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**Pro hac vice applications forthcoming Additional
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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

LIVINGWELL MEDICAL CLINIC, INC.;
PREGNANCY CARE CENTER OF THE NORTH
COAST, INC.; and CONFIDENCE PREGNANCY
CENTER, INC.,

Plaintiffs,

v.

KAMALA HARRIS, Attorney General of the State
of California, in her official capacity; KAREN
SMITH, M.D., Director of California Department of
Public Health, in her official capacity; MICHAEL
COLANTUONO, City Attorney of Grass Valley,
California, in his official capacity; ALISON
BARRAT-GREEN, County Counsel of Nevada
County, California, in her official capacity; CINDY
DAY-WILSON, City Attorney of Eureka,
California, in her official capacity; JEFFREY S.
BLANCK, County Counsel of Humboldt County,
California, in his official capacity; CHRISTOPHER
A. CALLIHAN, City Attorney of Salinas,
California, in his official capacity; CHARLES J.
MCKEE, County Counsel of Monterey County,
California, in his official capacity,

Defendants.

Case No.

COMPLAINT

1 Plaintiffs, LivingWell Medical Clinic, Inc., Pregnancy Care Center of the North Coast, Inc., and
2 Confidence Pregnancy Center, Inc., by their undersigned counsel, bring this Complaint against the
3 Defendants, their agents, servants, officers, employees, and successors in office and all those persons in
4 active concert and participation with them, and for their Complaint state as follows:

5 This is a civil rights action brought pursuant to 42 U.S.C. § 1983 challenging the
6 constitutionality of the so-called "Reproductive FACT Act" (hereafter "the Act"), Article 2.7 of
7 Chapter 2 of Part 2 of Division 106 of the California Health and Safety Code. The Act, by requiring
8 Plaintiffs to post a government-dictated message they do not wish to communicate, violates Plaintiffs'
9 fundamental rights as guaranteed by the First and Fourteenth Amendments to the United States
10 Constitution, as well as state constitutional provisions.

11 JURISDICTION AND VENUE

12 1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331,
13 1343, 1367, 2201, 2202 and 42 U.S.C. § 1983.

14 2. Venue for this action is proper in the United States District Court for the Eastern District
15 of California pursuant to 28 U.S.C. § 1391(b).

16 PARTIES

17 The Plaintiffs

18 LivingWell Medical Clinic, Inc.

19 3. Plaintiff, LivingWell Medical Clinic, Inc. (hereafter "LivingWell"), is a California non-
20 profit corporation under § 501(c)(3) of the Internal Revenue Code. LivingWell is licensed by the State
21 of California as a primary care medical clinic and is located at 105 Catherine Lane in Grass Valley,
22 California.

23 4. LivingWell's mission is to help women with unplanned pregnancies meet and accept the
24 stresses and challenges that come with unplanned pregnancies. Its services include such things as
25 pregnancy options education and consultation, pregnancy testing and verification, limited obstetrical
26 ultrasounds, STI/STD testing, education, and treatment, and material support. LivingWell's services
27 extend to partners and family members and provide support both during and after pregnancy.

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1 5. LivingWell provides services for approximately 600 first-time clinic clients per year, as
2 well as thousands of others through its thrift store and community education presentations.

3 6. All of LivingWell's services are provided free of charge and LivingWell never asks
4 clients for donations.

5 7. LivingWell does not, and will not, refer for, recommend, encourage, or facilitate clients
6 to obtain abortions or contraceptives based on its religious beliefs.

7 **Pregnancy Care Center of the North Coast, Inc.**

8 8. Plaintiff, Pregnancy Care Center of the North Coast (hereafter "PCC") is a non-profit
9 corporation under § 501(c)(3) of the Internal Revenue Code. PCC is located at 2390 Myrtle Avenue,
10 Eureka, California, and was established in 1994. PCC is also licensed to and operates a free clinic
11 called J. Rophe Medical, at 2458 Buhne St., Eureka, California established in 2011. PCC also operates
12 a JRM Mobile Medical Unit.

13 9. PCC's purpose is to encourage through education and outreach the recognition of human
14 life from the moment of conception and to minister in the name of Jesus Christ to women and men
15 facing unplanned pregnancies by providing support and medical services to them that will empower
16 them to make healthy life choices.

17 10. In the past 12 months, PCC has seen over 880 clients and has had over 3,400 client
18 visits. PCC has provided over 610 ultrasound and 290 pregnancy tests, along with ongoing support
19 services.

20 11. All of PCC's services are free and clients are never asked for donations.

21 12. PCC does not, and will not, refer for, recommend, encourage, or facilitate clients to
22 obtain abortions based on PCC's religious beliefs.

