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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO – CENTRAL DIVISION

CHILDREN OF THE
IMMACULATE HEART,

Plaintiff;

v.

KIMBERLEY JOHNSON, in her official
capacity as Director of the California
Department of Social Services;
CALIFORNIA DEPARTMENT OF
SOCIAL SERVICES; NICK MACCHIONE,
in his official capacity as Director of the
County of San Diego Health and Human
Services Agency; COUNTY OF SAN
DIEGO HEALTH AND HUMAN
SERVICES AGENCY; and DOES 1–10,
inclusive,

Defendants.

Case No.: 37-2019-00061761-CU-WM-CTL

IMAGED FILE

**VERIFIED PETITION
FOR WRIT OF MANDATE
[Cal. Code. Civ. Proc., § 1085] AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
DAMGES**

Jury Trial Demanded

INTRODUCTION

1. Sex trafficking is the fastest-growing illegal enterprise in California. In San Diego County alone, over 5,000 victims each year are forced into the commercial sex trade, generating an estimated \$810 million annually for gangsters and pimps. Many of these victims are children. Indeed, the ongoing commercial sexual exploitation of children—particularly young girls—is San Diego’s most endemic violation of human rights.

2. Children of the Immaculate Heart (“CIH”) is a Catholic charity that houses and cares for trafficked women. CIH’s holistic, one-on-one approach has helped over a dozen women recover their stolen dignity and find hope for the future. Because of its success working with adult women, CIH aspires to open the Refuge, a therapeutic group home for commercially sexually exploited minor girls. But after four years of government stonewalling and nearly \$600,000 in sunk costs, the Refuge sits empty. That is because state bureaucrats have resolved to advance an anti-Catholic agenda rather than rescue young girls enslaved in sex trafficking.

3. The California Department of Social Services (the “Department”), which regulates California’s foster system, refuses to license the Refuge because of Children of the Immaculate Heart’s sincere religious beliefs about human sexuality. Since submitting its licensing application in June 2018, CIH has repeatedly asked the Department to either license the Refuge or explain definitively why it will not. The Department has done neither. To be sure, the Refuge meets and exceeds all applicable licensing regulations. Yet the government refuses to take any action. In fact, licensing officials had a statutory duty to make a determination on the Refuge’s application over one year ago.

4. Make no mistake, the Refuge’s ongoing vacancy is not simply the result of plodding bureaucratic paper pushing. As alleged in this Complaint, the Department’s licensing officials have arbitrarily put CIH to a choice: If it wants to open the Refuge, then it must pledge to support programs and activities that violate its religious beliefs about sexual orientation, contraception, and abortion. As a consequence of this Mandate, the government is imposing a penalty on CIH’s religious exercise that must withstand the strictest scrutiny.

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5. The Department fails to meet this burden. Discriminating against CIH on the basis of religion advances no compelling interest, and even if it did, it would not be the least restrictive means of achieving that end. By contrast, the government's religiously discriminatory stonewalling is irreparably harming CIH's religious freedom, liberty of speech, and equal protection rights under the California Constitution. But more importantly, the government is hurting those abused and unloved girls in desperate need of a *refuge*.

6. Children of the Immaculate Heart has never been accused of discrimination, and for good reason—it does not and would not. The Refuge’s caretakers would love and nurture every foster girl regardless of their sexual orientation, gender identity, or reproductive choices. But the government ignores all that, because it has adjudged that CIH’s Catholic identity and Christ-centered mission are “offensive” and thus anathema to its political orthodoxy. But “[i]t is not, as the Court has repeatedly held, the role of the State or its officials to prescribe what shall be offensive.” (*Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Com.* (2018) 138 S. Ct. 1719, 1731.)

7. Without judicial relief and with no other remedy available, Children of the Immaculate Heart will continue to suffer irreparable harm. CIH therefore seeks (1) a traditional writ of mandate ordering the Department to make a final determination on the Refuge's application; (2) a judgment declaring that the government is violating CIH's fundamental constitutional rights; and (3) preliminary and permanent injunctions prohibiting the government from further discriminating against CIH.

JURISDICTION AND VENUE

8. This action arises under the California Constitution and applicable state law. Plaintiff alleges violations of article I, sections 1, 4, and 7 of the California Constitution.

9. This Court may issue a Writ of Mandate under section 1085 of the California Code of Civil Procedure, and because Plaintiff has no available administrative remedy. This Court may grant declaratory and injunctive relief under sections 525, 526, and 1060 of the California Code of Civil Procedure and under section 11350 of the California Government Code.

10. Venue is proper in this Court under sections 393(b) and 401(1) of the California Code of Civil Procedure.

THE PARTIES

11. Plaintiff Children of the Immaculate Heart (“CIH”) is a 501(c)(3) nonprofit religious charity incorporated in California and based in San Diego, California. CIH’s mission statement is “Restore All Things in Christ: Serving Survivors of Sex Trafficking.” Founded in 2013, CIH provides housing and “wraparound services” for women and children vulnerable to prostitution, trafficking, and other forms of sexual exploitation.

12. Defendant Kimberley Johnson is the Director of the California Department of Social Services (the “Department”). Johnson is responsible for the Department’s administration and operations. Johnson is sued only in her official capacity.

13. Defendant California Department of Social Services is an executive agency of the California government. The Department is responsible for promulgating, administering, and enforcing the State’s child welfare system.

14. Defendant Nick Macchione is Director of the County of San Diego Health and Human Services Agency. Macchione is responsible for overseeing the Agency, including the Child Welfare Services division. He is sued only in his official capacity.

15. Defendant County of San Diego Health and Human Services Agency (“Agency”) is a department of the County of San Diego. In providing child welfare services, the Agency acts as an administrative agency of the State executive branch, subject to the Department’s supervision. (See Welf. & Inst. Code, § 202.5 and *In re Ashley M.* (2003) 114 Cal. App.4th 1, 7 [citing authority].)

16. Plaintiff does not presently know the true names and capacities of defendants named herein as Does 1 through 10, inclusive. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants designated herein as a Doe is legally responsible in some manner for the matters herein alleged, and is legally responsible in some manner for causing the injuries and damages to Plaintiff as herein alleged. Plaintiff will seek leave of Court to amend this Complaint to allege said Defendants’ true names and capacities as soon as it has ascertained that information.

17. Unless context indicates otherwise, the defendants are referred to collectively as the “Department.”

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BACKGROUND

Children of the Immaculate Heart, its Mission, and its Religious Beliefs

A. Children of the Immaculate Heart's Mission: "To Restore All Things in Christ"

18. Grace Williams contemplated becoming a nun—but God had other plans for her. Grace took seriously the Church's "New Evangelization," which focuses on caring for the downtrodden and oppressed. Grace first developed a particular heart for helping suffering children during mission trips to Papua New Guinea and Madagascar. Then she began working with sex-trafficking survivors. Put together, she knew God had called her to devote her life to helping victims of commercial sexual exploitation. And so in 2013, she founded Children of the Immaculate Heart.

19. CIH's first client was a twenty-six-year-old woman on the run from sex traffickers. She had first sought help from other service agencies. But none offered assistance for trafficked mothers, and she had four children. At the same time, only three private rescue homes for trafficking survivors operated in San Diego—with less than thirty beds available. And all those beds were filled. She and her children had nowhere to go.

20. That is when CIH took action. Backed by a group of dedicated donors, CIH's caregivers immediately leased an apartment for the woman and her children. They outfitted the family with new clothes, stocked their cupboards with food, drove them to medical appointments, and helped them with other necessities. But more importantly, CIH's caregivers offered the woman a relationship-based support system built on love and trust.

21. Within two years, CIH's relationship-focused caretaking model gained national recognition, leading to partnerships with the San Diego District Attorney's Office, the Juvenile Justice Court, and prominent community- and faith-based groups. In December 2015, Grace Williams was elected Vice-chair of the Victim Service Committee of the San Diego County Regional Human Trafficking and Commercial Sexual Exploitation of Children Advisory Council.

22. Through its adult housing and rehabilitation program, CIH currently serves thirteen trafficked women and their eighteen children.

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B. CIH's Catholic Identity and Beliefs about Sexual Orientation and Reproduction

23. The Catholic faith is inseverable from CIH's mission. CIH's staff, board members, and volunteers all understand that its Catholic identity forms the foundation of its mission and apostolate.

