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12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN DIEGO – CENTRAL DIVISION
15

16 CHILDREN OF THE
17 IMMACULATE HEART,

18 Plaintiff;

19 v.

20 KIMBERLEY JOHNSON, et al.,

21 Defendants.
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Case No.: 37-2019-0006176-CU-WM-CTL

IMAGED FILE

**MEMORANDUM OF POINTS
AND AUTHORITIES**

**In Support of Motion for Temporary
Restraining Order and Order to Show Cause**

Date: December 3, 2019

Time: 8:30 a.m.

Dept.: C-64

Judge: Hon. John S. Meyer

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1 INTRODUCTION AND SUMMARY OF ARGUMENT

2 Plaintiff Children of the Immaculate Heart (“CIH”) is a Catholic charity dedicated to rescuing
3 victims of commercial sexual exploitation. The San Diego County District Attorney’s Office has
4 recognized CIH as a “strong partner” and “constant presence in the fight against human trafficking.” To
5 combat the growing epidemic of child prostitution in the county, CIH has sought for the last four years to
6 open the Refuge, a six-bed rescue home for teen girls. But CIH is in a troubling position. Despite
7 recognizing the critical need for the Refuge’s services, Defendants refuse to license the rescue home
8 because of CIH’s religious beliefs about human sexuality and reproduction.

9 Indeed, as alleged in the Verified Petition for Writ of Mandate and Complaint, Defendants have
10 forced CIH to a Hobson’s choice: If it wants to open a rescue home for sex-trafficked girls, then it must
11 certify that it will promote LGBTQ sexuality, inject children with transgender hormone medication, and
12 drive children to Planned Parenthood to get abortions. Conditioning a state license on a religious charity’s
13 agreement to cooperate in religiously objectionable actions is abhorrent to our traditions of religious
14 liberty and equality. It also violates the California Constitution.

15 CIH therefore applies *ex parte* for temporary and preliminary injunctive relief. Specifically, it seeks a
16 narrow temporary restraining order directing Defendants to evaluate the charity on equal terms with other
17 prospective licensees when finalizing its determination on the Refuge’s application. CIH is not
18 demanding special treatment, but it is asking for fair and neutral consideration as required by law. The
19 charity also moves for an order for Defendants to show cause why the Court should not issue both a
20 preliminary injunction and a writ of mandate. Mandamus is needed to compel Defendants to exercise
21 their statutory duty to make a decision on CIH’s licensing application. Moreover, the government’s
22 stonewalling is financially devastating CIH, and the charity needs to know now whether it has any hope
23 of rescuing trafficked girls or whether they will remain excluded from California’s foster care system.

24 A recent study of sex trafficking in San Diego County by the National Institute of Justice identified
25 that not one residential bed exists for teen girls trying to escape this \$810 million criminal industry. The
26 Refuge has had six available beds since 2017. CIH respectfully requests that this Court ensure that the
27 charity, consistent with its religious beliefs, may begin saving those girls desperately needing a *refuge*.

28 ///

STATEMENT OF FACTS SUPPORTING INJUNCTIVE RELIEF

1. CHILDREN OF THE IMMACULATE HEART AND ITS CATHOLIC IDENTITY

Founded in 2013, Children of the Immaculate Heart is a nonprofit religious charity that provides round-the-clock “wraparound services” for women and children vulnerable to human trafficking. (Declaration of Grace Williams [“Williams Decl.”] ¶ 76; Verif. Petn. Writ of Mandate & Complaint [“Verif. Compl.”] ¶ 11.) CIH’s caretakers believe that each survivor, in the words of Mother Teresa, “longs not just for a home of bricks, but for a home of understanding love.” (Tyler, *Mother Teresa: How to Love God* (Sept. 2007) <<https://youtu.be/-yFzCBIK-PY>> [as of Nov. 22, 2019].) Through that “understanding love,” CIH has helped over a dozen formerly trafficked women heal from their trauma and reintegrate into society. (Williams Decl. ¶ 3; Declaration of Selina Whiteside [“Whiteside Decl.”] ¶¶ 2-8.) CIH currently serves thirteen women and their eighteen children. (Verif. Compl. ¶ 22.) CIH’s successful outcomes have led to partnerships with the San Diego District Attorney’s Office, the County Juvenile Court, the County Probation Department, and other community- and faith-based groups. (Williams Decl. ¶¶ 25-26, 72; Verif. Compl. ¶ 21.)

Based on just its name—Children of the Immaculate Heart—it is clear that the charity is distinctly Catholic. (Verif. Compl. ¶ 24; see generally *Sumner v. Simpson Univ.* (2018) 27 Cal.App.5th 577, 586 [noting that, when determining whether an organization is “religious,” courts consider whether the entity “holds itself out” as religious].) CIH thus adheres to the Magisterium of the Catholic Church. CIH affirms that life is sacred from conception until natural death. It considers both contraception and abortion gravely wrong. And it believes that God created just two sexes—male and female—and that each sex has unique qualities that complement the other when united as husband and wife in marriage. (Verif. Compl. ¶¶ 25, 28-29, 33-35.) These are all inviolable Catholic theological principles. (Declaration of Fr. John S. Lyons, FSSP [“Fr. Lyons Decl.”] ¶¶ 6, 10-12.) CIH cannot and will not break them under any condition. (Verif. Compl. ¶ 35.)