23 **Confidence Pregnancy Center, Inc.**

24 13. Plaintiff, Confidence Pregnancy Center, (hereafter "CPC"), originally incorporated
25 under the name "Crisis Pregnancy Center of Salinas," is a non-profit § 501(c)(3) corporation under the
26 Internal Revenue Code and is licensed as a community clinic by the California Department of Health.
27 CPC is located at 780 E. Romie Ln., Ste. C, Salinas, California. CPC was founded in 1985.

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1 14. The purpose of CPC is to help women in a state of crisis as a result of an unplanned
2 pregnancy by helping them understand and work through the alternatives, enabling them to make an
3 informed decision concerning the outcome of their pregnancies. CPC offers pregnancy tests,
4 information and referrals, ultrasounds, counseling and emotional support, and practical material
5 assistance such as maternity and baby items.

6 15. CPC serves approximately 1,200 clients per year.

7 16. All of CPC's services are provided free of charge and CPC never asks clients for
8 donations.

9 17. CPC does not, and will not, refer for, recommend, encourage, or facilitate clients to
10 obtain abortions or contraceptives based on CPC's religious beliefs.

11 **The Defendants**

12 18. Defendant, Kamala Harris, is Attorney General of California, charged with enforcement
13 of the Act. She is sued in her official capacity.

14 19. Defendant, Karen Smith, M.D., is Director of Public Health for the State of California.
15 The California Department of Public Health is responsible for the enforcement of public health laws
16 and regulations such as the Act, and the licensure of Plaintiffs. She is sued in her official capacity.

17 20. Defendants Michael C. Colantuono and Alison Barratt-Green are, respectively, the city
18 attorney and county counsel of Grass Valley and Nevada County, California, and are thus charged with
19 enforcement of the Act with respect to Plaintiff, LivingWell. They are sued in their official capacities.

20 21. Defendants Cindy Day-Wilson and Jeffrey S. Blanck are, respectively, the city attorney
21 and county counsel of Eureka and Humboldt County, California, and are thus charged with enforcement
22 of the Act with respect to Plaintiff, PCC. They are sued in their official capacities.

23 22. Defendants Christopher A. Callihan and Charles J. McKee are, respectively, the city
24 attorney and county counsel of Salinas and Monterey County, California, and are thus charged with
25 enforcement of the Act with respect to Plaintiff, CPC. They are sued in their official capacities.

26 **ALLEGATIONS OF FACT**

27 23. On or about September 9, 2015, the California legislature enacted AB 775, the
28 "Reproductive FACT Act."

24. On or about October 9, 2015, Governor Brown signed the bill into law.

25. Pursuant to California law, the Act is scheduled to go into effect on January 1, 2016.

26. The Act, in pertinent part, requires “licensed covered facilities” to do the following:

123472 (a) A licensed covered facility shall disseminate to clients on site the following notice in English and in the primary threshold languages for Medi-Cal beneficiaries as determined by the State Department of Health Care Services for the county in which the facility is located.

(1) The notice shall state:

“California has public programs that provide immediate free or low-cost access to comprehensive family planning services (including all FDA-approved methods of contraception), prenatal care, and abortion for eligible women. To determine whether you qualify, contact the county social services office at [insert the telephone number].”

(2) The information shall be disclosed in one of the following ways:

(A) A public notice posted in a conspicuous place where individuals wait that may be easily read by those seeking services from the facility. The notice shall be at least 8.5 inches by 11 inches and written in no less than 22-point type.

(B) A printed notice distributed to all clients in no less than 14-point type.

(C) A digital notice distributed to all clients that can be read at the time of check-in or arrival, in the same point type as other digital disclosures. A printed notice as described in subparagraph (B) shall be available for all clients who cannot or do not wish to receive the information in a digital format.

(3) The notice may be combined with other mandated disclosures.

27. The Act provides exemptions from its disclosure requirement for (1) clinics conducted and operated by the United States or any of its departments; and (2) a licensed primary care clinic that is enrolled as a Medi-Cal provider and a provider in the Family Planning, Access, Care, and Treatment Program (FPACT).

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1 28. On information and belief, the exemption for Medi-Cal/FPACT providers applies to
2 approximately 1,700 entities that provide services similar to those offered by plaintiffs with the
3 exception of contraceptive and abortion services or referrals.

4 29. The Act had two co-sponsors in the Legislature: Black Women for Wellness and
5 NARAL Pro-Choice California. The latter co-sponsor has for many years led a campaign specifically
6 intended to interfere with, control, harass, and suppress the right of entities such as Plaintiffs to engage
7 freely in their constitutionally protected rights of freedom of speech, assembly, and religion based on
8 such entities' religious beliefs. In furtherance of that campaign, the Act targets entities such as Plaintiffs
9 herein while exempting numerous other organizations that do not share Plaintiffs' beliefs, mission, and
10 goals.