24. Indeed, CIH derives its name from the Immaculate Heart of Mary, which reflects the grace of God and overflows with maternal love for all souls. In imitation of Mary, CIH aspires to nourish young girls and women through Christ-centered maternal love.

25. CIH's theological beliefs are grounded in the Magisterium of the Catholic Church, which is the Church's divinely appointed authority to interpret God's Word. All Catholics must believe and abide by the Magisterium's teachings. Indeed, acting against the Church's teachings is sinful, and believing something contrary to those teachings is heresy.

26. Because of its Catholic identity, CIH cannot carry out any aspect of its mission that would conflict with its religious beliefs.

27. CIH believes the rise of human trafficking stems from the widespread cultural objectification of women, the normalization of extramarital sex, abortion, and family breakdown.

28. Because human trafficking is a societal ill, CIH believes that each woman and child saved from commercial sexual exploitation lays the foundation for a family-centered "Culture of Life."

29. For this reason, CIH upholds the Church's teaching that the "Right to Life" is the most fundamental human right. The Church instructs: "Human life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person—among which is the inviolable right of every innocent being to life."¹ CIH therefore works to protect the life and dignity of every person, from conception until natural death.

30. CIH accordingly affirms the Church's teachings on abortion. The Catechism of the Catholic Church professes that "every procured abortion" is a "moral evil," and "[t]his teaching

¹ (Catechism of the Catholic Church (1994), ¶ 2270 ["Catechism"].)

1 has not changed and remains unchangeable.” The Church states: “Direct abortion, that is to say,
2 abortion willed either as an end or a means, is gravely contrary to the moral law.... Formal
3 cooperation in an abortion constitutes a grave offense.”²

4 31. Thus, CIH believes that facilitating an abortion—both directly and indirectly—is a
5 grave offense.

6 32. CIH relatedly adheres to the Catholic Church’s teaching on contraception. The Church
7 instructs that the sexual union of husband and wife, through openness to new life, expresses the
8 full meaning of love and lifelong commitment. For that reason, the mutual gift of fertility is at the
9 heart of marriage. When married couples deliberately suppress fertility through contraception, it
10 defeats the inherent meaning of married sexuality.

11 33. CIH relatedly follows the Church’s teachings on marriage and sexuality. The Catechism
12 notes, “Sexuality is ordered to the conjugal love of man and woman,” in which they “give
13 themselves to one another through the acts which are proper and exclusive to spouses.”³ For that
14 reason, the Church states that homosexual acts are “contrary to the natural law,” in part because
15 “[t]hey close the sexual act to the gift of life.”⁴ And so “[u]nder no circumstances can they be
16 approved.”⁵

17 34. The Church understands that homosexuality “has taken a great variety of forms
18 through the centuries and in different cultures” and that “[i]ts psychological genesis remains
19 largely unexplained.”⁶ In all cases, the Church declares “men and women who have deep-seated
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22 ² (Catechism, ¶ 2272.)

23 ³ (Catechism, ¶ 2360.)

24 ⁴ (Catechism, ¶ 2357.)

25 ⁵ (*Ibid.*)

26 ⁶ (*Id.*) Notably, the American Psychological Association agrees that “[t]here is no consensus
27 among scientists about the exact reasons that an individual develops a heterosexual, bisexual, gay
28 or lesbian orientation. Although much research has examined the possible genetic, hormonal,
developmental, social and cultural influences on sexual orientation, no findings have emerged that
permit scientists to conclude that sexual orientation is determined by any particular factor or
factors.” (*Answers to Your Questions: For a Better Understanding of Sexual Orientation and
Homosexuality* (2008) Am. Psy. Assn. < <https://perma.cc/HST9-K87C>> [as of Nov. 14, 2019].)

homosexual tendencies ... must be accepted with respect, compassion, and sensitivity.”⁷

35. To that end, the Church’s position on the treatment of LGBTQ persons is clear: “Every sign of unjust discrimination in their regard should be avoided.”⁸ For that reason, CIH does not discriminate against LGBTQ adults or children. But under no circumstances would CIH encourage or promote sexual relations outside the marriage of one man and one woman.

36. In all events, CIH serves minor and adult women survivors regardless of their sexual orientation, gender identity, or reproductive choices. But CIH will not comply with or cooperate in any program or activity, formally or indirectly, that violates its sincere religious beliefs.

C. CIH’s Mission to Open a “Refuge” for Commercially Sexually Exploited Girls

37. Since its founding in 2013, Children of the Immaculate Heart has envisioned opening a residential treatment facility for commercially sexually exploited children, known as CSEC. To that end, CIH has spent the last four years trying to open the Refuge, to be operated as a specialized foster group home called a short-term residential therapeutic program (STRTP).

38. Commercially sexually exploited foster children require the most intensive and specialized treatment. Unfortunately, most social workers and foster agencies lack even a basic understanding of the risk factors, indicators, and dynamics of sex trafficking. For example, minor sex-trafficking victims have a complex, layered history of childhood trauma—such as a coinciding exposure to alcohol and substance abuse, domestic violence, and sexual assault.

39. Another challenge is that a CSEC’s out-of-home placement often triggers patterns of running away, which increases a child’s vulnerability to exploiters. Indeed, exploiters know where foster care group homes are, and they directly recruit girls from these settings because they know foster girls are vulnerable. Exploiters also coerce and threaten young girls to recruit other youth living in the group home.

40. This all being so, CSEC caretakers must be experienced and highly trained to provide trauma-informed care, apply harm reduction strategies, and develop a relationship-based approach for each child. Those demands have consequences: CSEC service providers and placements have

⁷ (Catechism, ¶ 2358.)

⁸ (*Ibid.*)

1 alarmingly high rates of staff turnover. That in turn disrupts the Legislature’s goal to provide
2 stability for foster youth and further harms the children.

3 41. Relatedly, both the Department and county welfare agencies acknowledge that the most
4 detrimental barrier to effectively serving CSEC in foster care is the lack of suitable placement
5 options—*e.g.*, specialized placements that include stabilization, support, trauma-informed care,
6 transition planning, and aftercare.⁹

7 42. Indeed, the lack of CSEC-specializing foster care has reached a crisis point.

8 43. Put simply, the Refuge is desperately needed.

9 44. Designed and managed by CIH’s highly trained and experienced caregivers, the
10 Refuge’s program would provide teen sex-trafficking survivors with dynamic, multi-disciplinary
11 treatment. Clinical services would include mental health and substance abuse counseling, crisis
12 intervention, and access to medical care. Therapeutic services include cognitive therapy, behavior
13 coaching, and relationship counseling. Educational and social supports include tutoring, career
14 advising, and life-skills development such as cooking, cleaning, and budgeting. Planned
15 recreational activities include beach days, equine therapy, shopping trips to the mall, painting
16 lessons, and popcorn and movie nights. Caregivers would also offer culturally relevant programs
17 and activities accounting for children’s diverse backgrounds.

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28 ⁹ (Cal. Legis. Serv. Ch. 757 (A.B. 2207).)

1 45. Here are some photographs of the Refuge:



17 46. Government agencies and officials have repeatedly expressed the critical need for the
18 Refuge. These include the San Diego County District Attorney's office, the San Diego County
19 Board of Supervisors, and the County Probation Department.

20 47. The San Diego Juvenile RISE Court, which is a juvenile court subdivision that serves
21 at-risk or actual CSEC youth, has particularly expressed an urgent need for the Refuge. In
22 November 2018, RISE Court officials toured the Refuge.

23 48. At the end of the two-hour tour, officials immediately requested to reserve all the beds.
24 Indeed, one court representative commented that the Refuge was the best foster facility they had
25 ever seen.

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Statutory and Regulatory Background

A. The Licensing Process for Short-Term Residential Therapeutic Programs

49. In 2015, the California Legislature passed, and Governor Brown signed into law, the Continuum of Care Reform Act (the “Act”), a series of sweeping changes to the State’s foster care system. As part of the Act, the Legislature created a new foster group home category called the Short-Term Residential Therapeutic Program (STRTP).

