother Provincial Julie Marie Horseman, as well as the papers, evidence and records on
19 file in this action, and any other written or oral evidence or argument as may be
20 presented at or before the time this motion is heard by the Court. A proposed order is
21 filed herewith.

TABLE OF CONTENTS

	Page
NOTICE OF MOTION AND MOTION TO INTERVENE.....	ii
TABLE OF AUTHORITIES.....	v
INTRODUCTION.....	1
STATEMENT OF THE ISSUES.....	2
STATEMENT OF FACTS	2
A. Proposed Intervenor	2
B. Procedural History.....	2
C. Potential Sale of the San Pedro Home.....	5
STANDARD OF REVIEW	6
ARGUMENT.....	7
I. The Little Sisters Chicago should be permitted to intervene under Rule 24(b)	7
A. The Little Sisters Chicago’s motion to intervene is timely.....	8
1. The stage of proceedings favors intervention.....	8
2. Intervention would not prejudice existing parties.....	10
3. The length and reason for the delay favors intervention	11
II. Alternatively, the Little Sisters Chicago should be permitted to intervene as of right	12
CONCLUSION	15

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Beckman Indus., Inc. v. Int’l Ins. Co.</i> , 966 F.2d 470 (9th Cir. 1992)	6, 7
<i>Cameron v. EMW Women’s Surgical Ctr., P.S.C.</i> , 142 S. Ct. 1002 (2022)	11
<i>CEP Emery Tech Investors LLC v. JPMorgan Chase Bank, N.A.</i> , No. 09-4409, 2010 WL 1460263 (N.D. Cal. Apr. 12, 2010)	8
<i>Citizens for Balanced Use v. Montana Wilderness Ass’n</i> , 647 F.3d 893 (9th Cir. 2011)	6, 7, 13, 14
<i>Delano Farms Co. v. Cal. Table Grape Comm’n</i> , No. 1:07-cv-1610, 2010 WL 2942754 (E.D. Cal. July 23, 2010)	14
<i>League of United Latin Am. Citizens v. Wilson</i> , 131 F.3d 1297 (9th Cir. 1997)	13
<i>Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania</i> , 140 S. Ct. 2367 (2020)	4, 10
<i>Peruta v. County of San Diego</i> , 824 F.3d 919 (9th Cir. 2016)	8
<i>Smith v. Los Angeles Unified Sch. Dist.</i> , 830 F.3d 843 (9th Cir. 2016)	passim
<i>Sw. Ctr. for Biological Diversity v. Berg</i> , 268 F.3d 810 (9th Cir. 2001)	6
<i>United States v. Alisal Water Corp.</i> , 370 F.3d 915 (9th Cir. 2004)	8
<i>United States v. State of Oregon</i> , 745 F.2d 550 (9th Cir. 1984)	9, 12
<i>United States v. Washington</i> , 86 F.3d 1499 (9th Cir. 1996)	11

Statutes

28 U.S.C. § 1331 3, 7, 12

Other Authorities

83 Fed. Reg. 57,536 (Nov. 15, 2018)..... 4

83 Fed. Reg. 57,592 (Nov. 15, 2018)..... 4

INTRODUCTION

For close to a decade, the Little Sisters of the Poor have fought for their right to live out their faith and fulfill their religious mission of serving the elderly poor without the threat of government fines. Plaintiff States originally brought suit in October 2017, and this Court allowed the Jeanne Jugan Residence of the Little Sisters of the Poor in San Pedro, California to intervene in December 2017. As a result of changes unrelated to this litigation, however, the Little Sisters are no longer in a position to continue operating the San Pedro Home and are seeking to sell it sometime within the next year.

Given this possible future sale—and understanding the necessity of having a religious institution in this case to defend the Final Rule and any religious exemption granted by the federal government—the St. Mary’s Home of the Little Sisters of the Poor in Chicago, Illinois moves to intervene in place of the San Pedro Home to protect its interests and the interests of other Little Sisters homes within the scope of Plaintiffs’ claims. The Little Sisters Chicago fully adopt the positions and existing briefing and filings of the San Pedro Home and respectfully request that this Court allow intervention.

STATEMENT OF THE ISSUES

Whether Proposed Defendant-Intervenor should be granted intervention to defend their interests in a lawsuit that threatens legal protections won in the U.S. Supreme Court and granted by regulation.

STATEMENT OF FACTS

A. Proposed Intervenor

The Little Sisters of the Poor (“the Little Sisters”) is an international Roman Catholic Congregation of Sisters that has provided loving care to needy elderly persons of any race, sex, or religion for over 180 years. Mother Julie Decl. ¶ 4. Each Little Sister takes a vow of obedience to God and of hospitality “to care for the aged as if they were Christ himself.” *Id.* at ¶ 17. The Little Sisters treat each “individual with the dignity they are due as a person loved and created by God,” and they strive to “convey a public witness of respect for life, in the hope that [they] can help build a Culture of Life in our society.” *Id.* at ¶ 20. The Little Sisters oppose, based on Catholic doctrine, sterilization, contraception, and abortion, and they believe that it is religiously wrong for them to facilitate the provision of those services to their employees in connection with their health insurance plans. *Id.* at ¶¶ 37-38.

The Little Sisters have founded and operate 21 homes in the United States, 12 of which are located in jurisdictions that are parties to this action. *Id.* at ¶ 8. One of those homes is the St. Mary’s Home of the Little Sisters of the Poor in Chicago, Illinois, an Illinois religious nonprofit corporation. *Id.* at ¶ 13. The Little Sisters Chicago now move to intervene in this case.

B. Procedural History

This Court is well-acquainted with the “extensive statutory, regulatory, and judicial background to this case.” *See* ECF Nos. 234 at 2-15, 387 at 2. The Little Sisters Chicago therefore recite only the relevant procedural history as it pertains to this motion to

1 intervene.

2 On October 6, 2017, the federal government issued an Interim Final Rule (“IFR”)
3 protecting the Little Sisters and others with sincerely held religious objections from
4 having to comply with the contraceptive mandate. That same day, California, Delaware,
5 Maryland, New York, and Virginia filed a complaint challenging the IFR. ECF No. 1.
6 The States later filed a First Amended Complaint on November 1, 2017, ECF No. 24,
7 and a motion for a preliminary injunction on November 9, 2017, ECF No. 28.

8 On November 21, 2017, the Jeanne Jugan Residence of the Little Sisters of the Poor
9 in San Pedro filed a motion to intervene to defend the legality of the IFR. ECF No. 38.
10 The San Pedro Home explained that no other religious institution was part of this case
11 and that as a beneficiary of the IFR, it could provide a much-needed perspective as a
12 party.

13 On December 29, 2017, this Court granted the San Pedro Home’s motion to intervene.
14 ECF No. 115. This Court concluded that the San Pedro Home met all three requirements
15 for permissive intervention, as it was “satisfied that it ha[d] jurisdiction over the Little
16 Sisters’ claims under 28 U.S.C. § 1331,” the claims and defenses brought by the San
17 Pedro Home “present[] the same question of law at issue in the Plaintiffs’ challenge to
18 the IFR’s legality,” and the San Pedro Home’s motion was timely. *Id.* at 14 & n.6. A
19 month later, the Court also granted March for Life’s motion to intervene to defend the
20 moral exemption portion of the Interim Final Rule. ECF No. 134.

21 This Court also granted Plaintiffs’ motion for a preliminary injunction. ECF No. 105.
22 The federal government, the San Pedro Home, and March for Life appealed, ECF Nos.
23

1 135-38, 142-43, and the Ninth Circuit largely affirmed—though it narrowed the
2 geographic scope of the preliminary injunction.

3 Meanwhile, the federal government proceeded with notice-and-comment, and
4 promulgated the Final Rule on November 15, 2018, with an effective date of January 14,
5 2019. 83 Fed. Reg. 57,536; 83 Fed. Reg. 57,592. Plaintiffs then filed a Second Amended
6 Complaint, challenging the Final Rule and adding Connecticut, Hawaii, Illinois,
7 Minnesota, North Carolina, Rhode Island, Vermont, Washington, and the District of
8 Columbia as Plaintiffs. ECF No. 170 at 8-12 ¶¶ 8, 13-26. Following briefing, this Court
9 granted a preliminary injunction against the Final Rule on January 13, 2019. ECF No.
10 234. That decision was affirmed by the Ninth Circuit and appealed to the Supreme Court.

11 Meanwhile, from April 2019 to August 2019, the parties briefed motions to dismiss
12 and dueling motions for summary judgment. ECF Nos. 311, 366, 368, 370, 385, 388, 389,
13 391. On January 17, 2020, while these motions were still pending, the Supreme Court
14 granted certiorari in *Little Sisters of the Poor v. Pennsylvania*, a parallel case challenging
15 the same Interim Final Rule and Final Rule in Pennsylvania. ECF No. 410. As a result,
16 this Court stayed this case on January 22, 2020.

17 On July 8, 2020, the Supreme Court reversed and remanded the Third Circuit's
18 decision upholding a nationwide injunction against the Final Rule. ECF No. 415. In light
19 of its decision, the Supreme Court also granted, vacated, and remanded the Ninth
20 Circuit's opinion affirming this Court's grant of a preliminary injunction against the
21 Final Rule. ECF Nos. 419, 420.

22 On October 8, 2020, the Ninth Circuit vacated the preliminary injunction and
23

1 remanded these cases to this Court to apply the Supreme Court's opinion. ECF No. 429.
2 The parties filed supplemental briefing, ECF Nos. 431, 433, 435, 437, 438, 440, and on
3 December 14, 2020, this Court lifted the stay and re-opened this case. ECF No. 442.

4 Following the change in presidential administrations, the federal government filed a
5 motion to stay to grant the federal agencies time to reassess the Final Rule. ECF No.
6 451. This Court did not grant the motion to stay, but it held the motions to dismiss and
7 motions for summary judgment in abeyance. ECF No. 454.

8 On August 17, 2021, the federal government sought a stay based on its then-current
9 plan to initiate a new rulemaking. That same day, this Court granted a stay of
10 proceedings that has continued in force to the present day. ECF Nos. 467, 468-70, 475
11 (joint status reports with Plaintiffs and federal government agreeing to indefinite
12 continuance of stay). Meanwhile, the parties' motions to dismiss and motions for
13 summary judgment, filed back in April 2019 through August 2019, remain pending.

14 **C. Potential Sale of the San Pedro Home**

15 As a result of changes unrelated to this litigation, the Little Sisters are no longer in
16 a position to continue operating the San Pedro Home. They have begun the process of
17 seeking approval from the State of California to sell this home to another nursing home
18 operator who is equipped to care for the current residents. The corporate defendant—the
19 Jeanne Jugan Residence of the Little Sisters of the Poor in San Pedro, California—would
20 continue to exist following any potential sale but would experience a drastic and possibly
21 complete reduction in its employee workforce. While it is possible the San Pedro Home
22 would later acquire another facility and resume operations, there is no guarantee they
23

1 will ever do so.

2 In light of this possible future sale, the Little Sisters Chicago move to intervene in
3 order to protect their interests and the interests of the 20 other Little Sisters homes
4 nationwide. The Little Sisters Chicago understand the necessity of having a religious
5 institution in this case to defend the Final Rule and any religious exemption granted by
6 the federal government, particularly in light of the federal government's uncertain
7 commitment to defending the current rule. In so doing, the Little Sisters Chicago fully
8 adopt the positions and existing briefing and filings of the San Pedro Home.

9 STANDARD OF REVIEW

10 In evaluating a motion to intervene, district courts are “required to accept as true the
11 non-conclusory allegations” made by the proposed intervenor. *Sw. Ctr. for Biological*
12 *Diversity v. Berg*, 268 F.3d 810, 819 (9th Cir. 2001). Decisions on intervention are “guided
13 primarily by practical considerations, not technical distinctions.” *Citizens for Balanced*
14 *Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011) (quoting *Berg*, 268
15 F.3d at 818). Intervention requirements “are broadly interpreted in favor of
16 intervention.” *Citizens for Balanced Use*, 647 F.3d at 897.

