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18 *Attorneys for Plaintiffs*

19 **IN THE UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF CALIFORNIA
20 **SACRAMENTO DIVISION**

21 Foothill Church, Calvary Chapel
22 Chino Hills, and Shepherd of the
Hills Church,

23 Plaintiffs,

24 vs.

25 MICHELLE ROUILLARD, in her official
capacity as Director of the California Department
of Managed Health Care.

26 Defendant.

Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

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1 Plaintiffs Foothill Church, Calvary Chapel Chino Hills, and Shepherd of the Hills
2 Church (collectively, "Plaintiffs"), by and through their attorneys, state as follows:

3 **NATURE OF THE ACTION**

4 1. In this action, Plaintiffs seek judicial review of Defendant's violations of the First
5 and Fourteenth Amendments to the United States Constitution.

6 2. On August 22, 2014, Defendant imposed an unsupported and unnecessary
7 requirement mandating that health insurance plans issued in California provide coverage for
8 abortions, including voluntary and elective ones (the "Mandate").

9 3. Defendant chose not to exempt employee health plans paid for and offered by
10 churches and other religious employers, even though the Mandate does not apply to other
11 plans.

12 4. Plaintiffs, as Christian churches, hold and actively profess religious beliefs that
13 include traditional Christian teachings on the sanctity of life.

14 5. Plaintiffs believe, as a matter of religious conviction, that it would be sinful and
15 immoral for them intentionally to pay for, participate in, facilitate, or otherwise support
16 abortion, which they believe destroys innocent human life.

17 6. Because federal law requires Plaintiffs to offer health insurance to their
18 employees, the Mandate illegally and unconstitutionally coerces Plaintiffs to violate their
19 religious beliefs under threat of heavy fines and penalties.

20 7. Defendant imposed the Mandate with full knowledge that it would coerce religious
21 employers and churches like Plaintiffs to violate their sincerely held religious beliefs.

22 8. Plaintiffs now seek declaratory and injunctive relief to remedy this unjustified
23 disregard of religious belief and impairment of conscience.

1 **JURISDICTION AND VENUE**

2 9. This action raises questions under the Constitution of the United States,
3 specifically the First and Fourteenth Amendments, and under federal law, particularly 28
4 U.S.C. § 2201 and 42 U.S.C. §§ 1983 and 1988.

5 10. This Court has subject matter jurisdiction over Plaintiffs’ federal claims pursuant
6 to 28 U.S.C. §§ 1331 and 1343.

7 11. This Court has authority to grant the requested declaratory and injunctive relief
8 under 28 U.S.C. §§ 2201 and 2202 and under Federal Rule of Civil Procedure 57.

9 12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a
10 substantial part of the events or omissions giving rise to the claims occurred in this district
11 and Defendant resides in this district.

12 **THE PARTIES**

13 13. Plaintiff Foothill Church is a non-profit Christian church located in Glendora,
14 California. Foothill Church currently offers health insurance plans to its employees through
15 Kaiser Permanente and Blue Shield. Its plan year begins and ends annually on or about July 1.

16 14. Plaintiff Calvary Chapel Chino Hills is a non-profit Christian church located in
17 Chino, California. Calvary Chapel Chino Hills currently offers health insurance plans to its
18 employees through Kaiser Permanente, Aetna, and Anthem Blue Cross. Its plan year begins
19 and ends annually on or about November 30.

20 15. Plaintiff Shepherd of the Hills Church is a non-profit Christian church located in
21 Porter Ranch, California. Shepherd of the Hills Church currently offers health insurance plans
22 to its employees through Anthem Blue Cross and Kaiser Permanente. Its plan year begins and
23 ends annually on or about December 1.

24 16. Defendant Michelle Rouillard is the Director of the California Department of
25 Managed Health Care (“DMHC”), an executive agency of the State of California responsible
26 for enforcing California law and regulations regarding health insurance. In her official
27

1 capacity, Rouillard is responsible for the promulgation and enforcement of the August 22,
2 2014, abortion mandate. Rouillard is sued in her official capacity only.

