

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

- (1) HOBBY LOBBY STORES, INC.,
- (2) MARDEL, INC.,
- (3) DAVID GREEN,
- (4) BARBARA GREEN,
- (5) STEVE GREEN,
- (6) MART GREEN, and
- (7) DARSEE LETT,

Plaintiffs,

v.

Civil Action No. CIV-12-1000-HE

- (1) KATHLEEN SEBELIUS, Secretary of
the United States Department of
Health and Human Services,
- (2) UNITED STATES DEPARTMENT
OF HEALTH AND HUMAN
SERVICES,
- (3) HILDA SOLIS, Secretary of the
United States Department of Labor,
- (4) UNITED STATES DEPARTMENT
OF LABOR,
- (5) TIMOTHY GEITHNER, Secretary of
the United States Department of the
Treasury, and
- (6) UNITED STATES DEPARTMENT
OF THE TREASURY,

Defendants.

VERIFIED COMPLAINT

JURY DEMANDED

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Plaintiffs Hobby Lobby Stores, Inc., Mardel, Inc., David Green, Barbara Green, Steve Green, Mart Green, and Darsee Lett, by and through their attorneys, allege and state as follows:

NATURE OF THE ACTION

1. This is a challenge to regulations issued under the 2010 Patient Protection and Affordable Care Act that would force religiously-motivated business owners like Plaintiffs to violate their faith under threat of millions of dollars in fines.

2. Plaintiffs David Green, Barbara Green, Steve Green, Mart Green, and Darsee Lett (“the Green family”) are committed evangelical Christians. Through various trusts, they own and operate plaintiff Hobby Lobby Stores, Inc. (“Hobby Lobby”), a privately held retail business headquartered in Oklahoma City. Hobby Lobby currently operates over 500 stores in over 40 states and has over 13,000 full-time employees.

3. Through various trusts, the Green family also owns and operates plaintiff Mardel, Inc. (“Mardel”), a privately held bookstore and education company headquartered in Hobby Lobby’s Oklahoma City complex that sells a variety of Christian-themed materials. Mardel currently operates 35 stores in 7 states and has 372 full-time employees.

4. Unless context indicates otherwise, “Plaintiffs” refers collectively to the Green family, Hobby Lobby, and Mardel.

5. The Green family believes they are obligated to run their businesses in accordance with their faith. Commitment to Jesus Christ and to Biblical principles is what gives their business endeavors meaning and purpose.

6. The Green family's business practices therefore reflect their Christian faith in unmistakable and concrete ways. For example, they employ full-time chaplains to meet their employees' spiritual and emotional needs. They pay all of their employees well above the minimum wage and provide them with excellent benefits. They monitor their merchandise, marketing, and operations to make sure all are consistent with their beliefs. They give millions of dollars from their profits to fund missionaries and ministries around the world. And, as is well known, they close all their stores on Sundays, even though they lose millions in annual sales by doing so.

7. The Green family's religious beliefs forbid them from participating in, providing access to, paying for, training others to engage in, or otherwise supporting abortion-causing drugs and devices.

8. The administrative rule at issue in this case ("the Mandate") runs roughshod over the Green family's religious beliefs, and the beliefs of millions of other Americans, by forcing them to provide health insurance coverage for abortion-inducing drugs and devices, as well as related education and counseling.

9. The Mandate illegally and unconstitutionally coerces the Green family to violate their deeply-held religious beliefs under threat of heavy fines, penalties, and

lawsuits. The Mandate also forces the Green family to facilitate government-dictated speech incompatible with their own speech and religious beliefs. Having to pay fines for the privilege of practicing one's religion or controlling one's own speech is alien to our American traditions of individual liberty, religious tolerance, and limited government. It is also illegal and unconstitutional.

10. The Mandate does not apply to everyone equally. The government has not required every insurance plan in the country to cover these services, but has instead exempted numerous persons and groups, often for reasons of commercial convenience. Millions of employers may escape the mandate because of the age of their plans or because of the number of people they employ. Certain non-profit religious organizations have been exempted from the mandate altogether, and others have been given extra time to comply with it. But the government refuses to give any accommodation whatsoever to families like the Greens, who simply want to run their businesses in accordance with their beliefs.

11. Defendants have no power to determine that businesses and business owners like the Greens deserve third-class protection for their religious faith. Religious freedom is the birthright of every American. It does not belong solely to those organizations Defendants have chosen to favor.

12. Defendants' actions therefore violate Plaintiffs' rights to freedom of religion, speech, and association as secured by the First and Fifth Amendments to the United

States Constitution and the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. § 2000bb *et seq.*

13. Furthermore, the Mandate is illegal because it was imposed by Defendants without prior notice or sufficient time for public comment, and otherwise violates the Administrative Procedure Act, 5 U.S.C. § 553.

14. Religious beliefs like those of the Green family concerning abortion are neither obscure nor unknown. In formulating and finalizing the Mandate, the government acted with full knowledge that the Mandate would run counter to beliefs like theirs, shared by millions of Americans. And yet the government not only refused to exempt objecting business owners like the Greens, but it allowed plans to exclude these services for a wide range of reasons *other than* religion. The Mandate can therefore be interpreted as nothing other than a deliberate attack on the religious beliefs of the Greens and millions of other Americans.

15. Plaintiffs therefore seek declaratory and injunctive relief against the Mandate.

JURISDICTION AND VENUE

16. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and § 1361. This action arises under the Constitution and laws of the United States. This Court has jurisdiction to render declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 2000bb-1.

17. Venue lies in this district pursuant to 28 U.S.C. § 1391(e). Plaintiffs reside in this district. A substantial part of the events or omissions giving rise to the claim occurred in this district.