17 Federal Rule of Civil Procedure 24(b) instructs courts to “permit anyone to intervene”
18 who “has a claim or defense that shares with the main action a common question of law
19 or fact,” as long as the intervenor has “an independent ground for jurisdiction” and has
20 made a “a timely motion.” Fed. R. Civ. P. 24(b); *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966
21 F.2d 470, 473 (9th Cir. 1992).

22 Meanwhile, Federal Rule of Civil Procedure 24(a)(2) permits intervention as of right
23 if: “(1) the intervention application is timely; (2) the applicant has a significant

1 protectable interest relating to the property or transaction that is the subject of the
 2 action; (3) the disposition of the action may, as a practical matter, impair or impede the
 3 applicant's ability to protect its interest; and (4) the existing parties may not adequately
 4 represent the applicant's interest." *Citizens for Balanced Use*, 647 F.3d at 897 (citation
 5 and internal quotation omitted). These requirements "are broadly interpreted in favor of
 6 intervention." *Id.* at 897.

7 ARGUMENT

8 **I. The Little Sisters Chicago should be permitted to intervene under Rule 24(b).**

9 On December 29, 2017, this Court granted the San Pedro Home permissive
 10 intervention under Rule 24(b). ECF No. 115 at 14. That same conclusion follows for the
 11 Little Sisters Chicago.

12 Permissive intervention under Rule 24(b) "requires (1) an independent ground for
 13 jurisdiction; (2) a timely motion; and (3) a common question of law and fact between the
 14 movant's claim or defense and the main action." *Beckman*, 966 F.2d at 473. "In exercising
 15 its discretion" on this issue, "the court must consider whether the intervention will
 16 unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P.
 17 24(b)(3).

18 The Little Sisters Chicago easily satisfy the first and third elements based on this
 19 Court's prior ruling granting permissive intervention to the San Pedro Home. The Little
 20 Sisters Chicago seek to argue precisely the same claims and defenses articulated by the
 21 San Pedro Home, which this Court "has jurisdiction over ... [pursuant to] 28 U.S.C.
 22 § 1331." ECF No. 115 at 14 n.6. And like the San Pedro Home, the Little Sisters Chicago
 23

1 argue that the Rule should be upheld, which “presents the same question of law at issue
2 in the Plaintiffs’ challenge” here. *Id.* at 14.

3 **A. The Little Sisters Chicago’s motion to intervene is timely.**

4 The only remaining question, then, is whether the motion to intervene is timely. That
5 inquiry considers the stage of the proceedings at which an applicant seeks to intervene,
6 the prejudice to existing parties, and the length of and reason for the delay. *United States*
7 *v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004). All these factors weigh in favor
8 of a finding of timeliness.

9 **1. The stage of proceedings favors intervention.**

10 As to the stage of the proceedings, “[a]lthough delay can strongly weigh
11 against intervention, the mere lapse of time, without more, is not necessarily a bar
12 to intervention.” *Id.* at 921. Rather, “courts consider whether there have been actual
13 proceedings of substance on the merits in the underlying action.” *CEP Emery Tech*
14 *Investors LLC v. JPMorgan Chase Bank, N.A.*, No. 09-4409, 2010 WL 1460263, at *3
15 (N.D. Cal. Apr. 12, 2010).

16 Here, while Plaintiffs initially brought suit approximately four and a half years ago,
17 that alone is insufficient to find the motion untimely. Indeed, courts regularly find
18 intervention motions to be timely even when filed years after litigation began. *See, e.g.*,
19 *Peruta v. County of San Diego*, 824 F.3d 919, 940 (9th Cir. 2016) (en banc), *cert. denied*
20 *sub nom Peruta v. California*, 137 S. Ct. 1995 (2017) (four years); *Smith v. Los Angeles*
21 *Unified Sch. Dist.*, 830 F.3d 843, 854 (9th Cir. 2016) (“approximately twenty years after
22 its commencement”).

1 Rather, “[w]here a change of circumstances occurs, and that change is the ‘major
2 reason’ for the motion to intervene, the stage of proceedings factor should be analyzed
3 by reference to the change in circumstances, and not the commencement of the
4 litigation.” *Smith*, 830 F.3d at 854. For example, in *United States v. State of Oregon*, 745
5 F.2d 550, 551-52 (9th Cir. 1984), Idaho moved to intervene in litigation between
6 Washington, Oregon, and various Indian tribes *fifteen years* after the commencement of
7 that action and five years after a settlement had been reached. Notwithstanding the
8 substantial lapse in time, the Ninth Circuit held that the “stage of proceedings” factor
9 supported a finding of timeliness because a “change of circumstance” had occurred in
10 1982—namely, two Indian tribes had given “notice of their intent to withdraw from the
11 [settlement] or to renegotiate it,” which created “the possibility of new and expanded
12 negotiations.” *Id.* at 552. Idaho’s 1983 intervention motion was thus timely.

13 That logic applies to this case. Here, the relevant “change in circumstances” involves
14 the possible sale of the San Pedro Home. As explained in the declaration of Mother
15 Provincial Julie Marie Horseman, the San Pedro Home could possibly be sold within the
16 next year. Mother Julie Decl. ¶ 74. Although dispositive motions were filed more than
17 three years ago, both the State Plaintiffs and the federal Defendants have repeatedly
18 asked this Court not to decide them, extending this litigation for years. Given that long
19 time frame and the possibility of a sale of the San Pedro Home before the case is resolved,
20 the Little Sisters Chicago are pursuing intervention in this case to ensure that a religious
21 organization can maintain a defense of the Rule when the case resumes. *Id.* at ¶ 76.

1 This is especially true because although Plaintiffs filed their complaint back in
 2 October 2017, this case has been stayed for almost two years, with Plaintiffs' repeated
 3 consent. *See* ECF Nos. 411, 442 (staying case from January 22, 2020 to December 14,
 4 2020); ECF No. 467 (staying case from August 17, 2021 to the present). And while this
 5 Court has decided motions for preliminary injunctions, *see* ECF Nos. 105, 234, 387, it
 6 has not yet issued a decision on the merits—let alone a merits decision incorporating the
 7 Supreme Court's ruling from *Little Sisters of the Poor Saints Peter and Paul Home v.*
 8 *Pennsylvania*, 140 S. Ct. 2367 (2020). Rather, Defendants' motions to dismiss remain
 9 outstanding, *see* ECF Nos. 366, 368, 370, dueling motions for summary judgment have
 10 not been decided, *see* ECF Nos. 311, 366, 368, 370, 385, 388, 389, 391, and most of the
 11 parties appear content for this posture to continue indefinitely. *See* ECF Nos. 468-70,
 12 475 (joint status reports explaining that Plaintiff States and Federal Defendants agree
 13 to an indefinite continuance of the stay).

14 Moreover, the Little Sisters Chicago are “not seeking to reopen [years] of litigation.”
 15 *Smith*, 830 F.3d at 856. Instead, they are merely seeking to step into the shoes of the
 16 San Pedro Home before it is sold. The Little Sisters Chicago would adopt in full the
 17 existing briefing before this Court by the San Pedro Home. This independently supports
 18 a finding of timeliness, as permitting intervention here would not unduly delay any
 19 proceedings. ECF No. 115 at 14-15 (noting that permitting intervention for the San
 20 Pedro Home would not unduly delay the proceedings).

21 **2. Intervention would not prejudice existing parties.**

22 Furthermore, the second timeliness factor, prejudice to the existing parties, likewise
 23 favors intervention. “[T]he only ‘prejudice’ that is relevant under this factor is that which

1 flows from a prospective intervenor's failure to intervene after he knew, or reasonably
2 should have known, that his interests were not being ... represented." *Smith*, 830 F.3d
3 at 857. Importantly, no "prejudice" arises from "the fact that including another party in
4 the case might make resolution more 'difficult.'" *Id.* (cleaned up).

5 In the present case, the San Pedro Home's sale has not even occurred. At this stage,
6 the sale remains a possibility within the next year, but any potential sale has not been
7 finalized and is contingent on regulatory approval by the State of California.
8 Nonetheless, in an abundance of caution and with an eye for preventing any possible
9 undue delay or prejudice, the Little Sisters Chicago are seeking intervention now to
10 maintain the posture of the existing parties. As a result, any elapsed time is nonexistent,
11 or at the very least, "nominal at best," *id.* at 859, especially because this case has been
12 stayed since August 17, 2021 (as well as from January 22, 2020 to December 14, 2020),
13 and the last motion that received a substantive ruling was decided on July 2, 2019, *see*
14 ECF No. 387 (granting Oregon's motion for preliminary injunction). In short, the
15 prejudice factor also weighs in favor of intervention.

16 **3. The length and reason for the delay favors intervention.**

17 Finally, the length and reason for the delay. Again, "[d]elay is measured from the
18 date the proposed intervenor should have been aware that its interests would no longer
19 be protected adequately by the parties[.]" *United States v. Washington*, 86 F.3d 1499,
20 1503 (9th Cir. 1996). The Supreme Court, in similar circumstances, has articulated the
21 timeliness question as whether a proposed intervenor intervened "as soon as it became
22 clear" that its interests "would no longer be protected by the parties in the case."
23

1 *Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 142 S. Ct. 1002, 1012 (2022) (cleaned
2 up).

3 As explained above, the San Pedro Home has not yet been sold, and the Little Sisters
4 Chicago are therefore moving for intervention now to prevent *any* delay in this case.
5 Moreover, “[w]here—as here—both the first and second timeliness factors weigh in favor
6 of intervention, [the Ninth Circuit] ha[s] found motions to be timely even in the face of
7 *longer* delays than are present here.” *Smith*, 830 F.3d at 859, 861 (granting intervention
8 when “Appellants moved to intervene approximately one year after the change in
9 circumstances prompting their motion”); *State of Oregon*, 745 F.2d at 552 (granting
10 intervention after at least an eight-month delay). Accordingly, there is no delay in this
11 case, and this Court should find that the Little Sisters Chicago’s motion to intervene is
12 timely.

13 * * * *

14 The Little Sisters Chicago have satisfied all the requirements for permissive
15 intervention. As was the case with the San Pedro Home, the Little Sisters Chicago
16 possess an independent ground for jurisdiction under 28 U.S.C. § 1331, and their claims
17 and defenses involve a common question of law and fact with Plaintiffs’ main action.
18 ECF No. 115 at 14. Most importantly, the motion is timely and no existing party will be
19 prejudiced by granting intervention. Indeed, this case has been stayed since August 17,
20 2021 (and from January 2020 to December 2020), and no substantive issues have been
21 decided in nearly three years. Allowing intervention here would thus simply allow the
22 Little Sisters Chicago to step in and defend the Rule on the exact same basis and briefing
23

1 as that offered by the San Pedro Home. This Court should grant the motion for
2 permissive intervention.

3 **II. Alternatively, the Little Sisters Chicago should be permitted to intervene**
4 **as of right.**

5 Under Rule 24(a), the Little Sisters Chicago should also be permitted to intervene as
6 of right. Intervention as of right must be granted when “(1) the intervention application
7 is timely; (2) the applicant has a significant protectable interest relating to the property
8 or transaction that is the subject of the action; (3) the disposition of the action may, as a
9 practical matter, impair or impede the applicant’s ability to protect its interest; and (4)
10 the existing parties may not adequately represent the applicant’s interest.” *Citizens for*
11 *Balanced Use*, 647 F.3d at 897 (cleaned up). These requirements “are broadly interpreted
12 in favor of intervention,” *id.*, and all are satisfied here.

13 As noted above, this motion is timely. *League of United Latin Am. Citizens v. Wilson*,
14 131 F.3d 1297, 1308 (9th Cir. 1997) (timeliness inquiry for permissive intervention and
15 intervention as of right “consider[s] precisely the same three factors”). And as to the
16 second and third elements for intervention as of right, this Court’s prior order holding
17 that those elements are met also applies here. The Little Sisters Chicago, like the San
18 Pedro Home, have a significant protectable interest “in being exempt from the ACA’s
19 contraceptive mandate based on their religious objection,” which is “protectable under
20 some law”—the Final Rule at issue in this case. ECF No. 115 at 7. “Moreover,” as before,
21 “the result of this case could impair or impede” the Little Sisters Chicago’s “ability to
22 protect this asserted interest,” in the event this Court invalidates the Final Rule such
23

1 that the Little Sisters Chicago are compelled “to comply with the prior accommodation
2 process to which they have objected for years.” *Id.* at 7-8.

