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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF HUMBOLDT

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, **v.** **ST. JOSEPH'S HEALTH NORTHERN CALIFORNIA, LLC; DOES 1-10,** Defendants.	Case No. CV2401832 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA'S OPPOSITION TO DEFENDANT'S DEMURRER** Date: February 14, 2025 Time: 10:30 a.m. Dept: 4 Judge: Hon. Timothy A. Canning Action Filed: September 30, 2024

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INTRODUCTION

Two critical points emerge from Defendant St. Joseph Health Northern California LLC's (SJH's) demurer. First, SJH does not dispute that California's Emergency Services Law (Health & Saf. Code, § 1317 *et. seq.*, the "ESL"), requires hospitals to provide abortion care when needed to treat a medical emergency. Second, SJH concedes—in fact affirmatively argues—that its internal policies contradict the ESL. SJH further contends that an injunction requiring it to follow state law would "compel SJH to permit pregnancy terminations without exceptions for circumstances in which the procedures are never permitted." (Dem. at p. 14.) The stakes of this could not be clearer: having acknowledged that they have, and will continue to, violate a law which requires them to adequately care for patients experiencing life threatening medical emergencies, SJH now asks this Court to condone their conduct by dismissing this action. The Court should overrule SJH's Demurrer because each of SJH's six arguments fail.

First, the doctrine of primary jurisdiction does not apply. Although the California Department of Public Health (CDPH) also has a role in enforcing the ESL, the law explicitly authorizes the Attorney General (AG) to bring lawsuits such as this one. There is no basis to indefinitely delay this lawsuit while a potential CDPH administrative investigation proceeds. Second, the People have adequately alleged that SJH illegally discharged a patient—an unstable patient it could have treated—for non-medical reasons. Third, SJH engages in intentional pregnancy discrimination under the Unruh Civil Rights Act (Unruh). While other patients can receive the care their doctors recommend and that SJH can provide, pregnant patients, and pregnant patients alone, have their care vetoed by SJH policy. Fourth, because the People's ESL and Unruh claims are adequately pled, the Unfair Competition Law (UCL) claim is too. Fifth, federal laws governing federal funding disbursements are inapplicable, and in any event, do not preempt the ESL. Sixth and finally, the First Amendment does not bar the People's ESL claims. The ESL does not impermissibly favor secular activity. Nor does CDPH's role undermine the ESL's general applicability. Likewise, the ESL does not violate SJH's right to Free Speech under established precedent. And even if the Court determined strict scrutiny applied, the ESL would pass because it advances a compelling government interest and is narrowly tailored. For all these

reasons, the Court should overrule the Demurrer. [1]

BACKGROUND

The ESL represents a basic promise to all Californians: if you experience a medical emergency, a hospital will provide the care you need without regard to your ability to pay or other characteristics. (Health & Saf. Code, § 1317.) Any hospital which operates an Emergency Department (ED) must comply with the law; the only time a hospital can decline to treat a patient is if it lacks the personnel or facilities needed to provide the requisite care. (*Id.* at § 1317.1, subd. (a)(1).) A hospital may transfer a patient to another facility for a nonmedical reason only after providing sufficient care "so that it can be determined within reasonable medical probability, that the transfer or delay caused by the transfer will not create a medical hazard to the person." (*Id.* at § 1317.2, subd. (b).) Should a hospital fail to comply with the ESL, the ESL offers a range of possible remedies, including an action by the AG. (*Id.* at § 1317.6, subds. (a), (j).) These remedies are cumulative "and do not limit the availability of other remedies." (*Id.* at § 1317.6, subd. (j).)

SJH operates Providence St. Joseph Hospital in Eureka, California, which has an ED. (Compl. ¶¶ 11, 37-38.) Yet, SJH refuses, as a matter of hospital policy, to adequately care for pregnant patients experiencing obstetric emergencies. (*Id.* at ¶ 66.) There are a number of conditions which can develop during pregnancy that pose an imminent risk to a patient's life and health. (*Id.* at ¶¶ 27-31.) In many cases, the only effective treatment for these conditions is to provide an abortion, terminating the pregnancy. (*Ibid.*) However, SJH refuses to allow its doctors to meet this standard of care, vastly increasing the risk to patients. (*Id.* at ¶¶ 65-66.) While non-pregnant patients can expect SJH doctors to treat them to the limits of their ability, pregnant patients, and pregnant patients alone, see their care vetoed by hospital policy. (*Id.* at ¶ 107.)