2. THE DEFENDANTS

Led by Defendant Kimberley Johnson, Defendant Department of Social Services regulates the State’s child welfare system. (See Health & Saf. Code, § 1500 et seq.; Welf. & Inst. Code, § 10550 et seq; 22 Cal. Code Reg., § 80000 et seq.) The Department delegates executive authority to administer the

1 State’s child welfare system to the county welfare departments. (See Welf. & Inst. Code, § 16500.) Thus,
2 Defendant San Diego County Health and Human Services Agency and its Director, Defendant Nick
3 Macchione, act as state agents when administering county-level foster services. Unless otherwise noted,
4 Defendants are collectively called the “Department.”

5 **3. FACTUAL BACKGROUND**

6 **3.1. CIH’s Application Process to Open the Refuge and the Department’s Discrimination**

7 In 2015, CIH began the process to open the Refuge, a short-term residential therapeutic program
8 (“STRTP”) for teen girls vulnerable to sex trafficking. (Williams Decl. ¶ 4.) Licensed and regulated by
9 Defendant Department of Social Services, a STRTP offers round-the-clock, “specialized and intensive
10 care and supervision” for foster children whose complex psychological and behavioral needs prevent their
11 placement in a traditional home-based setting. (See Health & Saf. Code, § 1502.) The Legislature
12 intended that particular qualified STRTP’s would focus on commercially sexually exploited children.
13 (See Welf. & Inst. Code, § 11462.01.)

14 After three years of navigating byzantine regulations and bureaucratic roadblocks, CIH submitted the
15 Refuge’s finished application to the Department’s Community Care Licensing Division on June 8, 2018.
16 (Williams Decl. ¶ 17.) The government had ninety days to evaluate the application for completeness and
17 mail CIH its determinations. (See Cal. Code Regs., tit. 22, § 80027, subd. (a).) Contrary to their statutory
18 duty, however, licensing officials did not respond until February 2019, when they emailed CIH eight pages
19 of documented “deficiencies” to the Refuge’s application. (Williams Decl. ¶¶ 20, 27, Ex. D.)

20 The government’s most pointed “deficiencies” were CIH’s perceived lack of detail on how it would
21 support LGBTQ children. In the government’s view, CIH failed to “[d]escribe how program will ensure
22 transportation services will be provided to outside activities to include [] LGBTQ programs and activities.
23 (Verif. Compl. ¶ 85.) Relatedly, CIH “[d]id not provide explanation/procedure to ensure there is no
24 discrimination against any youth or NMD [non-minor dependent] based on sexual orientation, gender
25 identity, or expression.” (*Ibid.*) And the charity failed to describe its “procedure for dispensing transition
26 related medication for Transgender Youth.” (*Id.*; Williams Decl. ¶ 32.)

27 These criticisms were baseless. For one, CIH had already addressed the application’s LGBTQ-
28 related items in good faith and without objection. (Verif. Compl. ¶ 103.) The Refuge’s application already

1 included an anti-discrimination policy expressly stating that CIH would not discriminate against a resident
2 child based on her sexual orientation or gender identity. (*Id.* ¶¶ 54, 68, 77.) And no rule or regulation
3 required STRTP caregivers to dispense transgender medication. (See generally Cal. Code Regs., tit. 22,
4 § 8000 et seq.) For these reasons, along with the government’s delayed response and the nature of the
5 “deficiencies,” CIH reached a simple conclusion: The licensing officials had decided that the charity’s
6 *Catholicity* was evidence that caretakers would discriminate against LGBTQ children. (Williams Decl.
7 ¶¶ 2, 29, 70.)

8 CIH was disheartened by these “deficiencies.” (Williams Decl. ¶ 44.) Even so, it revised the
9 Refuge’s application and resubmitted it on April 10. (Verif. Compl. ¶ 88; Williams Decl. ¶ 35.) Yet again,
10 months passed with no notice from the Department. (Verif. Compl. ¶ 89; Williams Decl. ¶ 40.) In July, a
11 licensing official finally emailed CIH a second round of documented deficiencies. (Verif. Compl. ¶¶ 91,
12 93; Williams Decl. ¶¶ 40-41, 42, Ex. G.) And again, CIH had apparently failed to provide “detail and
13 specifics on how STRTP affirms/supports LGBTQ, Gay, Bisexual, Transgender, Queer/Questioning,
14 and Gender Expansive youth.” The Department also criticized the Refuge’s Mission Statement:

15 Mission bullet states providing opportunities for their restoration in Jesus Christ... What is
16 [sic] the youth not religious? Does not have religious beliefs? Does not believe in Jesus
17 Christ/GOD? The statement being made with victims of trafficking being in the same sentence
18 is offensive. Youth who have been trafficked may have not lost their faith in their religion and it
should not be assumed that they have!

