SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made this 13th day of October 2017, by and between the entities and individuals listed in Exhibit A ("Plaintiffs") and the United States of America, acting by and through Eric D. Hargan, in his official capacity as Acting Secretary of Health and Human Services; R. Alexander Acosta, in his official capacity as Secretary of Labor; Steven T. Mnuchin, in his official capacity as Secretary of the Treasury; the United States Department of Health and Human Services; the United States Department of Labor; and the United States Department of the Treasury (the "Government" or the "Departments") (collectively, the "Parties").

RECITALS

WHEREAS, there is now pending a series of lawsuits listed in Exhibit B (collectively, the "Litigation") in which Plaintiffs allege that the Government has, among other things, violated the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1 et seq., by promulgating and enforcing regulations pursuant to 42 U.S.C. § 300gg-13 that required Plaintiffs to take actions that facilitated the provision, through or in connection with their health plans, of Food and Drug Administration-approved contraceptive methods and abortifacients, as well as sterilization procedures and related patient education and counseling to which Plaintiffs object on religious grounds ("the Objectionable Coverage"). The regulations were found at 26 C.F.R. § 54.9815-2713A (Sept. 14, 2015), 26 C.F.R. § 54.9815-2713(a)(1)(iv) (July 19, 2010), 29 C.F.R. § 2590.715-2713A (Sept. 14, 2015), 29 C.F.R. § 2590.715- 2713(a)(l)(iv) (July 19, 2010), 45 C.F.R.

§ 147.131 (Sept. 14, 2015), and 45 C.F.R. § 147.130(a)(l)(iv) (July 19, 2010) (the "Regulations").

WHEREAS, the Departments of Health and Human Services, Labor, and Treasury have issued new regulations affording Plaintiffs an exemption. 82 Fed. Reg. 47,792 (Oct. 13, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-10-13/pdf/2017-21851.pdf.

WHEREAS, those new regulations state that "requiring certain objecting entities or individuals to choose between the Mandate, the accommodation, or penalties for noncompliance imposes a substantial burden on religious exercise under RFRA," that "the application of the Mandate to certain objecting employers [i]s [not] necessary to serve a compelling governmental interest," and that "alternative approaches can further the interest the Departments previously identified behind the Mandate." 82 Fed. Reg. 47,792, 47,800, 47,806 (Oct. 13, 2017), *available at* https://www.gpo.gov/fdsys/pkg/FR-2017-10-13/pdf/2017-21851.pdf.

WHEREAS, recent Executive Orders establish that it is the policy of the Government "to vigorously enforce Federal law's robust protections for religious freedom," and to "exercise all authority and discretion available ... to waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the [Affordable Care] Act that would impose ... a cost, fee, tax, penalty, or regulatory burden on ... health insurers, ... [or] purchasers of health insurance." Executive Order 13798, Promoting Free Speech and Religious Liberty 82 Fed. Reg. 21,675 (May 4, 2017); Executive

Order 13765, Minimizing the Economic Burden on the Patient Protection and Affordable Care Act Pending Repeal 82 Fed. Reg. 8,351 (Jan. 20, 2017).

WHEREAS, after years of litigation, the Supreme Court considered the claims in these cases and, instead of resolving the legal issues, remanded the cases to allow the parties to "resolve any outstanding issues between them." *Zubik v. Burwell*, 136 S. Ct. 1557, 1560 (2016).

WHEREAS, the Supreme Court's remand orders provided that "the Government may not impose taxes or penalties on [Plaintiffs] for failure to provide the ... notice" required by the Regulations. *Id.* at 1561.

WHEREAS, the new regulations, the Supreme Court's remand order, and the President's Executive Orders have placed this litigation in an extraordinary posture.

WHEREAS, it is the desire of the Parties to resolve finally and permanently all disputes, asserted or unasserted, arising out of, or related to the matters set forth, alleged, embraced by, or otherwise referred to in the Litigation.

NOW THEREFORE, in consideration of the Recitals and mutual promises contained herein, including the discontinuation of the pending Litigation, and for other good and valuable consideration hereby deemed received, the Parties agree as follows:

TERMS OF AGREEMENT

1. The Parties agree that, under the Supreme Court's decision in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), the Affordable Care Act's "contraceptive mandate," if applied as set out in 26 C.F.R. § 54.9815-2713(a)(1)(iv) (July 19, 2010), 29 C.F.R. § 2590.715- 2713(a)(l)(iv) (July 19, 2010), and 45 C.F.R. § 147.130(a)(l)(iv) (July

19, 2010), would "impose[] a substantial burden on [Plaintiffs'] exercise of religion," *id.* at 2779, and "violate[] RFRA," *id.* at 2785. The Government therefore agrees that the "contraception mandate" as described in *Hobby Lobby* cannot be legally enforced, under RFRA, against Plaintiffs or their health plans.

