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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 IN AND FOR THE COUNTY OF FRESNO

16 CALIFORNIA PLANNED PARENTHOOD
EDUCATION FUND, PLANNED
17 PARENTHOOD MAR MONTE, S.H., A.Z.,
L.B., E.B., by and through her next friend,
18 R.T., and V.R., by and through her next
friend, K.S.,

19 Plaintiffs,

20 v.

21 PROMESA BEHAVIORAL HEALTH,

22 Defendant.

Case No. 16CECG00543

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: June 15, 2016
Time: 3:30 p.m.
Dept.: 501
Judge: Hon. Mark W. Snauffer

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Trial Date: None set

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Federal Cases

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Melendres v. Arpaio
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Nelson v. Nat’l Aeronautics & Space Admin.
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State Cases

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Butt v. California
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Conservatorship of Valerie N.,
707 P.2d 760, 772 (Cal. 1985)7

Huong Que, Inc. v. Luu
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Jones v. Super. Ct. of Alameda Cty.
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O’Connell v. Super. Ct.
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People ex rel. Eichenberger v. Stockton Pregnancy Control Med. Clinic
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People v. Wiener
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Planned Parenthood Affiliates v. Van De Kamp
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Robbins v. Super. Ct.
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26	<u>Constitutional Provisions</u>	
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1 **Other Authorities**

2 Amy Dworsky & Mark E. Courtney, *The Risk of Teen Pregnancy Among Transitioning*
3 *Foster Youth: Implications for Extending State Care Beyond Age 18*, 32 *Child. &*
4 *Youth Servs. Rev.* 1351 (2010).....13

5 Centers for Disease Control and Prevention, *Condom Fact Sheet in Brief, CONDOM*
6 *EFFECTIVENESS* (March 25, 2013).....12

7 Fresno County DSS *Caregiver Resource Handbook*.....10

8 Heather D. Boonstra, *What is Behind the Decline in Teen Pregnancy Rates?*, 17
9 *Guttmacher Policy Rev.* 15 (Summer 2014).....12

10 Jennifer Manlove et al., *Teen Parents in Foster Care: Risk Factors and Outcomes for*
11 *Teens and Their Children*, *CHILD TRENDS* (2011).....1

12 John S. Santelli, Laura Duberstein Lindberg, Lawrence B. Finer & Susheela Singh,
13 *Explaining Recent Declines in Adolescent Pregnancy in the United States: The*
14 *Contribution of Abstinence and Improved Contraception Use*, 97 *Am. J. Pub. Health*
15 150 (2007).....12

16 King K. Holmes, Ruth Levine & Marcia Weaver, *Effectiveness of Condoms in Preventing*
17 *Sexually Transmitted Infections*, 82 *Bulletin of the World Health Organization* 454
18 (2004).....12

19 Mark E. Courtney, Pajarita Charles, Nathanael J. Okpych, Laura Napolitano & Katherine
20 Halsted, *Findings from the California Youth Transitions to Adulthood Study*
21 *(CalYOUTH): Conditions of Foster Youth at Age 17*, *Chapin Hall Ctr. for Child. at the*
22 *U. Chi.* (2014).....1

23 California Department of Public Health, *Chlamydia Tables, California 2014,*
24 *SEXUALLY TRANSMITTED DISEASES CONTROL BRANCH* (2014)14

25 California Department of Public Health, *Teen Births in California: A Resource for*
26 *Planning and Policy*, *Maternal, Child and Adolescent Health Division* (2008)14

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1 **I. INTRODUCTION**

2 Plaintiffs bring this motion to enjoin Defendant Promesa Behavioral Health from the
3 unlawful practices of denying foster youth placed in Promesa group homes access to
4 contraceptives and confidential reproductive health care. Every year, thousands of youth enter
5 California’s foster care system due to neglect and abuse by family members. Alarming
6 percentages of those youth have experienced sexual assault, molestation, and rape.¹ Many foster
7 youth placed at Promesa group homes have already been sexually active—including against their
8 will, like Plaintiffs V.R and S.H. Other foster youth, like Plaintiffs S.H., A.Z, E.B., and L.B.,
9 were already pregnant or parenting a child when they were placed at Promesa group homes by
10 their county child welfare agencies. These youth have a particularly compelling need for access
11 to contraception and confidential reproductive health care, and without it they are at greater risk
12 of experiencing unwanted teen pregnancy and contracting sexually transmitted diseases.

13 For decades, California law has recognized that young women—including foster youth
14 like Plaintiffs V.R., S.H., A.Z., E.B., and L.B.—have a right to use contraception and make
15 decisions about their reproductive health in *private* consultation with their health care providers.
16 Yet Promesa has nonetheless adopted practices in flagrant violation of those rights. Promesa
17 regularly confiscates contraceptives belonging to foster youth placed at Promesa group homes,
18 including contraceptives given to foster youth by their health care providers. Promesa also insists
19 on having staff members present during confidential consultations between foster youth and their
20 medical providers, such as gynecological exams—even where foster youth express that Promesa
21 staff is unwelcome. As a result, Plaintiffs V.R., S.H., A.Z., E.B., and L.B., along with many other
22 foster youth placed at Promesa group homes, have been denied their rights in violation of
23 California law.