[1] Concerningly, SJH asserts that it only intends to comply with this court's October 29, 2024 order to the extent doing so does not contradict the Ethical and Religious Directives that are the foundation of its First Amendment argument (Dem. at p. 2, fn. 3.) This court's order has no such limitation and requires SJH to comply with the ESL without regard to its internal policies. The People reserve all rights to enforce the court's order. Should SJH refuse to provide care to a patient as required by the ESL and the court order, the People will seek all appropriate forms of relief including contempt for willful, premeditated disobedience of a lawful court order. (*In re Grayson* (1997) 15 Cal.4th 792, 794 ["Willful failure to comply with an order of the court constitutes contempt.'].)

The People allege that SJH's policy violates (1) the ESL's mandate to adequately care for patients in emergencies and to refrain from dumping unstable patients on other hospitals (Counts I-II); (2) Unruh by discriminating against pregnant patients (Count III); and (3) the UCL (Count IV). SJH's policy has harmed numerous patients and threatens future patients. (*Id*. at ¶¶ 83-85.)

LEGAL STANDARD

On demurrer, the Court must "accept[] as true all properly pleaded material factual allegations of the complaint and other relevant matters that are the subject of judicial notice" and should "liberally construe[] all factual allegations." (*Panterra GP, Inc. v. Super. Ct.* (2022) 74 Cal.App.5th 697, 708.) In addition to the pleadings, the Court should further consider any "affidavits filed on behalf of plaintiff" or other sworn testimony submitted with the pleadings. (*Del. E. Webb. Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

ARGUMENT

I. THE DOCTRINE OF PRIMARY JURISDICTION IS INAPPLICABLE

SJH argues that this Court should exercise its discretion under the primary jurisdiction doctrine to stay the People's action. (Dem. at pp. 4-8.) SJH fails to demonstrate that staying the AG's action would "enhance[] court decisionmaking and efficiency by allowing courts to take advantage of administrative expertise" or "assure uniform application of regulatory laws." (*Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 391-92.)

A. The ESL Authorizes AG Enforcement

SJH first argues that the ESL's text "reinforces" the application of primary jurisdiction and that there is a prelitigation administrative procedure. (Dem. at p. 5.) Neither is correct. The statutory text is clear: "the [AG] may bring a civil action against the responsible hospital . . . to enjoin the violation." (Health & Saf. Code, § 1317.6, subd. (j).) And there is no prelitigation administrative procedure; the AG's civil action is cumulative with other enforcement actions. (*Ibid.* ["The provisions of this subdivision are in addition to other civil remedies and do not limit the availability of other civil remedies."]; *Shuts v. Covenant Holdco LLC* (2012) 208 Cal.App.4th 609, 624 ["because the Legislature has made the remedies . . . cumulative to 'any other remedy provided by law,'" the potential problems of inconsistent rulings and duplicative enforcement

caused by administrative and private enforcement "have obviously been considered and rejected by our state lawmakers"].)

SJH next points to Section 1317.6, subdivision (e), which states that CDPH has "primary responsibility" for regulating EDs (Dem. at p. 4), but SJH omits the second part of that very sentence, stating that "fines imposed under this section should not be duplicated by additional fines imposed by the *federal government*." The language, by its terms, refers to the federal government, not the AG. Indeed, other parts of the ESL expressly contemplate concurrent enforcement authority by multiple agencies. (See, e.g. Health & Saf. Code, § 1317.7 ["This article does not preempt . . . any other governmental agency acting within its authority from regulating emergency care or patient transfers, including the imposition of more specific duties, consistent with the requirements of this article and its implementing regulations."].)[2] In short, if the Legislature wanted to circumscribe the AG's authority, it could have done so.[3] Instead, the Legislature explicitly reserved rights for any governmental agency, including the AG, to regulate emergency care. (*DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 992 ["A court may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used. Further, [w]e must assume that the Legislature knew how to create an exception if it wished to do so."].)

Nor do the authorities cited by SJH compel a stay. (Dem. at pp. 5-6.) In *Farmers, supra*, 2 Cal.4th at p. 381, the Court explicitly relied on "*the absence of legislation* clearly addressing whether a court may exercise discretion under the primary jurisdiction doctrine." (*Ibid*., emphasis added.) That is not the situation here where the Legislature has endorsed concurrent jurisdiction. Likewise, in *Jonathan Neil & Assoc., Inc. v. Jones* (2004) 33 Cal.4th 917, the Court concluded

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[2] See also Health & Saf. Code, § 1317.6, subds. (f)(1) and (f)(2) [requiring CDPH to remit or credit state fines if, following an investigation by federal Health & Human Services, the maximum penalty is exceeded]; *Id*. at § 1317.6, subd. (h) [making knowing and intentional violations punishable by misdemeanor by the local district attorney]; *Id*. at § 1317.6, subd. (j) [providing a right of action for private litigants, the local district attorney, or the AG].)