3 **FACTS**

4 17. Plaintiffs are all Christian churches that hold and actively profess historic and
5 orthodox Christian teachings on the sanctity of human life.

6 18. Plaintiffs believe that the Bible teaches that each human life is formed by and
7 bears the image of God. As such, they believe that all human life is sacred from the moment
8 of conception to natural death and that God has condemned the intentional destruction of
9 innocent human life.

10 19. Plaintiffs believe that human life is worthy of protection and respect at all stages
11 from the time of conception.

12 20. Because Plaintiffs ascribe intrinsic moral value to every human being from
13 conception (fertilization) to natural death, they believe and teach that abortion ends a human
14 life and is a grave sin.

15 21. Plaintiffs believe that participation in, facilitation of, or payment for abortion is
16 inconsistent with the dignity conferred by God on creatures made in His image.

17 22. Consistent with their Christian beliefs and principles, Plaintiffs also promote the
18 physical, emotional, and spiritual well-being of their employees through the provision of
19 generous health insurance as a benefit of employment.

20 23. Because Plaintiffs believe that abortion kills an innocent human life and thus runs
21 completely counter to their religious beliefs and the goals of health care and medicine, they
22 seek to provide health insurance coverage to their employees in a way that does not also cause
23 them to pay for abortions.

24 24. To that end, Plaintiffs have consulted with their insurance brokers and/or insurers
25 to avoid paying for abortions in their employee group health plans.

1 25. To Plaintiffs' great disappointment, however, their insurance brokers and/or
2 insurers have informed them that the Mandate requires their group health insurance plans to
3 cover abortions, including voluntary and elective ones.

4 26. Defendant promulgated the Mandate without any public notice or comment.

5 27. Defendant instead issued the Mandate through letters sent to private health insurers
6 in California and by publishing them on the DMHC website. *See Exhibits 1 and 2.*

7 28. Plaintiffs and other interested parties did not have the opportunity to comment or
8 provide the DMHC with their views on the Mandate before it went into effect.

9 29. The Mandate states that all health insurance plans issued in California must
10 immediately provide coverage for all abortions.

11 30. The Mandate instructed insurers to amend their policies to remove any limitations
12 on health coverage for abortions, such as excluding coverage for "voluntary" or "elective"
13 abortions or limiting coverage to "therapeutic" or "medically necessary" abortions.

14 31. In issuing the Mandate, Defendant noted that the Knox-Keene Health Care Service
15 Plan Act ("Knox-Keene Act") of 1975 requires health care service plans to cover all "basic
16 health care services."

17 32. According to the Mandate, the Knox-Keene Act's "basic health care" requirement
18 includes coverage for elective and voluntary abortions.

19 33. Defendant ignored the plain meaning and purpose of the Knox-Keene Act in
20 issuing her novel interpretation and implementation of the "basic health care" requirement.

21 34. The Knox-Keene Act, which charges Defendant with the administration and
22 enforcement of the laws relating to health care service plans, defines "basic health care
23 services" to include physician services; hospital inpatient services and ambulatory care
24 services; diagnostic laboratory and diagnostic and therapeutic radiologic services; home
25 health services; preventive health services; emergency health care services; and hospice care.
26 *See Cal. Health & Safety Code § 1345(b).*

1 35. Existing law and regulations further define “basic health care services” to include
2 services “where medically necessary.” *See, e.g.*, CAL. CODE REGS. tit. 28, § 1300.67.

3 36. The Knox-Keene Act specifically exempts religious employers from being forced
4 to provide coverage for contraceptive methods “that are contrary to [their] religious tenets”
5 and infertility treatments “in a manner inconsistent with [their] religious and ethical
6 principles.” CAL. HEALTH & SAFETY CODE §§ 1367.25(c) and 1374.55(e).

7 37. Because Defendant simply read the elective abortion requirement into the Knox-
8 Keene Act, the Mandate does not exempt the group health insurance plans of any religious
9 employer.