24 ¹ See Declaration of Michelle Ybarra In Support of Motion for Preliminary Injunction (“Ybarra
25 Decl.”) Ex. 1 (Jennifer Manlove et al., *Teen Parents in Foster Care: Risk Factors and Outcomes*
26 *for Teens and Their Children*, CHILD TRENDS (2011)) (hereinafter “Manlove”) at 1-4 (2011 study
27 finding 49% of women aged twenty to twenty-four who were in foster care during their youth
28 experienced forced sex); Ex. 2 (Mark E. Courtney, Pajarita Charles, Nathanael J. Okpych, Laura
Napolitano & Katherine Halsted, *Findings from the California Youth Transitions to Adulthood*
Study (CalYOUTH): Conditions of Foster Youth at Age 17, Chapin Hall Ctr. for Child. at the U.
Chi. (2014)) at 15 (2014 study finding more than 30% of female foster youth in California were
raped before they entered care and about 45% were sexually molested).

1 On May 5, 2016, Plaintiffs filed a First Amended Complaint seeking declaratory and
2 injunctive relief for Promesa’s violations of the California Constitution, the Bane Act, and
3 California statutes governing the rights of foster youth. Plaintiffs now seek a preliminary
4 injunction to prevent further irreparable harm pending resolution of this dispute on the merits.
5 Without this Court’s intervention, Promesa’s unlawful practices will continue to undermine
6 fundamental protections and rights afforded foster youth under the law and further place them at
7 grave risk.

8 **II. BACKGROUND**

9 **A. The parties**

10 Plaintiffs V.R., S.H., A.Z., E.B., and L.B. are former and current foster youth who were
11 placed in Promesa group homes. Plaintiff California Planned Parenthood Education Fund
12 (“CPPEF”) is a membership organization consisting of the seven Planned Parenthood affiliates,
13 including Plaintiff Planned Parenthood Mar Monte (“PPMM”). Declaration of Beth Parker In
14 Support of Plaintiffs’ Motion for Preliminary Injunction (“Parker Decl.”) ¶ 4. PPMM operates
15 health centers in Fresno County and delivers clinical, education and counseling services,
16 including reproductive health services. *Id.* at ¶¶ 5-6; Declaration of Heather Meyers In Support
17 of Plaintiffs’ Motion for Preliminary Injunction (“Meyers Decl.”) ¶ 3. PPMM’s education
18 programs feature classroom presentations, one-to-one outreach, peer education, family
19 communication classes, and youth development programs for at-risk teens. Parker Decl. ¶ 6;
20 Meyers Decl. ¶ 3. Among other things, PPMM runs the Fresno Teen Success program, a weekly
21 support group for pregnant and parenting teen mothers that offers strategies for coping with
22 young motherhood and building a positive future. Parker Decl. ¶ 6; Meyers Decl. ¶ 5. Through
23 these programs, PPMM provides reproductive and sexual health care and education to foster
24 youth, including those who live in Promesa group homes. Parker Decl. ¶ 7; Meyers Decl. ¶ 6.
25 *See also* Declaration of V.R. In Support of Plaintiffs’ Motion for Preliminary Injunction (“V.R.
26 Decl.”) ¶¶ 9-10; Declaration of S.H. In Support of Plaintiffs’ Motion for Preliminary Injunction
27 (“S.H. Decl.”) ¶¶ 27, 35, 37; Declaration of A.Z. In Support of Plaintiffs’ Motion for Preliminary
28 Injunction (“A.Z. Decl.”) ¶¶ 10, 17; Declaration of E.B. In Support of Plaintiffs’ Motion for

1 Preliminary Injunction (“E.B. Decl.”) ¶ 9; Declaration of C.W. In Support of Plaintiffs’ Motion
2 for Preliminary Injunction (“C.W. Decl.”) ¶ 5.

3 Promesa is a nonprofit 501(c) corporation that receives nearly five million dollars each
4 year in government funding to provide care and housing to California youth who are in foster care
5 due to abuse or neglect by their families. *See* Ybarra Decl. Ex. 13. Counties with responsibility
6 for these foster youth place them in Promesa’s residential group homes in Fresno County and
7 entrust Promesa with ensuring their health, safety, and well-being.

8 Plaintiffs² bring this action as a result of Promesa’s unlawful practices of confiscating
9 contraceptives from foster youth placed in Promesa group homes and restricting critical access to
10 confidential reproductive health care.