19 **3.2. The Department’s Religious Hostility toward CIH Surfaces at the Review Meeting**

20 On July 17, CIH met with licensing officials at the Department’s San Diego branch to review the
21 Refuge’s application. (Williams Decl. ¶ 50; Verif. Compl. ¶ 95.) Also present were administrators from
22 the County child welfare services and mental health departments, and Department officials in Sacramento
23 participated by phone. (Williams Decl. ¶¶ 50, 57; Verif. Compl. ¶ 95.) As soon as the meeting began, it
24 became clear that in the government’s view, CIH’s religious beliefs had no place in the State’s child
25 welfare system. (Williams Decl. ¶¶ 51-54, 62, 66.) Indeed, the government officials’ conduct during the
26 meeting, including statements made by the officials, exposed “elements of a clear and impermissible
27 hostility toward [CIH’s] sincere religious beliefs.” (*Masterpiece Cakeshop, Ltd. v. Colo. Civ. Rights Com.*
28 (2018) 138 S.Ct. 1719, 1729.)

1 For example, the officials immediately stated their disapproval of CIH’s Christ-centered mission.
2 (Williams Decl. ¶¶ 52-54, 57-59; Verif. Compl. ¶ 99.) Stacie Kinney, a Department policy analyst,
3 declared without explanation that CIH should remove all references to religion in the Refuge’s Mission
4 Statement. (Williams Decl. ¶¶ 52-54.) The government officials next probed CIH about its beliefs on
5 human sexuality. For instance, without citing a statute, a county child welfare services official asserted
6 that the agency “expects” the Refuge’s caregivers to personally drive residents to LGBTQ-affirming
7 activities. (Williams Decl. ¶ 60; Verif. Compl. ¶ 102.)

8 The officials then delved into CIH’s beliefs on contraception and abortion. Kinney asked whether
9 Refuge caregivers would drive a resident to “Planned Parenthood” to terminate her pregnancy and
10 whether caregivers “would provide condoms” to the residents. (Verif. Compl. ¶ 106.) Another licensing
11 official, Carol Anderson, speculated that resident girls would likely complain about CIH’s religious beliefs
12 and, in a thinly veiled threat, remarked that she would have to “write up” CIH. (Williams Decl. ¶ 62;
13 Verif. Compl. ¶ 108.)

14 Williams then asked whether the Department would deny the Refuge’s application because of CIH’s
15 religious beliefs. (Williams Decl. ¶ 109.) Kinney replied that “this is going to be a much bigger problem
16 than I thought” and that “we don’t normally hear this.” (Williams Decl. ¶ 59, Verif. Compl. ¶ 110.) As
17 the meeting ended, licensing official Carol Anderson restated the same position: “You’re just going to
18 have a problem with that religious thing.” (Williams Decl. ¶ 65; Verif. Compl. ¶ 114.)

19 **3.3. Licensing Officials Stonewall the Refuge’s Application**

20 CIH submitted its second revised application on August 6, 2019. (Williams Decl. ¶ 68; Verif. Compl.
21 ¶ 131.) Since then, the government has refused to make a determination. (Williams Decl. ¶ 69; Verif.
22 Compl. ¶ 133.) CIH sent the government follow-up letters in August and September, specifically noting
23 the considerable expense of maintaining the Refuge and pointing out that a therapeutic program for
24 commercially sexually exploited children was urgently needed. (Verif. Compl. ¶¶ 135, 137.) The
25 Department’s most recent contact with CIH is through an October 17 letter, which stated that the
26 government “needs additional time” to respond to CIH’s request for a response. (*Id.* ¶ 139.) The
27 government did not say how long that time would be.

28 ///

1 **3.4. The Department’s Preferential Treatment of another Prospective Licensee**

2 Another sign of the government’s hostility is the difference in treatment between CIH’s application
3 process and that of another nonprofit charity, Hidden Treasures. (Williams Decl. ¶ 70; Verif. Compl.
4 ¶¶ 141-144.) Hidden Treasures submitted its licensing application for its prospective STRTP, called
5 Tiffany’s Place, after CIH. Yet the Department granted Tiffany’s Place a provisional license last month.
6 (Williams Decl. ¶ 70.) CIH believes that the government did not impose a Mandate on Hidden Treasures
7 because, in the licensing officials’ determination, the organization did not have questionable religious
8 beliefs. (*Ibid.*) In other words, Hidden Treasures got the license because it said all the right things. That
9 the government issued a license to Tiffany’s Place but not to the Refuge supports a strong inference that
10 religious beliefs motivate the government’s decisionmaking, not whether an applicant meets the licensing
11 regulations.