[3] For example, subdivision (b) provides that "[t]he Department of Managed Health Care shall have *sole authority and responsibility to enforce* this article with respect to violations involving hospitals owned and operated by health care service plans in their treatment of plan members or enrollees." (Health & Saf. Code, § 1317.6, subd. (b), emphasis added.)

that the primary jurisdiction doctrine applied because the Department of Insurance's expertise was required in the first instance to ensure regulatory uniformity on the complex regulatory issue before the court (i.e., how to properly compute insurance premiums to cover an insured trucking company's subhaulers and qualifications for retroactive assessment of the premium on an excess basis). (*Id*. at p. 934.) But CDPH does not possess special expertise that is required to weigh in for regulatory uniformity here; the ESL is clear on its terms and there is not a complex regulatory issue before the Court.[4]

B. The CDPH Does Not Have Special Administrative Procedures

SJH argues CDPH's administrative procedures are "pervasive and self-contained" and designed "to deal with the precise questions involved" here. (Dem. at p. 7, citing *Jonathan Neil*, *supra*, 33 Cal.4th at p. 934 & *Farmers*, *supra*, 2 Cal.4th at p. 396.) Not true. First, the ESL does not set out a "pervasive" procedure. The ESL merely provides that, "[a]ll alleged violations of this article and the regulations adopted hereunder shall be investigated by" CDPH. (Health & Saf. Code, § 1317.5.) This is in contrast to the administrative procedures that underlie *Farmers* and *Jonathan Neil*. (*Farmers*, *supra*, 2 Cal.4th at p. 384 [describing administrative procedure that included notice and public hearing requirement]; *Jonathan Neil*, *supra*, 33 Cal.4th at p. 934 [describing "assigned risk program heavily regulated and ultimately governed by the [Insurance] Commissioner" that included an appeal process for aggrieved persons].) Second, as some of the arguments in this briefing make clear, this litigation will involve issues of preemption and constitutional rights. (See *infra* at pp. 9-15.) These are not issues in which CDPH has expertise. (*South Bay Creditors Trust v. General Motors Acceptance Corp.* (1999) 69 Cal.App.4th 1068, 1083 [where common law tort and contract claims do not fall within the agency's "specific and limited statutory jurisdiction," primary jurisdiction inapplicable].)

SJH's reliance on *Bradley v. CVS Pharmacy, Inc.* (2021) 64 Cal.App.5th 902, 917, is misplaced. (Dem. at p. 8.) The issues here do not require expertise in questions of "professional training and judgment" as applied to one doctor or one incident. (*Bradley*, *supra*, 64 Cal.App.5th

[4] Nor is there any evidence that there is a CDPH investigation, and SJH concedes that no such allegations exist in the Complaint. (Dem. at p. 5.)

at p. 917.) Rather, the People's allegations concern SJH's *policy* to not provide emergency abortion care when fetal heart tones are present, and the question of whether an injunction should issue to protect all patients seeking emergency abortion care at SJH.

C. The Court Is the Proper Arbiter of the Issues Raised in this Case

SJH argues that this case requires "specialized agency fact-finding expertise." (Dem. at p. 7.) For the reasons noted, that is incorrect: CDPH's expertise is not necessary. There are three additional problems with SJH's argument. First, the question of whether SJH's *policy* violates the ESL is not within CDPH's authority. (See Health & Saf. Code, § 1317.6 [allowing CDPH to issue fines for "a violation," e.g., a specific instance of an alleged violation (not a *policy*)].) Second, CDPH cannot issue injunctive relief under the ESL; this relief is only available to private litigants, DAs, and the AG. (Compare Health & Saf. Code, § 1317.6, subds. (a) and (g) with subd. (j).) Finally, CDPH cannot seek injunctive relief under Unruh or the UCL. (Civ. Code, § 52, subd. (3)(c) [AG, DA, city attorney, or aggrieved person may bring a civil action]; Bus. & Prof. Code, § 17203 [same].)

II. THE PEOPLE'S ILLEGAL NONMEDICAL TRANSFER CAUSE OF ACTION IS NOT BARRED BECAUSE THE COMPLAINT ALLEGES A NONMEDICAL TRANSFER, NOT A TRANSFER FOR "MEDICAL REASONS"

