

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SKYLINE WESLEYAN CHURCH,
Plaintiff,
v.
CALIFORNIA DEPARTMENT OF
MANAGED HEALTH CARE, et al.,
Defendants.

Case No.: 3:16-cv-00501-H-DHB

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS**

[Doc. No. 20]

On February 4, 2016, Plaintiff Skyline Wesleyan Church filed a complaint in San Diego County Superior Court against Defendant California Department of Managed Health Care and the department's director, Defendant Michelle Rouillard, in her official capacity. (Doc. No. 1 at 9-29.) The complaint challenges Defendants' requirement that group health insurance plans provide coverage for all legal abortions. (*Id.* ¶ 1.) On February 26, 2016, Defendants removed the action to this court pursuant to 28 U.S.C. § 1441 on the basis of federal question jurisdiction under 28 U.S.C. § 1331 and supplemental jurisdiction under 28 U.S.C. § 1367. (*Id.* at 1-3.)

On May 16, 2016, Defendants filed a motion to dismiss. (Doc. No. 20.) On June 6, 2016, Plaintiff opposed Defendants' motion. (Doc. No. 22.) On June 13, 2016, Defendants

1 replied to Plaintiff's opposition. (Doc. No. 25.) On June 20, 2016, the Court held a hearing
2 on the motion. Karli Eisenberg appeared for Defendants, and Jeremiah Galus and David
3 Hacker appeared for Plaintiff. For the reasons that follow, the Court grants in part and
4 denies in part Defendants' motion to dismiss.

5 **Background**

6 The Court takes the following facts from Plaintiff's state court complaint. Defendant
7 California Department of Managed Health Care ("DMHC") is an executive agency of the
8 State of California responsible for enforcing California law and regulations regarding
9 health service plans. (Doc. No. 1 ¶ 17.) As part of its regulatory responsibilities, Defendant
10 DMHC is charged with ensuring that health plans in California comply with the Knox-
11 Keene Health Care Service Plan Act of 1975. (*Id.*) Defendant Michelle Rouillard is the
12 Director of Defendant DMHC. (*Id.* ¶ 18.)

13 On August 22, 2014, Defendants sent letters to group health plans that did not
14 provide coverage for all legal abortions and required that the plans begin offering such
15 coverage (the "coverage requirement"). (*Id.* ¶¶ 1-2, Ex. 1.) As authority for imposing this
16 requirement, Defendants cited the Knox-Keene Act's provision that health plans must
17 cover "basic health care services." (*Id.* ¶ 3, Ex. 1.) Plaintiff alleges that, prior to
18 announcing the coverage requirement, Defendants had not interpreted the term "basic
19 health care services" to include voluntary and elective abortions. (*Id.* ¶ 4.)

20 Plaintiff is an Internal Revenue Code Section 501(c)(3) non-profit, Christian church
21 located in La Mesa, California. (*Id.* ¶ 14.) Plaintiff alleges that it believes and teaches that
22 participation in, facilitation of, or payment for an elective or voluntary abortion is a grave
23 sin. (*Id.* ¶ 23.) Plaintiff states that, based on its religious beliefs, it seeks to offer health
24 insurance coverage to its employees in a way that does not cause it to pay for abortions.
25 (*Id.* ¶ 29.) Plaintiff also alleges that the coverage requirement prevents Plaintiff from
26 obtaining a group health care plan that is consistent Plaintiff's religious beliefs. (*Id.* ¶ 7.)

27 On February 4, 2016, Plaintiff filed a complaint for declaratory and injunctive relief
28 and nominal damages in San Diego County Superior Court against Defendants, alleging

claims for (1) violation of the Free Exercise Clause of the First Amendment of the U.S. Constitution; (2) violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution; (3) violation of the Establishment Clause of the First Amendment of the U.S. Constitution; (4) violation of the Establishment and Free Exercise Clauses of Article I, Section 4 of the California Constitution; (5) violation of the Equal Protection Clause of Article I, Section 7 of the California Constitution; and (6) violation of the California Administrative Procedure Act, California Government Code § 11340, et seq. (Doc. No. 1 at 9-29.)

Discussion

I. Legal Standards

A complaint must satisfy the pleading requirements of Federal Rule of Civil Procedure 8 to evade dismissal under a Rule 12(b)(6) motion. Landers v. Quality Commc'ns, Inc., 771 F.3d 638, 640-41 (9th Cir. 2014). Rule 8(a) requires “a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quotation marks and alteration notations omitted). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Id. (quotation marks, alteration notations, and citations omitted).

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Hartmann v. Cal. Dept. of Corr. & Rehab., 707 F.3d 1114, 1122 (9th Cir. 2013) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678. “Factual allegations must be enough to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555 (citing 5

1 C. Wright & A. Miller, Federal Practice and Procedure § 1216, pp. 235-36 (3d ed. 2004)).
2 “Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable
3 legal theory or sufficient facts to support a cognizable legal theory.” Mendiondo v.
4 Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008).

