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

15 CITY AND COUNTY OF SAN FRANCISCO,  
16 Plaintiff,  
17 vs.  
18 ALEX M. AZAR II, et al.,  
Defendants.

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

19 STATE OF CALIFORNIA, by and through  
20 ATTORNEY GENERAL XAVIER BECERRA,  
Plaintiff,  
21 vs.  
22 ALEX M. AZAR, et al.,  
Defendants.

**SUPPLEMENTAL DECLARATION OF  
DR. RANDI C. ETTNER, PH.D. IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT AND  
OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS OR, IN THE  
ALTERNATIVE, FOR SUMMARY  
JUDGMENT**

23 COUNTY OF SANTA CLARA, et al.  
24 Plaintiffs,  
25 vs.  
26 U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, et al.,  
27 Defendants.  
28

1 I, Dr. Randi C. Ettner, declare as follows:

2 1. As detailed in my September 8, 2019 declaration submitted in support of the  
3 plaintiffs' motion for summary judgment, I am a licensed clinical and forensic psychologist with a  
4 specialization in the diagnosis, treatment, and management of gender dysphoric individuals. I also  
5 am the secretary and a member of the Board of Directors of the World Professional Association of  
6 Transgender Health (WPATH), and an author of the WPATH *Standards of Care for the Health of*  
7 *Transsexual, Transgender and Gender Nonconforming People* (7th version).  
8

9 2. I have been retained by counsel for Plaintiffs Trust Women Seattle, Los Angeles  
10 LGBT Center, Whitman-Walker Clinic, Inc. d/b/a Whitman-Walker Health, Bradbury-Sullivan  
11 LGBT Community Center, Center On Halsted, Hartford Gyn Center, Mazzoni Center, Medical  
12 Students For Choice, AGLP: The Association Of LGBTQ+ Psychiatrists, American Association of  
13 Physicians for Human Rights d/b/a Glma: Health Professionals Advancing LGBTQ Equality,  
14 Colleen McNicholas, Robert Bolan, Ward Carpenter, Sarah Henn, and Randy Pumphrey as an  
15 expert in connection with the above-captioned matter.  
16

17 3. I submit this supplemental declaration in response to the Court's September 24,  
18 2019 Notice Regarding Briefing requesting that the parties address "whether the word 'sterilization'  
19 as used in the Church Amendments was intended to cover transgender medical operations and/or  
20 gender reassignment surgery."  
21

22 4. Attached as Exhibit A is a bibliography of additional relevant medical and scientific  
23 materials I have relied upon in forming the opinions herein, in addition to my years of experience  
24 and those already listed in my September 8, 2019 declaration.

25 5. If called to testify in this matter, I would testify truthfully and based on my expert  
26 opinion.  
27  
28

1           **I.       EXPERT OPINIONS**

2           6.       A sterilization procedure is a medical procedure performed as a form of permanent  
3 birth control. Thus, a sterilization procedure is one that is *intended* to function as a form of  
4 permanent contraception.

5           7.       The American College of Obstetricians and Gynecologists defines sterilization as  
6 “a permanent method of birth control.” The U.S. Department of Health and Human Services  
7 similarly defines sterilization as “a form of contraception (birth control) that is meant to be  
8 permanent.”

9           8.       By contrast, gender-affirming health care, such as hormone replacement therapy or  
10 gender confirmation surgery (also known as gender reassignment surgery), are not sterilization  
11 procedures because they are not performed for the purpose of contraception. Gender-affirming  
12 health care is medically necessary for the treatment of gender dysphoria and can be life-saving for  
13 transgender individuals diagnosed with gender dysphoria.

14           9.       To be sure, studies document how transgender individuals desire to have children  
15 and form families just like any other person (De Roo, et al., 2016; Wierckx, et al., 2012; De Sutter,  
16 et al., 2002). Indeed, a majority of transgender men desire to have children (Wierckx, et al., 2012).

17           10.      Some transgender people can, and sometimes do, seek to preserve their ability to  
18 have children before undergoing any gender affirming medical procedure that will have an  
19 *incidental* effect on their fertility. Others, who have commenced cross-sex hormone therapy and  
20 choose to conceive, can stop hormonal treatment and stimulate reproductive organs.

21           11.      There is documented evidence of transgender men becoming pregnant *after*  
22 transitioning and having undergone cross-sex hormone therapy (Light, et al., 2014; Wierckx, et al.,  
23 2012). Thus, transgender men are achieving pregnancy after having transitioned socially,  
24 medically, or both.

1           12.     Among the options available for fertility preservation to transgender men are: (1)  
2 embryo banking; (2) oocyte banking; and (3) ovarian tissue cryopreservation (De Roo, et al., 2016;  
3 Finlayson, et al., 2016). Transgender women can also preserve their fertility through  
4 cryopreservation of sperm (De Roo, et al., 2016).

5           13.     The options for fertility preservation available to transgender patients are no  
6 different from those available to cancer patients undergoing treatments, including chemotherapy  
7 and radiation, which can lead to infertility, a field known as oncofertility (Finlayson, et al., 2016).

8           14.     It makes sense that the options for fertility preservation available to transgender  
9 patients are the same as those available to cancer patients. In both instances, the patient is obtaining  
10 medical treatment that may have an *incidental* effect on fertility, but which is obtained for the  
11 primary purpose of treating a medical condition and not for contraception. For example, a  
12 hysterectomy may be medically necessary for the treatment and alleviation of a transgender man's  
13 gender dysphoria, just as hysterectomy may be medically necessary for the treatment of uterine  
14 cancer or endometriosis.

15           15.     Lastly, longitudinal studies show that gender confirmation surgery has been linked  
16 with a reduction in the need for mental health treatment for transgender patients (Branstrom, et al.,  
17 2019).

18           16.     In other words, gender affirming health care is not a sterilization procedure. It is  
19 not performed for the purposes of contraception. Rather, gender affirming health care, including  
20 hormone replacement therapy and gender confirmation surgery, is medically necessary for the  
21 treatment and alleviation of a transgender patient's gender dysphoria, which is a serious medical  
22 condition that can result in significant clinical distress, debilitating depression, and suicidality.

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

Dated this 7 day of October, 2019.

Respectfully submitted,



Dr. Randi C. Ettner

# **EXHIBIT A**

## **BIBLIOGRAPHY**

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