10 38. The Mandate has created an untenable situation where Plaintiffs and other
11 religious employers do not have to provide health insurance coverage for contraceptives and
12 infertility treatments but must provide coverage for voluntary and elective abortions.

13 39. The Mandate requires that all health plans cover abortions, regardless of whether
14 religious employers pay for the plans or whether the abortions are medically necessary.

15 40. Defendant issued the Mandate with full knowledge that many churches and
16 religious organizations provide health insurance coverage to their employees and hold the
17 same or similar beliefs to Plaintiffs.

18 41. Because no exemption exists from the Mandate, Plaintiffs’ group health insurance
19 plans were changed to include elective abortion coverage without their authorization and over
20 their objections.

21 42. Realizing that Plaintiffs and others have sincerely held religious beliefs against
22 paying for or providing coverage for abortion, Defendant encouraged the insurers to hide
23 these changes by informing them that they may “omit any mention of coverage for abortion
24 services in health plan documents.”

25 43. The Mandate has prevented Plaintiffs from obtaining a health insurance plan that
26 excludes coverage for abortions.

1 44. Were it not for the Mandate, Plaintiffs would and could obtain group health
2 insurance for their employees excluding coverage for abortions.

3 45. California insurers have previously offered group health insurance plans to
4 churches and religious employers excluding coverage for abortions and would continue to
5 offer such plans in absence of the Mandate.

6 46. In fact, before Defendant issued the Mandate, insurers submitted evidence of
7 coverage filings to the DMHC properly notifying Defendant of benefit plan options that
8 excluded coverage for voluntary and elective abortions.

9 47. Defendant and the DMHC did not object to these filings before issuing the
10 Mandate, thereby previously permitting insurers to offer health insurance plans that excluded
11 coverage for abortions.

12 48. On information and belief, Defendant issued the Mandate in response to pressure
13 from abortion advocates who had learned that two Catholic universities in California had
14 recently decided to eliminate coverage for elective abortions from their health care plans.

15 49. The Knox-Keene Act's "basic health care" requirement, as interpreted and
16 implemented through the Mandate, is not generally applicable because it provides for
17 numerous exemptions.

18 50. For instance, the Knox-Keene Act (and by extension the Mandate), does not apply
19 to certain specified health care service plans, including plans (among others) "directly
20 operated by a bona fide public or private institution of higher learning" and the California
21 Small Group Reinsurance Fund. CAL. HEALTH & SAFETY CODE §§ 1343(e)

22 51. Furthermore, the Knox-Keene Act creates a system of individualized exemptions,
23 giving the Director of DMHC—in this case, Defendant—the authority to exempt any class of
24 persons or plan contracts from the requirements of the Act and giving her the power to waive
25 any requirement of any rule, including the Mandate. *See* CAL. HEALTH & SAFETY CODE §§
26 1343(b) and 1344(a).

1 52. The Mandate does not apply to health benefit plans offered by the California
2 Public Employees' Retirement System (CalPERS) to active and retired state and local
3 government employees.

4 53. CalPERS continued to offer health benefit plans excluding coverage for elective
5 abortions after Defendant issued the Mandate.

6 54. The Mandate also does not apply to certain multi-state plans sold on California's
7 individual and small business exchanges, which were established as part of the Patient
8 Protection and Affordable Care Act ("ACA").

9 55. Given the number of their full-time employees, Plaintiffs are not eligible to
10 purchase health plans on California's small business exchange.

11 56. Even if they could, California's small business exchange prohibits Plaintiffs from
12 limiting their employees' choices to a specific multi-state plan excluding coverage for
13 abortion.

14 57. The Mandate makes it impossible for Plaintiffs to purchase a group health
15 insurance plan that does not include coverage for abortions to which they object on religious
16 grounds.

17 58. Furthermore, Plaintiffs are unable to avoid the harmful effects of the Mandate
18 because federal law compels them to offer their employees affordable health insurance.