50. The STRTP reflected the Legislature’s direction for a new residential care facility that would focus on severely emotionally disturbed children who need short-term, specialized, and intensive intervention.¹⁰ Specifically, a STRTP provides dedicated 24-hour behavioral support and mental health services for children who have suffered from deeply disturbing events or situations that prevent them—whether for physical, psychological, or emotional reasons—from being placed in a family-style foster facility.¹¹ The STRTP’s objective is to provide these children with trauma-informed, round-the-clock treatment until they are ready to transition to a lower level of home-based care.

i. The Licensing Application Process for STRTP’s

51. In addition to the general licensing guidelines governing community care facilities, the Department has issued “Interim Licensing Standards” to regulate STRTP’s until the provisions are officially codified in the California Code of Regulations. (See Cal. Code. Regs., tit. 22, § 8700 et seq. [hereafter Standards or ILS].)

52. As with all State-regulated community care facilities, the STRTP application process is demanding. To begin, a prospective licensee must attend a mandatory orientation at one of the Department’s regional offices. During the orientation, officials review the licensing process, explain the applicable laws and regulations, and go over the application requirements.

53. Prospective licensees must then submit an extensive verified application that includes a submission fee, a letter of recommendation from a county interagency committee, a Plan of Operation, and a comprehensive Program Statement. After the prospective licensee submits its

¹⁰ (See Welf. & Inst. Code, § 16000.)

¹¹ (See Health & Saf. Code, § 1502.)

1 application, the Licensing Division obtains fingerprints, criminal records, credit reports, and a
2 facility fire clearance for the home. Licensing officials must also conduct an onsite inspection of
3 the facility and meet with the prospective licensee to review the application packet.

4 54. The licensing division must review a prospective licensee’s application “for
5 completeness” and give written notice of its decision within 90 days of receipt.¹² The notice must
6 inform the prospective licensee that the application is complete or deficient. An application is
7 “complete” if the licensing agency has both received all requisite application documents and
8 inspected the STRTP facility. A “deficient” application has “outstanding and/or inadequate
9 documents” that must be corrected within 30 days of receiving the notice.¹³

10 55. Once it receives the “completed application,” the licensing division must give written
11 notice whether it has approved a 12-month provisional license or denied the application.¹⁴ If the
12 licensing officials—properly called “evaluators”—fail to make a determination on the application
13 within 90 days, they are directed to bring the application to the Licensing Program Manager’s
14 attention.¹⁵

15 56. In sum, the licensing division must send the applicant a written notice of approval or
16 denial within 90 days of receiving the final application.¹⁶ If the licensing division determines that
17 the prospective licensee meets all regulatory and statutory requirements and approves the
18 application, it will issue a provisional, 12-month license pending a more comprehensive evaluation
19 for permanent licensure.¹⁷

20 57. In contrast, the licensing division will deny a prospective licensee’s application if it
21 concludes the applicant did not provide satisfactory evidence that the program can meet or conform
22 to the licensing regulations. A denied applicant may appeal the agency’s decision by requesting a
23 hearing within 15 days after the Licensing Division mails the notice of denial.¹⁸

24 ¹² (See ILS, § 87031.1.)

25 ¹³ (Cal. Code Regs., tit. 22, § 80027.)

26 ¹⁴ (See ILS, § 87031.1.)

27 ¹⁵ (See Cal. Dep’t of Soc. Servs., Eval. Manual: Children’s Residential Program, § 3-0325.)

28 ¹⁶ (ILS, § 87031.)

¹⁷ (*Id.*)

¹⁸ (See Health & Saf. Code, § 1526.)

1 **ii. The Licensing Application’s Requirements Related to LGBTQ programs,**
2 **Contraception, and Abortion**

3 58. At issue are (1) the Department’s abuse of discretion in evaluating CIH’s STRTP
4 application and (2) the Department’s arbitrary, discriminatory enforcement of the STRTP Interim
5 Licensing Standards and the general licensing regulations governing community care facilities.

6 59. As said above, a prospective licensee must include with its STRTP application a Plan
7 of Operation and Program Statement.¹⁹ Relevant here, the Program Statement must describe: the
8 population the STRTP intends to serve; the facility’s capability to support “the diverse needs of
9 children and their families”; how the facility will safeguard the children’s “personal rights”; and
10 how facility staff will ensure children can attend age and developmentally appropriate
11 extracurricular, enrichment, cultural, and social activities.²⁰

12 60. Relevant here, the Standards require an STRTP applicant to describe in its Program
13 Statement the following:

- 14 ○ “The practice models or interventions that will be utilized and/or tailored
15 to serve ... lesbian, gay, bisexual, transgender, and queer/questioning
children”;
- 16 ○ how the applicant “will engage the community, community-based
17 organizations, or providers that work with [lesbian, gay, bisexual,
transgender, and queer/questioning children]”;
- 18 ○ how the applicant will arrange for transporting children to and from
19 “lesbian, gay, bisexual, transgender, and queer/questioning affirming
activities”;
- 20 ○ how the applicant will provide “enrichment, cultural, and social
21 activities,” including “community events” for “lesbian, gay, bisexual,
22 transgender, queer/questioning, and gender expansive children and youth
activities”;
- 23 ○ details of applicant’s “planned educational activities and services,”
24 including “[p]roviding a safe learning environment for the lesbian, gay,
bisexual, transgender, and queer/questioning” children;
- 25 ○ “how the agency will advocate through the child and family team
26 meetings to include, but is not limited to, a child or youth’s lesbian, gay,
bisexual, transgender, and queer/questioning”; and

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28 ¹⁹ (Health & Saf. Code, § 1562.01, subd. (d)(1).)

²⁰ (See ILS, § 87022.1.)

- 1 ○ “[h]ow the STRTP will support visits for lesbian, gay, bisexual,
2 transgender, queer/questioning, and gender expansive children and youth
3 with adults who are affirming of their sexual orientation, gender identity,
and gender expression regardless of their biological connection.”²¹

4 61. The Standards also require STRTP applicants to certify that children have
5 transportation to health-related services, which includes abortion.

6 62. Specifically, the Standards provide:

7 Unless other arrangements are specified in the Needs and Services Plan
8 or the Transitional Independent Living Plan for a child or nonminor
9 dependent, a licensee shall ensure transportation is provided to the
10 following: (1) Health-related services. (2) School, including to the child’s
school of origin. (3) Extracurricular, enrichment, and social activities,
provided the transportation to these activities is reasonable.²²

11 63. The regulations further provide:

12 A foster youth must be provided transportation to health-related services
13 (See Welfare & Institution Code, § 16001.9, subdivision (a)(4); 22 CCR
14 §§ 80075, subdivision(a), and 89374, subdivision (c)(1). Many
15 reproductive health services are time-sensitive (e.g. emergency
16 contraception), therefore transportation is to be provided in a timely
manner in order to meet the requirement.²³

17 64. As applied to CIH, the Department has mandated that CIH certify that it will affirm the
18 sexual lifestyle choices of “lesbian, gay, bisexual, transgender, and queer/questioning children”
19 and ensure children are provided with contraception and access to abortion.

20 65. There is no legal authority for forcing foster care providers to support a child’s “sexual
21 attraction” to others. Nor is there legal authority for forcing foster care providers to personally
22 ensure children may terminate the life of a fetus.

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24 ²¹ “Sexual orientation” means “a person’s emotional, romantic or sexual attraction to others that
25 may be shaped at an early age.” (Cal. Code Regs., tit. 22, § 84001.)

26 ²² (ILS, § 87074.)

27 ²³ “Health-related services” include “services related to the prevention or treatment of
28 pregnancy, sexual assault or rape; and at 12 years of age or older, the prevention, diagnosis, or
treatment of sexually-transmitted diseases.” (ILS, § 87072.) The regulations clarify that the
“prevention or treatment of pregnancy includes contraception, pregnancy testing and counseling,
abortion, and prenatal care.” (ILS, § 87072.)

1 **iii. The Licensing Regulation’s System of Exceptions and Allowances**

2 66. The STRTP provisions related to sexual orientation and reproduction do not facially
3 discriminate on the basis of religion.

4 67. But they are not generally applicable because the Standards and the general regulations
5 provide for numerous allowances, and exceptions.

6 68. Both the Standards and the general licensing regulations governing community care
7 facilities provide for numerous exceptions to the Department’s rules.