5 II. Analysis

6 A. California Administrative Procedure Act Claim

7 Plaintiff alleges that the coverage requirement is a generally applicable rule that
8 Defendants issued without following the necessary steps for promulgating a regulation
9 under the California Administrative Procedure Act (“APA”), California Government Code
10 § 11340, et seq. (Doc. No. 1. ¶¶166-179.) Defendants do not claim that they followed the
11 APA’s procedures for notice and comment by stakeholders. Instead, they argue that the
12 letters detailing the coverage requirement are not subject to the APA because the letters
13 did not implement, interpret, or make specific a law, but rather restated existing law. (Doc.
14 No. 20-1 at 36-39.)

15 The APA provides “basic minimum procedural requirements for the adoption,
16 amendment, or repeal of administrative regulations.” Cal. Gov’t Code § 11346(a). “[A]ny
17 regulation not properly adopted under the APA is considered invalid.” Reilly v. Superior
18 Court, 57 Cal. 4th 641, 649 (2013). “‘Regulation’ means every rule, regulation, order, or
19 standard of general application or the amendment, supplement, or revision of any rule,
20 regulation, order, or standard adopted by any state agency to implement, interpret, or make
21 specific the law enforced or administered by it, or to govern its procedure.” Cal. Gov’t
22 Code § 11342.600. The APA’s rulemaking procedures do not apply to a rule that is meant
23 only to govern a specific case. Tidewater Marine W., Inc. v. Bradshaw, 14 Cal. 4th 557,
24 571 (1996). They also do not apply to a “regulation that embodies the only legally tenable
25 interpretation of a provision of law.” Cal. Gov’t Code § 11340.9(f).

26 The Knox-Keene Act requires that health plans cover “basic health care services.”
27 Cal. Health & Safety Code § 1367(i). The statute defines “basic health care services” to
28 include “physician services.” Cal. Health & Safety Code § 1345(b)(1). The statute also

1 requires that the “director shall by rule define the scope of each basic health care service
2 that health care service plans are required to provide as a minimum for licensure under this
3 chapter.” Cal. Health & Safety Code § 1367(i). The director has not by rule specifically
4 defined all legal abortions to be basic health care services. Instead, she has defined basic
5 health care services as including only those services that are “medically necessary.” Cal.
6 Code Regs. tit. 28, § 1300.67. Additionally, the legislature has not explicitly required
7 health plans to cover abortions, but it has required health plans to cover contraceptives and
8 fertility treatments while specifically exempting religious employers from these
9 requirements. Cal. Health & Safety Code §§ 1367.25; 1374.55.

10 The “only legally tenable interpretation” exception to the APA is “narrow.” Ctr. for
11 Biological Diversity v. Dep’t of Fish & Wildlife, 234 Cal. App. 4th 214, 262 (2015). In its
12 complaint, Plaintiff alleges that Defendants previously approved of plans that did not
13 provide coverage for abortion but then reversed their position in response to pressure from
14 abortion rights advocates. (Doc. No. 1 ¶¶ 58-61.) This allegation indicates that one valid
15 interpretation of existing statutes and regulations is that health plans need not cover
16 voluntary abortions. The laws discussed by the parties do not make these allegations
17 implausible.¹ Accordingly, at this stage of the proceedings, the Court declines to conclude
18 that Defendants’ coverage requirement is the “only legally tenable interpretation” of the
19 law. The Court therefore denies Defendants’ motion to dismiss Plaintiff’s APA claim, but
20 Defendants may bring a motion for summary judgment when the record is more fully
21 developed.

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25 ¹ Additionally, the Reproductive Privacy Act states, “Every woman has the fundamental right to choose
26 to bear a child or to choose and to obtain an abortion.” Cal. Health & Safety Code § 123462(b). The
27 California Constitution also protects the “right of the woman to choose whether to bear children.” Comm.
28 to Defend Reprod. Rights v. Myers, 29 Cal. 3d 252, 275 (1981). Defendants’ interpretation of these
provisions as they apply to health insurance coverage requirements is not the only legally tenable
interpretation at the motion to dismiss stage of the litigation.

1 B. Federal and California Free Exercise Claims

2 Plaintiff alleges that the coverage requirement violates its right to free exercise of
3 religion guaranteed by the First Amendment of the United States Constitution and Article
4 I, Section 4 of the California Constitution. (Doc. No. 1 ¶¶ 94-118, 138-158.) Defendants
5 argue that Plaintiff has not adequately pleaded these causes of action. (Doc. No. 20-1 at
6 22-31, 35-36.)