19 59. Under the ACA, employers with more than fifty full-time employees must provide
20 a certain level of health insurance to their employees.

21 60. Plaintiffs each have more than fifty full-time employees and must comply with
22 ACA's mandate to provide health insurance to their employees.

23 61. The Mandate thus forces Plaintiffs to choose between violating federal law and
24 violating their deeply held religious beliefs by paying for abortion coverage.

25 62. Defendant designed the Mandate to make it impossible for Plaintiffs to comply
26 with their religious beliefs.

1 63. The Mandate makes no allowance for the religious freedom of religious employers
2 and churches, including Plaintiffs, who object to paying for or providing insurance coverage
3 for abortions.

4 64. Plaintiffs cannot freely avoid the Mandate by simply refusing to provide health
5 insurance to its employees, because the ACA imposes crippling monetary penalties on
6 employers that do not provide health insurance.

7 65. Refusing to offer health insurance to their employees simply to avoid the Mandate
8 would also be inconsistent with Plaintiffs' Christian beliefs and principles promoting the
9 physical, emotional, and spiritual well-being of their employees.

10 66. Moreover, Plaintiffs rely on tithes and donations from members to fulfill their
11 Christian mission.

12 67. On information and belief, members who give to Plaintiffs do so with an
13 understanding of Plaintiffs' Christian mission and with the assurance that Plaintiffs will
14 continue to adhere to and transmit authentic Christian teachings on morality and the sanctity
15 of human life.

16 68. Plaintiffs cannot use donated funds for purposes known to be morally repugnant to
17 their members and in ways that violate the implicit trust of the purpose of their tithes and
18 donations.

19 69. The Mandate imposes a burden on Plaintiffs' ability to recruit and retain
20 employees by creating uncertainty as to whether they will be able to offer group health
21 insurance in the future, placing Plaintiffs in a competitive disadvantage.

22 70. Plaintiffs have already had to devote significant institutional resources, including
23 both staff time and funds, to determining how to respond to the Mandate.

24 71. Among other things, Plaintiffs filed an administrative complaint with the U.S.
25 Department of Health and Human Services Office of Civil Rights in October 2014, asking it
26 to enforce the Hyde-Weldon Amendment and vindicate Plaintiffs' constitutional rights. *See*
27 **Exhibit 3.**

1 72. Plaintiffs' administrative complaint explained that the Mandate constitutes
2 unlawful discrimination against a health care entity under section 507 of the Consolidated
3 Appropriations Act, Pub. L. No. 113-76, 128 Stat. 5 (Jan. 17, 2014) (the Hyde-Weldon
4 Amendment).

5 73. The Hyde-Weldon Amendment prohibits states that receive funding under the
6 federal Labor, Health and Human Services, and Education Appropriations Act, from
7 discriminating against health care plans based on whether they cover abortion.

8 74. Under the Hyde-Weldon Amendment, none of the funds received for programs
9 under the Labor, Health and Human Services, and Education Appropriations Act may be
10 available to a State that "subjects any individual or institutional health care entity to
11 discrimination on the basis that the health care entity does not provide for, pay for, provide
12 coverage of, or refer for abortions."

13 75. The Hyde-Weldon Amendment defines "health care entity" to include "a health
14 insurance plan."

15 76. On information and belief, California receives approximately \$70 billion in federal
16 funds for programs under the Labor, Health and Human Services, and Education
17 Appropriations Act.

18 77. California accepted these federal funds with full knowledge of the requirements of
19 the Hyde-Weldon Amendment.

20 78. Defendant chose to ignore the Hyde-Weldon Amendment when issuing the
21 Mandate.

22 79. Plaintiffs have sent several follow up letters to the U.S. Department of Health and
23 Human Services Office of Civil Rights, asking it to act quickly given the ongoing violation of
24 Plaintiffs' constitutional rights. *See Exhibits 4, 5, and 6.*

25 80. To date, the U.S. Department of Health and Human Services Office of Civil Rights
26 has not indicated whether it intends to enforce the Hyde-Weldon Amendment, leading
27 Plaintiffs to file this lawsuit.