8 69. For example, STRTP administrators and staff must make day-to-day decisions when
9 caring for children under “Reasonable and Prudent Parent Standard.” This standard, which vests
10 caretakers with extensive discretionary decisionmaking authority, is defined as “the careful and
11 sensible parental decisions that maintain a child’s health, safety, and best interests.”²⁴

12 70. Caregivers also have discretionary parental authority according to the foster child’s
13 “Needs and Services Plan,” (“NSP”) the blueprint that identifies the child’s individual needs and
14 outlines the services to meet those needs. The NSP is developed as a collaboration between the
15 child, her authorized representative, placement agency, social worker, the provider, and other
16 interested parties. Because it is a binding document, the NSP prohibits a caretaker from sponsoring
17 or permitting any action that would impair the child’s health and safety or otherwise violate her
18 NSP.²⁵

19 71. California has never enacted any law mandating that a community care facility promote
20 or take part in programs and activities that undermine the “Reasonable and Prudent Parent
21 Standard” and undercut the child’s “Needs and Services Plan.”

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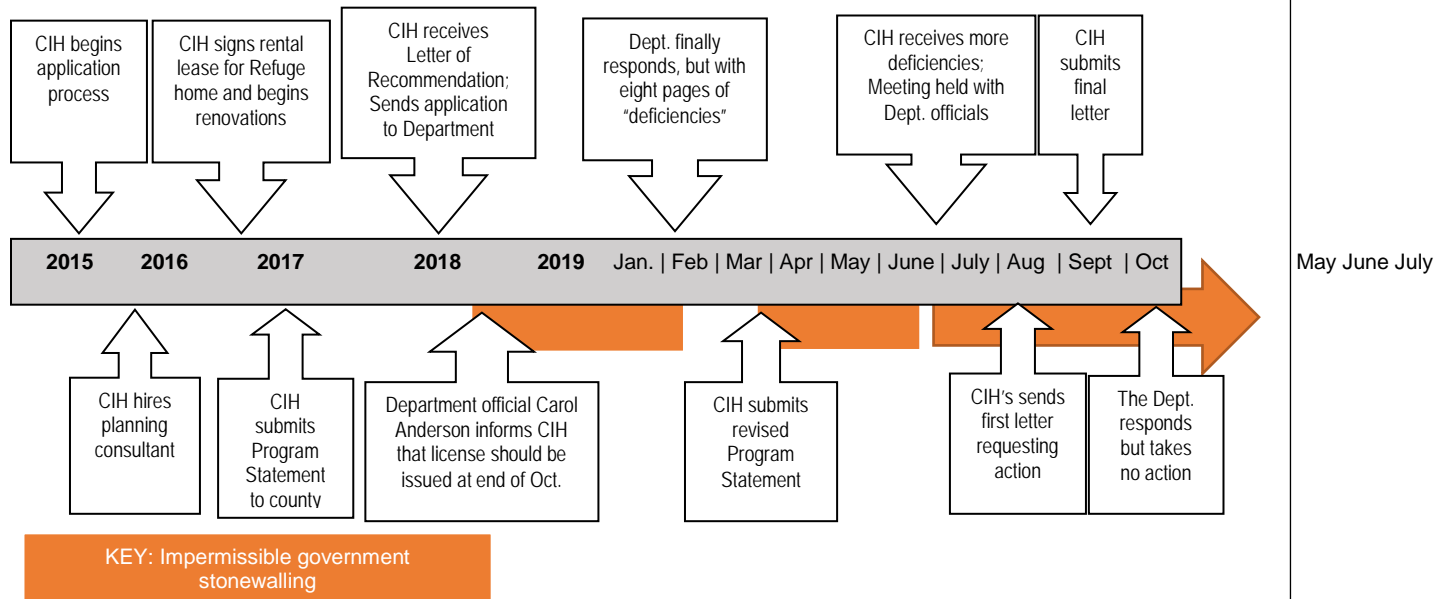
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27 ²⁴ (ILS, § 87001.)

28 ²⁵ (ILS, § 87068.2.)

Factual Background

A. Background of CIH's Licensing Application Process



72. Within two years of its founding, CIH had a fully developed program model and was poised to expand its mission. As a result, CIH's Board of Directors voted to open the Refuge as a residential facility for trafficked girls currently in the juvenile court system.

73. CIH started the license application in August 2015 when its executive director, Grace Williams, attended the Community Care Licensing Orientation at the Department's San Diego Regional Office.

74. In March 2016, donors had pledged enough funds for CIH to hire a full-time consultant to help design the Refuge and navigate the byzantine licensing process.

75. Later that year, a Child Welfare Services official from Defendant County of San Diego Health and Human Services Agency summarily informed CIH that the county welfare agency had ceased evaluating STRTP applications for the rest of 2016.

76. CIH resumed its application process in January 2017. The next month, CIH signed a lease for a home in San Diego County to be the Refuge. Donors and volunteers joined CIH staff to begin renovating and furnishing the Refuge so that it would be ready to accept girls as soon as the home was licensed.

1 77. In September 2017, CIH submitted copies of the Refuge’s Program Statement to a
2 county multi-agency review committee, as required by the regulations.

3 78. The review lasted nine months. On June 7, 2018, the interagency committee approved
4 the Refuge’s Program Statement and officially recommended that the Department issue a license
5 for the Refuge.

6 79. The very next day, on June 8, 2018, CIH submitted its completed application to the
7 Department’s Community Care Licensing Division. Upon information and belief, CIH was the
8 first organization to apply for a new STRTP license in San Diego County.

9 80. The licensing regulations required the government to notify CIH in writing the result
10 of its evaluation of the Refuge’s application within 90 days of receipt. But other than a letter
11 acknowledging receipt of the application on June 14, CIH received no official communication from
12 the government until late September or early October 2018, when Carol Anderson, the Licensing
13 Division official responsible for processing the Refuge’s application, called CIH.

14 81. During the call, Ms. Anderson stated that licensing officials would perform a walk-
15 through of the Refuge soon and that she planned to have the Refuge licensed by the end of October.

16 82. Overjoyed at the news, CIH made a major announcement to its donors that the Refuge
17 would soon be opening its doors to start rescuing girls.

18 83. But CIH never heard from Ms. Anderson that month—nor for the following three
19 months.

20 **B. The Department Targets CIH for its Sincere Religious Beliefs**

21 84. Cracks in the Department’s wall of neutrality began appearing in February 2019.
22 Licensing official Carol Anderson finally contacted CIH on February 11 for the first time since the
23 October 2018 call. Despite claiming four months ago that the Refuge’s application was ready for
24 approval, Ms. Anderson emailed CIH eight pages of what government evaluators had deemed
25 “deficiencies” in the Refuge’s Program Statement.

26 85. The deficiencies (and corresponding directions) in the Refuge’s Program Statement
27 included:

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- Did not provide explanation/procedure to ensure there is no discrimination against any youth or NMD [non-minor dependent] based on sexual orientation, gender identity, or expression.
- Describe how program will ensure transportation services will be provided to outside activities to include [] LGBTQ programs and activities.... Describe who provides transportation and how it is provided.
- Describe how the program affirms/supports visits for Lesbian, Gay, Bisexual, Transgender, Queer/Questioning and Gender Expansive Youth.
- Describe procedure for dispensing transition related medications for Transgender Youth.
- Describe in detail how a youth's sexual orientation, gender identity, religious beliefs, ethnic and cultural practices are not violated, discriminated against or punished.

86. Ms. Anderson suggested that CIH submit a revised Program Statement by March 4. But because of the overwhelming and unexpected number of deficiencies, CIH asked for more time.

87. On March 27, CIH employees Amy Sorensen and Christina Vasquez held a phone conference with Licensing Division officials to review the Refuge's Program Statement. During the call, Ms. Sorensen sought clarification about the Refuge having to dispense sex-change medications for transgender youth. Upon information and belief, a licensing program analyst named Paul Van Veen replied that it was a condition of licensing.

88. The next month, CIH resubmitted its Program Statement.

89. Ninety days passed with no word from the Department.

90. On July 10, licensing program analyst Carol Anderson contacted CIH to schedule a "technical assistance" meeting for July 17 with officials from the Continuum of Care Reform Branch, the Community Care Licensing Division, and San Diego's Child Welfare and Behavioral Health Services.

