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

14 CITY AND COUNTY OF SAN FRANCISCO,
15 Plaintiff,

16 vs.

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

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

21 vs.

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

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

26 vs.

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

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

**DECLARATION OF SARA H. CODY,
M.D., HEALTH OFFICER AND
DIRECTOR OF COUNTY OF SANTA
CLARA PUBLIC HEALTH
DEPARTMENT, IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND IN
SUPPORT OF THEIR OPPOSITION
TO DEFENDANTS' MOTION TO
DISMISS OR, IN THE
ALTERNATIVE, FOR SUMMARY
JUDGMENT**

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

1 I, SARA H. CODY, M.D., declare:

2 1. I am a resident of the State of California. I submit this declaration in support of
3 the County of Santa Clara's ("County"), and its co-plaintiffs', Motion for Summary Judgment. I
4 am over the age of 18 and have personal knowledge of all the facts stated herein. If called as a
5 witness, I could and would testify competently to all the matters set forth below.

6 2. I am the Director of the County's Public Health Department, as well as the Health
7 Officer for the County and each of the 15 cities located within Santa Clara County. I have held
8 the Health Officer position from 2013 to the present and have held the Public Health Department
9 Director position from 2015 to the present. In these roles, I provide leadership on public health
10 issues for all of Santa Clara County and oversee approximately 450 Public Health Department
11 employees, who provide a wide array of services to safeguard and promote the health of the
12 community.

13 3. Prior to becoming the Health Officer for the County and each of its cities, I was
14 employed for 15 years as a Deputy Health Officer/Communicable Disease Controller at the
15 County's Public Health Department, where I oversaw surveillance and investigation of individual
16 cases of communicable diseases, investigated disease outbreaks, participated in planning for
17 public health emergencies, and responded to Severe Acute Respiratory Syndrome (SARS),
18 influenza A virus subtype H1N1 (also known as "swine flu" or H1N1), and other public health
19 emergencies.

20 4. The mission of the Public Health Department is to promote and protect the health
21 of Santa Clara County's entire population. None of Santa Clara County's 15 cities have a health
22 department. All 15 cities, and all Santa Clara County residents, rely on the Public Health
23 Department to perform essential public health functions. The Public Health Department's work is
24 guided by core public health principles of equity, the value of every life, and harm prevention.
25 The Public Health Department's direct services primarily benefit low-income persons, children,
26 people of color, and people living with chronic diseases, such as HIV/AIDS.

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1 5. The work of the Public Health Department is focused on three main areas: (1)
2 infectious disease and emergency response, (2) maternal, child, and family health, and (3) healthy
3 communities.

4 6. The Public Health Department provides care focused on some of the County's
5 most vulnerable populations including, but not limited to, the LGBTQ community, low-income
6 residents, people who abuse controlled substances, and young women who are pregnant.
7 Approximately 25% of the County's nearly two million residents are considered to be among
8 these vulnerable populations. It is critical that Public Health Department staff be willing and able
9 to serve these populations. For that reason, in recruitment for employment in the Public Health
10 Department, the County inquires into job applicants' experiences with the LGBTQ community
11 and with other vulnerable populations. This recruitment practice ensures that our Department is
12 staffed with employees who are prepared to serve, and are experienced with serving, the needs of
13 all County residents who may interact with the Public Health Department.

14 7. Several specific programs would be undermined if the Public Health Department
15 were prevented from ensuring that employees staffing those programs were willing to provide the
16 health care services required. For example, the Public Health Department operates a needle
17 exchange program that is critical to preventing the spread blood-borne pathogens such as HIV,
18 hepatitis B and hepatitis C, and also helps to address substance abuse in Santa Clara County.
19 County employees participating in this program necessarily interact with people who abuse
20 controlled substances and typically engage in services such as providing clean needles, safer-sex
21 kits, and referrals for substance abuse treatment. If the Department could not ensure that
22 employees staffed on the needle exchange program are willing to provide these services, the
23 program would not be able to operate efficiently or effectively. Similarly, if the Department
24 could not reassign an employee who objected to providing such services, we would not be able to
25 staff appropriately, undermining this critical program.