IDENTIFICATION OF PARTIES

18. Plaintiff David Green founded Hobby Lobby in 1970 and remains its CEO. He is also a trustee of one or more of the trusts described in paragraphs 2 and 3 of this Complaint. He is a Christian and, from the beginning, has sought to run Hobby Lobby in harmony with God's laws and in a manner which brings glory to God.

19. Plaintiff Barbara Green is a trustee of one or more of the trusts described in paragraphs 2 and 3 of this Complaint. She is a Christian and, from the beginning, has sought to run Hobby Lobby in harmony with God's laws and in a manner which brings glory to God.

20. Plaintiff Steve Green is the President of Hobby Lobby and a trustee of one or more of the trusts described in paragraphs 2 and 3 of this Complaint. He is a Christian and, from the beginning, has sought to run Hobby Lobby in harmony with God's laws and in a manner which brings glory to God.

21. Plaintiff Mart Green is the Vice CEO of Hobby Lobby and the CEO of Mardel, a chain of education and supply stores providing Christian books and church supplies. He is also a trustee of one or more of the trusts described in paragraphs 2 and 3 of this Complaint. Mart is also founder of several Christian media companies and Chairman of

the Board of Oral Roberts University. He is a Christian and, from the beginning, has sought to run Hobby Lobby, Mardel, and his other business ventures in harmony with God's laws and in a manner which brings glory to God.

22. Plaintiff Darsee Lett is Vice-President of Hobby Lobby and trustee of one or more of the trusts described in paragraphs 2 and 3 of this Complaint. She is a Christian and, from the beginning, has sought to run Hobby Lobby in harmony with God's laws and in a manner which brings glory to God.

23. Hobby Lobby is a privately held, for-profit corporation located in Oklahoma City and organized under Oklahoma law. Hobby Lobby is not a church, an integrated auxiliary of a church, or a convention or association of churches as defined by 26 U.S.C. § 6033(a)(3)(A)(i). Hobby Lobby is not a religious order as defined by 26 U.S.C. § 6033(a)(3)(A)(iii). Nor is it a church or a convention or association of churches as defined by 26 U.S.C. § 414(e).

24. Mardel is a privately held, for-profit corporation located in Oklahoma City and organized under Oklahoma law. Mardel is not a church, an integrated auxiliary of a church, or a convention or association of churches as defined by 26 U.S.C. § 6033(a)(3)(A)(i). Mardel is not a religious order as defined by 26 U.S.C. § 6033(a)(3)(A)(iii). Nor is it a church or a convention or association of churches as defined by 26 U.S.C. § 414(e).

25. Defendants are appointed officials of the United States government and United States governmental agencies responsible for issuing the Mandate.

26. Defendant Kathleen Sebelius is the Secretary of the United States Department of Health and Human Services (“HHS”). In this capacity, she has responsibility for the operation and management of HHS. Sebelius is sued in her official capacity only.

27. Defendant HHS is an executive agency of the United States government and is responsible for the promulgation, administration and enforcement of the Mandate.

28. Defendant Hilda Solis is the Secretary of the United States Department of Labor. In this capacity, she has responsibility for the operation and management of the Department of Labor. Solis is sued in her official capacity only.

29. Defendant Department of Labor is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

30. Defendant Timothy Geithner is the Secretary of the Department of the Treasury. In this capacity, he has responsibility for the operation and management of the Department. Geithner is sued in his official capacity only.

31. Defendant Department of Treasury is an executive agency of the United States government and is responsible for the promulgation, administration, and enforcement of the Mandate.

FACTUAL ALLEGATIONS

I. The Green Family and Hobby Lobby.

32. Hobby Lobby began as Greco Products, a decorative frame company. In 1970, David Green started the business with a six hundred dollar bank loan, building hobby frames in a garage and selling them to other retailers.

33. As the business grew, David Green re-named the company Hobby Lobby and opened the first retail store in Oklahoma City in 1972. From the beginning, Hobby Lobby was a family business. David and Barbara worked in the store and packaged and shipped their frames to other retailers. Steve and Mart, in exchange for money to buy baseball cards, glued frames together at the family's kitchen table.

34. The store became successful. The Greens moved to a larger space, and then to an even larger one, and then began to open additional stores. They broadened their offerings to include a variety of art and craft supplies, home décor, and holiday decorations. Today, Hobby Lobby has grown into one of the nation's leading craft store chains, operating 514 stores in 41 states with 13,240 full-time employees.

35. Hobby Lobby has continued to expand and create new jobs, even during the recent economic downturn.

36. Hobby Lobby has always operated as a family business. David and Barbara Green did much of the work themselves in their first stores. As their children Steve, Mart, and Darsee grew older, the Greens introduced them to the business and trained them to

run a retail chain. Today, Steve is the President of Hobby Lobby, Darsee is Vice-President, and Mart is Vice CEO.

37. In 1981, Plaintiff Mart Green founded Mardel, a bookstore and educational supply company that specializes in Christian materials, such as Bibles, books, movies, apparel, church and educational supplies, and homeschool curricula. Mardel operates 35 stores in 7 states and has 372 employees.

38. The members of the Green family operate Hobby Lobby and Mardel through a management trust, which owns all of the voting stock of these companies. Each member of the Green family is a trustee of the management trust. By its own terms, this trust exists first and foremost “to honor God with all that has been entrusted” to the Green family and to “use the Green family assets to create, support, and leverage the efforts of Christian ministries.” The trustees must sign a Trust Commitment, which among other things requires them to affirm the Green family statement of faith and to “regularly seek to maintain a close intimate walk with the Lord Jesus Christ by regularly investing time in His Word and prayer.”