91. On July 12, just five days before the meeting, Ms. Anderson emailed CIH copies of two documents, dated June 30, 2019, and July 11, 2019, respectively, of "deficiencies" in the Refuge's revised Program Statement. Both documents identified *even more* deficiencies than the Department's February 2019 review.

1 92. As to the LGBTQ-related conditions, the Department stated:

- 2 ○ Need more detail and specifics on how STRTRP affirms/supports
- 3 LGBTQ, Gay, Bisexual, Transgender, Queer/Questioning, and Gender
- 4 Expansive youth.
- 5 ○ Any LGBTQ/SOGIE community resources? How will you make these
- 6 resources available to youth who request them?
- 7 ○ How facility programs will demonstrate the ability to support differing
- 8 needs of children, NMDs, and their families, including those from
- 9 different backgrounds or experiences, including race, ethnicity, sexual
- 10 orientation, gender identity, or a child/NMD who is gender non-
- 11 conforming.

12 93. In its review of the Refuge's Plan of Operation's "Vision, Mission, Purpose, Goals, and

13 Philosophies" section, the Department commented:

14 Mission bullet states providing opportunities for their restoration in Jesus

15 Christ... What is [sic] the youth not religious? Does not have religious

16 beliefs? Does not believe in Jesus Christ/GOD? The statement being

17 made with victims of trafficking being in the same sentence is offensive.

18 Youth who have been trafficked may have not lost their faith in their

19 religion and it should not be assumed that they have!

20 94. CIH was shocked that the Department would describe its mission statement as

21 "offensive." Moreover, no government official had mentioned CIH's mission statement before.

22 After reviewing the "deficiencies" and the dogged emphasis on the LGBTQ issue, CIH suspected

23 the government was stonewalling the Refuge's application because of the charity's religious beliefs

24 about sexual orientation, contraception, and abortion.

25 **C. The Department's Religious Hostility Surfaces at the July 2019 Meeting**

26 95. On July 17, the Department met with CIH representatives at the Community Care

27 Licensing Division Regional Office in San Diego. Attending for the government were two officials

28 from San Diego's Child Welfare and Behavioral Health Services department and two officials from

the Licensing Division, including Carol Anderson. Participating by phone were Department

officials based in Sacramento, including Stacie Kinney, a Policy Analyst from the Continuum of

Care Reform Branch.

96. Before long, CIH perceived that the Department had adopted a de facto criterion to

1 specifically evaluate the Refuge's application. That sole criterion was whether, in the government's
2 judgment, CIH's religious beliefs were discriminatory.

3 97. To apply this criterion, government officials trolled through CIH's religious beliefs
4 about sexual orientation, contraception, and abortion.

5 98. The government's questions and criticisms were highly specific. Thus, to decide
6 whether CIH's religious beliefs were discriminatory, the officials had to determine how CIH's
7 Catholic beliefs are derived and to discern the boundary between Catholic theological principles
8 and the government's endorsement of LGBTQ acts, contraception, abortifacients, and abortion.

9 99. For example, during the meeting, the government officials criticized CIH's mission
10 statement, declaring it would be best if CIH removed all references to religion. Indeed, Ms. Kinney
11 asked why Christ was even in the mission statement.

12 100. Grace Williams, CIH's executive director, replied that the Refuge would not
13 remove references to religion from its mission statement because the facility is an exercise of CIH's
14 religious apostolate to care for minor victims of sex trafficking. Ms. Williams further noted that
15 CIH is registered with the Internal Revenue Service as a 501(c)(3) religious organization.

16 101. The government officials also asked whether CIH would force the Refuge's staff
17 and residents to go to church or pray. Ms. Williams pointed out that the Refuge's application
18 already stated the program has no religious requirements. Ms. Williams then suggested that CIH
19 could emphasize that point by adding an express clause in the Plan of Operation.

20 102. Next, the Department analysts probed CIH on its beliefs on human sexuality.
21 Without citing a statute, a Child Welfare Services representative announced that it "expects" the
22 Refuge's caregivers to drive residents to LGBTQ-affirming activities.

23 103. In response, Ms. Williams reminded the officials that CIH had already certified in
24 the Refuge's Program Statement that it does not discriminate based on sexual orientation, gender
25 identity, and gender expression. And she again affirmed that the Refuge's programs and activities
26 would be open to all residents and that a resident may attend extracurricular activities that do not
27 threaten her health or safety and that fit with her NSP. She reiterated, however, that the Refuge
28 would neither formally nor materially cooperate in any program or activity that conflicts with CIH's

1 sincere religious beliefs.

2 104. Ms. Williams asked why the government would not consider the many reasonable
3 transportation options, such as the resident's family, friends, probation officer, social worker, or
4 even authorized volunteers.

5 105. Ms. Kinney did not answer but instead replied that she would have to discuss this
6 with her branch manager.

7 106. Moving on, Ms. Kinney pointedly asked about CIH's position on contraception and
8 abortion. She posed multiple hypotheticals, including whether Refuge staff would hand out
9 "condoms" and drive girls to "Planned Parenthood" to obtain abortions.

10 107. Ms. Williams responded that childcare staff would ensure residents have access to
11 health and medical care. But she reaffirmed that the Refuge would not condone, promote, nor
12 facilitate any activity that violates the Catholic Church's teachings on the sanctity of human life,
13 which includes prohibitions against contraception and abortion.

14 108. Ms. Anderson pressed that "these girls, where they come from, dating is going to
15 be very important to them—so that is going to be an issue—sex, abortions, things like that, because
16 of where they come from." She speculated that resident girls would likely complain to the
17 Department about the Refuge's position, and consequently she would have to "write up" CIH.

18 109. Ms. Williams finally asked whether the Department would deny the Refuge's
19 application because CIH would not comply with the Mandate.

20 110. Ms. Kinney replied that "this is going to be a much bigger problem than I thought"
21 and that "we don't normally hear this." She then said she would discuss CIH's religious objections
22 with her senior manager right after the meeting and would respond by the end of the day.

23 111. As the meeting concluded, Ms. Williams asked Ms. Anderson whether CIH's
24 Catholic beliefs would be a "dealbreaker."

25 112. Ms. Anderson shrugged and replied, "The law is the law."

26 113. Ms. Williams asked which law. Ms. Anderson replied that it was a provision from
27 the Health and Safety Code and that she would email it to her.

28 114. Even so, Ms. Anderson remarked to Ms. Williams, "You're just going to have a

1 problem with that religious thing.”

2 **D. The Department’s Actions and Statements Confirm that It Is Abusing the Licensing**
3 **Regulations to Enforce an Arbitrary Mandate against CIH**

4 115. By deliberately refusing to make a determination on CIH’s application and based on
5 the offensive statements made by government officials at the July 17 meeting, it is clear the
6 Department has imposed an arbitrary Mandate on CIH. That is, the Department will not issue CIH
7 the STRTP license unless the charity certifies in word and on an ongoing basis that it will support
8 and affirm LGBTQ acts, contraception, and abortion.

9 116. The Department has full knowledge that CIH abides by the Catholic Church’s
10 teachings on sexual orientation, contraception, and abortion. And the Department has full
11 knowledge of what those beliefs are. Yet the Department is intentionally discriminating against
12 CIH for those beliefs and its unwillingness to sacrifice them.

13 117. The Mandate has no basis in any state law or regulation. Nor is it justified by any
14 compelling interest. Thus, the Mandate discriminates on the basis of religion and imposes a
15 substantial burden on CIH’s religious exercise.

16 **E. The Department Is Stonewalling the Refuge’s Application to Force CIH to Comply with**
17 **the Mandate**

18 118. Because CIH refuses to comply with this Mandate, the Department is deliberately
19 stonewalling the Refuge’s application.

20 119. The evasion resumed the very day after the meeting, when Grace Williams emailed
21 policy analyst Stacie Kinney to follow up about the Mandate, noting that she did not respond that
22 afternoon.

23 120. Ms. Kinney replied to Ms. Williams by email the next day:

24 I followed up with my management team about what we discussed on the
25 TA call and they are going to provide me with an update as soon as
26 possible. The moment I hear back from them I will follow up with you.
27 My suggestion at this time is to move forward with your revisions and
28 leave that as is since I do not have the information right now to provide to
you.