26 8. The Public Health Department provides a range of STI-related services, including
27 sexual-health counseling, STI-prevention services, STI screening, STI treatment, and HIV pre-
28 exposure and post-exposure prophylaxis. Through both the Crane Center, which focuses on STI

1 screening for HIV and Hepatitis C, and the STI clinic, which provides examinations and
2 treatment for a wide range of STIs, such as syphilis, gonorrhea and chlamydia, the Public Health
3 Department regularly serves the LGBTQ community, women who are pregnant including those
4 who may be considering abortion, and people who are seeking contraceptive care. If a broad
5 swath of Public Health employees—even those not directly providing patient care—could refuse
6 to facilitate or refer patients for certain care based on religious or moral objections, these
7 programs would be dramatically impacted. Such refusals would interfere with the relationship of
8 trust between our providers and our patients and result in situations where patients seeking care
9 are turned away or provided with incomplete information regarding the health care services
10 available.

11 9. A policy that broadly permits employees to refuse to facilitate patient care could
12 have a serious negative impact on public health. Indeed, STIs are already a serious public health
13 concern in Santa Clara County, which has recently experienced a rise in chlamydia, gonorrhea,
14 and syphilis. Between 2010 and 2017, cases of chlamydia steadily increased from 271.3 cases
15 per 100,000 people in 2010 to 392.7 cases in 2017, and gonorrhea rates increased nearly fourfold
16 from 33.1 cases per 100,000 people in 2010 to 126.4 cases in 2017, with a 26% rapid increase
17 from 2016 to 2017. Rates of early syphilis (i.e., primary, secondary, and early latent syphilis)
18 diagnoses nearly tripled from 6.2 cases per 100,000 people in 2010 to 21.1 cases in 2017, with a
19 sharp 57% increase between 2015 and 2016. HIV/AIDS is another serious public health concern
20 in the County. In 2015, there were 2,734 people living with HIV/AIDS in the County, and in
21 2017, that number had risen to 3,361 people living with HIV/AIDS in the County. Any
22 requirements that obstruct patient access to treatment are likely to exacerbate these serious public
23 health problems and thus increase the burden on the County to address and prevent the spread of
24 these infections.

25 10. Public Health's STD/HIV Prevention and Control program distributes free
26 condoms at its clinical sites and through outreach events to the community. If Public Health were
27 unable to require advance notice of religious objections or reassign objecting employees, an
28 employee who has a religious objection to contraceptives or premarital sex could refuse to

1 participate in and seriously undermine this program. Decreased access to, and education about,
2 contraception is likely to increase unintended pregnancies, triggering immediate and long-term
3 costs to the County and communities nationwide. As the safety-net healthcare provider, the
4 County funds many of the medical services associated with preventing and treating both STIs and
5 unintended pregnancies, which disproportionately affect young, low-income, minority women,
6 without access to higher education, who are likely to rely on County-funded services. The
7 County is also burdened by the long-term costs of unplanned pregnancies, which can limit
8 individuals' ability to succeed in education and the workplace and to contribute as taxpayers and
9 citizens.

10 11. The Public Health Department depends heavily upon federal funding from the U.S.
11 Department of Health and Human Services. The elimination of this federal funding would be
12 devastating for the residents of Santa Clara County. It would result in a drastic reduction of
13 services and staff positions in Public Health Department programs providing direct services to
14 clients, as well as other programs integral to protecting and promoting public health. Vulnerable
15 communities would be most severely impacted by a loss of federal funding to the Public Health
16 Department.

17 12. In the County's 2018-19 fiscal year, from July 1, 2018 through June 30, 2019, the
18 Public Health Department's total gross expenditures amounted to approximately \$118.7 million.
19 Total revenues from federal funds in the 2018-19 fiscal year amounted to approximately \$33.7
20 million, or more than a quarter of the Department's gross expenditures. Most of these federal
21 funds pass through the State of California to the County.

22 13. Federal funding is critical to many of the Public Health Department's programs
23 that address infectious diseases. The Public Health Department is responsible for safeguarding
24 the public health by preventing and controlling the spread of infectious diseases and planning for
25 and responding to public health emergencies. Programs in this branch of the Public Health
26 Department receive reports on 85 different diseases and conditions; track overall trends in
27 infectious diseases; investigate individual cases of concern; provide long-term case management
28 for certain categories of patients (e.g., active tuberculosis cases); provide immunizations and

1 preventive therapy; identify, investigate and control outbreaks; and plan for and respond to public
2 health emergencies. They also ensure that all children attending school or childcare facilities in
3 Santa Clara County comply with State immunization requirements; conduct HIV and other STI
4 testing and education for vulnerable communities; and distribute opioid overdose prevention kits
5 for at-risk individuals. To support its communicable disease control function, the Public Health
6 Department has a public health laboratory, which serves as a local and regional resource which
7 local health providers, clinics, hospitals, and even law enforcement rely on to test and identify
8 infectious diseases, toxins, biohazards, and other substances that could pose a serious risk to
9 public health. This branch of the Public Health Department also includes two pharmacies.

