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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
AT YAKIMA**

STATE OF WASHINGTON,

Plaintiff,

v.

ALEX M. AZAR II, et al.,

Defendants.

No. 1:19-cv-03040-SAB

DECLARATION OF
CONNIE CANTRELL IN
SUPPORT OF NATIONAL
FAMILY PLANNING &
REPRODUCTIVE HEALTH
ASSOCIATION'S
MOTION FOR A PRELIMINARY
INJUNCTION

NATIONAL FAMILY PLANNING &
REPRODUCTIVE HEALTH
ASSOCIATION, et al.,

Plaintiffs,

v.

ALEX M. AZAR II, et al.,

Defendants.

DECLARATION OF CONNIE CANTRELL IN
SUPPORT OF NFPRHA'S MOTION FOR A
PRELIMINARY INJUNCTION

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1 Connie Cantrell declares and states as follows:

2 1. I am the Executive Director of the Feminist Women’s Health Center
3 (FWHC), doing business as Cedar River Clinics. FWHC is a plaintiff in this action
4 and one of 16 sub-recipients of the grant awarded to the Washington State
5 Department of Health (“WA DOH”) Family Planning Program for federally-
6 funded Title X family planning services. Plaintiff FWHC is also a member of the
7 National Family Planning & Reproductive Health Association (“NFPRHA”), the
8 first named plaintiff.
9

10 2. As the Executive Director of FWHC, I am responsible for overseeing
11 all aspects of our Title X program, in conjunction with the numerous clinical and
12 other staff who implement this resource-intensive program for FWHC on a day-to-
13 day basis. I provide this declaration on behalf of FWHC, based on my personal
14 knowledge, experience, and access to our business records.
15

16 3. I have worked in the health care field for over 30 years. Prior to
17 becoming FWHC’s Executive Director in 2014, I was the Director of Operations &
18 Quality Assurance Risk Management (QARM) for almost eight years. Before that,
19 I served as Clinic Manager at one of FWHC’s family planning clinics for almost
20 13 years. Prior to my 26 years at FWHC, I worked in home care for medically
21 fragile children and at a skilled nursing facility. During my career, I have often
22 expanded my knowledge and skillset through course work in health care
23

1 administration, patient advocacy, reproductive health, and family planning
2 services.

3 4. I am familiar with the key provisions of the new Title X regulations
4 (“New Rule”). If the New Rule were to take effect, it would cause significant and
5 immediate harm to FWHC, our providers, and the patients we serve, as well as to
6 the other approximately 4 million low-income clients around the country who
7 depend on the Title X program for access to critical, high-quality family planning
8 care each year.
9

10 **Background on FWHC**

11 5. FWHC is a 501(c)(3), nonprofit organization, founded in Yakima in
12 1979 as an independent, reproductive health care provider. We are guided by the
13 mission to ensure that individuals have local access to unbiased reproductive health
14 services and education in order to achieve reproductive freedom and determine
15 their own destinies.
16

17 6. FWHC operates three health center sites in Seattle, Tacoma, and
18 Renton. Our corporate headquarters office, which handles administrative
19 operations for all of our locations, is located in Yakima. In the 1980s, we were
20 able to purchase our building in Yakima, which became a key piece of the financial
21 foundation for our organization. In 2000, we purchased a second building in
22 Tacoma. We lease property in multi-tenant, medical office space for the health
23

1 centers in Renton and Seattle. FWHC has been certified to provide Ambulatory
2 Office Based Health Care by the Accreditation Association for Ambulatory Health
3 Care. All of our clinics are located on major bus routes for easy access to public
4 transportation.

5
6 7. For 37 years, FWHC has dedicated itself to the health care needs of
7 the communities it serves and has experienced continuous growth in its family
8 planning program. In 2004, we were invited to join the WA DOH's Family
9 Planning Leadership Team. In that same year we officially began doing business
10 as Cedar River Clinics to provide greater community awareness of our three clinics
11 as one entity. In addition to our family planning care, FWHC also provides
12 abortion care at each of our clinics.