1 81. Without injunctive and declaratory relief as requested herein, Plaintiffs are
2 suffering and will continue to suffer irreparable harm.

3
4 **FIRST CAUSE OF ACTION**

5 **Violation of the Free Exercise Clause of the
6 First Amendment to the United States Constitution**

7 82. Plaintiffs reallege all matters set forth in paragraphs 1-81 and incorporate them
8 herein.

9 83. Plaintiffs' sincerely held religious beliefs prohibit them from providing health
10 insurance coverage for abortion.

11 84. When Plaintiffs comply with their sincerely held religious beliefs on the sanctity
12 of human life, they exercise religion within the meaning of the Free Exercise Clause.

13 85. The Mandate imposes a substantial burden on Plaintiffs' religious exercise and
14 coerces them to change or violate their religious beliefs. Defendant substantially burdens
15 Plaintiffs' religious exercise when she forces Plaintiffs to choose between following their
16 religious commitments and suffering debilitating penalties under federal law or violating their
17 consciences in order to avoid those penalties.

18 86. The Mandate coerces Plaintiffs to provide coverage for abortions in violation of
19 their religious beliefs.

20 87. Plaintiffs have a sincere religious objection to providing coverage for abortions
21 because they believe that abortion ends an innocent human life.

22 88. The Mandate is neither neutral nor generally applicable.

23 89. The Knox-Keene Act creates categorical and individualized exemptions to its
24 requirements and, by extension, the Mandate.

25 90. The Mandate was not applied to certain health benefit plans provided through
26 CalPERS that excluded coverage for elective abortions.

27 91. The Mandate also does not apply to multi-state plans sold and purchased pursuant
28 to the ACA.

1 92. The Mandate furthers no compelling governmental interest.

2 93. California already exempts religious employers like Plaintiffs from being forced to
3 provide health insurance coverage for contraceptives and infertility treatments.

4 94. Guaranteeing unfettered access to elective and voluntary abortions through
5 employee health insurance plans is not a significant social problem.

6 95. Compelling Plaintiffs and other churches and religious employers to pay for
7 abortions is hardly the least restrictive means of advancing any interest that the government
8 might have.

9 96. The Mandate constitutes government-imposed coercion on Plaintiffs to change or
10 violate their sincerely held religious beliefs.

11 97. The Mandate chills Plaintiffs' religious exercise.

12 98. The Mandate exposes Plaintiffs to substantial monetary penalties and/or financial
13 burdens for their religious exercise.

14 99. The Mandate exposes Plaintiffs to substantial competitive disadvantages because
15 of uncertainties about their health insurance benefits caused by the Mandate.

16 100. The Mandate imposes a burden on Plaintiffs' employee recruitment efforts by
17 creating uncertainty as to whether or on what terms they will be able to offer health insurance
18 or will suffer penalties therefrom.

19 101. If Plaintiffs drop health insurance to avoid application of the Mandate, they will be
20 in violation of federal law and will experience a competitive disadvantage in their efforts to
21 recruit and retain employees.

22 102. Defendant designed the Mandate to make it impossible for Plaintiffs to comply
23 with their religious beliefs.

24 103. Defendant issued the Mandate to suppress the religious exercise of Plaintiffs and
25 other similarly situated churches and religious employers.

26 104. The Mandate violates Plaintiffs' rights secured to them by the Free Exercise
27 Clause of the First Amendment of the United States Constitution.

SECOND CAUSE OF ACTION

**Violation of the Establishment Clause of the
First Amendment to the United States Constitution**

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3 105. Plaintiffs reallege all matters set forth in paragraphs 1-81 and incorporate them
4 herein.

5 106. The Establishment Clause of the First Amendment prohibits the establishment of
6 any religion and/or excessive government entanglement with religion.

7 107. The Establishment Clause of the First Amendment also prohibits the government
8 from disapproving of or showing hostility toward a particular religion or religion in general.