7 Under the federal constitution, “the right of free exercise does not relieve an
8 individual of the obligation to comply with a valid and neutral law of general applicability.”
9 Employment Div., Dep’t of Human Res. of Oregon v. Smith, 494 U.S. 872, 879 (1990)
10 (quotation marks omitted). But “if the object of a law is to infringe upon or restrict
11 practices because of their religious motivation, the law is not neutral, and it is invalid unless
12 it is justified by a compelling interest and is narrowly tailored to advance that interest.”
13 Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 533 (1993)
14 (citations omitted). California “has not determined the appropriate standard of review for
15 . . . a challenge under the state Constitution’s guarantee of free exercise of religion,” but
16 the standard is not less deferential to such challenges than the federal standard. N. Coast
17 Women’s Care Med. Grp., Inc. v. San Diego Cty. Superior Court, 44 Cal. 4th 1145, 1158-
18 60 (2008).

19 Plaintiff alleges that Defendants issued the coverage requirement with the intent to
20 “suppress the religious exercise” of certain beliefs. (Doc. No. 1 ¶¶ 6, 61, 77, 117.)
21 Plaintiff’s complaint gives Defendants “fair notice of what the claim[s are] and the grounds
22 upon which [they] rest[.]” Twombly, 550 U.S. at 555. At this stage of the litigation,
23 Plaintiff has alleged sufficient facts to support its California and federal free exercise
24 claims. Accordingly, the Court denies Defendants’ motion to dismiss Plaintiff’s free
25 exercise claims, but Defendants may bring a motion for summary judgment when the
26 record is more fully developed.

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C. Federal and California Establishment Claims

Plaintiff alleges that the coverage requirement violates guarantees against establishments of religion under the First Amendment of the United States Constitution and Article I, Section 4 of the California Constitution. (Doc. No. 1 ¶¶ 126-158.) Defendants argue that Plaintiff has not adequately pleaded these causes of action. (Doc. No. 20-1 at 32-36.)

The First Amendment’s Establishment Clause requires that government conduct “(1) have a secular purpose, (2) not have as its principal or primary effect advancing or inhibiting religion and (3) not foster an excessive government entanglement with religion.” Am. Family Ass’n, Inc. v. City & Cty. of San Francisco, 277 F.3d 1114, 1121 (9th Cir. 2002). The “clause applies not only to official condonement of a particular religion or religious belief, but also to official disapproval or hostility towards religion.” Id. “[T]he protection against the establishment of religion embedded in the California Constitution [does not] create[] broader protections than those of the First Amendment. [T]he California concept of a ‘law respecting an establishment of religion’ coincides with the intent and purpose of the First Amendment establishment clause.” E. Bay Asian Local Dev. Corp. v. State of California, 24 Cal. 4th 693, 718, 13 P.3d 1122 (2000) (citation omitted).

Plaintiff alleges that “Defendants have adopted a particular theological view of what is acceptable moral complicity in provision of abortion and imposed it upon all churches and religious employers who must either conform or incur ruinous fines.” (Doc. No. 1 ¶ 130.) Plaintiff also alleges that Defendants’ purpose in adopting the coverage requirement was to favor certain religious beliefs over others. (Doc. No. 1 ¶¶ 131-136.) Plaintiff’s complaint gives Defendants “fair notice of what the claim[s are] and the grounds upon which [they] rest[.]” Twombly, 550 U.S. at 555. Plaintiff has alleged sufficient facts supporting its California and federal establishment claims to survive a motion to dismiss. Accordingly, the Court denies Defendants’ motion to dismiss Plaintiff’s establishment claims, but Defendants may bring a motion for summary judgment when the record is more fully developed.

D. Federal and California Equal Protection Claims

Plaintiff alleges that the coverage requirement violates its right to equal protection of the laws under the Fourteenth Amendment of the United States Constitution and Article I, Section 7 of the California Constitution. (Doc. No. 1 ¶¶ 119-125, 159-165.) Defendants argue that Plaintiff has not adequately pleaded these causes of action. (Doc. No. 20-1 at 31-32, 36.)

“The Equal Protection Clause of the Fourteenth Amendment commands that no State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly situated should be treated alike.” City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). “In order for a state action to trigger equal protection review at all, that action must treat similarly situated persons disparately.” Barnes-Wallace v. City of San Diego, 704 F.3d 1067, 1084 (9th Cir. 2012) (quotation marks and alteration notations omitted). “The Fourteenth Amendment’s guarantee of equal protection and the California Constitution’s protection of the same right are substantially equivalent and are analyzed in a similar fashion.” Landau v. Superior Court, 81 Cal. App. 4th 191, 207 (1998) (citations omitted). “The first step in equal protection analysis is to identify the state’s classification of groups.” Country Classic Dairies, Inc. v. State of Mont., Dep’t of Commerce Milk Control Bureau, 847 F.2d 593, 596 (9th Cir. 1988).