3 The only question then is whether the existing parties adequately represent the
4 interests of the Little Sisters Chicago. Though the Court previously concluded that those
5 interests were adequately represented by the federal defendants, ECF No. 115 at 9-14,
6 the change in presidential administrations and the federal defendants’ actions in this
7 litigation now prove otherwise; indeed, the entire premise of the lengthy stay of this case
8 is that the federal defendants are *not* equally committed to proposed intervenors’
9 religious claims and therefore might give the Plaintiffs what they seek.

10 In denying intervention as of right for the San Pedro Home, this Court found—based
11 on the record as it then existed—that “nothing in the record support[ed]” the
12 “theoretical” argument that federal defendants would not make the same arguments to
13 defend the Rule as the San Pedro Home would. ECF No. 115 at 13. Rather, at that point,
14 the federal defendants under the Trump Administration were “fully advocating for the
15 Little Sisters’ position.” *Id.* at 11. While this may have been true back in December 2017,
16 it is no longer the case.

17 Rather, federal defendants have demonstrated that they intend to cease defending
18 the Final Rule. Federal defendants filed a notice of intent to initiate a rulemaking to
19 amend the Final Rule, ECF No. 465, and successfully persuaded this Court to stay this
20 case so that they would not have to defend the Final Rule while seeking to replace it,
21 ECF Nos. 467-70. Thus, far from being “theoretical” or a “formal vestige of past
22 adversity,” it is now clear that the government does not adequately represent the
23

interests of the Little Sisters Chicago. ECF No. 115 at 10, 13. Indeed, in soliciting public comments to replace the Final Rule, the federal defendants have established that the public interest and their “balanc[ing] [of] a number of policy considerations” diverge from the Little Sisters Chicago’s more narrow, “parochial” interest, which is sufficient to show that the Little Sisters’ interests are not adequately represented. *See, e.g., Citizens for Balanced Use*, 647 F.3d at 899 (quotation omitted); *Delano Farms Co. v. Cal. Table Grape Comm’n*, No. 1:07-cv-1610, 2010 WL 2942754, at *2 (E.D. Cal. July 23, 2010).

Accordingly, the Little Sisters Chicago meet all the requirements for intervention as of right.

CONCLUSION

For the foregoing reasons, the motion to intervene should be granted.

Dated: September 2, 2022

Respectfully submitted,

/s/ Mark Rienzi

Mark Rienzi *pro hac vice*

Eric C. Rassbach – No. 288041

Lori Windham *pro hac vice*

Diana Verm Thomson *pro hac vice*

Adèle Auxier Keim *pro hac vice* pending

Daniel L. Chen – No. 312576

The Becket Fund for Religious Liberty

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Counsel for Proposed Defendant-Intervenor

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

V.

XAVIER BECERRA, Secretary of Health and Human Services, *et al.*,

Defendants,

and,

THE LITTLE SISTERS OF THE POOR,
JEANNE JUGAN RESIDENCE, *et al.*,

Defendant-Intervenors.

Case No. 4:17-cv-05783-HSG

**[PROPOSED] ORDER
GRANTING MOTION TO
INTERVENE**

ORDER

Pending before the Court is the Motion to Intervene of proposed Defendant-Intervenor The Little Sisters of the Poor, St. Mary's Home ("the Little Sisters Chicago"). After due consideration, this Court GRANTS the motion to intervene.

SIGNED this ____ day of _____, 20____.

HAYWOOD S. GILLIAM, JR.
U.S. District Judge

1 Mark Rienzi *pro hac vice*
Eric C. Rassbach – No. 288041
2 Lori Windham *pro hac vice*
Diana Verm Thomson *pro hac vice*
3 Adèle Auxier Keim *pro hac vice* pending
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12
13 **IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 STATE OF CALIFORNIA, *et al.*,

15 Plaintiffs,

16 v.

17 XAVIER BECERRA, Secretary of
Health and Human Services, *et al.*,

18 Defendants,

19 and,

20 THE LITTLE SISTERS OF THE
POOR, JEANNE JUGAN
RESIDENCE, *et al.*,

21 Defendant-Intervenors.
22

Case No. 4:17-cv-05783-HSG

**PROPOSED ANSWER OF
PROPOSED DEFENDANT-
INTERVENOR LITTLE SISTERS
OF THE POOR ST. MARY'S
HOME**

Date Filed: September 2, 2022

Hearing Date: January 19, 2023

Judge: Hon. Haywood S. Gilliam, Jr.

1 Defendant-Intervenor Little Sisters of Poor St. Mary's Home (hereafter, "Intervenor")
2 submits this proposed answer to Plaintiffs' Second Amended Complaint. Intervenor
3 denies all allegations not expressly admitted or qualified herein.

4 1. Paragraph 1 of the Complaint contains legal conclusions and characterizations
5 as to which no response is required. Intervenor admits the allegation in Paragraph 1 of
6 the Complaint that contraceptives and other birth-control services are widely used in the
7 United States. Intervenor otherwise lacks knowledge or information sufficient to form a
8 belief about the truth of the allegations set forth in Paragraph 1 of the Complaint and
9 therefore denies the same.

10 2. Paragraph 2 of the Complaint contains legal conclusions, speculation, and
11 Plaintiffs' characterizations of the Interim Final Rules ("IFRs"), the regulations
12 requiring the certain employers' group health plans provide contraception, sterilization,
13 and abortion-inducing drugs ("HHS Mandate"), and the accommodation scheme
14 ("Accommodation") adopted by the previous administration to purportedly accommodate
15 religious objectors to the HHS Mandate. None of these legal conclusions and
16 characterizations require a response. Further, Intervenor denies that these conclusions
17 and characterizations provide an accurate statement of the law.

18 3. Paragraph 3 of the Complaint contains legal conclusions and characterizations
19 of this Court's prior orders in this case. None of these legal conclusions and
20 characterizations require a response. Further, Intervenor denies that these conclusions
21 and characterizations provide an accurate statement of the law.
22
23

1 4. Paragraph 4 of the Complaint contains legal conclusions and characterizations
2 of the Ninth Circuit's prior opinion in this case. None of these legal conclusions and
3 characterizations require a response. Further, Intervenor denies that these conclusions
4 and characterizations provide an accurate statement of the law.

5 5. Paragraph 5 of the Complaint contains legal conclusions and characterizations
6 of the Ninth Circuit's opinion in this case. None of these legal conclusions and
7 characterizations require a response. Further, Intervenor denies that these conclusions
8 and characterizations provide an accurate statement of the law.

9 6. Paragraph 6 of the Complaint contains legal conclusions, speculation, and
10 Plaintiffs' characterizations of HHS' November 15, 2018 final rules accommodating
11 certain religious objectors to the HHS Mandate ("Final Rules"). 83 Fed. Reg. 57,536; 83
12 Fed. Reg. 57,592. Intervenor lacks knowledge or information sufficient to form a belief
13 about the truth of the factual allegations set forth in Paragraph 6 of the Complaint and
14 therefore denies the same. None of the legal conclusions and characterizations in
15 Paragraph 6 require a response. Further, Intervenor denies that these conclusions and
16 characterizations provide an accurate statement of the law.

17 7. Paragraph 7 of the Complaint contains legal conclusions and speculation about
18 the effect of the Final Rules. Intervenor admits that the Final Rules became effective on
19 January 14, 2019. Intervenor lacks knowledge or information sufficient to form a belief
20 about the truth of the factual allegations set forth in Paragraph 7 of the Complaint and
21 therefore denies the same. None of the legal conclusions and characterizations in
22

1 Paragraph 7 require a response. Further, Intervenor denies that these conclusions and
2 characterizations provide an accurate statement of the law.

3 8. Intervenor admits that Paragraph 8 correctly identifies the Plaintiffs to this case
4 who are challenging the IFR and Final Rules. Paragraph 8 otherwise contains legal
5 conclusions to which no response is required; further, Intervenor denies that this is an
6 accurate statement of the law. Intervenor denies that Plaintiffs have suffered or will
7 suffer any cognizable injury as result of the IFRs or Final Rules.

8 9. Paragraph 9 contains legal conclusions to which no response is required.

9 10. Paragraph 10 contains legal conclusions to which no response is required.

10 11. Paragraph 11 contains legal conclusions to which no response is required.

11 12. Paragraph 12 contains legal conclusions to which no response is required.

12 13. Intervenor admits that California is a plaintiff to this action and is represented
13 by its attorney general. The remainder of Paragraph 13 contains legal conclusions to
14 which no response is required.

15 14. Intervenor admits that Connecticut is a plaintiff to this action and is represented
16 by its attorney general. The remainder of Paragraph 14 contains legal conclusions to
17 which no response is required.

18 15. Intervenor admits that Delaware is a plaintiff to this action and is represented
19 by its attorney general. The remainder of Paragraph 15 contains legal conclusions to
20 which no response is required.

22. Intervenor admits that North Carolina is a plaintiff to this action and is represented by its attorney general. The remainder of Paragraph 22 contains legal conclusions to which no response is required.

1 the same. Intervenor further denies that Plaintiffs have suffered or will suffer any
2 cognizable harm as result of the IFRs or Final Rules.

3 29. Paragraph 29 primarily contains legal conclusions to which no response is
4 required; further, Intervenor denies that it is an accurate statement of the law.
5 Intervenor lacks knowledge or information sufficient to form a belief about the truth of
6 the factual allegations set forth in Paragraph 29 of the Complaint and therefore denies
7 the same. Intervenor further denies that Plaintiffs have standing to challenge the IFRs
8 or Final Rules.

9 30. Paragraph 30 primarily contains legal conclusions to which no response is
10 required; further, Intervenor denies that it is an accurate statement of the law.
11 Intervenor lacks knowledge or information sufficient to form a belief about the truth of
12 the factual allegations set forth in Paragraph 30 of the Complaint and therefore denies
13 the same. Intervenor further denies that Plaintiffs have suffered or will suffer any
14 cognizable harm as result of the IFRs or Final Rules.

15 31. Intervenor admits the allegations in Paragraph 31, except Intervenor states that
16 the current Secretary of HHS is Xavier Becerra, former Attorney General of California
17 and counsel for California in this case.

18 32. Intervenor admits the allegations in Paragraph 32.

19 33. Intervenor admits the allegations in Paragraph 33, except Intervenor states that
20 the current Secretary of Labor is Marty Walsh.

21 34. Intervenor admits the allegations in Paragraph 34.
22
23

35. Intervenor admits the allegations in Paragraph 35, except Intervenor states that the current Secretary of the Treasury is Janet Yellen.

36. Intervenor admits the allegations in Paragraph 36.

37. Paragraph 37 contains legal conclusions and characterizations to which no response is required; to the extent that the text of the Affordable Care Act (“ACA”), is cited, the law speaks for itself.

38. Paragraph 38 contains statements about the motivations of members of Congress who voted in favor of the Women's Health Amendment, and these statements speak for themselves. Intervenor otherwise lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 38 and therefore denies the same.

39. Paragraph 39 contains legal conclusions and statements about the legislative history of the ACA. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 39 and therefore denies the same. With respect to the legal conclusions, no response is required; further, Intervenor denies that Paragraph 39 is an accurate statement of the law.

40. Paragraph 40 contains statements about the process followed by the Institute of Medicine (“IOM”) in preparing its report on recommended preventative care for women. Intervenor admits the allegation in Paragraph 40 that the IOM prepared this report. Intervenor denies that the report “determine[ed] what should be included in cost-free ‘preventive care’ coverage for women.” IOM was not tasked with making insurance coverage recommendations, and explicitly excluded from its determinations those

1 considerations, including those regarding cost, that would be relevant to insurance
2 coverage recommendations. Intervenor lacks knowledge or information sufficient to form
3 a belief about the truth of the remaining allegations set forth in Paragraph 40 and
4 therefore denies the same.