II. The Green Family’s Religious Beliefs Related to Abortion-Causing Drugs and Devices.

39. Since the beginning, the Green family has operated Hobby Lobby according to their Christian faith. Christian beliefs and values inform their decisions and form the inspiration for their company. The family members use their profits to support Christian

charities and ministries around the world. They believe that God has blessed them so that they might bless others.

40. For example, David and Barbara Green signed the Giving Pledge, agreeing to donate the majority of their wealth to philanthropy. In this pledge, the Greens stated, “We honor the Lord in all we do by operating the company in a manner consistent with Biblical principles. From helping orphanages in faraway lands to helping ministries in America, Hobby Lobby has always been a tool for the Lord’s work. For me and my family, charity equals ministry, which equals the Gospel of Jesus Christ.”

41. Hobby Lobby bears the imprint of its owners’ faith. As they explain on the company website, “The foundation of our business has been, and will continue to be strong values, and honoring the Lord in a manner consistent with Biblical principles.”

42. Hobby Lobby’s statement of purpose reads:

In order to effectively serve our owners, employees, and customers the Board of Directors is committed to:

Honoring the Lord in all we do by operating the company in a manner consistent with Biblical principles.

Offering our customers an exceptional selection and value.

Serving our employees and their families by establishing a work environment and company policies that build character, strengthen individuals, and nurture families.

Providing a return on the owners’ investment, sharing the Lord’s blessings with our employees, and investing in our community.

We believe that it is by God's grace and provision that Hobby Lobby has endured. He has been faithful in the past, we trust Him for our future.

43. Hobby Lobby's Christian underpinnings are apparent to customers shopping in its stores. Among other things, the stores use a carefully managed music playlist which prominently features inspirational Christian songs. They do not stock gruesome or bloody Halloween decorations, nor risqué greeting cards. They carry religiously themed merchandise, particularly in their Christmas and Easter seasonal sections, which occupy a large portion of each store.

44. Furthermore, the Green family's religious beliefs forbid them from facilitating activities they regard as immoral or harmful. For instance, they refuse to sell shot glasses at Hobby Lobby. They once declined an offer from a liquor store to take over one of their building leases, because they did not want to facilitate alcohol use in the neighborhood around the store. Taking the liquor store's offer would have saved them hundreds of thousands of dollars a month. Similarly, the family refused to allow their trucks to "back-haul" beer shipments for a major distributor, even though the profits from doing so would have been substantial.

45. Perhaps the most well-known expression of the Greens' religious beliefs is the decision to close Hobby Lobby stores on Sundays. The Greens believe that employees should not be asked to regularly work on Sundays, so they can enjoy a day of rest and spend the day with their families. They made this decision because they believed it was the right thing to do, even though it initially cost them millions in lost revenues.

46. Consistent with the Green family's religious beliefs, Hobby Lobby stores are open no more than 66 hours per week. They close at 8 p.m. so that employees can spend the evening with their families. Again, the Greens know they might earn more if they stayed open later, but they believe it is more important to respect their employees and their families.

47. Every Christmas and Easter, Hobby Lobby takes out full-page ads in all newspapers in which it advertises. These ads celebrate the religious nature of the holidays and direct readers who would like to learn more, or are in need of spiritual guidance, to a site where they can download a free Bible and to the phone number of an outside ministry which provides spiritual counseling. In recent years, they have also taken out ads on the Fourth of July, celebrating the Christian beliefs of many of our nation's founders. They maintain an archive of those ads on the company website: http://www.hobbylobby.com/holiday_messages/holiday_messages.cfm.

48. Hobby Lobby has always served a diverse customer base, many of whom do not share the owners' religious beliefs. It strives to welcome and show respect to people of all religious faiths, or no faith at all. The Green family and their employees respond respectfully to criticism they have received for their beliefs about faith and business. The Greens believe it would be wrong to erase their faith from the company they operate.

49. Like Hobby Lobby, Mardel is a company run in accordance with the Green family's (and CEO Mart Green's) religious beliefs. Mardel is a bookstore and educational

supply company that specializes in Christian materials, such as Bibles, books, movies, apparel, church and educational supplies, and homeschool curricula. Mardel describes itself as “a faith-based company dedicated to renewing minds and transforming lives through the products we sell and the ministries we support.” It gives 10% of its net profits to help print Bibles translated by Wycliffe Bible Translators. Mardel’s 372 employees receive their health insurance coverage through Hobby Lobby’s self-insured plans.

50. The Green family believes that they have a religious obligation to treat their employees fairly and with respect, and to compensate good work with good wages and benefits. Over the years, they have looked for opportunities to raise wages, and have long provided minimum salaries well above any national or regional minimum wage. Despite the recession, they have increased wages for full-time employees for the last four years in a row. The wages for Hobby Lobby’s full-time employees start at 80% above the federal minimum wage.

51. The Green family also employs company chaplains to minister to employees’ personal needs. They provide religiously-inspired financial management classes for employees seeking to improve their family finances. They provide an on-site health clinic for their Oklahoma City employees. They provide conflict and dispute resolution classes based on Biblical principles. Employees are also offered an option to resolve employment disputes through various means, including Christian conciliation. Hobby Lobby

welcomes employees of all faiths or no faith, and seeks to create a positive, family-friendly environment for its workers.

52. As part of their religious obligations, the Green family also provides excellent health insurance coverage to Hobby Lobby's and Mardel's employees through a self-insured plan. As in other aspects of the business, the Greens believe it is imperative that their employee benefits are consistent with their religious beliefs.

53. The Green family's religious beliefs prohibit them from deliberately providing insurance coverage for prescription drugs or devices inconsistent with their faith, in particular abortion-causing drugs and devices.