2. The Government agrees, with respect to all Plaintiffs, to abide by the terms of the permanent injunction in *Zubik v. Sebelius*, 13-cv-1459, 13-cv-303, 2013 WL 6922024 (W.D. Pa. Dec. 20, 2013), as it relates to the Objectionable Coverage. The Government accordingly will treat Plaintiffs and their health plans, including their insurance issuers and/or third party administrators in connection with those health plans, as exempt from the Regulations or any materially similar regulation or agency policy. A materially similar regulation or agency policy includes any requirement that Plaintiffs, their insurance issuers, or their third-party administrators provide any of the Objectionable Coverage through or in connection with Plaintiffs' health plans, which means:

a. Plaintiffs (and their insurers and third-party administrators acting in connection with Plaintiffs' health plans) may provide health coverage without the Objectionable Coverage, and no procedure for providing any of the Objectionable Coverage may require any action by Plaintiffs;

b. If the Objectionable Coverage is provided, it may not be provided as part of any health plan sponsored by Plaintiffs, but instead must be provided through a separate and distinct health plan or other arrangement that is separate and distinct from Plaintiffs' health plan;

c. Plaintiffs or their health plans may not be required to pay for the provision of the Objectionable Coverage, either directly or indirectly (though Plaintiffs are not excused from paying generally applicable taxes);

d. An insurance or health plan card issued in conjunction with Plaintiffs' health plans may not be used by any person to obtain any of the products or services included within the Objectionable Coverage, or payment or reimbursement therefor;

e. No person may receive the Objectionable Coverage as an automatic consequence of enrollment in any health plan sponsored by Plaintiffs;

f. If the Government seeks to provide the Objectionable Coverage to individuals participating in Plaintiffs' health plans, such provision may only be through separate enrollments by those individuals in a separate and distinct health plan or other separate and distinct arrangement to obtain the Objectionable Coverage; and

g. Any communications regarding the Objectionable Coverage, other than disclosures in plan documents required by federal law that the Objectionable Coverage is not covered by the plan or notice provided for in footnote 1 of this agreement, must be separate from communications relating to Plaintiffs' health plans.

3. The Government further agrees to withdraw any letters sent to Plaintiffs' issuers and/or third-party administrators, pursuant to 29 C.F.R. § 2590.715-2713A and 45

C.F.R. § 147.131, as they relate to the provision of any of the Objectionable Coverage within 14 days of the effective date of this agreement.[1]

4. The Government further agrees, in light of interim relief ordered by several courts, including the Supreme Court in *Zubik*, that neither Plaintiffs that are party to this Agreement nor their health plans, insurers, or third-party administrators acting in connection with Plaintiffs' health plans shall be subject to any penalties or other adverse consequences, since August 2011, as a result of their non-compliance with any law or regulation requiring the provision of the Objectionable Coverage that the government is prohibited from enforcing by the terms of this agreement.

5. Notwithstanding this Agreement, the Plaintiffs retain their full legal rights to challenge any new law, regulation, or other requirement that the government may enact or impose relating to the provision of Objectionable Coverage and to challenge or defend against such action on any grounds they choose (including the Constitution, federal law, and/or this Agreement). Nothing herein shall be construed as an admission or indication that any law, regulation, or other requirement would be lawful or unobjectionable to Plaintiffs.

6. The Parties agree to resolve all proceedings identified above and to file such papers as are necessary to terminate the Litigation. In all cases where appeals are currently pending, the parties will file dismissals of appeal under Federal Rule of Appellate Procedure

[1] The effective date of the withdrawal may be contingent on proper notice being given to participants. If contraception coverage is currently being offered by an issuer or third-party administrator, the cessation of coverage would be effective no sooner than the first day of the first plan year that begins thirty days after the date of this Settlement Agreement (to allow for the provision of notice to plan participants in cases where contraceptive benefits will no longer be provided). Alternatively, sixty-days advance notice may be given pursuant to 42 U.S.C. § 300gg-15(d)(4) if applicable.

42(b). After the appeals are dismissed, the parties agree that they will jointly file stipulations of dismissal or motions for dismissal under Federal Rule of Civil Procedure 41(a), except in cases where there is a final judgment in the district court. This agreement shall not be effective until the Parties file dismissals of all appeals currently pending.