11 **B. Promesa has confiscated Plaintiff V.R’s and other foster youth’s**
12 **contraceptives.**

13 Promesa regularly searches the belongings of foster youth placed at Promesa group homes
14 and confiscates contraceptives found as a result of those searches, such as condoms. *See*
15 Declaration of Erica Amundsen In Support of Plaintiffs’ Motion for Preliminary Injunction
16 (“Amundsen Decl”) ¶ 6. Former Promesa staff and foster youth confirm that Promesa’s practice
17 of confiscating contraceptives has been in effect since at least 2010. V.R. Decl. ¶¶ 3, 5-8;
18 Declaration of Erica Castillo In Support of Plaintiffs’ Motion for Preliminary Injunction
19 (“Castillo Decl.”) ¶¶ 2, 4, 6, 8; Declaration of L.B. In Support of Plaintiffs’ Motion for
20 Preliminary Injunction (“L.B. Decl.”) ¶¶ 3-4, 7; A.Z. Decl. ¶¶ 4, 12; S.H. Decl. ¶ 31; E.B. Decl.
21 ¶¶ 5, 10-11; C.W. Decl. ¶¶ 3-5; Declaration of S.M. In Support of Plaintiffs’ Motion for
22 Preliminary Injunction (“S.M. Decl.”) ¶¶ 3, 5-6. Promesa’s predecessor corporation, Genesis,
23 also confiscated contraceptives as far back as 1998. Declaration of A.K. In Support of Plaintiffs’
24 Motion for Preliminary Injunction (“A.K. Decl.”) ¶¶ 2, 4, 6-8.

25 When foster youth move into a Promesa group home, Promesa staff search the youth’s
26 belongings and confiscate any contraceptives in their possession as part of the intake process.
27 Castillo Decl. ¶ 4; Amundsen Decl. ¶ 5; V.R. Decl. ¶ 5. Promesa staff inform foster youth that

28 ² “Plaintiffs” as used herein refers collectively to Plaintiffs V.R., S.H., A.Z., E.B., and L.B.,
CPPEF, and PPMM unless noted otherwise.

1 their condoms are being confiscated because they are not allowed to have sex while placed at
2 Promesa group homes. Amundsen Decl. ¶ 9.

3 Plaintiff V.R. entered the foster care system following a long history of physical and
4 sexual abuse. V.R. Decl. ¶ 2. Due to her history of sexual abuse, Plaintiff V.R. fears that she may
5 be abused again and, without access to contraception, that she will be at risk of becoming
6 pregnant or contracting a sexually transmitted disease. *Id.* at ¶ 4. Plaintiff V.R. was recently
7 placed in a Promesa group home. *Id.* at ¶ 3. Plaintiff V.R. arrived at Promesa with condoms in
8 her possession. *Id.* at ¶ 5. Upon her arrival, Promesa staff searched Plaintiff V.R.'s belongings
9 and confiscated her condoms. *Id.* Plaintiff V.R. has witnessed Promesa staff search the rooms of
10 other foster youth and confiscate contraceptives. *Id.* at ¶ 8.

11 Promesa staff also confiscate contraceptives that youth obtain from medical providers.
12 On at least three occasions, Plaintiff L.B. received condoms from her medical provider during a
13 gynecology appointment. L.B. Decl. ¶ 7. Each time, the Promesa staff member who
14 accompanied Plaintiff L.B. to the appointment confiscated the condoms. *Id.* at ¶¶ 7-8. Similarly,
15 C.W.'s doctor gave her contraceptives during a gynecological exam, and a Promesa staff member
16 took them away from her. C.W. Decl. ¶ 4. On another occasion, C.W. received a bag with
17 condoms and Plan B emergency contraception from her doctor and put the bag into her locked
18 personal storage area. *Id.* at ¶ 5. Promesa staff searched her storage area and confiscated the
19 entire bag. *Id.*

20 Promesa staff members regularly search youth's rooms and storage areas while they are
21 away from the group home and confiscate any contraceptives they find. Amundsen Decl. ¶¶ 6-8;
22 V.R. Decl. ¶ 8; S.H. Decl. ¶ 31; A.Z. Decl. ¶ 12; L.B. Decl. ¶ 7; E.B. Decl. ¶ 14; C.W. Decl. ¶ 5.
23 Promesa staff searched the rooms of Plaintiffs L.B. and A.Z. while each was at school and
24 confiscated contraceptives they found there. A.Z. Decl. ¶ 12; L.B. Decl. ¶ 7.

25 Promesa staff members also punish and threaten to punish foster youth if they are found in
26 possession of contraception. When Promesa staff confiscated condoms given to Plaintiff L.B. at a
27 medical appointment, they told her that she would get in trouble if she had them or had any
28 reason to use them. L.B. Decl. ¶ 7. Promesa staff told Plaintiff A.Z. that she was not allowed to

1 receive a Depo Provera birth control shot and that she would be punished if she chose to get it.
2 A.Z. Decl. ¶ 11. Promesa's practice of threatening punishment or actually punishing foster youth
3 for having condoms has been going on for many years. S.M. Decl. ¶ 5.

4 **C. Promesa has restricted Plaintiff V.R.'s and other foster youth's access to**
5 **confidential reproductive health care services.**

6 Promesa also regularly interferes with foster youth's access to confidential reproductive
7 health care. *See* Amundsen Decl. ¶ 10. Former Promesa staff and foster youth confirm that
8 Promesa staff insist on accompanying foster youth into the exam room during their gynecological
9 appointments and pressure foster youth to make reproductive health care decisions, such as
10 having an abortion, based on the Promesa staff person's own values. Amundsen Decl. ¶¶ 11-12;
11 V.R. Decl. ¶ 11; L.B. Decl. ¶ 8; C.W. Decl. ¶¶ 6-7; M.A. Decl. ¶ 6; S.M. Decl. ¶ 8; A.Z. Decl.
12 ¶¶ 7, 11; S.H. Decl. ¶ 37.