13
14 8. In 2012, due to patient and staff requests, we examined LGBTQ
15 health care in our communities. We discovered that LGBTQ individuals face
16 challenges and intolerance when seeking health care and are underserved. In 2013,
17 we launched our LGBTQ Wellness Services, including family planning services,
18 and our clinics have subsequently been nationally recognized as a "Leader in
19 LGBTQ Healthcare Equality" by the Human Rights Campaign Foundation.

20
21 9. Also in 2012, we expanded our relationship with the University of
22 Washington medical school ("UW") and were selected to participate in the creation
23 of the UW's first Family Planning Fellowship training program. Working under

1 the guidance of Dr. Sarah Prager, we continue that relationship with the UW and
2 have created a learning model that is being used in physician and other clinical
3 training programs nationwide. In addition, FWHC frequently hosts nursing and
4 medical assistant students for internships.

5
6 10. Around the beginning of 2015, Washington State approached FWHC
7 and asked us to consider applying to become part of its Title X project. As I
8 describe further below, FWHC successfully applied to become a Title X sub-
9 recipient in December 2016 and has received Title X funds since April 1, 2017.

10 11. FWHC employs a staff of 55 people, including nine employees in our
11 corporate office in Yakima, which handles payroll, accounting, and reporting
12 responsibilities, among others. All health services are provided by Physicians,
13 Advanced Practice Clinicians, Registered Nurses, and Registered and Certified
14 Medical Assistants. Our staff members' demographics represent the communities
15 they live and work in, representing many different cultures and speaking several
16 different languages: Spanish, Hindi, Punjabi, Romanian, Mien, Cantonese, and
17 Mandarin.
18

19 12. In addition to other clinical needs, there is a critical need for access to
20 testing, education, and prevention for sexually transmitted infections (STIs) in our
21 state. According to Center for Disease Control data, from 2013 to 2017, rates of
22 chlamydia, gonorrhea, and syphilis have all risen in Washington State.
23

1 13. FWHC's health centers offer all FDA-approved contraceptive options,
2 including natural family planning, and provide counseling regarding all of these
3 options. Contraceptive supplies are stocked regularly to ensure all patients can
4 receive the method of their choice the same day of their visit. We also provide
5 pregnancy testing and counseling; testing, treatment, and prevention for STIs,
6 including HIV; and treatment of minor gynecologic problems (such as vaginitis
7 and urinary tract infections); cervical and breast cancer screenings, and basic
8 infertility advice and screening.
9

10 14. FWHC also participates in various public education efforts, including
11 outreach at health fairs and community events, and provides speakers to schools
12 and organizations relating to reproductive health and family planning.
13

14 15. FWHC is an organizational NFPRHA member, along with WA DOH
15 and the other sub-recipients of its Title X grant. I also have an individual
16 NFPRHA membership. In addition, FWHC pays dues from its Yakima
17 headquarters to the Abortion Care Network, the Feminist Abortion Network, and
18 the National Abortion Federation.
19

20 Applying for Title X Funding

21 16. Four and a half years ago, WA DOH approached us about applying
22 for Title X funds, as we had already been providing high-quality family planning
23 care, including for low-income, uninsured, or underinsured patients, in conjunction

1 with the Department of Health for almost 40 years. With our ongoing sources of
2 income at that time, including some support from the WA DOH, we could not
3 offer all the low-income patients who needed it completely free family planning
4 care, including free access to their contraceptive method of choice.

5 17. Not all of FWHC's patients qualify for Medicaid or have other
6 insurance sufficient to cover the costs of their family planning care. Therefore,
7 prior to FWHC becoming a Title X sub-recipient, even though we were committed
8 to doing everything we could to offer subsidized contraceptive care and help any
9 low-income patients, FWHC's financial constraints sometimes interfered. At
10 times, for example, we could only offer clients birth control pills instead of an
11 intrauterine device (IUD), even though the patient requested the more effective and
12 more costly IUD.
13

14 18. With Title X, we could ensure that each patient could choose which
15 contraceptive method was best for them and adopt that method, rather than only
16 having access to the method(s) they (or FWHC subsidizing their contraceptive
17 care) could afford. In addition, the Title X funding would help us ensure that we
18 could provide access to contraceptives and contraceptive counseling at no or
19 reduced cost to qualifying patients right after we saw patients in our separate
20 abortion practice, a particularly important time for offering care to those women to
21 effectively help them achieve their goal of avoiding unintended pregnancies.
22
23