5 41. Intervenor admits the allegation in Paragraph 41 that the Institute of Medicine
6 (“IOM”) issued a report on recommended preventative care for women. Intervenor denies
7 that the IOM report “recommended that private health insurance plans be required to
8 cover all contraceptive benefits and services.” IOM was not tasked with making
9 insurance coverage recommendations, and explicitly excluded from its determinations
10 considerations, including those regarding cost, that would be relevant to insurance
11 coverage recommendations.

12 42. Paragraph 42 contains characterizations of the IOM report to which no response
13 is required; the report speaks for itself.

14 43. Paragraph 43 contains characterizations of the IOM report to which no response
15 is required; the report speaks for itself.

16 44. Paragraph 44 contains characterizations of the IOM report to which no response
17 is required; the report speaks for itself.

18 45. Intervenor admits the allegations in Paragraph 45.

19 46. Paragraph 46 contains legal conclusions to which no response is required.

20 47. Paragraph 47 contains legal conclusions to which no response is required. To the
21 extent Paragraph 47 is characterizing the Guidelines promulgated by the Health
22 Resources and Services Administration (“HRSA”), the Guidelines speak for themselves.

1 48. Paragraph 48 contains legal conclusions to which no response is required. To the
2 extent Paragraph 48 is characterizing the Guidelines promulgated by the Health
3 Resources and Services Administration (“HRSA”), the Guidelines speak for themselves.

4 49. Paragraph 49 contains legal conclusions to which no response is required. To the
5 extent Paragraph 49 is characterizing reports by HRSA and other entities, those reports
6 speak for themselves.

7 50. Paragraph 50 contains statements about the process followed by HRSA in
8 adopting updated Guidelines. To the extent Paragraph 50 is characterizing reports and
9 guidelines issued by HRSA and other entities, those reports speak for themselves.
10 Intervenor lacks knowledge or information sufficient to form a belief about the truth of
11 the remaining allegations set forth in Paragraph 50 and therefore denies the same.

12 51. Paragraph 51 contains statements about the updated HRSA Guidelines and
13 related reports and recommendations. To the extent Paragraph 51 is characterizing
14 reports, recommendations and guidelines issued by HRSA and other entities, those
15 documents speak for themselves. Intervenor lacks knowledge or information sufficient
16 to form a belief about the truth of the remaining allegations set forth in Paragraph 51
17 and therefore denies the same.

18 52. Paragraph 52 contains legal conclusions to which no response is required; the
19 ACA speaks for itself.

20 53. Paragraph 53 contains legal conclusions to which no response is required; the
21 ACA speaks for itself.
22
23

1 the same. Intervenor denies that Plaintiffs have suffered or will suffer any cognizable
2 injury as result of the IFRs or Final Rules.

3 66. Intervenor lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations set forth in Paragraph 66 of the Complaint and therefore denies
5 the same. Intervenor denies that Plaintiffs have suffered or will suffer any cognizable
6 injury as result of the IFRs or Final Rules.

7 67. Intervenor lacks knowledge or information sufficient to form a belief about the
8 truth of the allegations set forth in Paragraph 67 of the Complaint and therefore denies
9 the same. Intervenor denies that Plaintiffs have suffered or will suffer any cognizable
10 injury as result of the IFRs or Final Rules.

11 68. Intervenor lacks knowledge or information sufficient to form a belief about the
12 truth of the allegations set forth in Paragraph 68 of the Complaint and therefore denies
13 the same.

14 69. Intervenor lacks knowledge or information sufficient to form a belief about the
15 truth of the allegations set forth in Paragraph 69 of the Complaint and therefore denies
16 the same. Further, Paragraph 69 contains legal conclusions to which no response is
17 required.

18 70. Intervenor lacks knowledge or information sufficient to form a belief about the
19 truth of the allegations set forth in Paragraph 70 of the Complaint and therefore denies
20 the same. Further, Paragraph 70 contains legal conclusions to which no response is
21 required.

71. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 71 of the Complaint and therefore denies the same. Further, Paragraph 71 contains legal conclusions to which no response is required.

72. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 72 of the Complaint and therefore denies the same. Further, Paragraph 72 contains legal conclusions to which no response is required.

73. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 73 of the Complaint and therefore denies the same. Further, Paragraph 73 contains legal conclusions to which no response is required. Intervenor denies that California has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

74. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 74 of the Complaint and therefore denies the same. Further, Paragraph 74 contains legal conclusions to which no response is required.

75. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 75 of the Complaint and therefore denies the same.

88. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 88 of the Complaint and therefore denies the same. Intervenor denies that Delaware has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

89. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 89 of the Complaint and therefore denies the same. Further, Paragraph 89 contains legal conclusions to which no response is required.

90. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 90 of the Complaint and therefore denies the same. Further, Paragraph 90 contains legal conclusions to which no response is required. Intervenor denies that Delaware has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

91. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 91 of the Complaint and therefore denies the same. Further, Paragraph 91 contains legal conclusions to which no response is required.

92. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 92 of the Complaint and therefore denies the same. Further, Paragraph 92 contains legal conclusions to which no response is required. Intervenor denies that Delaware has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

1 93. Intervenor lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations set forth in Paragraph 93 of the Complaint and therefore denies
3 the same. Further, Paragraph 93 contains legal conclusions to which no response is
4 required.

5 94. Intervenor lacks knowledge or information sufficient to form a belief about the
6 truth of the allegations set forth in Paragraph 94 of the Complaint and therefore denies
7 the same. Further, Paragraph 94 contains legal conclusions to which no response is
8 required.

9 95. Intervenor lacks knowledge or information sufficient to form a belief about the
10 truth of the allegations set forth in Paragraph 95 of the Complaint and therefore denies
11 the same. Further, Paragraph 95 contains legal conclusions to which no response is
12 required. Intervenor denies that Delaware has suffered or will suffer any cognizable
13 injury as result of the IFRs or Final Rules.

14 96. Intervenor lacks knowledge or information sufficient to form a belief about the
15 truth of the allegations set forth in Paragraph 96 of the Complaint and therefore denies
16 the same.

17 97. Intervenor lacks knowledge or information sufficient to form a belief about the
18 truth of the allegations set forth in Paragraph 97 of the Complaint and therefore denies
19 the same.

20 98. Intervenor lacks knowledge or information sufficient to form a belief about the
21 truth of the allegations set forth in Paragraph 98 of the Complaint and therefore denies
22 the same. Further, Paragraph 98 contains legal conclusions to which no response is
23

1 required. Intervenor denies that Delaware has suffered or will suffer any cognizable
2 injury as result of the IFRs or Final Rules.

3 99. Intervenor lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations set forth in Paragraph 99 of the Complaint and therefore denies
5 the same.

6 100. Intervenor lacks knowledge or information sufficient to form a belief about the
7 truth of the allegations set forth in Paragraph 100 of the Complaint and therefore denies
8 the same. Paragraph 100 contains legal conclusions to which no response is required. To
9 the extent that it relies on D.C. statutes, those laws speak for themselves.

10 101. Intervenor lacks knowledge or information sufficient to form a belief about the
11 truth of the allegations set forth in Paragraph 101 of the Complaint and therefore denies
12 the same. Paragraph 101 contains legal conclusions to which no response is required. To
13 the extent that it relies on D.C. statutes, those laws speak for themselves.

14 102. Intervenor lacks knowledge or information sufficient to form a belief about the
15 truth of the allegations set forth in Paragraph 102 of the Complaint and therefore denies
16 the same. Further, Paragraph 102 contains legal conclusions to which no response is
17 required.

18 103. Intervenor lacks knowledge or information sufficient to form a belief about the
19 truth of the allegations set forth in Paragraph 103 of the Complaint and therefore denies
20 the same. Further, Paragraph 103 contains legal conclusions to which no response is
21 required. Intervenor denies that the District of Columbia has suffered or will suffer any
22 cognizable injury as result of the IFRs or Final Rules.

104. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 104 of the Complaint and therefore denies the same. Further, Paragraph 104 contains legal conclusions to which no response is required.

105. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 105 of the Complaint and therefore denies the same. Further, Paragraph 105 contains legal conclusions to which no response is required. Intervenor denies that the District of Columbia has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

106. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 106 of the Complaint and therefore denies the same. Further, Paragraph 106 contains legal conclusions to which no response is required. Intervenor denies that the District of Columbia has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

107. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 107 of the Complaint and therefore denies the same. Further, Paragraph 107 contains legal conclusions to which no response is required. Intervenor denies that the District of Columbia has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

108. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 108 of the Complaint and therefore denies the same.

109. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 109 of the Complaint and therefore denies the same.

110. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 110 of the Complaint and therefore denies the same. Intervenor admits that contraceptives are widely available and widely used.

111. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 111 of the Complaint and therefore denies the same.

112. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 112 of the Complaint and therefore denies the same.

113. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 113 of the Complaint and therefore denies the same.

114. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 114 of the Complaint and therefore denies the same. Intervenor denies that Hawaii has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

115. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 115 of the Complaint and therefore denies

1 the same. Intervenor denies that Hawaii has suffered or will suffer any cognizable injury
2 as result of the IFRs or Final Rules.

3 116. Intervenor lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations set forth in Paragraph 116 of the Complaint and therefore denies
5 the same. Further, Paragraph 116 contains legal conclusions to which no response is
6 required. Intervenor denies that Hawaii has suffered or will suffer any cognizable injury
7 as result of the IFRs or Final Rules.

8 117. Intervenor lacks knowledge or information sufficient to form a belief about the
9 truth of the allegations set forth in Paragraph 117 of the Complaint and therefore denies
10 the same.

11 118. Intervenor lacks knowledge or information sufficient to form a belief about the
12 truth of the allegations set forth in Paragraph 118 of the Complaint and therefore denies
13 the same.

14 119. Intervenor lacks knowledge or information sufficient to form a belief about the
15 truth of the allegations set forth in Paragraph 119 of the Complaint and therefore denies
16 the same.

17 120. Intervenor lacks knowledge or information sufficient to form a belief about the
18 truth of the allegations set forth in Paragraph 120 of the Complaint and therefore denies
19 the same. Further, Paragraph 120 contains legal conclusions to which no response is
20 required.

21 121. Paragraph 121 contains legal conclusions to which no response is required.
22
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1 122. Intervenor lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations set forth in Paragraph 122 of the Complaint and therefore denies
3 the same. Further, Paragraph 122 contains legal conclusions to which no response is
4 required. Intervenor denies that Illinois has suffered or will suffer any cognizable injury
5 as result of the IFRs or Final Rules.

6 123. Intervenor lacks knowledge or information sufficient to form a belief about the
7 truth of the allegations set forth in Paragraph 123 of the Complaint and therefore denies
8 the same.

9 124. Intervenor lacks knowledge or information sufficient to form a belief about the
10 truth of the allegations set forth in Paragraph 124 of the Complaint and therefore denies
11 the same. Intervenor denies that Illinois has suffered or will suffer any cognizable injury
12 as result of the IFRs or Final Rules.

13 125. Intervenor lacks knowledge or information sufficient to form a belief about the
14 truth of the allegations set forth in Paragraph 125 of the Complaint and therefore denies
15 the same. Further, Paragraph 125 contains legal conclusions to which no response is
16 required. To the extent that Paragraph 125 relies on Illinois statutes, those laws speak
17 for themselves. Intervenor denies that Illinois has suffered or will suffer any cognizable
18 injury as result of the IFRs or Final Rules.

19 126. Intervenor lacks knowledge or information sufficient to form a belief about the
20 truth of the allegations set forth in Paragraph 126 of the Complaint and therefore denies
21 the same. Intervenor denies that Illinois has suffered or will suffer any cognizable injury
22 as result of the IFRs or Final Rules.

127. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 127 of the Complaint and therefore denies the same.

128. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 128 of the Complaint and therefore denies the same.

129. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 129 of the Complaint and therefore denies the same. Further, Paragraph 129 of the Complaint contains legal conclusions as to which no response is required.

130. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 130 of the Complaint and therefore denies the same. Further, Paragraph 130 of the Complaint contains legal conclusions as to which no response is required.

131. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 131 of the Complaint and therefore denies the same. Further, Paragraph 131 contains legal conclusions to which no response is required. Intervenor denies that Maryland has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

132. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 132 of the Complaint and therefore denies

1 the same. Intervenor denies that Maryland has suffered or will suffer any cognizable
2 injury as result of the IFRs or Final Rules.

3 133. Intervenor lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations set forth in Paragraph 133 of the Complaint and therefore denies
5 the same. Intervenor denies that Maryland has suffered or will suffer any cognizable
6 injury as result of the IFRs or Final Rules.

7 134. Intervenor lacks knowledge or information sufficient to form a belief about the
8 truth of the allegations set forth in Paragraph 134 of the Complaint and therefore denies
9 the same. Intervenor denies that Maryland has suffered or will suffer any cognizable
10 injury as result of the IFRs or Final Rules.

11 135. There are two paragraphs in the Complaint that are numbered 135, one on page
12 38 and one on pages 54-55.

13 a. With respect to paragraph 135 on page 38, Intervenor lacks knowledge or
14 information sufficient to form a belief about the truth of the allegations set
15 forth in Paragraph 135 of the Complaint and therefore denies the same.

16 b. With respect to paragraph 135 on pages 54-55, Intervenor lacks knowledge
17 or information sufficient to form a belief about the truth of the allegations
18 set forth in Paragraph 135 of the Complaint and therefore denies the same.

19 To the extent that this paragraph summarizes comments Plaintiffs
20 submitted to HHS, those comments speak for themselves. Intervenor denies
21 that the Plaintiffs have suffered or will suffer any cognizable injury as
22 result of the IFRs or Final Rules.

136. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 136 of the Complaint and therefore denies the same. Intervenor denies that Maryland has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

137. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 137 of the Complaint and therefore denies the same.

138. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 138 of the Complaint and therefore denies the same. Further, Paragraph 138 contains legal conclusions to which no response is required. Intervenor denies that Minnesota has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

139. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 139 of the Complaint and therefore denies the same.

140. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 140 of the Complaint and therefore denies the same.

141. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 141 of the Complaint and therefore denies the same.

1 142. Intervenor lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations set forth in Paragraph 142 of the Complaint and therefore denies
3 the same. Intervenor denies that Minnesota has suffered or will suffer any cognizable
4 injury as result of the IFRs or Final Rules.

5 143. Intervenor lacks knowledge or information sufficient to form a belief about the
6 truth of the allegations set forth in Paragraph 143 of the Complaint and therefore denies
7 the same.

8 144. Intervenor lacks knowledge or information sufficient to form a belief about the
9 truth of the allegations set forth in Paragraph 144 of the Complaint and therefore denies
10 the same.

11 145. Intervenor lacks knowledge or information sufficient to form a belief about the
12 truth of the allegations set forth in Paragraph 145 of the Complaint and therefore denies
13 the same.

14 146. Intervenor lacks knowledge or information sufficient to form a belief about the
15 truth of the allegations set forth in Paragraph 146 of the Complaint and therefore denies
16 the same.

17 147. Intervenor lacks knowledge or information sufficient to form a belief about the
18 truth of the allegations set forth in Paragraph 147 of the Complaint and therefore denies
19 the same.

20 148. Intervenor lacks knowledge or information sufficient to form a belief about the
21 truth of the allegations set forth in Paragraph 148 of the Complaint and therefore denies
22 the same. Paragraph 148 contains legal conclusions to which no response is required. To
23

1 the extent that Paragraph 148 relies on statements by members of the New York State
2 Assembly, those statements speak for themselves.

3 149. Intervenor lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations set forth in Paragraph 149 of the Complaint and therefore denies
5 the same. Paragraph 149 contains legal conclusions to which no response is required.

6 150. Intervenor lacks knowledge or information sufficient to form a belief about the
7 truth of the allegations set forth in Paragraph 150 of the Complaint and therefore denies
8 the same. Paragraph 150 contains legal conclusions to which no response is required.

9 151. Intervenor lacks knowledge or information sufficient to form a belief about the
10 truth of the allegations set forth in Paragraph 151 of the Complaint and therefore denies
11 the same. Paragraph 151 contains legal conclusions to which no response is required.

12 152. Intervenor lacks knowledge or information sufficient to form a belief about the
13 truth of the allegations set forth in Paragraph 152 of the Complaint and therefore denies
14 the same. Paragraph 152 contains legal conclusions to which no response is required.
15 Intervenor denies that New York has suffered or will suffer any cognizable injury as
16 result of the IFRs or Final Rules.

17 153. Intervenor lacks knowledge or information sufficient to form a belief about the
18 truth of the allegations set forth in Paragraph 153 of the Complaint and therefore denies
19 the same. Paragraph 153 contains legal conclusions to which no response is required.
20 Intervenor denies that New York has suffered or will suffer any cognizable injury as
21 result of the IFRs or Final Rules.
22
23

154. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 154 of the Complaint and therefore denies the same. Intervenor denies that New York has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

155. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 155 of the Complaint and therefore denies the same. Intervenor denies that New York has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

156. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 156 of the Complaint and therefore denies the same. Intervenor denies that New York has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

157. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 157 of the Complaint and therefore denies the same. Intervenor denies that New York has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

158. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 158 of the Complaint and therefore denies the same.

159. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 159 of the Complaint and therefore denies the same.

160. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 160 of the Complaint and therefore denies the same, except Intervenor admits that contraceptives are widely available and widely used.

161. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 161 of the Complaint and therefore denies the same.

162. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 162 of the Complaint and therefore denies the same. Intervenor denies that North Carolina has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

163. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 163 of the Complaint and therefore denies the same. Paragraph 163 contains legal conclusions to which no response is required.

164. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 164 of the Complaint and therefore denies the same. Intervenor denies that North Carolina has suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

165. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 165 of the Complaint and therefore denies the same.

1 166. Intervenor lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations set forth in Paragraph 166 of the Complaint and therefore denies
3 the same.

4 167. Intervenor lacks knowledge or information sufficient to form a belief about the
5 truth of the allegations set forth in Paragraph 167 of the Complaint and therefore denies
6 the same.

7 168. Paragraph 168 contains legal conclusions to which no response is required.

8 169. Paragraph 169 contains legal conclusions to which no response is required.

9 170. Paragraph 170 contains legal conclusions to which no response is required.

10 171. Intervenor lacks knowledge or information sufficient to form a belief about the
11 truth of the allegations set forth in Paragraph 171 of the Complaint and therefore denies
12 the same. Paragraph 171 contains legal conclusions to which no response is required.

13 172. Intervenor lacks knowledge or information sufficient to form a belief about the
14 truth of the allegations set forth in Paragraph 172 of the Complaint and therefore denies
15 the same.

16 173. Intervenor lacks knowledge or information sufficient to form a belief about the
17 truth of the allegations set forth in Paragraph 173 of the Complaint and therefore denies
18 the same. Paragraph 173 contains legal conclusions to which no response is required.

19 174. Intervenor lacks knowledge or information sufficient to form a belief about the
20 truth of the allegations set forth in Paragraph 174 of the Complaint and therefore denies
21 the same. Paragraph 174 contains legal conclusions to which no response is required.
22

1 Intervenor denies that Rhode Island has suffered or will suffer any cognizable injury as
2 result of the IFRs or Final Rules.

3 175. Intervenor lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations set forth in Paragraph 175 of the Complaint and therefore denies
5 the same. Paragraph 175 contains legal conclusions to which no response is required.
6 Intervenor denies that Rhode Island has suffered or will suffer any cognizable injury as
7 result of the IFRs or Final Rules.

8 176. Intervenor lacks knowledge or information sufficient to form a belief about the
9 truth of the allegations set forth in Paragraph 176 of the Complaint and therefore denies
10 the same.

11 177. Intervenor lacks knowledge or information sufficient to form a belief about the
12 truth of the allegations set forth in Paragraph 177 of the Complaint and therefore denies
13 the same. Paragraph 177 contains legal conclusions to which no response is required.

14 178. Intervenor lacks knowledge or information sufficient to form a belief about the
15 truth of the allegations set forth in Paragraph 178 of the Complaint and therefore denies
16 the same.

17 179. Intervenor lacks knowledge or information sufficient to form a belief about the
18 truth of the allegations set forth in Paragraph 179 of the Complaint and therefore denies
19 the same. Intervenor denies that Vermont has suffered or will suffer any cognizable
20 injury as result of the IFRs or Final Rules.

21 180. Intervenor lacks knowledge or information sufficient to form a belief about the
22 truth of the allegations set forth in Paragraph 180 of the Complaint and therefore denies

1 the same. Intervenor denies that Vermont has suffered or will suffer any cognizable
2 injury as result of the IFRs or Final Rules.

3 181. Intervenor lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations set forth in Paragraph 181 of the Complaint and therefore denies
5 the same. Intervenor denies that Vermont has suffered or will suffer any cognizable
6 injury as result of the IFRs or Final Rules.

7 182. Intervenor lacks knowledge or information sufficient to form a belief about the
8 truth of the allegations set forth in Paragraph 182 of the Complaint and therefore denies
9 the same.

10 183. Intervenor lacks knowledge or information sufficient to form a belief about the
11 truth of the allegations set forth in Paragraph 183 of the Complaint and therefore denies
12 the same.

13 184. Intervenor lacks knowledge or information sufficient to form a belief about the
14 truth of the allegations set forth in Paragraph 184 of the Complaint and therefore denies
15 the same. Paragraph 184 contains legal conclusions to which no response is required.
16 Intervenor denies that Virginia has suffered or will suffer any cognizable injury as result
17 of the IFRs or Final Rules.

18 185. Intervenor lacks knowledge or information sufficient to form a belief about the
19 truth of the allegations set forth in Paragraph 185 of the Complaint and therefore denies
20 the same.

1 186. Intervenor lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations set forth in Paragraph 186 of the Complaint and therefore denies
3 the same.

4 187. Intervenor lacks knowledge or information sufficient to form a belief about the
5 truth of the allegations set forth in Paragraph 187 of the Complaint and therefore denies
6 the same. Paragraph 187 contains legal conclusions to which no response is required.

7 188. Intervenor lacks knowledge or information sufficient to form a belief about the
8 truth of the allegations set forth in Paragraph 188 of the Complaint and therefore denies
9 the same. Paragraph 188 contains legal conclusions to which no response is required.

10 189. Intervenor lacks knowledge or information sufficient to form a belief about the
11 truth of the allegations set forth in Paragraph 189 of the Complaint and therefore denies
12 the same.

13 190. Intervenor lacks knowledge or information sufficient to form a belief about the
14 truth of the allegations set forth in Paragraph 190 of the Complaint and therefore denies
15 the same. Intervenor denies that Virginia has suffered or will suffer any cognizable
16 injury as result of the IFRs or Final Rules.

17 191. Intervenor lacks knowledge or information sufficient to form a belief about the
18 truth of the allegations set forth in Paragraph 191 of the Complaint and therefore denies
19 the same. Intervenor denies that Virginia has suffered or will suffer any cognizable
20 injury as result of the IFRs or Final Rules.

1 knowledge or information sufficient to form a belief about the truth of the factual
2 allegations set forth in Paragraph 206 of the Complaint and therefore denies the same.

3 207. Paragraph 207 contains legal conclusions to which no response is required;
4 further, Intervenor denies that this is an accurate statement of the law. Intervenor lacks
5 knowledge or information sufficient to form a belief about the truth of the factual
6 allegations set forth in Paragraph 207 of the Complaint and therefore denies the same.

7 208. Paragraph 208 contains legal conclusions to which no response is required;
8 further, Intervenor denies that this is an accurate statement of the law. Intervenor lacks
9 knowledge or information sufficient to form a belief about the truth of the factual
10 allegations set forth in Paragraph 208 of the Complaint and therefore denies the same.