13 Promesa staff insisted that Plaintiff V.R. allow them in the exam room during a medical
14 appointment in which a private area of Plaintiff V.R.'s body was to be examined. V.R. Decl. ¶
15 11. Plaintiff V.R. asked to see the doctor without the Promesa staff present because she was not
16 comfortable having another person present during the examination, but Promesa staff refused to
17 leave. *Id.* Plaintiffs L.B. and A.Z. were similarly required to have Promesa staff present during
18 their gynecological exams. L.B. Decl. ¶ 8; A.Z. Decl. ¶ 7. Promesa punishes foster youth who
19 refuse to allow Promesa staff to stay in their exam rooms or to allow their gynecologists to
20 disclose protected health information to Promesa. C.W. Decl. ¶¶ 6-7; M.A. Decl. ¶ 6; A.Z. Decl.
21 ¶ 11.

22 When Plaintiff S.H. became pregnant while living at Promesa, Promesa staff tried to
23 persuade her to have an abortion. S.H. Decl. ¶¶ 36-39. When Plaintiff S.H. decided she did not
24 want to have an abortion, Promesa staff punished her by denying her visits with her daughter and
25 refusing to allow her to attend outings with the other residents. *Id.* at ¶ 37. After Plaintiff S.H.
26 miscarried, Promesa staff stopped punishing her. *Id.* at ¶ 38. Promesa subsequently gave
27 Plaintiff S.H. a seven-day notice forcing her to leave the group home shortly after she refused to
28 sign a form allowing Promesa staff to have access to confidential medical information from her
gynecologist. *Id.* at ¶¶ 40-41.

1 **III. ARGUMENT**

2 Plaintiffs seek a preliminary injunction enjoining Promesa from violating the
3 Constitutional and statutory rights of foster youth placed in its care. Specifically, Plaintiffs seek
4 an order enjoining Promesa from denying foster youth access to contraceptives and confidential
5 reproductive health care. *See* Cal. Code Civ. Proc. § 526(a)(2).

6 In deciding whether to grant a preliminary injunction, the Court “must weigh two
7 ‘interrelated’ factors”—namely, (1) the likelihood that Plaintiffs will ultimately prevail on the
8 merits, and (2) the relative interim harm to Plaintiffs and Defendant from the issuance or non-
9 issuance of the injunction. *Butt v. California*, 842 P.2d 1240, 1246 (Cal. 1992). These two
10 factors operate on a sliding scale: “the greater the plaintiff’s showing on one, the less must be
11 shown on the other to support an injunction.” *Id.* In considering a request for injunctive relief,
12 the court must exercise its discretion “in favor of the party most likely to be injured.” *Robbins v.*
13 *Super. Ct.*, 695 P.2d 695, 698 (Cal. 1985) (internal quotation marks and citations omitted). Here,
14 Plaintiffs easily demonstrate both factors.

15 **A. Plaintiffs will prevail on the merits.**

16 A preliminary injunction is warranted so long as Plaintiffs establish a likelihood of
17 success on even one of their causes of action. *See Huong Que, Inc. v. Luu*, 58 Cal. Rptr. 3d 527,
18 535 (Cal. Ct. App. 2007) (affirming injunctive order if “likelihood of success on *any* cause of
19 action” can be shown) (emphasis in original). Plaintiffs can do so here.

20 **1. Promesa’s practices of denying foster youth access to contraceptives
21 and confidential reproductive care violate their constitutional right to
22 privacy.**

23 The California Constitution contains an explicit right to privacy. *See Am. Acad. of*
24 *Pediatrics v. Lungren*, 940 P.2d 797, 808 (Cal. 1997). Article I, section 1 provides: “All people
25 are by nature free and independent and have inalienable rights. Among these are enjoying and
26 defending life and liberty, acquiring, possessing, and protecting property, and pursuing and
27 obtaining safety, happiness, and privacy.” Cal. Const. art. I, § 1. This right is self-executing,
28 meaning “that the constitutional provision, in itself, creates a legal and enforceable right of
privacy for every Californian.” *White v. Davis*, 533 P.2d 222, 234 (Cal. 1975) (internal quotation

1 marks omitted); *see also* *People v. Wiener*, 35 Cal. Rptr. 2d. 321, 326 (Cal. Ct. App. 1994).
2 “[T]he constitutional right to privacy widely has been recognized as applying to minors as well as
3 adults.” *Lungren*, 940 P.2d at 814; *see also* *Carey v. Population Svcs.*, 431 U.S. 678, 693-94
4 (1977) (finding the federal right to privacy to be free of unwarranted governmental intrusion in
5 personal decisions regarding intimate relations extends to minors).

6 “A plaintiff alleging an invasion of privacy in violation of the state constitutional right to
7 privacy must establish each of the following: (1) a legally protected privacy interest; (2) a
8 reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting
9 a serious invasion of privacy.” *Lungren*, 940 P.2d at 811 (internal quotation marks, formatting,
10 and citation omitted). Plaintiffs easily satisfy each of these requirements.