SJH contends that—based on a single paragraph in the People's Complaint—SJH's transfer of Anna Nusslock was for "medical reasons." (Dem. at p. 8, citing Compl. ¶ 70 [stating in part, "With no other feasible option for obtaining the emergency treatment she needed, Anna submitted to leave Providence Hospital and drive to Mad River."].) In advancing this spurious argument, SJH conveniently ignores multiple paragraphs within the Complaint explaining that the transfer (or discharge) of Anna was for nonmedical reasons. (See, e.g., Compl. ¶¶ 4-6, 60-74, 96-102.) And, SJH admits as much. (Dem. at p. 2 ["[t]he Complaint alleges that SJH unlawfully applied a faith-based policy regarding the termination of pregnancies"]; *id.* at p. 4 ["the Complaint clearly alleges that SJH violated the ESL *because* it applied a faith-based policy"].) The People also affirmatively allege that, medically speaking, SJH was fully capable of providing the treatment Anna needed. (Compl. ¶¶ 65-67.) The Court should not, as SJH requests, "view [an] allegation in isolation" but rather it should "'give the complaint a reasonable interpretation by reading it as a

whole and with all its parts in their context.'" (*Roe v. Hesperia Unified Sch. Dist.* (2022) 85 Cal.App.5th 13, 31.) Paragraph 70 clearly describes Anna learning of and submitting to Mad River as her only feasible option *given that* SJH's policy prohibited SJH doctors from providing the emergency treatment Anna needed. (Compl. ¶¶ 60-70.)

III. THE PEOPLE ADEQUATELY PLEAD SJH INTENTIONALLY DISCRIMINATED AGAINST PREGNANT PATIENTS, VIOLATING UNRUH

SJH contends the People cannot show intentional discrimination under Unruh because it "routinely provides care to pregnant people." (Dem. at p. 9.) But Unruh is "not limited to exclusionary practices . . . but [requires] equal treatment of patrons in all aspects of the business." (*Koire v. Metro Car Wash* (1985) 40 Cal.3d 24, 29.) Unruh prohibits all public accommodations from denying "full and equal accommodations, advantages, facilities, privileges, or services" to anyone based on the fact they are pregnant (among other protected characteristics). (Civ Code, § 51, subd. e(6) [discrimination based on sex includes discrimination based on pregnancy].)

Here, the People allege that SJH singles out pregnant patients for different—and inferior—treatment. Most patients can expect to receive the full range of emergency medical services offered by SJH: if their physician recommends it and the hospital can provide it, the patient will receive it. (Compl. ¶¶ 85, 107.) For pregnant patients, SJH actually *withholds* emergency care that the physicians recommend and that SJH is fully able to provide. (*Ibid*.) Put bluntly: as a matter of SJH policy, SJH denies pregnant patients, and pregnant patients alone, the recognized standard of care in medical emergencies. (Decl. of Herman Hedriana, M.D. ISO Mot. For Prelim. Inj. ("Hedriana Decl.") ¶ 25 ["the standard of care for Anna's condition was not met. The definite treatment for her condition was delivery of her pregnancy . . . However, the hospital directive prevailed over treating Anna appropriately"].) This constitutes intentional discrimination based on pregnancy. (See *Minton v. Dignity Health* (2019) 39 Cal.App.5th 1155, 1164 [Unruh violation adequately pled where plaintiff alleged hospital denied plaintiff full use of hospital services on account of gender identity].)

SJH's contention that it was merely acting in accordance with a neutral policy regarding a procedure, rather than deliberately targeting pregnant patients (Dem. at p. 9), thus misses the

mark. As a threshold matter, SJH's attempt to raise a factual dispute as to its motivations is improper to resolve on a demurrer. (*Minton*, *supra*, 39 Cal.App.5th at p. 1162 ["While Dignity Health may be able to assert reliance on the Directives as a defense to Minton's claim, the matter is not suitable for resolution by demurrer"].) More fundamentally, a facially neutral policy can nevertheless violate the Unruh where its sole effect is to deprive a protected group of full and equal access. (*Hankins v. El Torito Restaurants, Inc.* (1998) 63 Cal.App.4th 510, 518.) In *Hankins*, a restaurant sought to dismiss an Unruh claim on the grounds that it operated a neutral policy of denying all patrons access to an employee restroom. (*Ibid.*) However, the effect of this policy was that all customers *except* disabled customers had access to bathrooms that were available up a flight of stairs; because the employee bathroom was the only one on the ground floor, disabled customers alone were singled out by the supposedly neutral policy for inferior treatment. (*Ibid.*) The same is true here—a "neutral" policy results in one group (pregnant patients) not receiving the full range of emergency care available. This constitutes intentional discrimination under Unruh. (*Minton*, *supra*, 39 Cal.App.5th at p. 1165 ["The facts alleged in the amended complaint are that Dignity Health initially did not ensure that Minton had 'full and equal' access to a facility for the hysterectomy."].)

IV. THE PEOPLE ADEQUATELY PLEAD SJH VIOLATED THE UCL

Because the People adequately allege violations of the ESL and Unruh (see *supra* and *infra*), the UCL violation survives as well. (*Candelore v. Tinder, Inc.* (2018) 19 Cal.App.5th 1138, 1155 ["[b]ecause we conclude the complaint adequately states a claim for violation of the Unruh Act, we also conclude the allegations are sufficient to state a claim under the 'unlawful' prong of the UCL"].)