1 121. In response, Ms. Williams informed Ms. Kinney that CIH was “concerned about
2 spending the time and money to move forward in a process that generally has several months of
3 turnaround time if this is going to be a dealbreaker for the state.”

4 122. Ms. Williams also asked Ms. Kinney when CIH could expect a response from
5 management.

6 123. Ms. Kinney did not respond.

7 124. Two days after the technical assistance meeting, CIH received a letter from the
8 Department that declared the Refuge’s STRTP application still did not meet the licensing
9 standards.

10 125. On July 22, Ms. Williams emailed Carol Anderson about the “discrimination” law
11 to which she had referred at the meeting. Ms. Williams also asked about Ms. Kinney’s discussion
12 with her manager about the Mandate:

13 Any word from Stacie/CCR yet about our question in regards to
14 transportation? In the call she or one of you mentioned that you could get
15 an answer by the end of that day, but we are getting worried because it has
16 been almost a week now. Could we please request an extension of the
17 July 31st deadline? It will be difficult to meet that deadline without a clear
18 answer as to whether or not we will be able to proceed with the licensing
19 process given our concerns about protecting our conscience in regards to
20 the question in Section K we discussed during the TA call.

21 126. Ms. Anderson replied the same day and wrote that she “will look for the health and
22 safety law regarding discrimination.” She did not answer about the extension.

23 127. The next day, Ms. Anderson emailed Ms. Williams with a citation to section 1522.41
24 of the California Health & Safety Code. Ms. Anderson specifically cited section 1522.41 (c)(1)(H):

25 The administrator certification programs for group homes shall require a
26 minimum of 40 hours of classroom instruction that provides training on a
27 uniform core of knowledge in each of the following areas:

28 * * *

(H) Resident admission, retention, and assessment procedures, including
the right of a foster child to have fair and equal access to all available

1 services, placement, care, treatment, and benefits, and to not be subjected
2 to discrimination or harassment on the basis of actual or perceived race,
3 ethnic group identification, ancestry, national origin, color, religion, sex,
4 sexual orientation, gender identity, mental or physical disability, or HIV
status.

5 128. Upon information and belief, the provision is inapplicable to the Mandate. The
6 section is not a general anti-discrimination provision; it is about administrator certification training,
7 to which CIH has no religious objection.

8 129. On July 25, Grace Williams emailed policy analyst Stacie Kinney. She pointed out
9 that eight days had passed since the meeting with no word from Ms. Kinney about discussing CIH's
10 religious objection to the Mandate. Ms. Williams further noted:

11 We are just concerned about spending the time and money proceeding
12 with the process without an end date of when we might have an answer if
13 we will be able to comply with the standards in the way we stated. It would
14 cost us approximately \$45,000 (staff salaries and facility expenses) to go
15 through the next round of revisions if it only takes 3 months, knowing that
we might be denied over these issues.

16 130. That same day, licensing official Carol Anderson emailed Ms. Williams, telling her
17 to call her. During the call, Ms. Anderson reiterated that CIH's religious objections to the Mandate
18 were a problem: "It's the law; you just have to comply with the law."

19 131. CIH submitted its revised Plan of Operation and Program Statement on August 6
20 after receiving a short extension.

21 132. The Program Statement included the Refuge's non-discrimination policy and
22 emphasized that youth who wanted to attend LGBT-affirming activities had reasonable alternative
23 options available. The revised Program Statement provides in part:

24 The Refuge staff also take advantage of taking residents to community
25 events such as health/wellness fairs, cultural events, live music, theater,
26 and worship services (when requested/for those who are interested).
27 Youth wishing to attend LGBTQ activities may request that this be a part
28 of their NSP [Needs and Services Plan] created by their CFT [Child and
Family Team] or at any time. *The Refuge will not discriminate against any
youth for reasons of religion/creed, ethnicity, sexual orientation, race,*

1 cultural practices, age, or disability. Transportation to LGBTQ activities
2 *may be provided* by a family member, friend, placement agent, or whoever
3 the CFT or placement agent designates.

4 133. The Department provided no response to CIH's resubmission. As such, Grace
5 Williams sent Ms. Kinney and Ms. Anderson a letter on August 22 to confirm the Department's
6 position on CIH's religious objections to the Mandate.

7 134. Ms. Williams also expressed concern about the Department's trivializing treatment
8 during the application process, stating in part:

9 Every time that we have sent in a revised Program Statement and Plan of
10 Operation, however, it has taken a very long time to hear back from CDSS
11 (3 to 8 months). Right now, we pay approximately \$15,000 per month to
12 maintain The Refuge and pay for the salaries of our development staff....
13 To date, we have also spent approximately \$600,000 in fees and costs
14 since doing our orientation with CCL in August 2015 trying to secure a
15 license for The Refuge. The fact that we have been trying since August
16 2015 to obtain a license is also confusing to many of our supporters.
17 Numerous San Diego officials have all expressed eagerness to see The
18 Refuge open up.

19 135. Ms. Williams requested that the Department provide a substantive response by
20 September 6. She added: "Since we are spending \$15,000 a month just waiting, we need to decide
21 whether to continue with the process of trying to get licensed, or whether we should simply turn
22 The Refuge into a home for adult women."

23 136. On August 26, Policy Analyst Stacie Kinney emailed Ms. Williams, noting that the
24 August 22 letter "has been received and has been elevated to management and a response will be
25 provided shortly."

26 137. By September 12, the Department had not responded to CIH's August 22 letter, so
27 Ms. Williams sent a second letter to Ms. Kinney and Ms. Anderson "to follow up one last time and
28 give you 10 more days to respond (by Monday, September 23, 2019)." CIH further stated in part:

If we don't hear from you by then, CIH will have no choice but to assume
that our proposed reasonable accommodations will be unacceptable to
CDSS, that our religious beliefs will be a bar to licensure, and that
continuing this process will be fruitless. The community here in San

Diego is eagerly awaiting the use of The Refuge, and I cannot keep telling our supporters that we are continuing to waste \$15,000 a month just waiting to hear from CDSS.

138. On October 2, Ms. Kinney sent a letter to CIH:

The Department is in receipt of your letter dated September 12, 2019 inquiring about the status of the Department's response to your letter dated August 22, 2019. The Department will provide a response by Friday, October 18, 2019.

139. On October 17, Ms. Kinney sent CIH the Department's "response," which stated:

For the reasons set forth herein, the Department needs additional time to respond to your STRTP application and other communications. The reasons for this are twofold. First, the Department must consult with other parts of the Agency that have a substantial interest in the approval of STRTP's. Additionally, there were many areas of the application that were deficient that warrant the Department's continued review. Although we have made progress in these areas, further work is necessary before we can give you a definitive response. Additionally, some parts of the review process are not within the Department's control. As soon as we know the timeframe for responding to your application and letters in full, we will share that information with you.

140. Based on a plain reading, the Department's October 17 letter provided no substantive response to CIH's request for administrative action. The letter failed to state a deadline for *when* the Department will make a determination on the Refuge's application. Instead, it merely stated that licensing officials will notify CIH *when* they find out *how long* it will take to respond to CIH's inquiries—the very inquiries that asked *how long* the Department will take for a final decision.

141. Upon information and belief, on October 3, the Department issued a provisional license to Hidden Treasures Foundation, a San Diego-based nonprofit organization, so that it may open Tiffany's Place, a STRTP for commercially sexually exploited adolescents.

142. Upon information and belief, Hidden Treasures Foundation applied for an STRTP license *after* CIH submitted its application in June 2018.

143. Upon information and belief, the Department issued Hidden Treasures Foundation

1 a STRTP license on October 3 even though the Program Statement for Tiffany’s Place did not
2 substantially comply with the Standards at that time. Thus, upon information and belief, the
3 Department issued Hidden Treasures Foundation a conditional license allowing Tiffany’s Place to
4 open provided that it would bring its Program Statement into substantial compliance during the
5 provisional period.

6 144. Upon information and belief, the Department did not apply and enforce the
7 Mandate against Hidden Treasures Foundation. Upon information and belief, the Department is
8 interpreting and applying the Standards to CIH differently from Hidden Treasures Foundation.