11 *First*, foster youth placed in Promesa group homes have a legally protected right to access
12 contraception and confidential reproductive health care. The right of procreative choice protected
13 by Article 1, section 1 includes the right of all women of childbearing age to access and use
14 contraceptive methods to choose whether or not to bear children. *See Conservatorship of Valerie*
15 *N.*, 707 P.2d 760, 772 (Cal. 1985).³ This right has been explicitly affirmed by the Legislature,
16 which has declared that “every individual possesses a fundamental right to privacy with respect to
17 private reproductive decisions. Accordingly, it is the public policy of the State of California that
18 ... [e]very individual has the fundamental right to choose or refuse birth control.” Cal. Health &
19 Safety Code § 123462.

20 The California Constitution protects two distinct legally recognized privacy interests—
21 informational privacy and autonomy privacy. Autonomy privacy protects an individual’s
22 “interests in making intimate personal decisions or conducting personal activities without
23 observation, intrusion, or interference.” *Lungren*, 940 P.2d at 812 (internal quotation marks and
24 citation omitted). This includes an individual’s right to obtain reproductive health care and make
25 decisions about that care without observation and without interference. *Id.* at 813.

26 The constitutional protection for informational privacy protects foster youth’s privacy

27
28 ³ *See also* *Carey*, 431 U.S. at 686-87. The California right to privacy is significantly broader than
the comparable federal right. *See Lungren*, 940 P.2d at 808-10.

1 with respect to their reproductive and sexual health information. *See, e.g., People ex rel.*
2 *Eichenberger v. Stockton Pregnancy Control Med. Clinic*, 249 Cal. Rptr. 762, 770 (Cal. Ct. App.
3 1988) (“It is established that minors have a right of privacy secured by the federal and state
4 Constitutions that protects private information about a minor’s sexual experience and medical
5 condition”). California courts have recognized that “few things are more intimate and more
6 deserving of privacy protections. Surely no aspect of a woman’s medical profile is more sensitive
7 in terms of privacy interests than her obstetrical-gynecological history.” *Planned Parenthood*
8 *Affiliates v. Van De Kamp*, 226 Cal. Rptr. 361, 381 (Cal. Ct. App. 1986) (internal quotation marks
9 and citation omitted). This privacy right protects against “intrusion upon communications
10 between the woman and her physician.” *Jones v. Super. Ct. of Alameda Cty.*, 174 Cal. Rptr. 148,
11 157 (Cal. Ct. App. 1981); *see also Bd. of Med. Quality Assurance v. Gherardini*, 156 Cal. Rptr.
12 55, 60 (Cal. Ct. App. 1979) (recognizing privacy between a patient and physician is necessary “to
13 encourage the patient’s full disclosure to the physician of all information necessary for effective
14 diagnosis and treatment of the patient”).

15 *Second*, foster youth placed in group homes—including those run by Promesa—have a
16 reasonable expectation of privacy with regard to their access and use of contraceptives and
17 confidential reproductive health services. The California Legislature has long recognized that
18 minors have autonomy rights to consent to and obtain pregnancy-related care on their own. *See*
19 Cal. Fam. Code § 6925(a). The Legislature has also ensured that minors have statutory rights to
20 consent to and receive health services related to pregnancy, family planning, and at twelve years
21 or older, sexually transmitted diseases, as well as to rights to maintain the confidentiality of the
22 services that they receive. *See* Cal. Fam. Code §§ 6925(a), 6926(b) (providing that minors may
23 consent to medical treatment for pregnancy, family planning, and sexually transmitted disease
24 (STD) prevention); Cal. Civ. Code §§ 56.10(a), 56.11(c)(1), (2) (prohibiting health care providers
25 from disclosing information regarding pregnancy, family planning, or STD services to a minor’s
26 legal guardian without the minor’s written consent); Cal. Health & Safety Code §§ 123110(a),
27 123115(a)(1) (authorizing minors to inspect their patient records relating to pregnancy, family
28 planning, and STD services and restricting their representative’s access to those records).

1 Minors in the foster care system have the same right to consent for and obtain pregnancy-
2 related care, including contraception, and to maintain privacy for those services, as minors not in
3 the foster care system. *See, e.g.*, Cal. Welf. & Inst. Code § 369(h) (acknowledging the rights of
4 dependent children to consent to medical care relating to the prevention or treatment of
5 pregnancy, including contraception, sexual assault, and the prevention or treatment of STDs);
6 Cal. Civ. Code § 56.103(h) (recognizing the privacy rights of foster care youth).⁴ Regulations
7 governing foster youth’s access to health-related services in group homes specifically provide that
8 “[t]here shall be privacy . . . for examination or treatment by a physician if required.” Cal. Code
9 Regs. tit 22, § 80075(d).