1 19. For more than a year we researched Title X's requirements, weighed
2 carefully the decision to apply, and ultimately proceeded to do so, because FWHC
3 is committed to making affordable contraceptive care accessible to all, especially
4 those with limited economic resources. The process of applying for Title X sub-
5 recipient funding proved very time-consuming and challenging. We established a
6 four-person team to put together the application, including myself and three others.
7 We invested considerable resources into learning the structure of Title X, how to
8 comply with all of the Title X rules and regulations, and how to establish a
9 successful Title X-funded program.
10

11 **Establishing Our Title X Program**

12 20. We submitted a twenty-page narrative proposal and dozens of other
13 pages of financial, clinical, and administrative information to the WA DOH in
14 August 2016. We found out in December 2016 that our application to become a
15 Title X sub-recipient had been successful and that we had until April 1, 2017 to be
16 fully ready to serve in that role. We then had to train and educate our staff, help
17 them learn the new reporting and recordkeeping requirements, and adopt new
18 protocols. We had to change our accounting and payroll practices, and take many
19 other steps required by Title X, all before we started receiving federal funds.
20
21

22 21. All existing staff had to complete the following trainings prior to
23 providing Title X care, and we have required the same of new employees that

1 FWHC hired after joining Title X: Mandated Child Abuse Reporting Law,
2 Counseling Adolescents about Sexual Coercion and Abuse, Human Trafficking,
3 Family Planning Basics, and Quality Contraceptive Counseling and Education.
4 We also mandate that employees review the QFP (“Providing Quality Family
5 Planning Services: Recommendations of CDC and Office of Population Affairs”) and the Program Requirements for Title X Funded Family Planning Projects, and
6
7 employees must sign acknowledgement forms that they have done so.
8

9 22. In order to keep current with best clinical practices, FWHC
10 implemented an electronic health records (EHR) system for all of its health center
11 sites in 2012. It was a huge and costly undertaking. FWHC uses the NextGen
12 Enterprise Practice Management/Electronic Medical Records system; it is the only
13 health records and practice management system FWHC has. The NextGen system
14 holds all patient medical records, regardless of the clinic site or reason for any
15 visits, which ensures that clinicians always have access to our patients’ full
16 medical information and history, and that their ongoing care is based on that
17 complete record. NextGen also includes coding to describe the care provided, and
18 for Medicaid and private billing purposes, so that we can manage our business
19 based on the specifics of the care we provide.
20
21

22 23. When we joined the Title X program, FWHC established separate
23 NextGen templates within our single EHR system for Title X and abortion

1 respectively. That allows FWHC staff to chart and code Title X visits on one
2 template, and chart and code abortion visits on the separate abortion template, but
3 both are housed within the same NextGen system. A patient's full medical records
4 are available to any clinician, which is the essential purpose of integrated
5 electronic health records, just as all billing information on NextGen is available to
6 our administrative personnel.
7

8 24. Our experience with EHR is that even small adjustments to the system
9 are very costly and can easily run over \$10,000 per change; that was the case when
10 we had to make adjustments to facilitate client visit reporting for the federal
11 Family Planning Annual Report ("FPAR") to WA DOH, as we ramped up our
12 Title X program. When we first purchased and installed the EHR system, our costs
13 were over \$100,000.
14

15 25. FWHC also must track staff time for Title X family planning care and
16 pay staff for that care out of our family planning project funds, while we pay staff
17 for abortion-related care out of separate funds. FWHC created a new department
18 in its payroll system to do so, and we keep ongoing records of actual staff
19 utilization that then determine payments to staff from the two different payroll
20 departments and budgets.
21

22 26. Establishing the Title X practices and procedures at FWHC led to
23 more complicated administrative and record-keeping tasks for our clinical staff.