V. FEDERAL CONSCIENCE LEGISLATION DOES NOT BAR THE PEOPLE'S ESL CLAIMS

SJH asserts that the federal Church, Coats-Snowe, and Weldon Amendments bar the People's ESL claims. (Dem. at pp. 10-12.) SJH is wrong. None of these federal conscience laws apply, and even if they did, they do not preempt the ESL.

A. Conscience Legislation Does Not Apply

The Church Amendment. The Church Amendment does not provide a hospital the right

to refuse care, as SJH contends. It merely prohibits *conditioning the acceptance of federal funds on* the performance of abortion procedures. (42 U.S.C. § 300a-7(b) ["[t]he receipt of [certain federal funds] by any . . . entity does not authorize any court or any public official or other public authority to require" the entity to make its facilities available for a sterilization or abortion].) Senator Frank Church confirmed this when he introduced the amendment: "This amendment . . . merely says that the Government does not impose a new requirement conditioning the acceptance of Federal money upon the performing of certain operations that are contrary to religious beliefs." (See 119 Cong. Rec. 9601 (1973), RJN, Ex. A, statement of Sen. Church; *id.* at p. 9600, statement of Sen. Church [amendment prohibits using federal money "as a lever" to require hospitals to perform certain procedures][5]; *Cal. ex rel Becerra v. Azar* (9th Cir. 2020) 950 F.3d 1067, 1079 ["[42 U.S.C. § 300a-7(b)] prevent[s] the government from conditioning grant funds on assistance with abortion-related activities"].) The case SJH cites, *Chrisman v. Sisters of St. Joseph of Peace*, does not hold otherwise. There, the Ninth Circuit concluded the Church Amendment "prohibit[s] courts from using receipt of [federal] funds *as the basis for* compelling an individual or hospital to perform any sterilization procedure"; it did not conclude that the Church Amendment barred application of a state law. ((9th Cir. 1974) 506 F.2d 308, 310, emphasis added.) Nor did it conclude that a court would be prohibited from issuing an injunction to require compliance with state law. In short, the People do not use federal funds "as a lever" to establish a claim against SJH. Nor do the People assert allegations implicating SJH's receipt of federal money. Instead, the People ask this Court to apply state law—which it can and should do.

The Weldon and Coats-Snowe Amendments. These amendments do not apply for at least two reasons. First, Coats-Snowe only concerns abortions in the context of *medical training*—it does not reach a hospital's operation of an ED. (42 U.S.C. § 238n(c)(2) [Coats-Snowe applies to "an individual physician, a postgraduate physician training program, and a participant in the program of training in the health professions"]; *City & Cty. of S.F. v. Azar* (N.D. Cal. 2019) 411

[5] In interpreting federal statutes, explanations by the statute's sponsor are accorded substantial weight. (*Okla. v. U.S. Dep't of Health & Human Servs.* (10th Cir. 2024) 107 F.4th 1209, 1224, citing *Fed. Energy Admin v. Algonquin SNG, Inc.* (1976) 426 U.S. 548, 564.)

F.Supp.3d 1001, 1015, citing 142 Cong. Rec. 2264-65 (1996) [Coats-Snowe's purpose was "to (1) ensure medical training programs such as schools and residencies were not required to provide abortion training in order to be accredited, and (2) extend conscience protections to students and faculty in the context of training for abortions"].) This case does not implicate a training program; the case concerns the emergency medical care SJH is mandated to provide as a California hospital with an ED. (Compl. ¶¶ 7, 37-40, 52-53, 60-62, 86-101.)

Second, Weldon governs who may receive federal funds. It acts "to dissuade states" from discriminating against health care entities by threatening the loss of federal funding, but it does *not* directly mandate that a state refrain from discrimination. (*Cal. ex rel. Lockyer v. U.S.* (9th Cir. 2006) 450 F.3d 436, 439; *State of Cal. v. U.S.* (N.D. Cal. Nov. 17, 2005) 2005 WL 3096603 at *3 ["[Weldon] does not have a direct legal impact on [California's ESL]"]; *Okla. v. U.S. Dep't of Health & Hum. Servs.* (10th Cir. 2024) 107 F.4th 1209, 1220, fn. 10 ["[Weldon] says that federal funds will not 'be made available' to a federal agency that discriminates against a grantee"].) SJH cannot invoke Weldon as a defense against the ESL; Weldon only functions to cut off funding, not to bar an AG from pursuing a lawsuit alleging violations of state law.[6]