10 *Finally*, Promesa’s practices of denying foster youth access to contraceptives and
11 confidential reproductive health care constitute a serious invasion of the privacy rights of the
12 foster youth placed in their group homes—not one that is *de minimis*. *Lungren*, 940 P.2d at 817.
13 Promesa’s refusal to allow young women living in its group homes access to contraceptives and
14 confidential reproductive health care intrudes into one of “the most intimate and fundamental of
15 all constitutional rights,” *id.* at 813 (internal quotation marks and citation omitted), by denying the
16 young women affected the ability to protect themselves from exposure to STDs and unwanted
17 pregnancy, jeopardizing their health and depriving them of control over their own bodies and
18 procreation. These intrusions “cannot, by any stretch of the imagination, properly be
19 characterized as ‘de minimis or insignificant.’” *Id.* at 817. Accordingly, Plaintiffs are likely to
20 prevail on their claim that Promesa’s conduct violates Plaintiffs’ and other foster youth’s right to
21 privacy.

22 **2. Promesa’s practices of denying foster youth access to contraceptives**
23 **and confidential reproductive care violate foster youth’s statutory**
24 **rights.**

Promesa’s practices of denying foster youth access to contraceptives and confidential

25 ⁴ Other courts considering whether foster youth should be permitted to have access to
26 contraception in their group home have concluded that they should. *See, e.g., Armeth v. Gross*,
27 699 F. Supp. 450, 452-53 (S.D.N.Y. 1988) (holding that a religiously affiliated group home must
28 allow foster youth to have access to contraception). Even under the more narrow federal right to
artificial contraception absent compelling state considerations to the contrary, and this is not
diminished because they are in foster care.” *Id.* at 452.

1 reproductive care also violate the statutory rights of foster youth. Youth in California, including
2 foster youth, have the right to consent to and receive medical services related to the prevention or
3 treatment of pregnancy and sexually transmitted diseases, and to maintain the confidentiality of
4 the services they receive. The California Family Code provides that a minor may consent to
5 medical care related to the prevention or treatment of pregnancy, Cal. Fam. Code § 6925(a), or
6 related the prevention of a sexually transmitted disease, Cal. Fam. Code § 6926(b). The Family
7 Code also provides that a minor may consent to treatment after a rape or sexual assault, which
8 may include provision of emergency contraception and prophylactic STD medication. *See* Cal.
9 Fam. Code §§ 6927-28. The California Welfare and Institutions Code, which governs the
10 treatment of dependent minors, explicitly provides that nothing in that statutory scheme shall be
11 construed as limiting the rights of dependent children to consent to “medical care relating to the
12 prevention or treatment of pregnancy, including contraception.” Cal. Welf. & Inst. Code §
13 369(h). California law further provides that “it is the public policy of the State of California that
14 . . . [e]very individual has the fundamental right to choose or refuse birth control.” Cal. Health &
15 Safety Code § 123462.⁵

16 Child welfare agencies throughout California have recognized that these statutes afford
17 foster youth the right to access and use contraception, including condoms.⁶ Promesa’s denial of

18 ⁵ Foster youth also have a legal right to possess and use their own personal items, Cal. Code
19 Regs. tit. 22, § 84072(c)(9); to be free from unreasonable searches of personal belongings, Cal.
20 Welf. & Inst. Code § 16001.9(a)(21), Cal. Code Regs. tit. 22, § 84072(c)(31)); and to have access
21 to information about reproductive health care, the prevention of unplanned pregnancy, and the
22 prevention and treatment of sexually transmitted infections at the age of twelve or older, Cal.
23 Welf. & Inst. Code § 16001.9(a)(27).

24 ⁶ These agencies, which are responsible for placing foster youth in group homes, such as
25 Promesa, have developed policies and materials that expressly address this right. *See, e.g.,*
26 Ybarra Decl. Ex. 3 (Fresno County DSS *Caregiver Resource Handbook*) at 29 (explaining that
27 family planning services available to youth in foster care include access to contraception); Ybarra
28 Decl. Ex. 14 (Feb. 25, 2016 Fresno County DSS Letter stating that foster youth “have the right to
request that no one other than medical personnel be present in an exam room”); Ybarra Decl. Ex.
4 (Orange County Social Service Agency, CFS Operations Manual) at 2, 6 (addressing foster
youth access to family planning services including “supplies (e.g. condom[s])” and recognizing
that “children and [non-minor dependents] are entitled to privacy concerning their reproductive
health and medical care”); Ybarra Decl. Ex. 5 (San Luis Obispo County DSS brochure)
(informing foster youth of right to contraception, including “male or female condoms”); Ybarra
Decl. Ex. 6 (San Luis Obispo County DSS flier) (describing medical treatment for which youth
can consent and informing foster parents that “[y]outh have the right to have any treatment
provided under this guideline kept confidential”).

1 access to contraception and confidential reproductive health care interferes with foster youth’s
2 ability to exercise these rights. Promesa has regularly and repeatedly denied Plaintiffs and other
3 foster youth placed at its homes access to contraceptives—including condoms given to Plaintiffs
4 by their health care providers. *See* V.R. Decl. ¶¶ 3, 5-8; Amundsen Decl. ¶¶ 2, 3, 5-9; Castillo
5 Decl. ¶¶ 2, 4, 6, 8; L.B. Decl. ¶¶ 3-4, 7; A.Z. Decl. ¶¶ 4, 12; S.H. Decl. ¶ 31; E.B. Decl. ¶¶ 5, 10-
6 11; C.W. Decl. ¶¶ 3-5; S.M. Decl. ¶¶ 3, 5-6; A.K. Decl. ¶¶ 2, 4, 6-8. That practice deprives
7 minors of their statutory rights to consent to and receive medical services and choose or refuse
8 contraception. *See* Cal. Fam. Code §§ 6925(a), 6926(b); Cal. Health & Safety Code § 123462(a).
9 It further infringes on foster youth’s right to possess and use their own personal items. *See* Cal.
10 Code Regs. tit. 22, § 84072(c)(9).