9 145. Because of the Department’s discriminatory and selective enforcement of the
10 Standards, CIH continues to spend \$15,000 per month on an empty rescue home. And young girls
11 who could otherwise be rescued continue to be pimped, abused and dehumanized.

12 **ALLEGATIONS**

13 **The Mandate Forces Children of the Immaculate Heart’s Formal and Material** 14 **Cooperation in Actions Contrary to Catholic Doctrine**

15 146. Based on Catholic moral teachings, complying with the Mandate would cause
16 Children of the Immaculate Heart to formally cooperate with grave wrongdoing. Under Church
17 teaching, “formal cooperation” in wrongdoing is directly intending to contribute to another’s
18 wrongful acts. If CIH certifies in the Refuge’s Program Statement that it will indorse wrongful
19 programs and activities, then it would be sharing the Department’s intention to carry out wrongful
20 acts. Obeying the Mandate is therefore formal cooperation with wrongdoing, no matter if the
21 wrongful acts are never actually carried out.

22 147. Moreover, complying with the Mandate would involve CIH’s impermissible
23 material cooperation in actions contrary to Catholic doctrine. “Material cooperation” occurs when
24 the cooperator—here, CIH—facilitates or participates in a forbidden action without actually
25 sharing that wrongful intention. By transporting children to LGBTQ-affirming events or to
26 abortion clinics, CIH would be materially cooperating in immoral actions prohibited under Catholic
27 teaching.

28 148. In addition, CIH’s compliance with the Mandate in any form would cause

1 “scandal”—that is, it would lead or influence others to do wrongful acts. If CIH submits to the
2 Mandate, it would send a clear message that it endorses the Mandate’s objectives. Doing so would
3 undermine its Catholic identity, betray the trust of its board members and donors, disrespect the
4 local Church, and persuade other religious community care facilities to subordinate their spiritual
5 beliefs.

6 149. In all events, the Mandate places a substantial burden on CIH’s sincere religious
7 beliefs because it forces CIH’s cooperation in morally violable acts. At a minimum, it puts
8 substantial pressure on CIH to abandon its faith only so that it may open and operate the Refuge.

9 **The Department’s Discriminatory Actions Irreparably Harm CIH**
10 **and Endanger Commercially Sexually Exploited Girls**

11 150. At all times relevant to this Complaint, the alleged acts are attributable to
12 Defendants, who acted under color of California state law.

13 **A. The Department’s Stonewalling and Refusal to Make a Final Determination on the**
14 **Refuge’s Application is an Unlawful Abuse of Discretion**

15 151. The general licensing regulations set forth a time limit within which the Department
16 must either approve or deny a community care facility license application. This time limit “protects
17 applicants from the caprice and arbitrariness associated with protracted and unjustified delays by
18 the government.” (*Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1049.)

19 152. The time limit for the Refuge’s licensing process started running when the
20 Department’s Community Care Licensing Division received Children of the Immaculate Heart’s
21 application, which was submitted on June 8, 2018. The licensing division was thus statutorily
22 required to respond by the middle of September 2018.

23 153. The Department has a clear and present duty to make a determination on the
24 Refuge’s application within the timeframe required by the general licensing requirements and
25 related regulations.

26 154. Yet the Department continues to prejudicially abuse its discretion by refusing to act
27 on the Refuge’s application, in which CIH is beneficially interested.

28 155. Unless this Court grants the requested writ of mandate, the Department will

1 continue to abuse its discretion, causing CIH irreparable harm with no remedy of law available.

2 156. To be clear, the Department’s “reasons” that it explained in its October 17 letter
3 for not acting on the Refuge’s application directly undercut both the general licensing regulations
4 and the Interim Licensing Standards.

5 157. First, no other “Agency” has a “substantial interest” in the Refuge’s licensure
6 other than those agencies—*e.g.*, the Continuum of Care Reform Branch and the Community Care
7 Licensing Division—that have already reviewed the Refuge’s application.

8 158. Second, under Department regulations, whatever parts of the Refuge’s application
9 the licensing division considered “deficient” do not prevent the Licensing Division from issuing
10 CIH the standard *provisional* license. As it did with Hidden Treasures Foundation, upon
11 information and belief, the Department may issue CIH a provisional license under the condition
12 that the program will bring its operations into “substantial compliance” under the Interim
13 Licensing Standards within eight months.

14 159. Third, the Department’s vacuous claim that “some parts of the review process are
15 not within the Department’s control” is false and squarely in conflict with state law. The
16 Department is *exclusively* responsible for licensing and regulating STRTP’s.

17 160. In short, the October 17 letter fails to justify the Department’s ongoing abuse of
18 discretion, and therefore CIH will continue to suffer irreparable harm without a writ of mandate.

19 **B. The Department’s Ongoing Religious Discrimination Violates CIH’s Freedom of**
20 **Religion, Liberty of Speech, and Right to Equal Protection**

21 161. Both the Standards as applied and the Mandate violate CIH’s free exercise, liberty
22 of speech, and equal protection rights under the California Constitution. By selectively applying
23 and enforcing the licensing standards to CIH based on specious hypothetical scenarios, the
24 Department has made clear it plans to deny *one of the only* CSEC short-term residential therapeutic
25 programs *in the entire state* unless that facility promises in advance to violate its religious beliefs.

26 162. Upon information and belief, the Department has never interpreted and applied the
27 licensing regulations as it has to CIH. This new and inconsistent interpretation of the Refuge’s
28 application exposes the government’s discriminatory targeting of a set of religious beliefs and

1 practices.

2 163. California has enacted no law or regulation *mandating* that community care facilities
3 transport all minor residents to LGBTQ-related events or to “Planned Parenthood.” Instead,
4 licensing regulations provide facility caregivers with broad discretionary authority under the
5 “Reasonable and Prudent Parent Standard” and each child’s “Needs and Services Plan.” Thus,
6 the Department’s discriminatory actions are directly frustrating, rather than complying with, the
7 licensing standards.

8 164. The Department’s speculation that the Refuge would inevitably discriminate
9 against LGBTQ children is baseless. No evidence exists of a single discrimination complaint
10 against CIH during its six years serving trafficked women. Nor has anyone complained that a staff
11 member or resident felt discriminated against because of CIH’s Catholic beliefs. And the Refuge
12 has an express anti-discrimination policy consistent with state law prohibiting discrimination based
13 on sexual orientation and gender identity.

14 165. Moreover, CIH has not requested a formal waiver or accommodation request based
15 on its religious beliefs, because it neither discriminates against any protected class nor objects to a
16 resident exercising her personal rights. An accommodation is unwarranted because of the plethora
17 of alternative transportation options a resident may choose to participate in activities that CIH
18 cannot promote. In other words, the Mandate is not the least restrictive means of achieving the
19 government’s implied compelling interests.

20 166. All told, the Department’s unreasonable standpoint shows a clear hostility toward
21 CIH’s religious beliefs.

22 167. Indeed, through written and verbal statements, government officials have been open
23 about their disagreement with CIH’s Catholic beliefs on human sexuality. For example, the
24 Department’s written comment that the Refuge’s religious mission is “offensive” is clear and
25 impermissible hostility toward CIH’s sincere religious beliefs. Neither the government nor its
26 officials may declare which religious beliefs are offensive.

27 168. By contrast, the Department’s trolling inquiries into CIH’s religious beliefs are
28 blatantly offensive—and unconstitutional. In short, the Department’s judgmental dismissal of

1 CIH's sincere religious beliefs is antithetical to the California Constitution and cannot withstand
2 strict scrutiny. At a minimum, the Department's comments are unfitting for an agency required to
3 evaluate the Refuge's STRTP application fairly and neutrally.

4 169. The Department's unlawful actions also have real-world consequences. That local
5 agencies repeatedly ask why the Refuge has not opened its doors shows the urgent need to save
6 commercially sexually exploited girls in San Diego. The answer is clear: The Department is
7 conditioning the Refuge's license on CIH's pledge to violate its sincere Catholic beliefs. Tragically,
8 each day the Refuge stays closed, young women who could be rescued remain at risk of commercial
9 sexual exploitation. Yet the government believes it is more important to promote an anti-Catholic
10 political agenda than it is to save children currently being pimped and prostituted.

11 170. The Mandate unlawfully forces CIH to choose between engaging in speech
12 endorsing religiously objectionable activities and its religious exercise of serving vulnerable
13 survivors of sex trafficking. Consequently, CIH is suffering imminent and irreparable harm to its
14 liberty of speech.