12 **3.5. The Impact of the Department’s Discriminatory Mandate**

13 The record shows no indication that the Department is evaluating the Refuge’s application fairly and
14 neutrally, as required by law. (Cf. *Anderson v. El Dorado Cty.* (1967) 253 Cal.App.2d 611, 615–616 [holding
15 that county welfare agencies “are required to deal fairly and in good faith with each licensee with regulated
16 and licensed facilities as well as with the applicants who are in need of care.”].) On the contrary, the
17 Department’s written criticisms of the Refuge’s application, the officials’ statements made at the July
18 meeting, and the ongoing stonewalling all make clear the government is arbitrarily enforcing a Mandate
19 that conditions the Refuge’s license on CIH’s pledge—in both action and writing—to cooperate in
20 programs, activities and services that violate its sincere religious beliefs. Consequently, the government
21 is imposing irreparable penalties on CIH’s religious freedom, liberty of speech, and equal protection
22 rights.

23 On top of the irreparable injuries to CIH’s constitutional rights, the Mandate is causing CIH severe
24 economic harm. In the past four years, CIH has diverted hundreds of staff hours and thousands of dollars
25 in consulting fees to prepare the STRTP application. (Williams Decl. ¶¶ 13, 36, 71; Declaration of Amy
26 Vance [“Vance Decl.”] ¶¶ 8-10.) Regulations require group homes to be ready to open before licensure,
27 so CIH currently sinks \$15,000 *each month* to maintain the Refuge, which has sat empty for nearly *three*
28 *years*. (Williams Decl. ¶ 71.) And the uncertainty surrounding the Refuge has constrained CIH to cut back

1 on its fundraising activities. (Vance Decl. ¶¶ 2-4.) Meanwhile, the government’s stonewalling disrupts
2 CIH’s day-to-day operations, forcing it to reroute substantial time, effort, and resources from its adult
3 women’s program. (Vance Decl. ¶¶ 4-10; Williams Decl. ¶¶ 71, 75-76.) In short, the government has
4 constrained CIH to “undertake extraordinary measures” to open the Refuge, and its discriminatory
5 actions have threatened CIH with unrecoverable, irreparable economic harm. (*Flores v. Pierce* (9th Cir.
6 1980) 617 F.2d 1386, 1391.)

7 **4. PROCEDURAL HISTORY**

8 CIH filed its Verified Petition for Writ of Mandate and Complaint on November 19, 2019, challenging
9 the Mandate on state constitutional grounds.

10 **LEGAL STANDARD**

11 The standard of review for a requested TRO is well known. A court must evaluate two interrelated
12 factors: the likelihood that the plaintiff will prevail on the merits and the interim harm to each party if the
13 TRO is either granted or denied. (See *Church of Christ in Hollywood v. Superior Court* (2002) 99
14 Cal.App.4th 1244, 1251.) CIH meets these standards. *First*, it is likely to prevail on its California
15 Constitution claims. As the record shows, the Department is conditioning the Refuge’s license on CIH’s
16 pledge to abandon its sincere religious beliefs about human sexuality. Whatever the strength of the
17 government’s interest in substantially burdening CIH’s sincere beliefs, the Mandate is hardly the least
18 restrictive means of furthering that interest, because a resident has numerous transportation options.
19 Moreover, this Mandate is not just unconstitutional—it is an injustice to the teen girls desperately needing
20 a refuge *right now*. *Second*, without temporary injunctive relief, CIH will continue to suffer ongoing
21 irreparable injuries to its fundamental constitutional rights, along with severe economic damages. These
22 injuries far outweigh any harm the government would suffer from a TRO.

23 **ARGUMENT**

24 **1. CIH IS LIKELY TO SUCCEED ON ITS CALIFORNIA FREE EXERCISE CLAIM**

25 “Free exercise and enjoyment of religion without discrimination or preference are guaranteed.”
26 (Cal. Const., art. I, § 4.) Under the California Constitution, a regulation may not impose a substantial
27 burden on a claimant’s religious exercise unless the government proves under strict scrutiny that it is the
28 least restrictive means of furthering a compelling governmental interest. (See *Catholic Charities of*

1 *Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 562.) Here, the Mandate substantially burdens
2 CIH’s religious exercise because it forces the charity to affirm and cooperate in religiously objectionable
3 programs and activities. And the Mandate does not even come close to satisfying strict scrutiny.

4 **1.1. The Mandate Substantially Burdens CIH’s Sincere Religious Beliefs**

5 A regulation imposes a substantial burden on a claimant’s free exercise of religion when it interferes
6 with a “tenet or belief that is central to the religious doctrine.” (*People v. Peck* (1996) 52 Cal.App.4th 351,
7 359 [internal quotation marks omitted].) A regulation also “substantially burdens” religious exercise “if
8 it conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it
9 denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure
10 on an adherent to modify his behavior and to violate his beliefs....” (*Catholic Charities, supra*, 32 Cal.4th
11 527, 548 [internal quotation marks omitted].) The Mandate does both.