11 30. Failure to comply with the Act carries with it a civil penalty of \$500 for a first offense
12 and \$1,000 for each subsequent offense.

13 31. The Act provides that the Attorney General, city attorney, or county counsel may bring
14 an action to impose a civil penalty on any licensed covered facility that fails to comply with the Act's
15 disclosure provision.

16 32. Each of the Plaintiffs meets the definition of a "licensed covered facility" as set forth in
17 the Act and thus must comply with the Act's disclosure provision.

18 33. Each of the Plaintiffs strongly objects to being compelled to speak the message required
19 by the Act's disclosure provision. Each Plaintiff considers the required notice to be the equivalent of
20 directly referring clients for abortions and other services that Plaintiffs do not provide or refer for based
21 on their religious beliefs and organizational purposes.

22 34. The Plaintiffs believe that posting the required notice would undermine the patient/client
23 and medical provider relationship by requiring them to provide a referral to an agency that determines
24 eligibility for state-funded abortion before the patient/client is seen by a medical provider. This gives
25 patients and clients the impression that a recommendation for treatment has been made by the clinician
26 before the patient/client has been evaluated.

27 35. Being compelled to post the notice required by the Act would require Plaintiffs to
28 disseminate a message that contradicts their organizational missions and beliefs.

1 **ALLEGATIONS OF LAW**

2 36. The Defendants are “persons” for purposes of the claims set forth in this Complaint, as
3 that term is used in 42 U.S.C. § 1983.

4 37. All of the conduct of the Defendants as set forth in this Complaint, whether taken or
5 threatened to be taken, constitutes conduct “under color of state law” as that phrase is used in 42 U.S.C.
6 § 1983.

7 38. The First Amendment to the U.S. Constitution protects the freedoms of speech and
8 assembly, and the free exercise of religion.

9 39. The First Amendment is applicable to state and local government through the Fourteenth
10 Amendment.

11 40. Both the Act and the threat of civil penalties for violations thereof injure rights protected
12 by the U.S. Constitution and the California Constitution.

13 41. By compelling the Plaintiffs to post and/or disseminate the notice in question, the Act
14 unlawfully compels Plaintiffs, against their wishes, to speak a message that contradicts their beliefs and
15 mission.

16 42. By compelling the Plaintiffs to post and/or disseminate the notice in question, the Act
17 unlawfully interferes with and infringes upon Plaintiffs’ ability to meet and speak with pregnant women
18 unless Plaintiffs comply with the Act.

19 43. Plaintiffs have no adequate remedy at law, as the violation of their constitutional rights
20 imposes irreparable harm.

21 **CAUSES OF ACTION**

22 **Count One**

23 **(Federal Free Speech)**

24 44. Plaintiffs repeat and re-allege the preceding paragraphs of this Complaint.

25 45. The Act unconstitutionally burdens, restricts, and infringes upon Plaintiffs’ right of Free
26 Speech guaranteed by the First Amendment, as applied to the Defendants by the Fourteenth
27 Amendment, and protected by 42 U.S.C. § 1983.

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1 WHEREFORE, Plaintiffs request the relief set forth below in the prayer for relief.

2 **PRAYER FOR RELIEF**

3 On their foregoing causes of action, Plaintiffs respectfully request the Court to grant the
4 following relief:

5 A. A preliminary and permanent injunction barring the Defendants and all persons in active
6 concert with them from enforcing the Act against Plaintiffs.

7 B. A declaratory judgment that the Act violates the First Amendment to the United States
8 Constitution and Article I, §§ 2 and 3 of the California Constitution.

9 C. Attorney's fees and costs pursuant to 42 U.S.C. § 1988.

10 D. Any further relief the Court deems just.

11 Respectfully submitted this 27th day of October, 2015.

12
13 Respectfully submitted,

14 TYLER & BURSCH, LLP

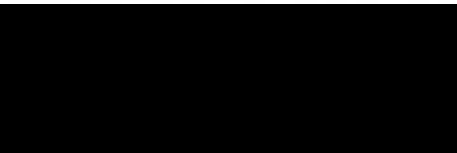
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17 Dated: October 27, 2015

18 By: _____

19 Robert H. Tyler, Esq.

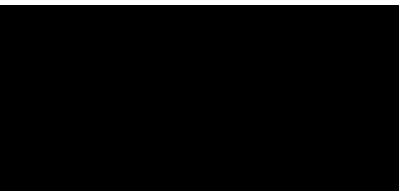
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