1 We lost two nurse practitioners during the summer and fall of 2017 because of
2 these new burdens and administrative rules. Those clinicians did not like the new
3 record-keeping requirements and other administrative tasks that added to their
4 patient care responsibilities, and wanted instead to spend more of their time
5 providing that care.
6

7 27. It has been difficult to replace those nurse practitioners. We have
8 since hired one full-time replacement, but otherwise are relying on coverage from
9 temporary staffing services or extra help from our existing staff. The market for
10 qualified non-physician clinician candidates is very tight, and we seek not only
11 clinicians who provide quality care but also those that are willing to accommodate
12 the current Title X record-keeping and administrative tasks in order to serve low-
13 income clients and advance the purposes of Title X.
14

15 28. FWHC had its first administrative audit as a Title X provider in
16 January 2018 and its first clinical site review in February 2018. Both of these
17 reviews went well. There were no issues noted during the January 2018 fiscal
18 monitoring review and the WA DOH observed that our “books and records are in
19 very good order.” And during the February on-site review, the Department noted
20 that FWHC is “administered and maintained exceptionally well by qualified,
21 caring staff” and recognized us as “true leaders in the forefront of family planning
22 services, which include LGBTQ wellness services.”
23

1 29. As a sub-recipient of the Washington State grantee, FWHC received
2 approximately \$195,000 in federal Title X funds for fiscal year 2018, which ran
3 from October 1, 2017, to September 30, 2018. Our Title X sub-recipient funding
4 continues at approximately the same level this fiscal year.

5 30. In 2018, we provided approximately 3,100 Title X visits in our three
6 clinics. During that year, we provided contraceptive care to approximately 2,400
7 Title X patients. We also provided pregnancy testing and counseling to 535 Title
8 X patients in 2018.

9 31. Under the standards set by the federal government, almost all of the
10 clients served through FWHC's Title X project qualify for free or reduced cost
11 services based on their income level. Thirty-five percent of our Title X patients
12 have incomes at or below 100% of the federal poverty level—which was \$12,140
13 for a single-person household and \$20,780 for a household of three in 2018. These
14 clients are entitled to services free of charge through the Title X program. Another
15 59% have incomes at or below 250% of the poverty level and receive care based
16 on a sliding scale.

17 32. Thirteen percent of our clients are Hispanic and 23% are Black. We
18 serve primarily young adults; 52% of our project's clients are between 20 and 29
19 and an additional 33% are between 30 and 39. Approximately 3% of our project's
20 clients are under 18.

1 33. Under current Title X regulations, FWHC is able to provide
 2 contraception on the same day as an abortion service, as a separate, second
 3 consecutive appointment for the patient. Our abortion patients often cannot afford
 4 contraception and they do not wish to be pregnant. Providing both family planning
 5 care and abortion care on the same date at the same health center site saves patients
 6 the need for a second appointment, which could be difficult to accomplish for the
 7 patient or otherwise be delayed, and reduces the risk of another unintended
 8 pregnancy. The Title X contraceptive services and abortion services are provided
 9 and funded separately, based on Title X requirements, but received efficiently on
 10 the same day by the patients who desire that follow-on contraceptive counseling
 11 and access to contraceptives, including IUDs.

12
 13 34. In addition, FWHC also schedules designated family planning clinic
 14 times to serve Title X patients who make appointments or walk in for family
 15 planning care. Those clinics take place at the same three health centers, but at
 16 different times than abortion care is scheduled.

17 **The Impending Harms from the New Title X Regulations**

18
 19 35. The New Rule would immediately harm FWHC, our mission, our
 20 clinicians, our patients, and the communities we serve in numerous ways.

21
 22 36. As described below, should the New Rule be allowed to take effect, it
 23 would force many Title X providers, including FWHC, to leave the program,

1 which would prevent FWHC and others from providing the care their patients
2 need. In Washington State, almost 90% of all Title X patients are served by
3 organizations that provide abortion and that are committed to pregnant patients'
4 access to full information and referrals about their options, including abortion. In
5 addition to FWHC, as an independent abortion provider, that includes Planned
6 Parenthood health centers. Planned Parenthood has already made clear that its
7 clinics would not be able to continue providing care under the terms of the New
8 Rule. If FWHC and the Washington State Planned Parenthood clinics are pushed
9 out of Title X, no other Title X providers in the state have the capacity to suddenly
10 care for all of these patients, which would create huge service gaps and harm an
11 already underserved population. Moreover, all of those lost Title X provider
12 organizations would lose the Title X funds they have relied upon, and have fewer
13 funds to provide family planning care to those in need of such services.
14
15