11 Promesa’s practices also violate minors’ statutory rights to receive confidential
12 reproductive health care. As set forth above, Promesa regularly intrudes on confidential
13 consultations between foster youth and their reproductive health care providers, including by
14 refusing to leave during foster youth’s gynecological exams. That conduct flies in the face of the
15 rights guaranteed to minors under California law, both regarding their right to consent to receive
16 medical treatment for the prevention of pregnancy and STDs, as well as their right to maintain the
17 confidentiality of their medical information. *See, e.g.*, Cal. Fam. Code §§ 6925(a), 6926(b); Cal.
18 Civ. Code §§ 56.10(a), 56.11(c)(1), (2); Cal. Code Regs., tit. 22, § 80075(d). Accordingly,
19 Plaintiffs are likely to prevail on their claim that Promesa’s conduct violates Plaintiffs’ and other
20 foster youth’s statutory rights regarding access to contraceptives and confidential reproductive
21 health care.

22 **B. The balance of interim harm tips sharply in Plaintiffs’ favor.**

23 The Court should grant the interim relief that Plaintiffs request because the injury that
24 Plaintiffs will suffer in the absence of an injunction is severe and irreparable, while any harm
25 Promesa might suffer from the Court’s injunction is negligible. *See* Cal. Civ. Proc. § 526(a)(2);
26 *Shoemaker v. Cnty. of Los Angeles*, 43 Cal. Rptr. 2d 774, 784 (Cal. Ct. App. 1995).

27 *First*, “[i]t is well established that the deprivation of constitutional rights ‘unquestionably
28 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)

1 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); see also *Nelson v. Nat'l Aeronautics & Space*
2 *Admin.*, 530 F.3d 865, 882 (9th Cir. 2008), *rev'd and remanded on other grounds*, 562 U.S. 134
3 (2011) (“Unlike monetary injuries, constitutional violations cannot be adequately remedied
4 through damages and therefore generally constitute irreparable harm.”).

5 As discussed above, Plaintiffs and foster youth have an “interest in retaining personal
6 control over the integrity of [their] own bod[ies].” *Lungren*, 940 P.2d at 813. Promesa’s
7 practices of denying foster youth access to contraceptives and confidential reproductive health
8 care undermine Plaintiffs’ and foster youth’s constitutional interest in autonomy privacy by
9 depriving them of the ability to make personal choices regarding their bodies. *See id.* Absent an
10 injunction, Promesa’s practices will continue to undermine that interest by depriving them of their
11 ability to make decisions about their reproductive health and control their procreative future.

12 *Second*, Promesa’s practice of denying foster youth access to contraceptives subjects
13 Plaintiff V.R. and other foster youth to higher risks of teen pregnancy and exposure to a sexually
14 transmitted disease—both of which are effectively prevented through the use of condoms.⁷
15 Promesa’s practice of preventing Plaintiff V.R. and other foster youth from receiving confidential
16 reproductive health care also inhibits their ability to share with their physician information
17 necessary for effective diagnosis and treatment. *See, e.g., Bd. of Med. Quality Assurance*, 156
18 Cal. Rptr. at 60 (recognizing privacy between a patient and physician is necessary “to encourage
19 the patient’s full disclosure to the physician of all information necessary for effective diagnosis
20 and treatment of the patient”). Young women in foster care, such as Plaintiff V.R. and others like

21 _____
22 ⁷Researchers have concluded that modern contraceptives, including condoms, are highly effective
23 at preventing teen pregnancy. They attribute the dramatic reduction in teen pregnancy between
24 1995 and 2010 to the increased use of contraceptives. *See Ybarra Decl. Ex. 7* (Heather D.
25 Boonstra, *What is Behind the Decline in Teen Pregnancy Rates?*, 17 *Guttmacher Policy Rev.* 15
(Summer 2014)) at 16-17; *Ex. 8* (John S. Santelli, Laura Duberstein Lindberg, Lawrence B. Finer
& Susheela Singh, *Explaining Recent Declines in Adolescent Pregnancy in the United States: The
Contribution of Abstinence and Improved Contraception Use*, 97 *Am. J. Pub. Health* 150 (2007))
at 150.

26 Condoms are highly effective in preventing the sexual transmission of HIV infection and
27 significantly reduce the risk for other STDs, including chlamydia, gonorrhea, and syphilis.
28 *Ybarra Decl. Ex. 9* (King K. Holmes, Ruth Levine & Marcia Weaver, *Effectiveness of Condoms
in Preventing Sexually Transmitted Infections*, 82 *Bulletin of the World Health Organization* 454
(2004)) at 455-57; *Ex. 10* (Centers for Disease Control and Prevention, *Condom Fact Sheet in
Brief*, CONDOM EFFECTIVENESS, (March 25, 2013)).