54. Hobby Lobby's insurance policies have long explicitly excluded—consistent with their religious beliefs—contraceptive devices that might cause abortions and pregnancy-termination drugs like RU-486.

55. Recently, after learning about the nationally prominent HHS mandate controversy, Hobby Lobby re-examined its insurance policies to ensure they continued to be consistent with its faith. During that re-examination, Hobby Lobby discovered that the formulary for its prescription drug policy included two drugs—Plan B and Ella—that could cause an abortion. Coverage of these drugs was not included knowingly or deliberately by the Green family. Such coverage is out of step with the rest of Hobby Lobby's policies, which explicitly exclude abortion-causing contraceptive devices and

pregnancy-termination drugs. Hobby Lobby therefore immediately excluded the inconsistent drugs from its policies.

56. The Green family also believes it would violate their faith to deliberately provide health insurance that would facilitate access to abortion-causing drugs and devices, even if those items were paid for by an insurer or a plan administrator and not by Hobby Lobby itself.

57. The Greens have no religious objection to providing coverage for non-abortion-causing contraceptive drugs and devices.

58. The Green family and Hobby Lobby have expended significant resources working with Hobby Lobby's insurers and plan administrators to ensure that its health insurance policies reflect their religious beliefs.

59. Before the Mandate was issued, Hobby Lobby made the decision not to retain grandfathered status under the Affordable Care Act. Neither its 2011 nor its 2012 plan materials included a notice of grandfather status. Therefore Hobby Lobby's insurance plan is not grandfathered. *See* 45 C.F.R. § 147.140(a)(1)(i), 26 C.F.R. § 54.9815-1251T(a)(1)(i); 29 C.F.R. § 2590.715-1251(a)(1)(i).

III. The Affordable Care Act

60. In March 2010, Congress passed, and President Obama signed into law, the Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), and the

Health Care and Education Reconciliation Act, Pub. L. 111-152 (March 30, 2010), collectively known as the “Affordable Care Act.”

61. The Affordable Care Act regulates the national health insurance market by directly regulating “group health plans” and “health insurance issuers.”

62. The Act does not apply equally to all plans.

63. The Act does not apply equally to all insurers.

64. The Act does not apply equally to all individuals.

65. The Act applies differently to employers with fewer than 50 employees, not counting seasonal workers. 26 U.S.C. § 4980H(c)(2)(A).

66. According to the United States census, more than 20 million individual workers are employed by firms with fewer than 20 employees. <http://www.census.gov/econ/smallbus.html>. Employers with less than 50 employees would therefore employ an even higher number of workers.

67. Certain provisions of the Act do not apply equally to members of certain religious groups. *See, e.g.*, 26 U.S.C. §§ 5000A(d)(2)(a)(i) and (ii) (individual mandate does not apply to members of “recognized religious sect or division” that conscientiously objects to acceptance of public or private insurance funds); 26 U.S.C. § 5000A(d)(2)(b)(ii) (individual mandate does not apply to members of “health care sharing ministry” that meets certain criteria).

68. The Act's preventive care requirements do not apply to employers who provide so-called "grandfathered" health care plans.

69. Employers who follow HHS guidelines may continue to use grandfathered plans indefinitely.

70. HHS has predicted that a majority of large employers, employing more than 50 million Americans, will continue to use grandfathered plans through at least 2014, and that a third of small employers with between 50 and 100 employees may do likewise. <http://www.healthcare.gov/news/factsheets/2010/06/keeping-the-health-plan-you-have-grandfathered.html>.

71. The Act is not generally applicable because it provides for numerous exemptions from its rules.

72. The Act is not neutral because some individuals and organizations, both secular and religious, enjoy exemptions from the law, while other religious individuals and organizations do not.

73. The Act creates a system of individualized exemptions.

74. The Department of Health and Human Services has the authority under the Act to grant compliance waivers to employers and other health insurance plan issuers ("HHS waivers").

75. HHS waivers release employers and other plan issuers from complying with the provisions of the Act.

76. HHS decides whether to grant waivers based on individualized waiver requests from particular employers and other health insurance plan issuers.

77. Upon information and belief, thousands of HHS waivers have been granted.

78. The Act is not neutral because some secular and religious groups and individuals have received statutory exceptions while other religious groups and individuals have not.

79. The Act is not neutral because some secular and religious groups and individuals have received HHS waivers while other religious groups and individuals have not.

80. The Act is not generally applicable because Defendants have granted numerous waivers from complying with its requirements.

81. The Act is not generally applicable because it does not apply equally to all individuals and plan issuers.

82. The Act is neither neutral nor generally applicable because Defendants have exempted certain religious employers, but not religious businesses and business-owners like Plaintiffs.

83. The Act is neither neutral nor generally applicable because Defendants have issued a "safe harbor" protecting certain non-exempt non-profit religious objectors from the Mandate, but not religious businesses and business-owners like Plaintiffs.

84. The Act is neither neutral nor generally applicable because Defendants have stated an intention to make certain non-exempt non-profit religious objectors effectively exempt through the ANPRM (described below), but not religious businesses and business-owners like Plaintiffs.

85. Defendants' waiver practices create a system of individualized exemptions.

IV. The Preventive Care Mandate

86. One of the provisions of the Affordable Care Act mandates that health plans “provide coverage for and shall not impose any cost sharing requirements for . . . with respect to women, such additional preventive care and screenings . . . as provided for in comprehensive guidelines supported by the Health Resources and Services Administration,” and directs the Secretary of Health and Human Services to determine what would constitute “preventative care” under the mandate. 42 U.S.C § 300gg-13(a)(4).