12 CIH’s apostolate is clearly an exercise of the charity’s religious beliefs. Guided by Christ, CIH cares
13 for survivors of human trafficking through corporal and spiritual works of mercy. (Williams Decl. ¶ 78;
14 Verif. Compl. ¶¶ 23-24.) Every aspect of its operations—from administrative decisions to comforting
15 those in pain—is a gift and duty from God. (Williams Decl. ¶ 78; Verif. Compl. ¶¶ 18, 23-24.) And out of
16 love for both God and its clients, CIH opposes any action it regards as immoral or harmful. (Williams
17 Decl. ¶ 78; Verif. Compl. ¶¶ 25-36.) This includes promoting sexual relations outside natural marriage,
18 facilitating abortion-causing drugs and contraceptives, and facilitating an abortion. (Williams Decl. ¶¶ 55-
19 58; Verif. Compl. ¶¶ 25-36.)

20 In direct violation of its religious exercise, the Mandate forces CIH to (a) certify *in writing* that it will
21 affirm LGBTQ relations and dispense transgender hormone medication; (b) *personally* drive residents to
22 obtain contraception and abortions, thus making it morally complicit in the prevention or destruction of
23 human life; or (c) withdraw its application and suffer crippling financial consequences.

24 To summarize the substantial burden on CIH: The Mandate forces it to

- 25 ○ apostatize through heretical acts, or at the least, compromise its religious beliefs;
- 26 ○ waste hundreds of thousands of dollars in housing costs, fees, and labor; and
- 27 ○ prevent the Refuge from saving girls who are at this very moment at risk of commercial
28 sexual exploitation

If the coercive impact of these consequences does not amount to a substantial burden, then it is hard to

1 see what would.

2 CIH does not object to a resident’s right to contraceptives and abortion, even if those actions go
3 against its religious beliefs. (Williams Decl. ¶¶ 55-58, 61; Verif. Compl. ¶¶ 107, 165.) Nor would CIH
4 prohibit a resident from exercising that right or any other personal right. (Williams Decl. ¶¶ 54, 61, 68;
5 Verif. Compl. ¶¶ 165.) But CIH has drawn a moral line consistent with its Catholic beliefs *between*
6 respecting a resident’s “personal rights” (*e.g.*, to attend extracurricular activities and to obtain
7 reproductive-related medical services) *and* facilitating those rights. It is not the government’s prerogative
8 to determine whether this line is unreasonable, illogical, or even offensive. (See *W. Virginia Bd. of Educ. v.*
9 *Barnette* (1943) 319 U.S. 624, 642. [“[N]o official, high or petty, can prescribe what shall be orthodox in
10 politics, nationalism, religion, or other matters of opinion.”].)

11 **1.2. The Mandate Fails Strict Scrutiny**

12 Because the Department is substantially burdening CIH’s religious exercise, the government must
13 show its actions are the least restrictive means of furthering a compelling governmental interest. (See
14 *People v. Woody* (1964) 61 Cal.2d 716, 718 [adopting the United States Supreme Court’s “strict scrutiny
15 test” set forth in *Sherbert v. Verner* (1963) 374 U.S. 398].) As discussed below, it cannot do so.

16 **1.2.1. Burdening CIH’s religious beliefs fails to advance the government’s** 17 **compelling interests**

18 In the strict scrutiny analysis, the compelling interest test requires a “focused inquiry.” (*Burwell v.*
19 *Hobby Lobby Stores, Inc.* (2014) 573 U.S. 682, 726 [internal quotation omitted].) The Court should “look[]
20 beyond broadly formulated interests” and instead “look to the marginal interest” in enforcing the
21 Mandate against CIH. (*Ibid.* [internal quotation marks omitted].) Based on the record evidence, the
22 government is discriminating against CIH to further two interests—LGBTQ equality and reproductive
23 health. To be sure, the State has a compelling governmental interest in prohibiting “sexual orientation
24 discrimination.” (*N. Coast Women’s Care Med. Grp., Inc. v. Superior Court* (2008) 44 Cal.4th 1145, 1158.)
25 So too in “ensuring full and equal access to medical treatment for all its residents.” (*Minton v. Dignity*
26 *Health* (2019) 39 Cal.App.5th 1155, 1165.) But the Department faces two critical problems.

27 First, the government’s asserted harms must be “real, not merely conjectural, and that the regulation
28 will in fact alleviate these harms in a direct and material way.” (*Turner Broad. Sys. Inc. v. FCC* (1994) 512

1 U.S. 624, 664.) CIH does not challenge a resident’s access to lifestyle-affirming events and reproductive
2 services. (Verif. Compl. ¶ 165.) CIH merely objects to cooperating in those things. And despite CIH’s
3 requests, licensing officials have failed to explain how the charity’s religious beliefs endanger the
4 government’s interests in LGBTQ equality and reproductive health. Without more, the mere “invocation
5 of the general characteristics” of equality or preventative services “cannot carry the day.” (*Gonzales v. O*
6 *Centro Espírita Beneficente União do Vegetal* (2006) 546 U.S. 418, 432.)