B. Conscience Legislation Does Not Preempt the ESL Causes of Action

Even if this conscience legislation were applicable—which it is not—then this Court would also need to conclude that this legislation preempts the ESL. These laws do not. Courts "have long presumed that Congress does not cavalierly pre-empt state-law," particularly where (as here) that law regulates health and safety. (*Medtronic, Inc. v. Lohr* (1996) 518 U.S. 470, 485.) Because Church, Coats-Snowe, and Weldon do not explicitly preempt any state law, the Court can only find that they preempt the ESL if "that was the clear and manifest purpose of Congress." (*Id.* at

[6] Even if Coats-Snowe and Weldon applied (and they do not), their application would require a threshold finding that "discrimination" occurred. (See 42 U.S.C. § 238n and Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. F, § 508(d) (2004).) But a state does not engage in discrimination merely by seeking to enforce a facially neutral state law like the ESL. (E.g., *Cal. v. U.S.* (N.D. Cal. Mar. 18, 2008) 2008 WL 744840 at*4 ["There is no clear indication . . . that enforcing [the ESL] . . . to require medical treatment for emergency medical conditions would be considered 'discrimination' under [Weldon] if the required treatment was abortion-related services."].) SJH cites no authority to suggest that holding SJH to the same standard as every other California hospital constitutes "discrimination."

pp. 485, 490-91.) Such is not the case here.

Church, Coats-Snowe, and Weldon were not intended to require conscience accommodations during medical emergencies. (See *N.Y. v. U.S. Dep't of Health & Hum. Servs.* (2019) 414 F.Supp.3d 475, 538 ["there is affirmative evidence that the sponsors of each of the Church, Coats-Snowe, and Weldon Amendments did *not* intend for these to require providers, in an emergency, to be obliged to accommodate an objecting employee"].) Review of the legislative history for each amendment confirms this. (See 119 Cong. Rec. 9601 (1973), RJN, Ex. A, statement of Sen. Church ["in an emergency situation—life or death type—no hospital, religious or not, would deny such services"]; 142 Cong. Rec. S2270 (1996), RJN, Ex. B, statement of Sen. Coats ["the similarities between the procedure which [Ob-Gyns] are trained for, which is a D&C procedure, and the procedures for performing an abortion are essentially the same and, therefore, they have the expertise necessary, as learned in those training procedures, should the occasion occur and an emergency occur to perform that abortion"]; 151 Cong. Rec. H177 (2005), RJN, Ex. C, statement of Rep. Weldon ["[Weldon concerns] participat[ion] in elective abortions . . . It simply prohibits coercion in nonlife-threatening situations."]; *ibid.* [when confronted with the concern that Weldon would endanger women by preventing access to emergency abortions, Rep. Weldon responded: "Weldon does nothing of the sort. It ensures that in situations where a mother's life is in danger a health care provider must act to protect the mother's life."].) In sum, this legislative history demonstrates that these laws were not intended to apply to medical emergencies, and thus do not preempt the ESL. (See *N.Y.*, 414 F.Supp.3d at 538.)[7]

VI. THE FIRST AMENDMENT DOES NOT BAR THE PEOPLE'S ESL CLAIMS

SJH argues that complying with the ESL would infringe on its religious beliefs and speech

[7] The policy language SJH quotes from the American Medical Association (AMA) (Dem. at pp. 11-12) was consolidated and *amended* in 2022 to incorporate the AMA's ethical guidance on conscience, which provides that irrespective of conscience, "Physicians are expected to provide care in emergencies." (AMA Policy H-5.993, Report of the Bd. of Trustees, at pp. 6, 8 (2022), https://www.ama-assn.org/system/files/i22-bot04.pdf; (1.1.7 Physician Exercise of Conscience, AMA Code of Medical Ethics (2017), https://code-medical-ethics.ama-assn.org/ethics-opinions/physician-exercise-conscience.)

rights, thereby violating the First Amendment. (Dem. at p. 12.)[8] Both arguments fail.

A. The ESL Does Not Impermissibly Favor Secular Activity

"[T]he right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability.'" (*Emp. Div. Or. Dep't of Humans Res. v. Smith* (1990) 494 U.S. 872, 879.) SJH asserts that the ESL fails the test for "general applicability" because it exempts hospitals that lack "appropriate facilities and qualified personnel available" while providing no comparable exemption for religious reasons. (Dem. at p. 13.) But a law remains generally applicable so long as it does not "prohibit[] religious conduct while permitting secular conduct that undermines the government's asserted interests *in a similar way*." (*Fulton v. City of Phila.* (2021) 593 U.S. 522, 534, emphasis added.) A recent Ninth Circuit case is helpful. (*Doe v. San Diego Unified Sch. Dist.* (9th Cir. 2021) 19 F.4th 1173.) There, a student challenged a school district's vaccine mandate, which provided exemptions to students medically unable to receive a vaccine but had no exemption for students with religious objections to vaccines. (*Id*. at p. 1176.) The court rejected plaintiff's argument that this mandate impermissibly favored secular activity over similar religious conduct, explaining that "the medical exemption . . . serves the primary interest for imposing the mandate—protecting student 'health and safety'—and so does not undermine the District's interests as a religious exemption would." (*Id.* at p. 1178.) The mandate was thus generally applicable and subject only to rational basis review. (*Id.* at p. 1180.)