87. On July 19, 2010, HHS, along with the Department of Treasury and the Department of Labor, published an interim final rule under the Affordable Care Act. 75 Fed. Reg. 41726 (2010).¹ The interim final rule required providers of group health insurance to cover preventive care for women as provided in guidelines to be published

¹ For ease of reading, references to “HHS” in this Complaint are to all three Departments.

by the Health Resources and Services Administration at a later date. 75 Fed. Reg. 41759 (2010).

88. The Mandate also requires group health care plans and issuers to provide education and counseling for all women beneficiaries with reproductive capacity.

89. The Mandate went into effect immediately as an “interim final rule.”

90. HHS accepted public comments to the 2010 interim final rule until September 17, 2010. A number of groups filed comments warning of the potential conscience implications of requiring religious individuals and groups to pay for certain kinds of health care, including contraception, sterilization, and abortion.

91. HHS directed a private health policy organization, the Institute of Medicine (“IOM”), to suggest a list of recommended guidelines describing which drugs, procedures, and services should be covered by all health plans as preventive care for women. *See* <http://www.hrsa.gov/womensguidelines>.

92. In developing its guidelines, IOM invited a select number of groups to make presentations on the preventive care that should be mandated by all health plans. These were the Guttmacher Institute, the American Congress of Obstetricians and Gynecologists (ACOG), Prof. John Santelli, a Senior Fellow at the Guttmacher Institute, the National Women’s Law Center, National Women’s Health Network, Planned Parenthood Federation of America and Prof. Sara Rosenbaum, a proponent of government-funded abortion.

93. No religious groups or other groups that oppose government-mandated coverage of contraception, sterilization, abortion, and related education and counseling were among the invited presenters.

94. One year after the first interim final rule was published, on July 19, 2011, the IOM published its recommendations. It recommended that the preventive services include “[a]ll Food and Drug Administration approved contraceptive methods [and] sterilization procedures.” Institute of Medicine, *Clinical Preventive Services for Women: Closing the Gaps* (July 19, 2011).

95. FDA-approved contraceptive methods include birth-control pills; prescription contraceptive devices and injections; levonorgestrel, also known as the “morning-after pill” or “Plan B”; and ulipristal, also known as “Ella” or the “week-after pill”; and other drugs, devices, and procedures. The FDA birth control guide specifically notes that Plan B and Ella may work by preventing “attachment (implantation)” of a fertilized egg to a woman’s uterus. See <http://www.fda.gov/downloads/ForConsumers/ByAudience/ForWomen/FreePublications/UCM282014.pdf>.

96. Thirteen days later, on August 1, 2011, HRSA issued guidelines adopting the IOM recommendations. See <http://www.hrsa.gov/womensguidelines>. On the same day HHS, the Department of Labor, and the Department of Treasury promulgated an amended interim final rule which reiterated the Mandate and added a narrow exemption

for “religious employer[s].” 76 Fed. Reg. 46621 (published Aug. 3, 2011); 45 C.F.R. § 147.130.

97. HHS did not take into account the concerns of religious organizations and individuals in the comments submitted before the Mandate was issued.

98. The Mandate was unresponsive to the concerns stated in the comments submitted by religious organizations and individuals.

99. When it issued the Mandate, HHS requested comments from the public by September 30, 2011, and indicated that comments would be available online.

100. Upon information and belief, over 100,000 comments were submitted against the Mandate and its narrow “religious employer” exemption.

101. On October 5, 2011, six days after the comment period ended, Defendant Sebelius gave a speech at a fundraiser for NARAL Pro-Choice America. She told the assembled crowd that “we are in a war.”

102. The Mandate fails to take into account the statutory and constitutional conscience rights of religious individuals like the Green family, even though those rights were raised in the public comments.

103. The Mandate requires that Plaintiffs provide coverage or access to coverage for abortion-causing drugs and related education and counseling against their consciences in a manner that is contrary to law.

104. The Mandate constitutes government-imposed pressure and coercion on Plaintiffs to change or violate their religious beliefs.

105. The Mandate exposes Plaintiffs to substantial fines and other penalties and pressures for refusal to change or violate their religious beliefs.

106. The Mandate forces Plaintiffs to provide coverage or access to coverage for abortion-causing drugs and devices, including Plan B and Ella, in violation of Plaintiffs' religious beliefs.

107. Plaintiffs have a sincere religious objection to providing coverage for Plan B and Ella since they believe those drugs could prevent a human embryo—which they understand to include a fertilized egg before it implants in the uterus—from implanting in the wall of the uterus, causing the death of the embryo.

108. Plaintiffs have a sincere religious objection to providing coverage for certain contraceptive intrauterine devices or “IUDs” since they believe those devices could prevent a human embryo from implanting in the wall of the uterus, causing the death of the embryo.

109. Plaintiffs consider the prevention by artificial means of the implantation of a human embryo to be an abortion.

110. Plaintiffs believe that Plan B, Ella and certain IUDs can cause the death of the embryo.

111. Plan B can prevent the implantation of a human embryo in the wall of the uterus.

112. Ella can prevent the implantation of a human embryo in the wall of the uterus.

113. Certain IUDs can prevent the implantation of a human embryo in the wall of the uterus.

114. Plan B, Ella, and certain IUDs can cause the death of the embryo.

115. The use of artificial means to prevent the implantation of a human embryo in the wall of the uterus constitutes an “abortion” as that term is used in federal law.

116. The use of artificial means to cause the death of a human embryo constitutes an “abortion” as that term is used in federal law.

117. The Mandate forces Plaintiffs to provide insurance coverage or access to insurance coverage for abortion-causing drugs and devices, including Plan B and Ella, regardless of the ability of insured persons to obtain these drugs from other sources.