7 Second, an interest cannot be “compelling” where the government “fails to enact feasible measures
8 to restrict other conduct producing substantial harm or alleged harm of the same sort.” (*Church of Lukumi*
9 *Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 546.) The Department broadly grants formal
10 waivers and exceptions to many child welfare regulations. (Verif. Compl. ¶¶ 67-68.)¹ And specifically, the
11 licensing regulations are riddled with discretionary exceptions to providing transportation to programs,
12 activities, and services. (Verif. Compl. ¶¶ 67-71.) For example, facility caregivers have broad discretion
13 under the statutorily created “Reasonable and Prudent Parent Standard.” (ILS, § 87001; Welf. & Inst.
14 Code, § 362.05.) Under this standard, caregivers must “ensure transportation is provided” to
15 “[e]xtracurricular, enrichment, and social activities” *only if* “transportation to these activities is
16 reasonable.” (ILS, § 87068.2.) In addition, a child’s “Needs and Services Plan” prohibits caregivers from
17 supporting any program or activity that would impair the child’s health and safety. (See Cal. Dept. of Soc.
18 Servs., Eval. Man: Office Functions, § 2-5300.)

19 The point is that if the licensing regulations excuse absolute compliance under these concepts, then
20 surely sincere religious objections are a good enough reason to excuse compliance with a discretionary,
21 arbitrary Mandate. The government simply “cannot be regarded as protecting an interest of the highest
22 order when it leaves appreciable damage to that supposedly vital interest unprohibited.” (*Church of*
23 *Lukumi Babalu Aye, Inc. v. City of Hialeah, supra*, 508 U.S. 520, 547 [cleaned up].)

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25
26 ¹ Remarkably, the Department enforces regulations that actually accommodate a prospective foster care
27 provider that “objects to participating in adolescent pregnancy prevention training or the dissemination
28 of information” promoting contraception and abortion. (Welf. & Inst. Code, § 16521.5.) “If the provider
objects, the county case manager shall assume this responsibility.” (*Ibid.*)

1 **1.2.2. The many available alternatives show the Mandate is not the least restrictive**
2 **means of furthering any interest**

3 Under strict scrutiny, the Department must show that the Mandate “is the least restrictive means”
4 of furthering its interests. (*Thomas v. Review Bd. of Ind. Emp’t Sec. Div.* (1981) 450 U.S. 707, 718.) “This
5 is an extremely demanding standard.” (*Ctr. for Bio-Ethical Reform, Inc. v. Irvine Co.* (2019) 37 Cal.App.5th
6 97, 105.) Indeed, “[a] government action burdening free exercise, even though justified by a compelling
7 state interest, is impermissible if *any* action imposing a lesser burden on religion would satisfy that
8 interest.” (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1118 [emphasis added].) Thus, if a less
9 restrictive alternative would serve its purpose, the government “must use that alternative.” (*United States*
10 *v. Playboy Entm’t Grp., Inc.* (2000) 529 U.S. 803, 813.)

11 Even if the Department could show that forcing CIH to comply with the Mandate furthers a
12 compelling interest, it has many less restrictive ways of advancing those interests without forcing CIH’s
13 cooperation. In fact, the welfare statutes and regulations already provide numerous alternatives, subsidies,
14 and personal options:

- 15 ○ “Child welfare services may include ... a range of service-funded activities, including ...
16 *transportation*.... These service-funded activities shall be available to children and their
17 families in all phases of the child welfare program in accordance with the child’s case plan
18 and departmental regulations.” (Welf. & Inst. Code, § 16501 [emphasis added].)
- 19 ○ “A caregiver may ... allow an *alternative* caregiver to provide care and supervision to the
20 foster child, unless prohibited by the foster child’s social worker or probation officer or court
21 order.” (Welf. & Inst. Code, § 16501.02(b) [emphasis added].)
- 22 ○ County agencies may use “*volunteer individuals* to supplement professional child welfare
23 services by providing *ancillary* support services in accordance with regulations adopted by
24 [the Department].” (Welf. & Inst. Code, § 16501 [emphasis added].)

25 Not one reason exists why these “plausible, less restrictive alternative[s] would be ineffective.” (*United*
26 *States v. Playboy Entm’t Grp., Inc., supra*, 529 U.S. 803, 824.)

27 What is more, the Department could subsidize its objectives. The most straightforward way to do
28 this would be for the government to tender foster children an electronic benefits transfer (EBT) card for
transportation. The State already uses the EBT system with public assistance programs such as CalFresh
and CalWORKs. (See Welf. & Inst. Code, § 10065.) Another possibility is the government could grant

1 credits to ride-sharing companies to offer discounted or no-cost transportation for foster youth. Or the
2 government could duplicate its family reunification services policy that *requires* “the county welfare
3 department, the sheriff’s department, and other appropriate entities” to coordinate transportation for the
4 foster child. (Welf. & Inst. Code, § 361.5.)