11 209. Paragraph 209 contains legal conclusions to which no response is required;
12 further, Intervenor denies that this is an accurate statement of the law. Intervenor lacks
13 knowledge or information sufficient to form a belief about the truth of the factual
14 allegations set forth in Paragraph 209 of the Complaint and therefore denies the same.

15 210. Paragraph 210 contains legal conclusions to which no response is required;
16 further, Intervenor denies that this is an accurate statement of the law. Intervenor lacks
17 knowledge or information sufficient to form a belief about the truth of the factual
18 allegations set forth in Paragraph 210 of the Complaint and therefore denies the same.

19 211. Intervenor lacks knowledge or information sufficient to form a belief about the
20 truth of the factual allegations set forth in Paragraph 211 of the Complaint and therefore
21 denies the same.

1 212. Intervenor lacks knowledge or information sufficient to form a belief about the
2 truth of the factual allegations set forth in Paragraph 212 of the Complaint and therefore
3 denies the same.

4 213. Intervenor lacks knowledge or information sufficient to form a belief about the
5 truth of the factual allegations set forth in Paragraph 213 of the Complaint and therefore
6 denies the same.

7 214. Paragraph 214 contains legal conclusions to which no response is required;
8 further, Intervenor denies that this is an accurate statement of the law.

9 215. Paragraph 215 contains legal conclusions to which no response is required;
10 further, Intervenor denies that this is an accurate statement of the law.

11 216. Paragraph 216 contains legal conclusions to which no response is required;
12 further, Intervenor denies that this is an accurate statement of the law. Intervenor lacks
13 knowledge or information sufficient to form a belief about the truth of the allegations set
14 forth in Paragraph 216 of the Complaint and therefore denies the same.

15 217. Paragraph 217 contains legal conclusions to which no response is required;
16 further, Intervenor denies that this is an accurate statement of the law. Intervenor lacks
17 knowledge or information sufficient to form a belief about the truth of the allegations set
18 forth in Paragraph 217 of the Complaint and therefore denies the same. Intervenor
19 denies that Plaintiffs have suffered or will suffer any cognizable injury as result of the
20 IFRs or Final Rules.

1 218. Intervenor lacks knowledge or information sufficient to form a belief about the
2 truth of the allegations set forth in Paragraph 218 of the Complaint and therefore denies
3 the same.

4 219. Paragraph 219 contains legal conclusions to which no response is required;
5 further, Intervenor denies that this is an accurate statement of the law. Intervenor lacks
6 knowledge or information sufficient to form a belief about the truth of the allegations set
7 forth in Paragraph 219 of the Complaint and therefore denies the same. Intervenor
8 denies that Plaintiffs have suffered or will suffer any cognizable injury as result of the
9 IFRs or Final Rules.

10 220. Paragraph 220 contains legal conclusions to which no response is required;
11 further, Intervenor denies that this is an accurate statement of the law. Intervenor lacks
12 knowledge or information sufficient to form a belief about the truth of the allegations set
13 forth in Paragraph 220 of the Complaint and therefore denies the same.

14 221. Paragraph 221 contains legal conclusions to which no response is required;
15 further, Intervenor denies that this is an accurate statement of the law. Intervenor lacks
16 knowledge or information sufficient to form a belief about the truth of the allegations set
17 forth in Paragraph 221 of the Complaint and therefore denies the same. Intervenor
18 denies that Plaintiffs have suffered or will suffer any cognizable injury as result of the
19 IFRs or Final Rules.

20 222. Paragraph 222 contains legal conclusions to which no response is required;
21 further, Intervenor denies that this is an accurate statement of the law. Intervenor lacks
22 knowledge or information sufficient to form a belief about the truth of the allegations set
23

1 forth in Paragraph 222 of the Complaint and therefore denies the same. Intervenor
2 denies that Plaintiffs have suffered or will suffer any cognizable injury as result of the
3 IFRs or Final Rules.

4 223. Intervenor lacks knowledge or information sufficient to form a belief about the
5 truth of the allegations set forth in Paragraph 223 of the Complaint and therefore denies
6 the same. Intervenor denies that Plaintiffs have suffered or will suffer any cognizable
7 injury as result of the IFRs or Final Rules.

8 224. Intervenor lacks knowledge or information sufficient to form a belief about the
9 truth of the allegations set forth in Paragraph 224 of the Complaint and therefore denies
10 the same. Intervenor denies that Virginia has suffered or will suffer any cognizable
11 injury as result of the IFRs or Final Rules.

12 225. Intervenor lacks knowledge or information sufficient to form a belief about the
13 truth of the allegations set forth in Paragraph 225 of the Complaint and therefore denies
14 the same. Intervenor denies that California has suffered or will suffer any cognizable
15 injury as result of the IFRs or Final Rules.

16 226. Intervenor lacks knowledge or information sufficient to form a belief about the
17 truth of the allegations set forth in Paragraph 226 of the Complaint and therefore denies
18 the same. Intervenor denies that California has suffered or will suffer any cognizable
19 injury as result of the IFRs or Final Rules.

20 227. Paragraph 227 characterizes past legal filings in this case, which requires no
21 response. Intervenor incorporates by reference all preceding responses. Intervenor
22

1 denies that California has suffered or will suffer any cognizable injury as result of the
2 IFRs or Final Rules.

3 228. Intervenor lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations set forth in Paragraph 228 of the Complaint and therefore denies
5 the same. Intervenor denies that Maryland has suffered or will suffer any cognizable
6 injury as result of the IFRs or Final Rules.

7 229. Intervenor lacks knowledge or information sufficient to form a belief about the
8 truth of the allegations set forth in Paragraph 229 of the Complaint and therefore denies
9 the same. Intervenor denies that New York has suffered or will suffer any cognizable
10 injury as result of the IFRs or Final Rules.

11 230. Intervenor lacks knowledge or information sufficient to form a belief about the
12 truth of the allegations set forth in Paragraph 230 of the Complaint and therefore denies
13 the same. Intervenor denies that New York has suffered or will suffer any cognizable
14 injury as result of the IFRs or Final Rules.

15 231. Intervenor lacks knowledge or information sufficient to form a belief about the
16 truth of the allegations set forth in Paragraph 231 of the Complaint and therefore denies
17 the same. Intervenor denies that Plaintiffs have suffered or will suffer any cognizable
18 injury as result of the IFRs or Final Rules.

19 232. Intervenor lacks knowledge or information sufficient to form a belief about the
20 truth of the allegations set forth in Paragraph 232 of the Complaint and therefore denies
21 the same. Intervenor denies that Plaintiffs have suffered or will suffer any cognizable
22 injury as result of the IFRs or Final Rules.

233. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 233 of the Complaint and therefore denies the same. Intervenor denies that Plaintiffs have suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

234. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 234 of the Complaint and therefore denies the same. Intervenor denies that Plaintiffs have suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

235. Paragraph 235 characterizes Plaintiffs' own complaint, which requires no response. Intervenor incorporates by reference all preceding responses.

236. Paragraph 236 contains legal conclusions to which no response is required; the APA speaks for itself.

237. Paragraph 237 contains legal conclusions to which no response is required; the APA speaks for itself.

238. Paragraph 238 contains legal conclusions to which no response is required; further, Intervenor denies that this is an accurate statement of the law.

239. Paragraph 239 contains legal conclusions to which no response is required; further, Intervenor denies that this is an accurate statement of the law.

240. Paragraph 240 contains legal conclusions to which no response is required; the further, Intervenor denies that this is an accurate statement of the law.

241. Paragraph 241 characterizes Plaintiffs' own complaint, which requires no response. Intervenor incorporates by reference all preceding responses.

242. Paragraph 242 contains legal conclusions to which no response is required; the APA speaks for itself.

243. Paragraph 243 contains legal conclusions to which no response is required; further, Intervenor denies that this is an accurate statement of the law. Intervenor denies that Plaintiffs have suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

244. Paragraph 244 contains legal conclusions to which no response is required.

245. Paragraph 245 characterizes Plaintiffs' own complaint, which requires no response. Intervenor incorporates by reference all preceding responses.

246. Paragraph 246 contains legal conclusions to which no response is required; the APA speaks for itself.

247. Paragraph 247 contains legal conclusions to which no response is required; further, Intervenor denies that this is an accurate statement of the law. Intervenor denies that Plaintiffs have suffered or will suffer any cognizable injury as result of the IFRs or Final Rules.

248. Paragraph 248 characterizes Plaintiffs' own complaint, which requires no response. Intervenor incorporates by reference all preceding responses.

249. Paragraph 249 contains legal conclusions to which no response is required; the First Amendment's Establishment Clause speaks for itself. Further, Intervenor denies that this is an accurate statement of the law.

250. Paragraph 250 contains legal conclusions to which no response is required; further, Intervenor denies that this is an accurate statement of the law.

1 258. Paragraph 258 contains legal conclusions to which no response is required;
2 further, Intervenor denies that this is an accurate statement of the law. Intervenor
3 denies that Plaintiffs have suffered or will suffer any cognizable injury as result of the
4 IFRs or Final Rules.

5 259. Paragraph 259 contains legal conclusions to which no response is required;
6 further, Intervenor denies that this is an accurate statement of the law.

7 260. Paragraph 260 contains legal conclusions to which no response is required;
8 further, Intervenor denies that this is an accurate statement of the law. Intervenor
9 denies that Plaintiffs have suffered or will suffer any cognizable injury as result of the
10 IFRs or Final Rules.

11 In response to Plaintiffs' prayer for relief, Intervenor denies that Plaintiffs are
12 entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

Plaintiffs' request for relief must be denied because:

1. Plaintiffs' requested relief violates the rights secured to Intervenor by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb et seq.

2. Plaintiffs' requested relief violates the rights secured to Intervenor by the Free Exercise Clause of the First Amendment to the United States Constitution.

3. Plaintiffs' requested relief violates the rights secured to Intervenor by the Establishment Clause of the First Amendment to the United States Constitution.

4. Plaintiffs' requested relief violates the rights secured to Intervenor by the Free Speech Clause of the First Amendment to the United States Constitution.

5. Plaintiffs' requested relief violates the rights secured to Intervenor by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

6. Plaintiffs' requested relief violates the rights secured to Intervenor by existing injunctions from the United States Supreme Court.

7. Plaintiffs' efforts to take away religious exemptions from the contraceptive mandate, after years of making no effort to take away much larger secular exemptions to the mandate, constitutes illegal religious discrimination and religious targeting in violation of the Free Exercise Clause and the religious freedom provisions of Plaintiffs' state constitutions.

1 Dated: September 2, 2022

Respectfully submitted,

2
3 /s/ Mark Rienzi

Mark Rienzi *pro hac vice*

Eric C. Rassbach – No. 288041

4 Lori Windham *pro hac vice*

Diana Verm Thomson *pro hac vice*

5 Adèle Auxier Keim *pro hac vice* pending

Daniel L. Chen – No. 312576

6 The Becket Fund for Religious Liberty

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9
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11 *Counsel for Proposed Defendant-Intervenor Little Sisters of the Poor, St. Mary's Home*

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 STATE OF CALIFORNIA, *et al.*,

Plaintiffs,

15 v.

16 XAVIER BECERRA, Secretary of Health and
Human Services, *et al.*,

17 Defendants,

18 and,

19 THE LITTLE SISTERS OF THE POOR,
20 JEANNE JUGAN RESIDENCE, *et al.*,

Defendant-Intervenors.

Case No. 4:17-cv-05783-HSG

**DECLARATION OF MOTHER
PROVINCIAL JULIE MARIE
HORSEMAN**

1 I, Mother Provincial Julie Marie Horseman, hereby declare as follows:

2 1. I am over the age of 21 and am capable of making this declaration pursuant to
3 28 U.S.C. § 1746. I have not been convicted of a felony or crime involving dishonesty. I
4 make this declaration based on my personal knowledge and experience of the Little
5 Sisters, our organization, our ministry, and our religious beliefs and practices. My
6 statements about the history of the Little Sisters, the scope of our ministry
7 internationally, and the founding dates of our homes are drawn from organizational and
8 historical documents that I believe to be correct.