118. The Mandate forces Plaintiffs to provide insurance coverage or access to insurance coverage for education and counseling concerning abortion-causing drugs and devices that directly conflicts with their religious beliefs and teachings.

119. Providing this counseling and education is incompatible and irreconcilable with Plaintiffs’ express messages and speech.

120. The Mandate forces Plaintiffs to choose between violating their religious beliefs or terminating employee health insurance coverage and incurring substantial fines.

121. Group health plans and issuers will be subject to the Mandate starting with the first insurance plan year that begins on or after August 1, 2012.

122. Plaintiffs have already had to devote significant institutional resources, including both staff time and funds, to determining how to respond to the Mandate. Plaintiffs anticipate continuing to make such expenditures of time and money up until the time that the Mandate goes into effect.

V. The Narrow and Discretionary Religious Employer Exemption

123. The Mandate indicates that that the Health Resources and Services Administration (“HRSA”) “may” grant religious exemptions to certain religious employers. 45 C.F.R. § 147.130(a)(iv)(A). Among other things, those employers must be “a nonprofit organization as described in section 6033(a)(1) and section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.” 45 C.F.R. § 147.130(a)(iv)(B).

124. As a for-profit company, Hobby Lobby does not qualify for this exemption.

125. After public outcry over the Mandate, Defendant Sebelius announced that “[n]onprofit employers who, based on religious beliefs, do not currently provide contraceptive coverage in their insurance plan, will be provided an additional year, until August 1, 2013, to comply with the new law,” on the condition that those employers certify they qualify for the extension.

126. Hobby Lobby does not qualify for this “safe harbor,” since it is a for-profit company.²

127. On February 10, 2012, President Obama held a press conference at which he announced an intention to initiate, at some unspecified future date, a separate rulemaking process that would work toward creating a different insurer-based mandate. This promised mandate would, the President stated, attempt to take into account the kinds of religious objections voiced against the original Mandate contained in the interim final rule.

128. On February 15, 2012, Defendants adopted as final, “without change,” the narrow “religious employer” exemption. 77 Fed. Reg. 8725, 8727.

129. On March 16, 2012, Defendants issued an Advance Notice of Proposed Rulemaking (“ANPRM”). The ANPRM announced Defendants’ intention to create an “accommodation” for non-exempt religious organizations under which Defendants would require a health insurance issuer (or third party administrator) to provide coverage for these drugs and services—without cost sharing and without charge—to employees

² See HHS, Guidance on Temporary Enforcement Safe Harbor, U.S. DEP’T OF HEALTH & HUMAN SERVS. (Feb. 10, 2012), at 3, *available at* <http://cciio.cms.gov/resources/files/Files2/02102012/20120210-Preventive-Services-Bulletin.pdf> (last visited Sept. 10, 2012). The government recently expanded the safe harbor, but it still does not include for-profit businesses like Plaintiffs. See HHS, Guidance on Temporary Enforcement Safe Harbor, U.S. DEP’T OF HEALTH & HUMAN SERVS. (August 15, 2012), *available at* <http://cciio.cms.gov/resources/files/prev-services-guidance-08152012.pdf> (last visited Sept. 10, 2012).

covered under the organization's health plan. The ANPRM solicited public comments on structuring the proposed accommodation, and announced Defendants' intention to finalize an accommodation by the end of the Safe Harbor period. *See* <https://s3.amazonaws.com/public-inspection.federalregister.gov/2012-06689.pdf> (published on March 21, 2012).

130. The ANPRM did not announce any intention to alter the Mandate or its narrow "religious employer" exemption, which was made "final, without change" on February 15, 2012. All the ANPRM's suggestions for future rulemaking are limited to non-profit religious organizations. The government has made no promises, either in the ANPRM or anywhere else, to provide protection for religious business owners like Plaintiffs.

131. The plan year for Hobby Lobby's and Mardel's employee insurance plan begins on January 1 of each year.

132. The Mandate takes effect against Hobby Lobby's and Mardel's employee insurance plan on January 1, 2013.

133. On January 1, Plaintiffs will face an unconscionable choice: either violate the law, or violate their faith.

VI. The Mandate's Effect on the Plaintiffs and the Need for Immediate Relief

134. The Mandate constitutes government-imposed pressure on Plaintiffs to act contrary to their religious beliefs.

135. The Mandate exposes Plaintiffs to enormous fines and other penalties and pressures if it refuses to comply.

136. Hobby Lobby has about 13,240 full-time employees as of September 1, 2012.

137. Mardel has about 372 full-time employees as of September 1, 2012.

138. The Mandate imposes a burden on Plaintiffs' employee recruitment and retention efforts by creating uncertainty as to how they will be able to offer health insurance beyond 2012.

139. The Mandate places Plaintiffs at a competitive disadvantage in its efforts to recruit and retain employees.

140. Plaintiffs are planning now for the 2013 insurance plan year.

141. Every fall, Plaintiffs work with their insurance plan administrators to set up the plans for the coming year. The process is time consuming: Plaintiffs' HR department must work with its administrators on plan changes and on the production and distribution of plan materials and employee insurance cards.

142. Plaintiffs need immediate relief from the Mandate in order to arrange for and continue providing employee health insurance to their employees. Delay could lead to a lapse in coverage, placing the health and well-being of thousands of employees and their families in jeopardy. Denial of immediate relief will force Plaintiffs to choose between their religious beliefs and the prospect of crippling fines, regulatory penalties, and lawsuits.

143. The consequences for Plaintiffs' employees would be severe. Thousands of families rely on Plaintiffs' insurance plans.

144. The consequences for Plaintiffs' businesses would be enormous. For example, with over 13,000 full-time employees, Hobby Lobby faces fines of about \$26 million dollars per year if it drops employee insurance altogether, and additional fines of about \$1.3 million per *day* if it chooses to offer insurance that does not include all of the mandated drugs and services. Plaintiffs will be subject to those penalties on January 1, 2013.