15 171. The Interim Licensing Standards as applied expressly discriminate against an
16 otherwise eligible STRTP applicant by denying it a licensing solely because of its status as a
17 Catholic charity. The Standards put CIH to a choice: It may receive a government operating license
18 or remain a Catholic organization. By conditioning the STRTP license this way, the Department is
19 imposing a penalty on CIH's free exercise of religion that cannot withstand strict scrutiny.

20 172. The Department's ongoing religious hostility has forced CIH to undertake
21 extraordinary measures to secure the Refuge's license. Specifically, the Department is specifically
22 imposing the rigors of the bureaucratic process to burden, hinder, and punish CIH because of its
23 religious beliefs. The Department's discriminatory impositions have denied, and continue to deny,
24 CIH's right to equal protection under the law.

25 173. CIH is also facing severe economic consequences. Indeed, if the Department denies
26 the Refuge's STRTP license, CIH will have wasted years of work and nearly \$600,000 in costs.

27 174. CIH has no adequate or speedy remedy at law. Without an injunction, CIH will
28 continue to suffer irreparable harm to its constitutional rights.

1 **COUNT II**

2 **Violation of the California Constitution**

3 **Free Exercise Clause**

4 **(Against All Defendants)**

5 183. CIH incorporates by reference all preceding paragraphs.

6 184. Article 1, section 4 of the California Constitution provides: “Free exercise and
7 enjoyment of religion without discrimination or preference are guaranteed.”

8 185. The California Constitution forbids the government from imposing a regulation that
9 substantially burdens claimant’s sincere religious beliefs unless it can prove that the regulation is
10 the least restrictive means of furthering a compelling government interest.

11 186. Through the Mandate, Defendants are forcing CIH to act contrary to its religious
12 beliefs and teachings and are preventing it from acting consistently with its religious beliefs.

13 187. Consequently, Defendants have imposed a substantial burden on CIH’s religious
14 exercise.

15 188. Defendants have no compelling interest for their actions, nor have they selected the
16 least restrictive means to further any interest.

17 189. Without declaratory relief determining that Defendants may not apply the Mandate
18 against CIH, and without injunctive relief precluding it from doing so, CIH will continue to suffer
19 irreparable harm to its free exercise rights under the California Constitution.

20 **COUNT III**

21 **Violation of California Constitution**

22 **Discrimination against Religion**

23 **(Against All Defendants)**

24 190. CIH incorporates by reference all preceding paragraphs.

25 191. Article 1, section 4 of the California Constitution provides: “Free exercise and
26 enjoyment of religion without discrimination or preference are guaranteed.”

27 192. Defendants discriminate among religiously affiliated STRTP applicants by
28 conditioning licenses on their tolerance of the applicants’ moral positions on human sexuality.

193. Upon information and belief, Defendants have issued STRTP licenses to other religious organizations with Program Statements sufficiently aligned with the government's position on human sexuality and reproduction.

194. Conversely, Defendants refuse to issue a license for CIH because it has judged that the Refuge's Program Statement was anathema to their view on human sexuality and reproduction.

195. Defendants are therefore applying the Standards and the Mandate in a way that expressly discriminates among religious organizations.

196. Article I, section 4 prohibits the government from singling out a religious organization for disfavored treatment.

197. Through the Mandate, Defendants are explicitly interpreting and applying the Standards in a way that disfavors CIH because of its sincere religious beliefs. Defendants have adopted and enforced the Mandate against CIH because of the government’s animus toward CIH’s Catholic beliefs. Defendants’ hostile actions and statements have conveyed a clear message that it deems CIH’s religious beliefs and identity “offensive.”

198. Defendants have no compelling interest in discriminating against CIH. Even if it did, violating CIH's religious liberties is not narrowly tailored to achieve that interest.

199. Without declaratory relief determining that Defendants may not apply the Mandate against CIH, and without injunctive relief precluding it from doing so, CIH will continue to suffer irreparable harm to its right under the California Constitution to be free from religious discrimination.

COUNT IV

Violation of the California Constitution

Liberty of Speech

(Against All Defendants)

200. CIH incorporates by reference all preceding paragraphs.

201. Under the California Constitution’s liberty of speech clause, “[a] law may not restrain or abridge liberty of speech or press.” (Cal. Const., art. I, § 2.)

202. CIH's statements about its religious beliefs and practices are protected speech.

203. Yet Defendants' Mandate coerces CIH to engage in objectionable speech and

1 expression by compelling it to affirm and take part in programs and activities that contradict its
2 Catholic beliefs.

3 204. By forcing CIH to make affirmative statements contradicting its religious beliefs and
4 practices, Defendants are conditioning the Refuge's STRTP license, and the ability to engage in
5 the religious exercise of helping victims of sex trafficking, on CIH's willingness to make such
6 contradictory statements.

7 205. Forcing CIH to speak in support of programs and activities that violate its religious
8 beliefs about human sexuality and reproduction serves no compelling interest. Even if there were a
9 compelling interest, Defendants have less restrictive means to achieve it without forcing CIH to
10 abandon its constitutional rights.

11 206. Without declaratory relief determining that Defendants may not apply the Mandate
12 against CIH, and without injunctive relief precluding it from doing so, CIH will continue to suffer
13 irreparable harm to its liberty of speech under the California Constitution.

14 **COUNT V**

15 **Violation of the California Constitution**

16 **Equal Protection Clause**

17 **(Against All Defendants)**

18 207. CIH incorporates by reference all preceding paragraphs.

19 208. The California Constitution prohibits denial of "equal protection of the laws." (Cal.
20 Const., art. I, § 7.)

21 209. Defendants' Mandate and the Standards as applied violate CIH's equal protection
22 rights.

23 210. In applying for a STRTP license, all applicants are similarly situated.

24 211. Licensing regulations provide that the State may not discriminate against applicants
25 based on religion.

26 212. Thus, the Department must treat CIH equally to other prospective STRTP
27 licensees regardless of religious affiliation.

28 213. Through its actions as alleged above, Defendants have singled out CIH for

1 discriminatory treatment on the basis of religion.

2 214. Upon information and belief, Defendants have not applied the Standards to other
3 applicants in the same way it has to CIH. Nor has it imposed the Mandate on other religious
4 STRTP applicants.

5 215. The Mandate cannot withstand strict scrutiny, because it furthers no compelling
6 interest and is not narrowly tailored to further any interest.

7 216. Without declaratory relief determining that Defendants may not apply the Mandate
8 against CIH, and without injunctive relief precluding it from doing so, CIH will continue to suffer
9 irreparable harm to its equal protection rights under the California Constitution.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Children of the Immaculate Heart requests that the Court:

12 A. Issue a traditional writ of mandate compelling Defendants to

- 13 1) Comply with their legal obligations and make a determination on the
14 Refuge's STRTP application; and
15 2) Make that determination in a neutral manner without considering CIH's
16 religious beliefs and practices.

17 B. Issue preliminary and permanent injunctions prohibiting Defendants from

- 18 1) Considering CIH's religious beliefs and practices when evaluating and
19 making a final determination on the Refuge's application;
20 2) Interpreting and applying state statutes, regulations, and rules to
21 substantially burden CIH's religious exercise;
22 3) Penalizing CIH for failing to comply with the Mandate; and
23 4) Taking retaliatory action against CIH, including refusing to issue the Refuge
24 a license or, once granted, rescinding the license without just cause, or from
25 otherwise penalizing CIH for its religious beliefs.

26 C. Declare that Defendants' interpretation and application of state regulations,
27 including the Interim Licensing Standards, violate CIH's free exercise of religion,
28 liberty of speech, and equal protection rights under the California Constitution;

- 1 D. Award CIH actual damages for the costs it has incurred and the revenue it has lost
2 as a result of Defendants' unlawful actions;
3 E. Award CIH nominal damages for the loss of its rights;
4 F. Award CIH the costs of this action and reasonable attorney's fees; and
5 G. Award any other relief the Court considers fair and just.
6

7 Date: November 19, 2019

Respectfully submitted,

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 19, 2019, at San Diego, California.


Grace Williams
President & Executive Director
Plaintiff Children of the
Immaculate Heart