9 2. I am the Mother Provincial of the Chicago Province of the Little Sisters of the
10 Poor. The Chicago Province includes Little Sisters homes in Illinois, Colorado, New
11 Mexico, Missouri, Kentucky, Minnesota, and California.

12 3. I have been a Little Sister for 23 years and have served in leadership positions
13 in the order for 6 years. I became Mother Provincial in 2021.

14 **I. History, Organization, and Structure of the Little Sisters of the Poor**

15 4. The Little Sisters of the Poor is an international Roman Catholic Congregation
16 of Sisters that has provided loving care to needy elderly persons of any race, sex, or
17 religion for over 180 years.

18 5. The Little Sisters of the Poor were founded in France, in the winter of 1839,
19 when St. Jeanne Jugan carried a blind elderly woman off the streets and into her home
20 and laid the woman in her own bed. Over time, other women joined St. Jeanne in a
21 religious ministry designed to protect and care for the elderly poor.

1 6. By the time St. Jeanne died forty years later, the Little Sisters of the Poor had
2 established homes in eight countries, including the United States, where the first home
3 was founded in 1868 in Brooklyn, New York.

4 7. Today, there are Little Sisters homes in over thirty countries around the world
5 serving nearly 10,000 poor elderly people.

6 8. The Little Sisters of the Poor have founded and operate 21 homes in the United
7 States, which are located in twenty states and the District of Columbia. Twelve of these
8 homes are located in jurisdictions that are parties to this case. These homes are hosted
9 by over 300 Little Sisters of various nationalities.

10 9. All Little Sisters homes share the same fidelity to Catholic beliefs. Every home
11 is operated under the control of the Little Sisters, and every Little Sister takes a vow of
12 obedience to God, which assumes obedience to the Pope, the Church's teaching, and the
13 authority of the Church in her hierarchy.

14 10. While Catholic and committed to following Church teaching, the Little Sisters'
15 homes are not under the civil legal ownership and control of the dioceses in which they
16 are located. Instead, the Little Sisters of the Poor own and control the homes ourselves,
17 through local corporations that are entirely within the civil legal control of the Little
18 Sisters.

19 11. The Little Sisters' homes are not directly funded by the dioceses in which we are
20 located. Instead, we take responsibility for funding our own operations. For most homes,
21 about half of the budget comes from voluntary gifts, largely in response to the begging
22 for funds and gifts in kind that the Little Sisters do to support our ministry.

II. Little Sisters of the Poor Chicago Province

12. The Little Sisters of the Poor Chicago Province is responsible for the Little Sisters' homes in seven states, including California, Illinois, and Minnesota, which I understand are plaintiffs in this case.

13. For example, the St. Mary's Home of the Little Sisters of the Poor in Chicago ("Little Sisters Chicago"), is an Illinois nonprofit corporation that qualifies as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 ("the Code"). Little Sisters Chicago is under my authority as Mother Provincial.

14. Little Sisters Chicago currently employs about 73 full-time employees.

15. Little Sisters Chicago has adopted the Christian Brothers Employee Benefit Trust (the "Christian Brothers Trust") to provide medical benefits coverage for its employees.

16. It is my understanding that Christian Brothers Trust is a Catholic entity designed to serve the Catholic Church and related faith-based entities. It is my understanding that, like the Little Sisters, the Christian Brothers Trust operates in a manner consistent with our mutual Catholic beliefs. One of the reasons the Little Sisters chose to use the Christian Brothers Trust for our health benefits is because it shares and is administered in accordance with our religious beliefs and provides benefits accordingly.

III. Religious Beliefs and Commitments of the Little Sisters of the Poor

17. Jesus taught that "in so far as you did it to the least of these brothers of mine, you did it to me." *See* Matthew 25:34. This teaching is a fundamental part of who the Little Sisters are. St. Jeanne urged her fellow Little Sisters, "Never forget that the poor

1 are Our Lord; in caring for the poor say to yourself: This is for my Jesus—what a great
2 grace!” Thus, each Little Sister makes a vow of Hospitality, through which she promises
3 to care for the aged as if they were Christ himself.

4 18. As Little Sisters, we strive to witness to the value of the elderly by believing in
5 their inviolable dignity, by recognizing their unique contributions to the Church and
6 society, and by involving them in the activities of our Homes to develop their human
7 potential.

8 19. Caring for the dying is the summit of the Little Sisters’ service to the elderly
9 poor. The Little Sisters maintain a constant presence with those who have entered the
10 dying process and their families. We try to relieve their sufferings as much as possible,
11 which includes giving emotional and prayerful support. Our provision of spiritual
12 support is always consistent with the faith of the person we are serving; we do not force
13 religious observance on anyone.

14 20. Because the Little Sisters care for those who are weak and dying, we strive to
15 emphasize our respect for the uniqueness and dignity of each elderly person as they
16 reach the end of their life. We offer this respect for two reasons. First, to treat the
17 individual with the dignity they are due as a person loved and created by God, with the
18 same respect and compassion as if he or she was Jesus Christ. Second, to convey a public
19 witness of respect for life, in the hope that we can help build a Culture of Life in our
20 society.

21 21. We care for the elderly poor of all races and religions, or of no religion at all. We
22 do not care for people because they are Catholic, but because we are Catholic.

1 22. We also hire employees of all races and religions, or of no religion at all. Because
2 staff members are an important extension of our ministry to the elderly, they must
3 support the Little Sisters' mission by welcoming the elderly poor, helping to make them
4 happy and caring for them with respect or dignity until death. Failure to do so is one of
5 the relatively few explicit grounds for staff dismissal.

6 23. The Little Sisters have also taken a vow of obedience to God, which assumes
7 obedience to the Pope. We carefully follow all of his guidance, and obey all the decisions
8 of the Church. Thus, we develop all of our programs, policies, and procedures in accord
9 with the teachings of the Catholic Church, including its ethical teachings on the
10 inviolable dignity of every human life.

11 24. These teachings include Catholic religious teachings about abortion,
12 contraception, sterilization, and cooperation with acts that are intrinsically immoral.

13 25. Authoritative Catholic teachings are located in sacred Scripture and sacred
14 tradition, and are set forth and specified in the Catechism of the Catholic Church,
15 documents of ecumenical councils (such as the Second Vatican Council), papal
16 encyclicals, directives issued by bishops' conferences, and other teaching documents of
17 the Church. *See generally* Catechism of the Catholic Church Nos. 888-892 (describing
18 the teaching office of the Church); *Dei Verbum* No. 10 (describing how "[s]acred tradition
19 and Sacred Scripture form one sacred deposit of the word of God, committed to the
20 Church").

21 26. Sections 2270 and 2271 of the Catechism of the Catholic Church (1994) affirm
22 that life begins at conception, that directly intending to take innocent human life is
23 gravely immoral. Thus a post-conception contraceptive is an abortifacient and "gravely

1 contrary to the moral law.” *See also* section 2274 (“Since it must be treated from
2 conception as a person, the embryo must be defended in its integrity, cared for, and
3 healed, as far as possible, like any other human being.”)

4 27. The Catholic Church also teaches that contraception and sterilization are
5 intrinsic evils. *Id.* at Section 2370.

6 28. The Church teaches that programs of “economic assistance aimed at financing
7 campaigns of sterilization and contraception” are “affronts to the dignity of the person
8 and the family.” *See* Section 234 of the Compendium of the Social Doctrine of the Church
9 (2004).

10 29. In a landmark encyclical, Saint Pope John Paul II made clear that Catholics may
11 never “encourage” the use of “contraception, sterilization and abortion[.]” *See* Section 91
12 of *Evangelium Vitae* (1995).

13 30. Similarly, the United States Conference of Catholic Bishops (“USCCB”) has
14 issued a series of directives to inform the provision of health services in every U.S.
15 Catholic health institution. These directives prohibit providing, promoting, condoning,
16 or participating in the provision of abortions, abortion-inducing drugs, contraceptives,
17 and sterilization. ECF No. 38-3, USCCB Directives for Catholic Health Care Services at
18 Nos. 45, 52, & 53.

19 31. The directives specifically warn against partnering with other entities in a
20 manner that could involve Catholic health care services in the provision of such
21 “intrinsically immoral” services. *Id.* at Nos. 67-72.

22 32. Rather, the USCCB Directives instruct us to “distinguish [ourselves] by service
23 to and advocacy for” people who are “at the margins of our society” and “particularly

1 vulnerable to discrimination,” such as “the poor; the uninsured and the underinsured;
2 children and the unborn; single parents; the elderly; those with incurable diseases and
3 chemical dependencies; racial minorities; immigrants and refugees.” *Id.* at No. 3.

4 33. The Little Sisters are particularly concerned about the possibility that our
5 conduct may lead others to do evil, or think that the Little Sisters condone evil. *See*
6 Catechism No. 2284, 86 (instructing Catholic institutions to avoid “scandal” and defining
7 “scandal” as “an attitude or behavior which leads another to do evil”; scandal can be
8 caused “by laws or institutions”). The Little Sisters beg for funds and goods at Catholic
9 parishes and elsewhere to support our ministry. Thus, participating in the provision of
10 health benefits that violate Catholic teaching poses a grave risk for the Little Sisters as
11 they interact with Catholic faithful and others who share our beliefs.

12 34. Catholic teaching also instructs us to provide our employees and their families
13 adequate health benefits. “In return for their labor, workers have a right to wages and
14 other benefits sufficient to sustain life in dignity.” *Economic Justice for All: Pastoral*
15 *Letter on Catholic Social Teaching and the U.S. Economy* ¶ 103,
16 http://www.usccb.org/upload/economic_justice_for_all.pdf (“The dignity of workers also
17 requires adequate health care”).

18 35. These religious teachings are binding on how the Little Sisters carry out our
19 religious ministry of caring for the elderly poor. We believe that the health plans that
20 each home offers should be consistent with Catholic teaching.

21 **IV. The Impact of the Mandate on the Little Sisters**

22 36. The HHS contraceptive mandate (the “Mandate”) requires the Little Sisters to
23 participate in the provision of contraception, abortion, and sterilization to our employees

1 via the use of our health plans, health plan information, and health plan infrastructure.
2 If we do not comply with the Mandate, we face massive penalties, which places enormous
3 pressure on the Little Sisters to violate our religious beliefs.

4 37. Our vow of hospitality, which asks us to treat each person in our care as if he or
5 she were Christ himself, commits us just as much to respecting the dignity of human life
6 at its beginning as at its end. We can no more participate in the provision of
7 contraception, abortion, and sterilization than we could participate in the provision of
8 euthanasia or assisted suicide.

9 38. Because of the religious beliefs set forth above, the Little Sisters cannot:

- 10 a. participate in the Mandate's program to promote and facilitate access to the
11 use of sterilization, contraceptives, and abortion-inducing drugs and
12 devices;
- 13 b. provide health benefits to our employees and plan beneficiaries that will
14 include or facilitate access to sterilization, contraception, and abortion-
15 inducing drugs and devices;
- 16 c. designate, authorize, or incentivize any third party to provide our
17 employees or plan beneficiaries with access to sterilization, contraception,
18 and abortion-inducing drugs and devices;
- 19 d. sign, execute, deliver, or otherwise file documents with a third party or with
20 the government which could then be used to require, authorize, or
21 incentivize that third party to provide our employees with access to
22 sterilization, contraception, and abortion-inducing drugs;
- 23

- e. agree to refrain from speaking with a third party to ask or instruct it not to deliver contraceptives, sterilization, and abortifacients to Little Sisters' employees and plan beneficiaries in connection with Little Sisters' health plans;
- f. create or facilitate a provider-insured relationship (between the Little Sisters and Christian Brothers Services or any other third-party administrators), the sole purpose of which would be to provide contraceptives, sterilization, and abortifacients in connection with the Little Sisters' health plans;
- g. create, maintain, support, and facilitate health insurance plans, information, and infrastructure that is used to provide contraceptives, sterilization, and abortifacients to Little Sisters' employees and plan beneficiaries;
- h. take any action that would require, authorize, or incentivize Christian Brothers Trust or Christian Brothers Services to violate their own Catholic religious beliefs.