CLAIMS

COUNT I

Violation of the Religious Freedom Restoration Act Substantial Burden

145. Plaintiffs incorporate by reference all preceding paragraphs.

146. Plaintiffs' sincerely held religious beliefs prohibit them from providing coverage or access to coverage for abortion-causing drugs or devices or related education and counseling. Plaintiffs' compliance with these beliefs is a religious exercise.

147. The Mandate creates government-imposed coercive pressure on Plaintiffs to change or violate their religious beliefs.

148. The Mandate chills Plaintiffs' religious exercise.

149. The Mandate exposes Plaintiffs to substantial fines for their religious exercise.

150. The Mandate exposes Plaintiffs to substantial competitive disadvantages, in that they may no longer be permitted to offer health insurance.

151. The Mandate imposes a substantial burden on Plaintiffs' religious exercise.

152. The Mandate furthers no compelling governmental interest.

153. The Mandate is not narrowly tailored to any compelling governmental interest.

154. The Mandate is not the least restrictive means of furthering Defendants' stated interests.

155. The Mandate and Defendants' threatened enforcement of the Mandate violate Plaintiffs' rights secured to them by the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.*

156. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT II

Violation of the First Amendment to the United States Constitution Free Exercise Clause Substantial Burden

157. Plaintiffs incorporate by reference all preceding paragraphs.

158. Plaintiffs' sincerely held religious beliefs prohibit them from providing coverage or access to coverage for abortion-causing drugs or devices or related education and counseling. Plaintiffs' compliance with these beliefs is a religious exercise.

159. Neither the Affordable Care Act nor the Mandate is neutral.

160. Neither the Affordable Care Act nor the Mandate is generally applicable.

161. Defendants have created categorical exemptions and individualized exemptions to the Mandate.

162. The Mandate furthers no compelling governmental interest.

163. The Mandate is not the least restrictive means of furthering Defendants' stated interests.

164. The Mandate creates government-imposed coercive pressure on Plaintiffs to change or violate their religious beliefs.

165. The Mandate chills Plaintiffs' religious exercise.

166. The Mandate exposes Plaintiffs to substantial fines for their religious exercise.

167. The Mandate exposes Plaintiffs to substantial competitive disadvantages, in that they may no longer be permitted to offer health insurance.

168. The Mandate imposes a substantial burden on Plaintiffs' religious exercise.

169. The Mandate is not narrowly tailored to any compelling governmental interest.

170. The Mandate and Defendants' threatened enforcement of the Mandate violate Plaintiffs' rights secured to them by the Free Exercise Clause of the First Amendment to the United States Constitution.

171. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT III

**Violation of the First Amendment to the United States Constitution
Free Exercise Clause
Intentional Discrimination**

172. Plaintiffs incorporate by reference all preceding paragraphs.

173. Plaintiffs sincerely held religious beliefs prohibit them from providing coverage or access to coverage for abortion-causing drugs or devices or related education and counseling. Plaintiffs' compliance with these beliefs is a religious exercise.

174. Despite being informed in detail of these beliefs beforehand, Defendants designed the Mandate and the religious exemption to the Mandate in a way that made it impossible for Plaintiffs to comply with both their religious beliefs and the Mandate.

175. Defendants promulgated both the Mandate and the religious exemption to the Mandate in order to suppress the religious exercise of Plaintiffs and others.

176. The Mandate and Defendants' threatened enforcement of the Mandate thus violate the Plaintiffs rights secured to them by the Free Exercise Clause of the First Amendment to the United States Constitution.

177. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT IV

Religious Discrimination—

**Violation of the First and Fifth Amendments to the United States Constitution
Free Exercise and Establishment Clauses; Due Process and Equal Protection**

178. Plaintiffs incorporate by reference all preceding paragraphs.

179. By design, Defendants imposed the Mandate on some religious individuals and organizations but not on others, resulting in discrimination among religious objectors.

180. The Mandate vests HRSA with unbridled discretion in deciding whether to allow exemptions to some, all, or no organizations meeting the definition of “religious employers.”

181. Religious liberty is a fundamental right.

182. The “religious employer” exemption protects many religious objectors, but not Plaintiffs.

183. The “safe harbor” protects many religious objectors, but not Plaintiffs.

184. The ANPRM promises protection to many religious objectors, but not Plaintiffs.

185. The Mandate and Defendants’ threatened enforcement of the Mandate thus violate Plaintiffs’ rights secured to them by the Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution and by Due Process Clause of the Fifth Amendment to the United States Constitution.

186. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT V

**Violation of the First Amendment to the United States Constitution
Freedom of Speech
Compelled Speech**

187. Plaintiffs incorporate by reference all preceding paragraphs.

188. Plaintiffs believe and profess that providing abortion-causing drugs and devices violates their religious beliefs.

189. The Mandate would compel Plaintiffs to cooperate in activities through its provision of health insurance that are violations of Plaintiffs' religious beliefs.

190. The Mandate would compel Plaintiffs to provide education and counseling related to abortion-causing drugs and devices.

191. Defendants' actions thus violate Plaintiffs' right to be free from compelled speech as secured to it by the First Amendment to the United States Constitution.

192. The Mandate's compelled speech requirement is not narrowly tailored to a compelling governmental interest.

193. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT VI

**Violation of the First Amendment to the United States Constitution
Freedom of Speech
Expressive Association**

194. Plaintiffs incorporate by reference all preceding paragraphs.

195. The Mandate would compel Plaintiffs to cooperate in activities through their provision of health insurance that are violations of Plaintiffs' religious beliefs.