5 All these transportation options raise a simple question: With so many less restrictive means, what
6 compelling interest is served by mandating, as a condition of licensing, that a Refuge caretaker drive a
7 resident to religiously objectionable events and activities? If the above options work in other situations,
8 then it is crystal clear the Department is foisting the Mandate on CIH for no reason other than the
9 charity’s Catholic beliefs. In sum, because the government can achieve its asserted interests through less
10 restrictive means, the Mandate cannot survive strict scrutiny.

11 **2. THE MANDATE VIOLATES CIH’S EQUAL PROTECTION RIGHTS**

12 In enforcing the Mandate against CIH but not against other STRTP applicants, the Department is
13 violating CIH’s equal protection rights. Under the California Constitution, “[a] person may not be ...
14 denied equal protection of the laws.” (Cal. Const., art. I, § 7, subd. (a).) “At core, the requirement of
15 equal protection ensures that the government does not treat a group of people unequally without some
16 justification.” (*People v. Chatman* (2018) 4 Cal.5th 277, 288.) A regulation violates a claimant’s equal
17 protection rights under two basic principles. First, a regulation is unlawful if it treats similarly situated
18 groups differently under the challenged law. (See *Connerly v. State Pers. Bd.* (2001) 92 Cal.App.4th 16, 31.)
19 Second, a regulation is unconstitutional if it impinges a fundamental right. In an equal protection analysis,
20 a regulation that either treats similarly situated groups differently based on “suspect classifications” such
21 as religion or that touches on “fundamental interests” is subject to strict scrutiny. (See *Warden v. State*
22 *Bar* (1999) 21 Cal.4th 628, 641.)

23 **2.1. The Department Treats CIH Differently from Similarly Situated Applicants**

24 The Department is violating CIH’s equal protection rights because the Mandate treats Catholic
25 licensing applicants “differently” from similarly situated applicants. All of the nonprofit applicants are
26 similarly situated under state and federal law. Yet the Mandate draws an arbitrary line between Catholic
27 applicants and non-Catholic applicants, separating two groups with no other relevant distinctions. A clear-
28 cut example of the Department’s discrimination is the preferential licensing of Tiffany’s Place. (Williams

1 Decl. ¶ 70; Verif. Compl. ¶¶ 141-144.) By enforcing a government policy directed only at CIH’s Catholic
2 beliefs and practices, the government is necessarily and explicitly treating similarly situated applicants
3 differently based only on a religious criterion. Put simply, the Mandate discriminates against organizations
4 faithful to Catholic teaching but not against prospective licensees with other or no religious affiliations. In
5 dividing providers along these religious lines, the government is imposing a penalty on CIH’s equal
6 protection rights that triggers the most exacting scrutiny.

7 **2.2. The Department is Intentionally Discriminating against CIH for its Religious Beliefs**

8 The Department is violating Children of the Immaculate Heart’s equal protection rights by
9 discriminating against it because of its Catholic beliefs. “California cases establish that a person’s religion
10 is a suspect classification for equal protection purposes.” (*In re Marriage Cases* (2008) 43 Cal.4th 757, 841
11 [citing cases]; cf. *In re Ferguson* (1961) 55 Cal.2d 663, 670 [“Freedom of religion is protected as a
12 fundamental right by provisions in the California and United States Constitutions.”].) Here, the
13 “historical background” of the Mandate, “the specific series of events leading to [its] enactment” and
14 enforcement against CIH, and the “contemporaneous statements made by members of the
15 decisionmaking body” all show that the government’s overriding objective is to eliminate CIH’s moral
16 and religious objections to pro-LGBTQ events and abortion-related services. (*Masterpiece Cakeshop, Ltd.*
17 *v. Colo. Civ. Rights Com.*, *supra*, 138 S.Ct. 1719, 1731 [quotations omitted].) At its root, the government
18 deliberately placed CIH in an impossible dilemma: cooperate in religiously objectionable programs and
19 activities or give up on opening the Refuge. Whatever the outer boundaries of the State’s equal protection
20 clause permit, those boundaries surely prohibit that type of government discrimination.

21 **3. THE DEPARTMENT IS INFLECTING ONGOING IRREPARABLE HARM**

22 **3.1. Harm to CIH’s Constitutional Rights**

23 The Department’s warning to Children of the Immaculate Heart is unmistakably clear: Give in or
24 give up. Both choices threaten CIH with irreparable harm. On one hand, cooperating in religiously
25 objectionable programs and activities is the epitome of irreparable injury. Once CIH is forced to violate
26 its conscience, future remedies cannot undo the past. (Cf. *Ketchens v. Reiner* (1987) 194 Cal.App.3d 470,
27 480, quoting *Elrod v. Burns* (1976) 427 U.S. 347, 373 [“The loss of First Amendment freedoms, for even
28 minimal periods of time, unquestionably constitutes irreparable injury.”].) In both cases, the Mandate

1 prevents CIH from freely exercising its religion. (Williams Decl. ¶¶ 74, 76, 78-79, 81; Verif. Compl.
2 ¶¶ 161, 170-171.) The denial of constitutional rights is, per se, irreparable harm.