Likewise here, the statutory exemption in the ESL—a statute which is designed to ensure that Californians are able to obtain care in a medical emergency—serves the primary interest underlying the statute. Specifically, ensuring hospitals only perform emergency treatments that their staff are *qualified* to perform *promotes* patient welfare—consistent with the aims of the ESL. (See Stats. 1987, c. 1240, § 1, subd. (a), RJN, Ex. D ["The Legislature finds and declares that the provision of emergency medical care is a vital public service of great benefit to Californians. It is

[8] The People assume for purposes of this motion, but do not concede, that a for-profit, non-closely held corporation such as SJH may assert a free exercise claim. (See *U.S. v. Safehouse* (E.D. Penn. 2024) 729 F.Supp.3d 451, 457 [while closely held corporations expressly organized under religious values may have religious liberty interests under RFRA, no case has recognized corporate religious exercise rights beyond that specific context].)

necessary for the protection of the health and safety of Californians that a comprehensive and high quality system of emergency medical services be provided"].) In contrast, allowing a hospital that is fully able to care for a patient to choose not to do so would undermine the ESL.[9]

B. The CDPH's Role Does Not Defeat General Applicability

SJH argues that because CDPH must "exercise[] discretion as to whether and to what extent to apply and enforce the ESL," the law is not generally applicable. (Dem. at p. 13.) However, "[t]he mere existence of an exemption that affords some minimal governmental discretion does not destroy a law's general applicability." (*Stormans, Inc. v. Wiesman* (9th Cir. 2015) 794 F.3d 1064, 1082 [law was generally applicable because "the exemptions at issue . . . do not create a regime of unfettered discretion that would permit discriminatory treatment of religion or religiously motivated conduct"].) SJH's primary authority is readily distinguishable. (Dem. at p. 13, citing *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.* (9th Cir. 2023) 82 F.4th 664.) *Fellowship of Christian Athletes* concerned a freeform system of "ad hoc" discretionary exceptions based on the "common sense" of officials. (82 F.4th at 687-688.) The ESL contains no such sweeping grant of discretion. CDPH's ESL assessment is tied to specific checklists of objective criteria. (Health & Saf. Code, § 1317.6, subd. (a)[10].) Given this, the ESL more closely tracks the regulations at issue in *Stormans.* (*Stormans*, *supra*, 794 F.3d at pp. 1082 [because exceptions were "tied to particularized, objective criteria" they did not invest authorities with "unfettered discretion" that could lead to religious discrimination].)

C. The ESL Does Not Violate SJH's Right to Free Speech

SJH asserts that the ESL violates its First Amendment right to free speech because its

[9] SJH's sole authority on this point, *Tandon v. Newsom*, is inapposite. (Dem. at p. 13, citing (2021) 593 U.S. 61, 62.) There, the Court invalidated a prohibition on prayer services instituted during the COVID-19 pandemic which allowed similarly sized secular gatherings to take place. (593 U.S. at p. 62). Given that indoor gatherings posed similar risks of spreading the disease regardless of their motivation, there was no reason why permitting secular gatherings would promote the purposes of the law. (*Id.* at p. 63 [court could not find that "those [secular] activities pose a lesser risk of transmission than applicants' proposed religious exercise at home"].)

[10] Specifically, CDPH must consider (1) whether the violation was intentional; (2) the danger to the patient; (3) the frequency or gravity of the violation; and (4) other fines and penalties imposed as a result of the violation. (Health & Saf. Code, § 1317.6, subd. (a).)

refusal to provide abortion care when a patient's life is at stake is expressive conduct that "communicate[s] its faith-based message." (Dem. at p. 14.) Binding precedent forecloses this argument. (*Catholic Charities of Sacramento, Inc. v. Super. Ct.* (2004) 32 Cal.4th 527, 558 ["Catholic Charities' compliance with a law regulating health care benefits [requiring contraceptive coverage] is not speech"]; *North Coast Women's Care Med. Grp., Inc. v. Super. Ct.* (2008) 44 Cal.4th 1145, 1157 [requiring physicians to provide IVF treatment to a lesbian couple did not violate the First Amendment as "defendant physicians remain free to voice their objections"]; see also *Minton*, 39 Cal.App.5th at p. 1165-1166 [holding hospital had no free expression right to deny patient a hysterectomy].)