Plaintiff has not alleged that Defendants have selectively enforced the coverage requirement only against certain groups. Rather, Plaintiff alleges that Defendants have granted partial exemptions to the coverage requirement to religious employers that request such exemptions but that Defendants have been unwilling to grant any employer the complete exemption that Plaintiff seeks.² (Doc. No. 1 ¶¶ 66-67.) Indeed, Plaintiff alleges

² In light of Defendants’ system for granting exemptions, the parties may wish to investigate whether they can come to an arrangement that will meet the needs of all stakeholders. See, e.g., Zubik v. Burwell, 136 S. Ct. 1557, 1560 (2016) (“[T]he parties on remand should be afforded an opportunity to arrive at an approach going forward that accommodates petitioners’ religious exercise while at the same time ensuring

1 that the coverage requirement “was intended to apply generally.” (Id. ¶ 168.) These
2 allegations are insufficient to support an equal protection claim. See Twombly, 550 U.S.
3 at 555. Accordingly, the Court grants Defendants’ motion to dismiss Plaintiff’s equal
4 protection claims with leave to amend.³

5 E. Standing

6 The parties also disagree as to whether Plaintiff has standing to bring this case. (Doc.
7 Nos. 20-1 at 18-22; 22 at 11-15; 24 at 6-9.) “[T]o satisfy Article III’s standing
8 requirements, a plaintiff must show (1) it has suffered an “injury in fact” that is (a) concrete
9 and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury
10 is fairly traceable to the challenged action of the defendant; and 3) it is likely, as opposed
11 to merely speculative, that the injury will be redressed by a favorable decision. Friends of
12 the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81 (2000). Plaintiff
13 alleges that it has suffered a concrete, actual injury because the coverage requirement has
14 left it with no viable options for providing health insurance to its employees in a way that
15 is consistent with its religious beliefs. (Doc. No. 1 ¶¶ 26-33.) See Council of Ins. Agents
16 & Brokers v. Molasky-Arman, 522 F.3d 925, 931 (9th Cir. 2008). Plaintiff alleges that its
17 injury is fairly traceable to the coverage requirement because, before Defendants issued the
18 coverage requirement, Plaintiff provided its employees with a health plan that conformed
19 to its religious beliefs, but insurers will no longer provide Plaintiff with such a plan because
20 of the coverage requirement. (Doc. No. 1 ¶¶ 30, 33.) See Barnum Timber Co. v. U.S.
21 E.P.A., 633 F.3d 894, 901 (9th Cir. 2011) (Plaintiff “need not eliminate any other
22 contributing causes to establish its standing.”). Finally, Plaintiff alleges it is likely that a
23 favorable decision will redress the injury because the coverage requirement is the reason
24 insurers ceased offering health plans that conform to Plaintiff’s religious beliefs and the
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27 that women covered by petitioners’ health plans receive full and equal health coverage”) (internal
quotation marks omitted).

28 ³ If the Court subsequently dismisses or otherwise disposes of Plaintiff’s remaining federal claims, the
Court reserves the right to remand any remaining state claims to the state court.

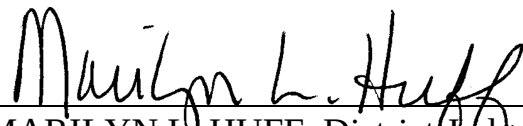
1 insurers would resume offering such plans if the requirement were lifted. (Doc. No. 1 ¶¶
2 31-33, 58.) See Renee v. Duncan, 686 F.3d 1002, 1013 (9th Cir. 2012) (“Plaintiffs need
3 only show that there would be a change in a legal status, and that a practical consequence
4 of that change would amount to a significant increase in the likelihood that the plaintiff
5 would obtain relief that directly redresses the injury suffered.”) (quotation marks omitted).
6 Accordingly, the Court denies Defendants’ motion to dismiss the complaint on the basis of
7 standing, but Defendants may bring a motion for summary judgment when the record is
8 more fully developed.

9 **Conclusion**

10 The Court grants Defendants’ motion to dismiss Plaintiff’s equal protection claims
11 with leave to amend and denies Defendants’ motion to dismiss Plaintiff’s remaining
12 claims.⁴ (Doc. No. 20.) Plaintiff must file an amended complaint or a notice of its intent
13 to not file an amended complaint on or before July 20, 2016. Defendants must answer the
14 complaint or file a motion to dismiss any amended complaint within thirty days of when
15 Plaintiff files its amended complaint or notice of its intent to not file an amended complaint.

16 **IT IS SO ORDERED.**

17 DATED: June 20, 2016

18 
19 MARILYN L. HUFF, District Judge
20 UNITED STATES DISTRICT COURT
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⁴ Additionally, the Court grants Defendants’ request for judicial notice. (Doc. No. 20-2.)