3 **3.2. Severe Economic Harm and Damages**

4 CIH also suffers unrecoverable economic losses every week the Mandate remains in effect. (Williams
5 Decl. ¶ 71; Vance Decl. ¶¶ 7-8; Verif. Compl. ¶ 173.) For instance, CIH spends \$15,000 each month to
6 lease and maintain the Refuge. (Verif. Compl. ¶¶ 134-135, 137, 145.) And if the Department continues to
7 enforce the Mandate while this case is adjudicated, CIH could be forced to shut down the Refuge. (Vance
8 Decl. ¶¶ 7-8; Verif. Compl. ¶ 173.) Consequently, hundreds of thousands of dollars in donations and
9 thousands of hours of work would be lost. (Vance Decl. ¶¶ 2-10.)

10 **3.3. Harm to Sex-Trafficked Girls Who Need Immediate Care and Treatment**

11 CIH established the Refuge to fight the child sex-trafficking crisis in San Diego County. It is
12 indisputable that this crisis is serious, immediate, and real. (Williams Decl. ¶ 75; Declaration of Robert
13 Moscato [“Moscato Decl.”] ¶¶ 7-12; Verif. Compl. ¶¶ 41-43.) Yet the Mandate bars CIH from housing
14 and treating commercially sexually exploited children. Every day the Refuge stays shuttered is one more
15 day a young girl will suffer physical, emotional, and psychological harm. (Moscato Decl. ¶ 10.) It is also
16 one more day a gangster or pimp can profit off that teen girl. (*Id.* ¶¶ 4-5.) This *ongoing* endangerment of
17 children is, beyond cavil, irreparable harm. So too, is depriving CIH of the opportunity to save these girls.
18 In short, the immediate and severe nature of these harms to CIH—and the inexcusable impact the
19 Department’s actions are already having on sex-trafficked youth—easily satisfies the irreparable harm
20 standard. Damages simply cannot compensate those harms; only an order from this Court could prevent
21 them.

22 By contrast, there is no countervailing harm to the Department. For one, vindicating CIH’s
23 constitutional rights could not plausibly harm any government interest. A TRO would merely prevent the
24 government from evaluating and making a determination on the Refuge’s STRTP license on the basis of
25 CIH’s religious status and beliefs. The government would otherwise remain free to evaluate applicants
26 and issue licenses fairly and neutrally. And by removing religious beliefs as an eligibility criterion, the
27 Department would be meeting the compelling interest in providing welfare services for commercially
28 sexually exploited foster children, particularly short-term therapeutic care. Indeed, in a September 2017

1 letter to the Department endorsing CIH’s application to open the Refuge, San Diego County District
2 Attorney Summer Stephan recognized “the big gap in services” for minor victims of sex trafficking and
3 specifically noted that the Refuge would “fill this important gap in services.” (Williams Decl. ¶ 30, Ex.
4 E.) Thus, a STRTP licensed to care for commercially sexually exploited children would actually advance
5 the Legislature’s goal “to reduce the vulnerability of all children in California communities to incidents
6 of commercial sexual exploitation, and adequately serve children who have been sexually exploited....”
7 (Welf. & Inst. Code, § 16524.6.) That is precisely what the Refuge is meant to do. (Verif. Compl. ¶ 44.)
8 In short, especially when balanced against the serious, ongoing irreparable injury inflicted on CIH, any
9 harm the Department might claim from a TRO is *de minimis*.

10 **SCOPE OF TEMPORARY RESTRAINING ORDER**

11 Children of the Immaculate Heart seeks a narrow TRO, as set forth in the accompanying Proposed
12 Order. In sum, CIH simply seeks an order directing Defendants to review and make a determination on
13 its application in a neutral and fair manner, without discriminating against CIH on the basis of its sincere
14 religious beliefs about human sexuality and reproduction.

15 **CONCLUSION**

16 *Right now*, young girls in San Diego County are being pimped and prostituted. And *right now*, the
17 Refuge can open its doors and start saving them. Yet the Department is prioritizing an anti-Catholic
18 political agenda over rescuing these girls enslaved in sex trafficking. Not only are the government’s actions
19 profoundly immoral; they are unconstitutional. For all the reasons argued above, the Court should
20 temporarily enjoin the Department’s ongoing religious discrimination and open the door for Children of
21 the Immaculate Heart to begin saving those girls.

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Respectfully submitted,

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20 * Admission *pro hac vice* pending
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