39. Obeying the Mandate's requirement to participate in the provision of abortion-inducing drugs would violate our public witness to the respect for life and human dignity that we are committed to displaying at all times through our vow of hospitality and our fidelity to Church teaching. It would similarly violate our duty to "advoca[te] for those people whose social condition puts them at the margins of our society and makes them particularly vulnerable," such as "the unborn." ECF No. 38-3, USCCB Directives, at No. 3.

1 40. The Little Sisters believe that our ministry and all of our resources—including
2 our health insurance plans and the efforts we make to maintain those plans—are gifts
3 from God that we must use to God’s glory and for the good of all, to help bear the burdens
4 and sufferings of others. We cannot allow those gifts to be co-opted to serve ends that we
5 believe dishonor God and the dignity of the human person.

6 41. The Mandate threatens the Little Sisters with large fines and penalties if we
7 continue to act in accordance with our religious beliefs.

8 42. For example, if we continue our practice of providing health benefits to our
9 employees and their families without including or facilitating free access to sterilization,
10 contraception, and abortion-inducing drugs and devices, we will face fines of “\$100 for
11 each day in the noncompliance period with respect to each individual to whom such
12 failure relates.” 26 U.S.C. § 4980D(b)(1).

13 43. Depending on how the I.R.S. applied this penalty, the Little Sisters homes could
14 face millions of dollars of fines *each year* for our inability to facilitate the required
15 coverage.

16 44. Little Sisters Chicago currently employs about 73 full-time employees. If the
17 I.R.S. levies the fine on a per-full-time-employee basis, we would be facing daily fines of
18 \$7,300, and annual fines of \$2,664,500. If the I.R.S. levies the fine on the basis of total
19 number of employees and dependents receiving benefits, the fines would be orders of
20 magnitude larger.

21 45. The entire annual budget for Little Sisters Chicago, which currently provides
22 care for 81 needy elderly individuals, is \$7.7 million.

1 46. Nor can we avoid these fines by choosing not to provide health benefits at all.
2 Cutting off all benefits for our employees would be unconscionable. We love and respect
3 our employees and are dedicated to providing adequate health benefits.

4 47. Cutting off all employee benefits would also have a severe negative impact on
5 our employees and their families, and on our ability to hire and retain qualified medical
6 staff and other employees. Benefits plans are an important reason that many employees
7 make choices about which jobs to pursue, to keep, and to abandon.

8 48. Even if we could cut off all benefits in good conscience and without harming our
9 employees or our homes, we would face large government fines for doing so. For example,
10 Little Sisters Chicago would face annual fines of approximately \$168,000 for dropping
11 health benefits altogether.

12 49. For these reasons, the Mandate imposes enormous pressure on the Little Sisters
13 to participate in activities prohibited by our sincerely held religious beliefs.

14 50. Prior to the Mandate, we engaged in conduct motivated by our sincerely held
15 religious beliefs: providing benefits plans that do not include sterilization, contraception,
16 and abortion-inducing drugs and devices. The Mandate penalizes our participation in
17 that religious exercise.

18 51. The Mandate also places enormous pressure on the Little Sisters to engage in
19 conduct contrary to our sincerely held religious beliefs. I am charged with making
20 decisions for Little Sisters Chicago. The severe threats of fines and punishment create
21 enormous pressure on me to violate my religious beliefs at the price of continuing our
22 mission of helping the needy elderly.
23

1 52. We object to the Mandate not because it makes us *use* drugs or devices against
2 our religious beliefs, but because it forces us to participate as a necessary part of the
3 government's scheme to provide those drugs and devices.

4 **The Little Sisters' Litigation Against the Mandate**

5 53. The Little Sisters tried to avoid having to sue the federal government to protect
6 our ministry. We made multiple public statements and filed a detailed public comment
7 with the federal government to inform it of our sincere religious objection to
8 incorporating us into its scheme. But the government refused to exempt us. Which meant
9 that on January 1, 2014, we would start facing massive penalties.

10 54. We filed suit on September 24, 2013, and filed a motion for preliminary
11 injunction one month later, on October 24. *Little Sisters of the Poor v. Sebelius*, No. 13-
12 cv-2611 (D. Colo.).

13 55. Over the next nine years, we would remain in constant litigation with the federal
14 government. We twice had to go to the Supreme Court to be protected from the imposition
15 of massive financial penalties.

16 56. The first time came on December 31, 2013, when just hours before the start of
17 the penalties we filed for and received a temporary emergency injunction from Justice
18 Sotomayor. Later in January 2014, the rest of the Supreme Court would grant an
19 injunction pending appeal without noted dissent. *Little Sisters of the Poor v. Sebelius*,
20 134 S. Ct. 1022 (2014).

21 57. And the second time came after the Supreme Court granted certiorari in our
22 case, when it vacated a Tenth Circuit ruling against us, remanded the case for further
23

1 consideration, and ordered that “the Government may not impose taxes or penalties” on
 2 us while the case remained pending. *Zubik v. Burwell*, 136 S. Ct. 1557, 1561 (2016).

3 58. Following remand, the district court granted us a final injunction, which gave
 4 us protection under the Religious Freedom Restoration Act. That injunction remains in
 5 place today.

6 **The Interim Final Rule and the Final Rule**

7 59. On May 4, 2017, President Trump invited members of the Little Sisters of the
 8 Poor to the White House for the traditional proclamation of the National Day of Prayer
 9 and the signing of an Executive Order related to religious liberty.

10 60. At the signing ceremony, the President made clear that the Mandate’s
 11 application to the Little Sisters had been inappropriate and illegal. The President
 12 described the Mandate as an “attack[] against the Little Sisters of the Poor” that had
 13 put them through “a long, hard ordeal,” and he listed it as an example of past “abuses”
 14 of religious liberty. See [https://www.c-span.org/video/?428059-1/president-trump-](https://www.c-span.org/video/?428059-1/president-trump-signsreligious-liberty-executive-order)
 15 [signsreligious-liberty-executive-order](https://www.c-span.org/video/?428059-1/president-trump-signsreligious-liberty-executive-order) (starting at 28:30).

16 61. The agencies issued an Interim Final Rule on October 6, 2017. See Religious
 17 Exemptions and Accommodations for Coverage of Certain Preventive Services Under the
 18 Affordable Care Act, 82 Fed. Reg. 47,792 (Oct. 13, 2017). The rule explicitly referred to
 19 the Little Sisters’ lawsuit and the Supreme Court decision in our case as the impetus for
 20 the regulatory change: “Consistent with the President’s Executive Order and the
 21 Government’s desire to resolve the pending litigation and prevent future litigation from
 22 similar plaintiffs, the Departments have concluded that it is appropriate to reexamine
 23

1 the exemption and accommodation scheme currently in place for the Mandate.” 82 Fed.
2 Reg. 47,799; *see also id.* at 47,798 (describing lawsuits and *Zubik* decision).

3 62. The Interim Final Rule conceded that “requiring certain objecting entities or
4 individuals to choose between the Mandate, the accommodation, or penalties for
5 noncompliance imposes a substantial burden on religious exercise under RFRA,” and
6 that because “requiring such compliance did not serve a compelling interest and was not
7 the least restrictive means of serving a compelling interest, we now believe that
8 requiring such compliance led to the violation of RFRA in many instances.” *Id.* at 47,800,
9 47,806.

10 63. The Interim Final Rule included a call for comments, and the agencies received
11 and reviewed over 56,000 public comments over a period of several months.

12 64. On November 15, 2018, the agencies finalized the religious exemption by
13 promulgating a Final Rule that would take effect on January 14, 2019. 83 Fed. Reg.
14 57,536 (Nov. 15, 2018) (Final Rule). As to the substance of the religious exemption, the
15 Final Rule was the same as the Interim Final Rule.

16 **Litigation Against the Interim Final Rule and the Final Rule**

17 65. Within days of the Interim Final Rule’s promulgation, States across the country
18 filed lawsuits alleging that the Interim Final Rule was unlawful.

19 66. In two of those cases, Little Sister homes intervened to defend the Interim Final
20 Rule and protect their ability to run their homes consistent with their sincerely held
21 religious beliefs. In the case out of Pennsylvania, the Little Sisters’ Saints Peter and
22 Paul Home in Pittsburgh, Pennsylvania intervened. In the case out of California, the
23 Little Sisters’ Jeanne Jugan Residence in San Pedro, California intervened.

1 67. In both cases, the district courts in Pennsylvania and California ruled that the
2 Interim Final Rule was unlawful. On appeal, the Ninth Circuit largely affirmed the
3 California district court decision where the State of Illinois was a Plaintiff. Meanwhile,
4 in the other Pennsylvania case at the Third Circuit, the agencies finalized the Interim
5 Final Rule while the appeal was pending.

6 68. The cases returned to the district courts, where States challenged the Final Rule.
7 Again, in both cases, the district court found the Final Rule unlawful and prevented it
8 from taking effect. The Third Circuit and Ninth Circuit affirmed those decisions.

9 69. The Supreme Court granted certiorari in the Pennsylvania case out of the Third
10 Circuit. The Supreme Court reversed, holding that the Final Rule and the religious
11 exemption was lawful.

12 70. The Supreme Court then granted, vacated, and remanded the decision from the
13 Ninth Circuit. The Ninth Circuit then remanded to the district court to apply the
14 Supreme Court's holding.

15 71. To date, even after obtaining a victory at the Supreme Court, the Little Sisters
16 have been unable to have this case resolved. Instead of receiving clarity about the legality
17 of the Final Rule, the Little Sisters remain uncertain about the legal status of our
18 religious practices, as both cases have instead been stayed for almost two years.

19 **Possible Sale of the San Pedro Home**

20 72. As Mother Provincial for the Chicago Province, I am responsible for overseeing
21 the Jeanne Jugan Residence of the Little Sisters in San Pedro, California ("the San Pedro
22 Home"), which I understand is the Little Sisters' home that intervened in this litigation.

1 73. I understand that, while this case has been pending at the California district
2 court following the Supreme Court's decision, the San Pedro Home has explored the
3 possibility of a sale due to changes unrelated to this litigation.

4 74. I understand that the San Pedro Home has been moving forward with a potential
5 sale that could possibly occur within six months to a year.

6 75. I understand that the corporate entity—the Jeanne Jugan Residence of the
7 Little Sisters of the Poor in San Pedro, California—would continue to exist following any
8 potential sale but would experience a drastic and possibly complete reduction in its
9 employee workforce. While it is possible the San Pedro Home would later acquire another
10 facility and resume operations, there is no guarantee they will ever do so.

11 76. The Little Sisters Chicago are therefore seeking to intervene in this case in order
12 to ensure that there is a party in the case committed to defending the legality of the
13 religious exemption. It is particularly important for us to intervene because Illinois,
14 Minnesota, and California are all plaintiffs in this case, and any relief granted would
15 presumably extend to the Little Sisters Chicago Province homes that are located in those
16 states.

17 **Conclusion**

18 77. Being forced into nine years of litigation, including three trips to the Supreme
19 Court, has been a difficult and burdensome experience for the Little Sisters. We do not
20 want to alarm in any way the elderly poor whom we serve, nor their families, our
21 employees, or our benefactors. But to protect our ability to serve them as we always have,
22 and to avoid violating and publicly rejecting our religious beliefs, our only recourse was
23 a lawsuit.

1 78. It is deeply troubling to us that, after years of respectfully seeking recourse in
2 federal court to be protected from the *federal* government, we are being forced to defend
3 those same rights that are threatened by a *state* government. We hope a day will come
4 when governments will cease threatening our ministry in this way.

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

3
4 Executed this 31 th day of August, 2022,

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6 Mother Provincial Julie Marie Horseman
7 Mother Provincial Julie Marie Horseman
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