10 14. For example, in Fiscal Year 2018-19, Public Health Department programs
11 supported by federal funding included the following:

12 a. Under the federal government's Ryan White HIV/AIDS Program, the
13 County received \$4.4 million in funds to provide core medical services and support services to
14 low-income individuals living with HIV/AIDS in the County. The majority of this \$4.4 million
15 consists of federal funds, with state funds comprising the remainder. The funded services include
16 drugs provided to uninsured and underinsured HIV/AIDS patients enrolled in the AIDS Drug
17 Assistance Program. The recipients are patients who are at or below 500% of the Federal Poverty
18 Level and do not qualify for no-cost Medi-Cal. In calendar year 2018, there were 1,782 Ryan
19 White-funded clients in Santa Clara County—slightly more than half (52%) of all the persons
20 living with HIV/AIDS in Santa Clara County.

21 b. The Public Health Department received approximately \$1.7 million in
22 federal financial assistance, including an Immunization Local Assistance Grant, to support its
23 immunization programs and its Tuberculosis (TB) Prevention and Control Program, which
24 provides TB immunizations and testing and investigates all reports of persons with suspected or
25 confirmed TB disease. There were 169 cases of TB reported in Santa Clara County in 2018.

26 c. Through the National Hospital Preparedness Program and Public Health
27 Emergency Preparedness Cooperative Agreement Programs, the Public Health Department has
28 received \$2.2 million in federal funding to prepare for emergencies, such as natural disasters,

1 mass casualties, biological and chemical threats, radiation emergencies and terrorist attacks.

2 15. Further, in the area of maternal, child, and family health, the Public Health
3 Department provides services for Santa Clara County's most vulnerable children and families.

4 The following are some of the Public Health Department's federally funded programs in this area:

5 a. The California Children's Services (CCS) program provides diagnostic and
6 treatment services, medical case management, and medically necessary physical and occupational
7 therapy services to children under 21 years of age with CCS-eligible medical conditions, such as
8 cystic fibrosis, hemophilia, cerebral palsy, muscular dystrophy, spina bifida, heart disease, cancer,
9 and traumatic injuries. The CCS program serves well over 5,000 children each year, and in Fiscal
10 Year 2018-2019, it received \$5.8 million in federal funds, not including payments from Medi-Cal.

11 b. The Special Supplemental Nutrition Program for Women, Infants and
12 Children (WIC) program safeguards the health of low-income pregnant, postpartum, and
13 breastfeeding women, infants, and children up to age 5 who are at nutritional risk by providing
14 nutritious foods to supplement diets, information on healthy eating, breastfeeding promotion and
15 support, and referrals to health care. The program has a caseload of nearly 16,000 individuals
16 each month, and it received \$4.2 million in federal funds in Fiscal Year 2018-2019.

17 c. The Child Health and Disability Prevention (CHDP) Program, which
18 received \$1.7 million in federal funds in Fiscal Year 2018-2019, ensures that low-income children
19 and youth receive routine health assessments and treatment services. Within the CHDP Health
20 Care Program for Children in Foster Care (HCPCFC) Program, public health nurses provide care
21 coordination for foster care youth to ensure that their medical, dental, mental health, and
22 developmental needs are met.

23 d. The Public Health Nursing Home Visitation program, which received \$1.7
24 million in federal funds (Targeted case management) in Fiscal Year 2018-2019, provides case
25 management services to Medi-Cal beneficiaries in specific target populations to gain access to
26 needed medical, social, educational, and other services.

27 e. The Childhood Lead Poisoning Prevention Program, which received
28 approximately \$50,577 in federal funds in Fiscal Year 2018-2019, provides nursing and

1 environmental case management and follow-up for lead-poisoned children, promotes screening
2 for lead poisoning, and provides community education regarding lead poisoning prevention.