196. The Mandate would compel Plaintiffs to provide, through their provision of health insurance, education and counseling related to abortion-causing drugs and devices.

197. Defendants' actions thus violate Plaintiffs' right of expressive association as secured to it by the First Amendment of the United States Constitution.

198. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT VII

**Violation of the Administrative Procedure Act
Lack of Good Cause**

199. Plaintiffs incorporate by reference all preceding paragraphs.

200. Defendants' stated reasons that public comments were unnecessary, impractical, and opposed to the public interest are false and insufficient, and do not constitute "good cause."

201. Without proper notice and opportunity for public comment, Defendants were unable to take into account the full implications of the regulations by completing a

meaningful “consideration of the relevant matter presented.” Defendants did not consider or respond to the voluminous comments they received in opposition to the interim final rule.

202. Therefore, Defendants have taken agency action not in observance with procedures required by law, and Plaintiffs are entitled to relief pursuant to 5 U.S.C. § 706(2)(D).

203. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT VIII

Violation of the Administrative Procedure Act Arbitrary and Capricious Action

204. Plaintiffs incorporate by reference all preceding paragraphs.

205. In promulgating the Mandate, Defendants failed to consider the constitutional and statutory implications of the mandate on Plaintiffs and similar organizations and individuals.

206. Defendants’ explanation for their decision not to exempt Plaintiffs and similar religious individuals from the Mandate runs counter to the evidence submitted by religious individuals during the comment period.

207. Thus, Defendants’ issuance of the interim final rule was arbitrary and capricious within the meaning of 5 U.S.C. § 706(2)(A) because the rule fails to consider

the full extent of the Mandate's implications and does not take into consideration the evidence against it.

208. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT IX

**Violation of the Administrative Procedure Act
Agency Action Not in Accordance with Law
Weldon Amendment
Religious Freedom Restoration Act
First Amendment to the United States Constitution**

209. Plaintiffs incorporate by reference all preceding paragraphs.

210. The Mandate is contrary to the provisions of the Weldon Amendment of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act of 2009, Public Law 110 329, Div. A, Sec. 101, 122 Stat. 3574, 3575 (Sept. 30, 2008).

211. The Weldon Amendment provides that “[n]one of the funds made available in this Act [making appropriations for Defendants Department of Labor and Health and Human Services] may be made available to a Federal agency or program . . . if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.”

212. The Mandate requires issuers, including Plaintiffs, to provide coverage or access to coverage of all FDA-approved “contraceptives.”

213. Some FDA-approved “contraceptives” cause abortions.

214. As set forth above, the Mandate violates RFRA and the First Amendment.

215. Under 5 U.S.C. § 706(2)(A), the Mandate is contrary to existing law, and is in violation of the APA.

216. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

COUNT X

Violation of the Administrative Procedure Act Agency Action Not in Accordance with Law Affordable Care Act

217. Plaintiffs incorporate by reference all preceding paragraphs.

218. The Mandate is contrary to the provisions of the Affordable Care Act.

219. Section 1303(b)(1)(A) of the Affordable Care Act states that “nothing in this title”—*i.e.*, title I of the Act, which includes the provision dealing with “preventive services”—“shall be construed to require a qualified health plan to provide coverage of [abortion] services . . . as part of its essential health benefits for any plan year.”

220. Section 1303 further states that it is “the issuer” of a plan that “shall determine whether or not the plan provides coverage” of abortion services.

221. Under the Affordable Care Act, Defendants do not have the authority to decide whether a plan covers abortion; only the issuer does.

222. The Mandate requires issuers, including Plaintiffs, to provide coverage or access to coverage for all Federal Drug Administration-approved contraceptives.

223. Some FDA-approved contraceptives cause abortions.

224. Under 5 U.S.C. § 706(2)(A), the Mandate is contrary to existing law, and is in violation of the APA.

225. Absent injunctive and declaratory relief against the Mandate, Plaintiffs have been and will continue to be harmed.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that the Court:

- a. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs violate the First and Fifth Amendments to the United States Constitution;
- b. Declare that the Mandate and Defendants' enforcement of the Mandate against Plaintiffs violate the Religious Freedom Restoration Act;
- c. Declare that the Mandate was issued in violation of the Administrative Procedure Act;
- d. Issue a permanent injunction prohibiting enforcement of the Mandate against Plaintiffs and other individuals and organizations that object on religious grounds to providing insurance coverage for abortion-causing drugs and devices, and related education and counseling;

- e. Award Plaintiffs the costs of this action and reasonable attorney's fees; and
- f. Award such other and further relief as it deems equitable and just.

JURY DEMAND

Plaintiffs request a trial by jury on all issues so triable.

Respectfully submitted this 12th day of September, 2012.

/s/ Charles E. Geister III

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- And -

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(Motion for Pro Hac Vice pending)
Eric S. Baxter, D.C. Bar No. 479221
(Motion for Pro Hac Vice pending)
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ATTORNEYS FOR PLAINTIFFS

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 12, 2012



David Green*

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 12, 2012

A handwritten signature in cursive script that reads "Barbara Green". The signature is written in black ink and is positioned above the printed name.

Barbara Green*

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 12, 2012


Steve Green*

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 12, 2012

A handwritten signature in black ink, appearing to read 'Mart Green', written over a horizontal line.

Mart Green*

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*

VERIFICATION OF COMPLAINT ACCORDING TO 28 U.S.C. § 1746

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on September 12, 2012

A handwritten signature in cursive script that reads "Darsee Lett". The signature is written in black ink and is positioned above a horizontal line.

Darsee Lett*

**I certify that I have the signed original of this document, which is available for inspection at any time by the Court or a party to this action.*