7. The Government agrees to pay Plaintiffs $3 million in costs and fees.

8. The Parties agree that this Agreement constitutes a good-faith settlement of the Litigation for good and valuable consideration and acknowledge that it is entered into freely and voluntarily.

9. The Parties further agree that this Agreement has been fully read and understood by them, and that each of them has received independent legal advice from their respective attorney(s) as to the effect and import of its provisions. The Parties further agree that this Agreement is being entered into for the express purpose and intention of making and entering into a full and final compromise, adjustment, and settlement of all claims which were or could have been asserted in the Litigation, whether or not referred to therein.

10. This Agreement constitutes the sole and entire agreement between Plaintiffs and the Government, and supersedes all prior agreements, negotiations, and discussions between the Parties with respect to the subject matter covered hereby. It is expressly understood and agreed that this Agreement may not be altered, amended, waived, modified, or otherwise changed except by writing, duly executed by authorized representatives of Plaintiffs and the Government, respectively. The Parties further acknowledge and agree that they will make no claim at any time or place that this Agreement has been orally supplemented, modified, or altered.

11. All signatories represent that they have authority to enter into this Agreement on behalf of their respective clients.

12. This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, this Agreement is executed as of the date and year first indicated above.

JONES DAY (counsel for all Plaintiffs) BY:

Paul M. Pohl
JONES DAY
500 Grant St., Suite 4500
Pittsburgh, PA 15219

Matthew A. Kairis
JONES DAY
325 John H. McConnell Blvd.
Suite 600
Columbus, OH 43215

John D. Goetz
JONES DAY
500 Grant St., Suite 4500
Pittsburgh, PA 15219

Leon F. DeJulius, Jr.
JONES DAY
500 Grant St., Suite 4500
Pittsburgh, PA 15219

David T. Raimer
Anthony J. Dick
JONES DAY
Washington, DC 20001-2113

Counsel for Plaintiffs

ON BEHALF OF THE GOVERNMENT:

Brett A. Shumate
Deputy Assistant Attorney General
Civil Division, U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, District of Columbia 20530

Counsel for Defendants

EXHIBIT A

EXHIBIT A

The term "Plaintiffs," as used in the attached settlement agreement includes the following organizations and individuals; their subsidiaries, affiliates, and successors; and related entities that offer coverage through the health plan of any signatory:

- The Roman Catholic Archdiocese of New York
- The Roman Catholic Diocese of Rockville Centre, New York
- Catholic Health Care System
- Catholic Health Services of Long Island
- Cardinal Spellman High School
- Monsignor Farrell High School
- Most Reverend David A. Zubik
- Roman Catholic Diocese of Pittsburgh
- Catholic Charities of the Diocese of Pittsburgh, Inc.
- Most Reverend Lawrence T. Persico
- Roman Catholic Diocese of Erie
- St. Martin Center, Inc.
- Prince of Peace Center, Inc.
- Erie Catholic Preparatory School
- Most Reverend Lawrence Brandt
- Most Reverend Edward Malesic
- Diocese of Greensburg
- Catholic Charities of the Diocese of Greensburg
- St. John the Evangelist Regional Catholic School
- Catholic Diocese of Beaumont
- Catholic Charities of Southeast Texas
- Catholic Charities, Diocese of Fort Worth, Inc.
- University of Dallas
- Catholic Diocese of Biloxi, Inc.

- The Most Reverend Roger P. Morin, Bishop and President of The Catholic Diocese of Biloxi, Inc. and his successors in office, as Trustee for and on behalf of the Resurrection Catholic School and the Sacred Heart Catholic School.
- De L'Eppe Deaf Center, Inc.
- Catholic Social and Community Services, Inc. of Biloxi
- Catholic Diocese of Jackson
- The Most Reverend Joseph N. Latino, Bishop and Chief Executive Officer of the Catholic Diocese of Jackson, and his successors in office, in accordance with the discipline and government of the Roman Catholic Church;
- Vicksburg Catholic School, Inc.
- St. Joseph Catholic School
- Catholic Charities, Inc. of Jackson
- St. Dominic-Jackson Memorial Hospital
- Catholic Diocese of Nashville
- Catholic Charities of Tennessee, Inc.
- Camp Marymount, Inc.
- St. Mary Villa, Inc.
- Mary, Queen of Angels, Inc.
- St. Cecilia Congregation
- Aquinas College
- Michigan Catholic Conference
- Catholic Family Services d/b/a Catholic Charities Diocese of Kalamazoo
- Franciscan University of Steubenville
- University of Notre Dame
- Diocese of Fort Wayne-South Bend, Inc.
- Catholic Charities of the Diocese of Fort Wayne-South Bend, Inc.
- St. Anne Home of the Diocese of Fort Wayne-South Bend, Inc.
- Franciscan Alliance, Inc.
- Specialty Physicians of Illinois, LLC
- University of Saint Francis of Fort Wayne, Indiana, Inc.