9 108. The Mandate discriminates between religions and denominations and exhibits
10 hostility towards certain religious beliefs.

11 109. The Mandate adopts a particular theological view of what is acceptable moral
12 complicity in provision of abortion and imposes it upon all churches and religious employers
13 who must either conform their consciences or suffer penalty.

14 110. Defendant issued the Mandate with full knowledge that some religions and
15 denominations object to participating in, paying for, facilitating, or otherwise supporting
16 abortion, while others do not.

17 111. Defendant designed the Mandate to make it impossible for Plaintiffs to comply
18 with their religious beliefs.

19 112. Defendant issued the Mandate to suppress the religious exercise of Plaintiffs and
20 other similarly situated churches and religious employers.

21 113. The Mandate unconstitutionally prefers those religions and denominations that do
22 not have religious objections to abortion and exhibits hostility towards those that do by
23 forcing them to pay for abortions in violation of their sincerely held religious beliefs.

24 114. The Mandate violates Plaintiffs' rights secured to it by the Establishment Clause of
25 the First Amendment to the United States Constitution.
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THIRD CAUSE OF ACTION

**Violation of the Free Speech Clause of the
First Amendment to the United States Constitution**

115. Plaintiffs reallege all matters set forth in paragraphs 1-81 and incorporate them herein.

116. The Mandate requires Plaintiffs to purchase group health plans that provide coverage for abortions, forcing them to convey a message or speak in a manner contrary to their religious beliefs.

117. By requiring Plaintiffs to cover abortions in their employee health plans, the Mandate forces Plaintiffs to fund government-dictated speech that is directly at odds with the religious message that they wish to convey to their employees, parishioners, and broader culture.

118. Defendant has no narrowly tailored compelling interest to justify this compelled speech.

119. The Mandate violates Plaintiffs' rights secured to them by the Free Speech Clause of the First Amendment of the United States Constitution.

FOURTH CAUSE OF ACTION

**Violation of the Equal Protection Clause of the
Fourteenth Amendment to the United States Constitution**

120. Plaintiffs reallege all matters set forth in paragraphs 1-81 and incorporate them herein.

121. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs equal protection of the laws, which prohibits Defendant from treating Plaintiffs differently than similarly situated persons and businesses.

122. The government may not treat some employers disparately as compared to similarly situated employers.

1 123. The Mandate treats Plaintiffs differently than similarly situated persons and
2 businesses in that there are categorical and individualized exemptions to the Knox-Keene Act
3 and the Mandate's requirements.

4 124. Defendant lacks a rational or compelling state interest for such disparate treatment
5 of Plaintiffs because guaranteeing unfettered access to elective and voluntary abortions
6 through employee health insurance plans is not a significant social problem.

7 125. Defendant's disparate treatment of Plaintiffs is not narrowly tailored because
8 compelling Plaintiffs and other churches and religious employers to pay for abortions is
9 hardly the least restrictive means of advancing any interest that the government might have.

10 126. The Mandate, as applied to Plaintiffs, violates their right to equal protection of the
11 laws as guaranteed by the Fourteenth Amendment to the United States Constitution.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs respectfully request that the Court:

14 a. Enter a judgment declaring the Mandate and its application to Plaintiffs and others
15 not before the Court to be a violation of the First and Fourteenth Amendments to the United
16 States Constitution.

17 b. Enter a permanent injunction prohibiting Defendant from enforcing the Mandate
18 against Plaintiffs and others not before the Court in a way that substantially burdens the
19 religious belief of any person in violation of the United States Constitution, and prohibiting
20 Defendant from illegally discriminating against Plaintiffs and others not before the Court by
21 preventing them from purchasing a group health insurance plan that excludes coverage for
22 abortion;

23 c. Award Plaintiffs court costs and reasonable attorney's fees; and

24 d. Award such other and further relief as to which Plaintiffs may be entitled.
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1 Respectfully submitted this the 16th day of October, 2015.

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3 /s/ David J. Hacker

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**Pro hac vice* application forthcoming

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