1 her placed in Promesa group homes, are particularly vulnerable to these risks. Young women in
2 foster care are nearly twice as likely to have had sexual intercourse before age sixteen than their
3 peers not in the foster care system, and are far more likely to get pregnant and give birth.⁸
4 Unwanted teen pregnancies can have tremendously harmful effects upon the young women living
5 in Promesa group homes. As the California Supreme Court has recognized, “[t]he implications of
6 an unwanted child for a woman’s education, employment opportunities and associational
7 opportunities (often including marriage opportunities) are of enormous proportion.” *Lungren*,
8 940 P.2d at 81 (italics omitted).

9 *Third*, Promesa’s practices of denying foster youth access to contraceptives and
10 confidential reproductive health care will also cause irreparable harm to Plaintiffs CPPEF and
11 PPM, which provide medical services to young women, including foster youth. Parker Decl.
12 ¶¶ 3-5, 7; Meyers Decl. ¶ 3. Promesa’s actions interfere with Plaintiffs CPPEF’s and PPM’s
13 ability to provide effective reproductive health care and preventative services to its foster youth
14 clients who live in Promesa’s group homes. See *Van De Kamp*, 226 Cal. Rptr. at 363 (Cal. Ct.
15 App. 1986). Providing such care and services is the core mission of Planned Parenthood. See
16 Meyers Decl. ¶¶ 3-6.

17 *Finally*, Promesa will not suffer any meaningful harm from an order enjoining it from
18 denying foster youth access to contraceptives and confidential reproductive health care during the
19 pendency of this action. Promesa’s legitimate interest in denying foster youth access to
20 contraceptives and confidential reproductive health care, if any at all, is negligible compared with
21 Plaintiffs’ and other foster youth’s interest in preserving their right to privacy in reproductive
22 health care choices—a right the California courts have repeatedly recognized is fundamental and
23 of “profound importance.” *Lungren*, 940 P.2d at 813. Accordingly, the harm threatened to
24 Plaintiffs in the absence of an injunction far outweighs that which Promesa might suffer if
25 enjoined. Where, as here, the balance of hardships tips sharply in favor of the movant, the Court
26 should issue the preliminary relief requested.

27 ⁸ See, e.g., Ybarra Decl. Ex. 1 (Manlove) at 1, 4; Ex. 11 (Amy Dworsky & Mark E. Courtney,
28 *The Risk of Teen Pregnancy Among Transitioning Foster Youth: Implications for Extending State
Care Beyond Age 18*, 32 Child. & Youth Servs. Rev. 1351 (2010)) at 1352.

1 **C. Plaintiffs’ requested injunctive relief would serve the public interest.**

2 “*It is well established that when injunctive relief is sought, consideration of public policy*
3 *is not only permissible but mandatory.*” *O’Connell v. Super. Ct.*, 47 Cal. Rptr. 3d 147, 161 (Cal.
4 Ct. App. 2006) (addressing a motion for a preliminary injunction) (internal quotations and
5 citations omitted). Here, foster youth’s right to access contraceptives and confidential
6 reproductive health care serves to advance the public interest in preventing unwanted pregnancy
7 and the spread of STDs.

8 The control and prevention of STDs is a significant public health concern in California.
9 *See, e.g.,* Cal. Health & Safety Code § 120500, *et seq.* (establishing the Sexually Transmitted
10 Diseases Control Branch and the Office of HIV/AIDs within the California Department of Public
11 Health). This is particularly true in areas such as Fresno County that have high rates of STD
12 infection and transmission.⁹ Similarly, preventing unwanted teen pregnancy has long been a
13 priority for the State of California. Over the last forty years, California has created a number of
14 publicly-funded programs aimed at reducing unintended teen pregnancy.¹⁰ Accordingly, the
15 public interest favors the requested injunctive relief, and the Court should grant Plaintiffs’ request
16 for an injunction on this basis, as well.

17 **IV. CONCLUSION**


18 For the foregoing reasons, Plaintiffs respectfully request the Court grant this request for a
19 preliminary injunction enjoining Defendant Promesa from denying foster youth access to
20 contraceptives and confidential reproductive health care.
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22

23 ⁹ *See, e.g.,* Ybarra Decl. Ex. 13 California Department of Public Health, *Chlamydia Tables,*
24 *California 2014, SEXUALLY TRANSMITTED DISEASES CONTROL BRANCH* (2014)) at 2 (showing that,
25 for the past five years, Fresno County has had one of the highest incidence rates of chlamydia in
26 California).

27 ¹⁰ *See, e.g.,* Ybarra Decl. Ex. 15 (California Department of Public Health, *Teen Births in*
28 *California: A Resource for Planning and Policy,* Maternal, Child and Adolescent Health Division
(2008)) at 11 (summarizing twelve publicly-funded programs created by California in support of
its efforts to prevent unintended teen pregnancies and teen births, including the Family PACT
(Planning, Access, Care and Treatment) Program, which “provides no-cost, confidential,
comprehensive clinical family planning and reproductive health services to low income California
residents” including adolescents).

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