- Our Sunday Visitor, Inc.
- Archdiocese of St. Louis
- Catholic Charities of St. Louis
- Diocese of Cheyenne
- Catholic Charities of Wyoming
- St. Joseph's Children's Home
- St. Anthony Tri-Parish School (a.k.a, St. Anthony's Tri-Parish Catholic School)
- Wyoming Catholic College
- The Archdiocese of Atlanta, an association of churches and schools
- Archbishop Wilton D. Gregory
- Catholic Education of North Georgia, Inc.
- Catholic Charities of the Archdiocese of Atlanta, Inc.
- The Roman Catholic Diocese of Savannah;
- The Most Rev. Gregory J. Hartmayer, OFM Conv., as Bishop and his successors in office.
- Donald W. Wuerl, Roman Catholic Archbishop of Washington, and his successors in office, in accordance with the discipline and government of the Roman Catholic Church, a corporation sole (the Archdiocese of Washington)
- Consortium of Catholic Academies of the Archdiocese of Washington, Inc.
- Archbishop Carroll High School, Inc.
- Don Bosco Cristo Rey High School of the Archdiocese of Washington, Inc.
- Mary of Nazareth Elementary School, Inc.
- Catholic Charities of the Archdiocese of Washington, Inc.
- Victory Housing, Inc.
- The Catholic Information Center, Inc.
- The Catholic University of America
- Thomas Aquinas College

EXHIBIT B

EXHIBIT B

District Court	Court of Appeals
Roman Catholic Archdiocese of N.Y. v. Sebelius, No. 12-cv-2542 (E.D.N.Y.).	*Catholic Health Care Sys. v. Burwell*, No. 14–427, (2d Cir.)
Zubik v. Sebelius,No. 13-cv-1459 (W.D. Pa.). *Persico v. Sebelius*, No. 13-cv-0303 (W.D. Pa.)	*Zubik v. Sec'y U.S. Dep't of Health & Human Servs.*, Nos. 14-1376, 14-1377 (3d Cir.)
Brandt v. Burwell., No. 14-cv-681 (W.D. Pa.).	*Brandt v. Burwell*, Nos. 14-4087 & 14-3663 (3d Cir.)
Catholic Diocese of Biloxi Inc., et al. v. Burwell, No. 14-cv-00146 (S.D. Miss.).	None
University of Dallas v. Burwell, No. 12-cv-00314 (N.D. Texas) *Catholic Diocese of Beaumont v. Sebelius*, No. 1:13-cv-709 (E.D. Texas)	*Catholic Diocese of Beaumont v. Burwell,* Nos. 14-40212, 14-10241, 14-10661. (5th Cir.),
Michigan Catholic Conference v. Sebelius, No. 13-cv-1247 (W.D. Mich.) *Catholic Diocese of Nashville v. Sebelius*, No. 3:13-01303 (M.D. Tenn.)	*Michigan Catholic Conference v. Burwell*, Nos. 13-2723, 13-6640 (6th Cir.).
Franciscan University of Steubenville v. Sebelius, No. 12-CV-440 (S.D. Ohio)	None
University of Notre Dame v. Sebelius No. 13-cv-1276 (N.D. Ind.)	*University of Notre Dame v. Sebelius*, No. 13-3853 (7th Cir.).
Diocese of Ft. Wayne-South Bend v. Burwell, No. 12-cv-159, (N.D. Ind. 2013).	*Diocese of Ft. Wayne-South Bend v. Burwell,* No. 14-1431 (7th Cir.)
Archdiocese of St. Louis v. Burwell, No. 13-cv-2300 (E.D. Mo.).	*Archdiocese of St. Louis, et al v. Burwell,* No. 14-3016 (8th Cir.)

Diocese of Cheyenne v. Sebelius, No. 14-cv-00021 (D. Wyo.)	*Diocese of Cheyenne v. Burwell*, No. 14-8040 (10th Cir.).
Roman Catholic Archdiocese of Atlanta v. Sebelius, No. 12-cv-03489 (N.D. Ga.).	*Roman Catholic Archdiocese of Atlanta v. Burwell*, Nos. 14-12890, 14-13239 (11th Cir.).
Roman Catholic Archbishop of Washington v. Sebelius, No. 13-cv-1441 (D.D.C.).	*Roman Catholic Archbishop of Washington v. Burwell*, Nos. 13-5371, 14-5021 (D.C. Cir.)