SJH attempts to sidestep this authority by arguing that these cases did not consider the ERDs (Dem. at p. 14 fn. 20) but this is a non-sequitur. The Supreme Court "rejected the view that 'conduct can be labeled "speech" whenever the person engaging in the conduct intends thereby to express an idea'" and has thus limited "First Amendment protection only to conduct that is inherently expressive." (*Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.* (2006) 547 U.S. 47, 65.) Complying with the ESL does not constitute "inherently expressive" conduct. (*Ibid*.; *Catholic Charities*, *supra*, 32 Cal.4th at pp. 558-559 ["[f]or purposes of the free speech clause, simple obedience to a law that does not require one to convey a verbal or symbolic message cannot reasonably be seen as a statement of support for the law or its purpose"].)

Nat'l Institute of Family and Life Advocates v. Becerra (2018) 585 U.S. 755, 766 ("*NIFLA*") is similarly inapposite. (Dem. at p. 14.) *NIFLA* concerned a statute which required organizations to post a notice with information on where patients could obtain abortions. (585 U.S. at 766.) The Court held that the statute violated the First Amendment because it "compel[ed] individuals to speak a particular message." (*Ibid*.) *NIFLA* did not address when conduct is "inherently expressive" to receive First Amendment protection.

D. Even If Strict Scrutiny Applied, the ESL Advances a Compelling Government Interest and Is Narrowly Tailored

SJH does not dispute that the State has a compelling government interest under the ESL.[11]

[11] The People assume for purposes of this motion, but do not concede, that the proposed relief (continued…)

(*French v. Jones* (9th Cir. 2017) 876 F.3d 1228, 1231 ["To survive strict scrutiny, the government must show that 'the restriction "furthers a compelling interest and is narrowly tailored to achieve that interest"'"].) Instead, SJH argues that the ESL cannot survive strict scrutiny because supposed alternatives could also advance the State's compelling government interest. (Dem. at p. 15.) For instance, SJH argues that allowing it to continue to apply its own policies rather than comply with the ESL would be a viable alternative. (*Ibid*.) This, however, ignores the People's well documented allegations that SJH's conduct endangers the safety of its patients. (E.g., Compl. ¶¶ 7-8, 60-70, 84-85; Decl. of Herman Hedriana, M.D. ISO Mot. For Prelim Inj. ¶ 36 ["[S]evere maternal morbidity will increase for people who cannot be provided with emergency therapeutic abortion care, and the rate of pregnancy associated maternal mortality among these people will be high."].) Furthermore, strict scrutiny only requires that a law "'be narrowly tailored, not that it be perfectly tailored'" and "a reviewing court should 'decline to wade into the swamp' of calibrating the individual mechanisms of a restriction." (*In re Nat'l Security Letter* (9th Cir. 2022) 33 F.4th 1058, 1073.) For the same reason the Court need not consider SJH's nebulous assertion that the state should have somehow intervened to keep the Mad River L&D unit open. (Dem. at p. 15; *Matter of Subpoena* (3rd Cir. 2019) 947 F.3d 148, 158-159 ["[T]hese alternatives are untenable [and] impractical. . . . Strict scrutiny does not demand that sort of prognostication."].) Regardless, the ESL *is* narrowly tailored because it only applies in medical emergencies where a patient has no time to seek alternative treatment. (Health & Saf. Code, § 1317.1, subd. (b).)[12]

CONCLUSION

This Court should overrule SJH's Demurrer.

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would "substantially burden" SJH's religious exercise. (*Jones v. Williams* (9th Cir. 2015) 791 F.3d 1023, 1031-1032.)

[12] SJH primarily argues that the ESL fails under strict scrutiny but does not squarely address Unruh. To the extent it contends that the Unruh Act claim must also fail on these grounds, SJH's argument is contradicted by binding authority. (*North Coast*, 44 Cal.4th at p. 1158 ["The [Unruh] Act furthers California's compelling interest in ensuring full and equal access to medical treatment . . . and there are no less restrictive means for the state to achieve that goal"].)

Dated: January 28, 2025

Respectfully submitted,

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DECLARATION OF SERVICE BY E-MAIL

Case Name: **THE PEOPLE OF THE STATE OF CALIFORNIA v. ST. JOSEPH'S HEALTH NORTHERN CALIFORNIA, LLC**
No.: **CV2401832**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On January 28, 2025, I served the attached

1. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA'S OPPOSITION TO DEFENDANT'S DEMURRER**

2. **PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA'S OPPOSITION TO DEFENDANT'S REQUEST FOR JUDICIAL NOTICE**

3. **PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO DEFENDANT'S DEMURRER**

by transmitting a true copy via electronic mail, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on January 28, 2025, at Los Angeles, California.

Jusua Barbosa
Declarant

Signature

SA2024303031