16 37. The New Rule would have this disruptive effect, *first*, because it
17 distorts routine, standard-of-care pregnancy counseling. The New Rule would
18 interfere with clinician-patient communications, prevent FWHC from providing
19 abortion referrals, and require our clinicians to compromise ethical principles and
20 professional standards. In keeping with the current Title X regulations, our
21 policies and procedures regarding pregnancy counseling ensure that the
22 information provided is unbiased and factual. Our staff responds to patient cues
23

1 and preferences, and provides information about all options unless the patient
2 wishes otherwise: carrying the pregnancy to term, adoption or infant/foster care,
3 and pregnancy termination. The New Rule would unreasonably limit provider
4 speech, forbidding referral upon request for one option only, abortion, while
5 requiring prenatal referral even when not desired.
6

7 38. This is not an approach that FWHC could use with its patients. The
8 organization strongly believes in providing patients with unbiased information so
9 that they have the freedom to make their own reproductive decisions and control
10 their own destiny.

11 39. The New Rule singles out abortion as the only out-of-Title X program
12 care for which FWHC would not be able to directly or indirectly refer Title X
13 patients. At the same time, the New Rule requires us to refer to all other types of
14 out-of-program health care in any instance where “medically necessary,” as well as
15 to provide for coordination and use of referral arrangements to help patients in any
16 other way.
17

18 40. Again, FWHC could not agree to arbitrarily cut off our Title X
19 patients from referrals to abortion care in this fashion. That would require our
20 clinicians to pretend that they had no knowledge of FWHC’s other practice areas,
21 though those are separate from the Title X program, and require our staff to silently
22
23

1 and misleadingly turn away patients from any referral to a type of care they
2 themselves might provide, at FWHC but outside Title X.

3 41. Moreover, the New Rule not only requires that our providers withhold
4 information, but also mandates FWHC to refer all pregnant patients for prenatal
5 and/or social services related to carrying their pregnancy to term, even if the
6 patient does not wish to receive that type of care. Additionally, the New Rule only
7 allows doctors and advanced practice clinicians with a graduate level degree to
8 conduct pregnancy counseling. This would strain FWHC resources if we were to
9 try to comply. Pregnancy counseling is often conducted at our clinics by providers
10 who may not have a graduate level degree but do have the relevant training and
11 expertise. Plus, for those clinicians who are allowed to provide pregnancy
12 counseling, the New Rule requires them to discuss carrying the pregnancy to term
13 even if the patient is only interested in discussing abortion. These coercive, newly
14 required steps would contradict a central aspect of Title X care to which FWHC is
15 deeply committed—that patients freely make voluntary choices about the
16 counseling or other care they receive.

17 42. *Second*, the New Rule also imposes physical facility, electronic
18 system, and staff separation requirements that would force abortion providers like
19 FWHC out of the Title X program because it would not be financially possible or
20 rational to comply.
21
22
23

1 43. FWHC, for example, could not finance the cost of installing a second,
2 completely separate EHR system. Its cost would immediately eat up more than
3 half of the annual federal funds we receive to provide Title X care, and make it not
4 cost effective to be in the Title X program. Indeed, we would apparently not even
5 be able to attempt to fund such major “infrastructure” with federal monies, but
6 would have to find those large sums elsewhere, because the New Rule imposes
7 new limits on funding for infrastructure versus “direct implementation” (or “direct
8 services”) purposes. Moreover, we already have a fully functional integrated
9 system, consistent with current best practices, and creating two different ones
10 would complicate medical care and increase risks for patients, because providers
11 would not have integrated access to their complete medical records. FWHC could
12 not set back our medical standards in this way.
13

14 44. It is also not feasible or logical to have to hire two completely
15 different staffs, or obtain and equip duplicate workspaces. As I noted above,
16 FWHC confronts difficulty in hiring qualified staff, particularly non-physician
17 clinicians, and requiring us to end our use of staff part-time for Title X care and
18 part-time for abortion care would harm our ability to care for Title X patients.
19 Staff and real estate are two of our highest expenses. We have invested in our own
20 buildings and rented other health center space in locations accessible to our Title X
21 clients. Requiring us to undertake complete physical separation of any abortion
22
23

1 care or administrative services, or activities that support access to abortion, on the
2 one hand, and any Title X services and administration on the other, would swamp
3 the amount of Title X funds we receive, and not make any financial sense.