3 16. To create and maintain healthy communities, the Department conducts localized
4 health assessments and planning throughout Santa Clara County, and works with community
5 partners and County leadership to promote system-wide and environmental changes to reduce the
6 incidence of chronic diseases and injuries in Santa Clara County. In Fiscal Year 2018-2019, the
7 chronic disease and injury prevention unit received \$1.7 million in federal funds to provide
8 nutrition education and obesity prevention activities and interventions for low-income
9 Californians for primary prevention of nutrition-related chronic disease.

10 17. In addition to the programs described above, the Public Health Department
11 received \$3.9 million in Medi-Cal payments and \$2.7 million in Medicare payments in Fiscal
12 Year 2018-2019 for health care provided to patients with Medi-Cal or Medicare coverage. The
13 payments from Medicare, which is the federal health insurance program for elderly and disabled
14 individuals, consist entirely of federal funds. Medi-Cal is financed by the State and federal
15 governments, and the Medi-Cal payments therefore contain a mixture of State and federal funds.
16 Although the apportionment of the funding is not readily known to the County, the Medi-Cal
17 payments are dependent on receipt of federal funding from Medicaid, the federal health insurance
18 program for low-income individuals.

19 18. The Public Health Department relies on continual receipt of comparable federal
20 funding from the U.S. Department of Health and Human Services annually, with anticipated
21 increases in line with future increases in the population of the County.

22 19. Many, if not most, of the individuals served through the Public Health
23 Department's various programs simply would not get the care and resources that they need
24 without federally funded services. For example, without federal funding for WIC, thousands
25 more women would not have the appropriate nutrition to ensure healthy pregnancies, healthy
26 birth outcomes, and healthy children, and thousands more children would suffer from poor
27 nutrition. This would impact not only their immediate health but also their developmental
28 readiness for kindergarten and chances for future health and success in life. As another example,

1 loss of funding for CCS would result in reduced therapy and other necessary services for
2 thousands of medically fragile and disabled children with expensive and complicated medical
3 conditions. And as yet another example, loss of funding for clients with HIV/AIDS would mean
4 that hundreds of low-income, chronically ill individuals in our community would not receive the
5 health care, drugs, and other essential services they need to survive and enjoy a reasonable quality
6 of life. Patients with HIV infection who are not adequately treated are also at greater risk of
7 spreading HIV to others. The fees the STI clinic collects do not cover the costs of providing STI-
8 related services, and if the Department's budget loses federal funding, we would not be able to
9 continue with the same level of services going forward.

10 20. The impact of any loss in federal funding would not be limited to services
11 traditionally funded by federal dollars. A withdrawal of federal funding for the County would
12 require a countywide realignment of funding and priorities, and money that is currently allocated
13 to the Public Health Department from the County's General Fund could be reduced to make up
14 for a loss of federal funds in other departments. A loss of federal funding, combined with a
15 reduction in the General Fund allocation for the Public Health Department, would require the
16 Public Health Department to make difficult decisions about how to reallocate its remaining funds,
17 which communities to prioritize, and which diseases and health conditions to focus on at the
18 expense of others. Rather than being in a position to create and implement proactive strategies to
19 promote health and prevent disease, the Public Health Department would almost certainly be
20 forced into focusing on reactive services designed to address public health crises (e.g.,
21 communicable disease control), services that the Public Health Department and Health Officer are
22 mandated by law to provide (e.g., birth and death registration), and a modicum of services for the
23 neediest populations.

24 21. A withdrawal of federal funding would compromise the Public Health
25 Department's ability to prevent public health emergencies and outbreaks, to prevent chronic
26 diseases, to provide equal opportunity to vulnerable children for a healthy start and optimal
27 health, and to foster healthy families and healthy communities.

28 22. A sustained loss of federal funding to the County would ultimately result in a far

1 sicker and less healthy community overall and for generations to come. The collateral costs
2 would be many: greater health care costs for individuals, their families, their employers, and for
3 the County itself, which is mandated by law to provide health care to the medically indigent. In
4 addition, I am familiar with a wide body of studies and literature showing that an increase in
5 incidents of sickness and illness can result in financial instability for families, a less productive
6 workforce, and poorer educational and economic outcomes for children.

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

9 Executed on September 9, 2019 in San José, California.

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11 SARA H. CODY, M.D.
12 Health Officer and Director of County of Santa
13 Clara Public Health Department
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