4 45. If we were to try to comply with the New Rule, our patients may have
5 difficulty even finding us and/or scheduling appointments because we would have
6 to establish separate sites, phone numbers, email addresses, and websites.
7

8 46. Separation would also severely disrupt the current continuum of care
9 that we provide our patients. If FWHC were to completely separate into duplicate
10 physical locations, we would no longer be able to offer Title X contraceptive care
11 right after abortion procedures. Any abortion patients seeking Title X services
12 would instead have to make a second appointment at a different location, rather
13 than having the ability to get an IUD or another effective contraceptive option at
14 no or low cost under Title X immediately. As a practical matter, patients might not
15 be able to take additional time away from work, family, and other obligations to
16 make a separate visit anytime soon, and would again be at risk for unintended
17 pregnancy.
18

19 47. But as described above, the separation requirements are cost
20 prohibitive and contrary to our high standards of care, and FWHC could not
21 undertake them, just as we could not have our staff providing ethically
22 compromised pregnancy counseling. In addition, the New Rule also imposes even
23

1 more elaborate record-keeping and reporting requirements that would add to the
2 staff burden and cost of providing Title X care. The New Rule, if allowed to take
3 effect, would push FWHC from the Title X program, and we would have to cease
4 being a sub-recipient of funds.

5 48. If forced to lose our federal Title X funding, our annual budget for
6 contraceptive and other family planning care would suddenly have a hole of
7 approximately \$200,000. We would not be able to maintain the same number of
8 dedicated clinic hours for family planning care at our health centers, nor would we
9 be able to serve as many patients with family planning services. We would
10 especially not be able to accommodate as many low-income patients at low or no
11 cost to them, particularly for expensive services such as IUD insertion.
12

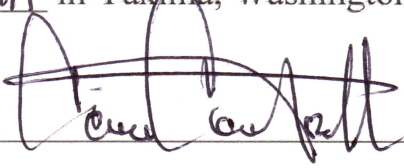
13 49. If the New Rule becomes operative, and pushes FWHC from Title X,
14 that setback would make our mission more difficult to accomplish, and reverse the
15 benefits that Title X has provided for our patients. FWHC serves especially
16 vulnerable populations that need Title X services, including the women we see for
17 abortions who have already experienced an unintended pregnancy and the LGBTQ
18 patients we have so effectively reached. FWHC's loss of federal resources would
19 mean fewer resources to provide family planning care to these and other needy
20 patients.
21
22
23

1 50. FWHC dedicated significant resources over several years to applying
2 for, learning the details of, and implementing Title X-funded and -regulated care.
3 We expended resources to do so, because we saw the benefits for our patients and
4 the expanded family planning care that Title X funds would allow us to provide.

5 51. The New Rule presents a much different equation—it tells health care
6 organizations to adopt unethical, deceptive approaches to counseling and to
7 implement counterproductive, prohibitively costly separation of records, staff, and
8 facilities. The New Rule’s provisions would harm, rather than help, Title X care
9 and the many patient and public health benefits it brings. And it would drive
10 dedicated providers such as FWHC from the Title X program. In Washington
11 State, the Title X network would suffer a particularly devastating blow as providers
12 serving almost 90% of all current Title X patients exit. For our state’s sake, I hope
13 that day never comes.
14

15 52. I submit this declaration to emphasize these great impending harms to
16 FWHC, other Title X provider organizations, and our patients, and in support of a
17 preliminary injunction against implementation of the New Rule. The current Title
18 X regulations should remain in effect while NFPRHA, FWHC, and our co-
19 plaintiffs argue the legal claims against the New Rule.
20
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23

1 I declare under penalty of perjury that the foregoing is true and correct and that this
2 declaration was executed on March 19, 2019 in Yakima, Washington.

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4 

5 Connie Cantrell
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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED, this 22nd of March, 2019, at Seattle, Washington.

/s/ Emily Chiang
Emily Chiang, WSBA No. 50517