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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF HUMBOLDT

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 v.

18 ST. JOSEPH HEALTH NORTHERN
19 CALIFORNIA, LLC AND DOES 1-10,

20 Defendants.

Case No. CV2401832

**DEFENDANT ST. JOSEPH HEALTH
NORTHERN CALIFORNIA, LLC'S
NOTICE OF DEMURRERS AND
DEMURRERS TO COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES**

**Filed concurrently with: (1) Declaration
of Colin M. McGrath; (2) Request for
Judicial Notice**

Hearing Date: January 27, 2025
Time: 10:30 a.m.
Dept.: 4

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 27, 2025, at 10:30 a.m., or as soon thereafter
3 as this matter may be heard in Courtroom 4 of the above-entitled Court, located at 825 Fifth
4 Street, Eureka, California 95501, defendant St. Joseph Health Northern California, LLC (“SJH”)
5 will and hereby does demur to the Complaint of the Attorney General (“AG”) on behalf of the
6 People of the State of California under Code of Civil Procedure section 430.10(e), on the ground
7 that the Complaint fails to state facts sufficient to constitute a cause of action against SJH.

8 Counsel for the parties met and conferred pursuant to Code of Civil Procedure section
9 430.41(a). The parties were unable to resolve the matter. (Declaration of Colin M. McGrath ¶ 2.)

10 The Demurrers will be based upon this Notice, the accompanying Demurrers and
11 Memorandum of Points and Authorities, the concurrently filed Request for Judicial Notice, the
12 concurrently filed Declaration of Colin M. McGrath, the pleadings and papers on file in this
13 action, and any other evidence or argument the Court shall permit at the hearing on this matter.

14
15 Dated: December 23, 2024

MANATT, PHELPS & PHILLIPS, LLP

16
17 By: 

Harvey L. Rochman
Attorneys for Defendant
ST. JOSEPH HEALTH NORTHERN
CALIFORNIA, LLC

1 **DEMURRERS**

2 Defendant St. Joseph Health Northern California, LLC ("SJH") demurs to the Complaint
3 filed by the Attorney General ("AG") on behalf of the People of the State of California as
4 follows:

5 1. SJH demurs to the first cause of action for alleged violation of Health and Safety
6 Code § 1317 on the ground that the Complaint does not allege facts sufficient to state a cause of
7 action.

8 2. SJH demurs to the second cause of action for alleged violation of Health and
9 Safety Code § 1317.2 on the ground that the Complaint does not allege facts sufficient to state a
10 cause of action.

11 3. SJH demurs to the third cause of action for alleged violation of the Unruh Civil
12 Rights Act (Civil Code § 51(b)), on the ground that the Complaint does not allege facts sufficient
13 to state a cause of action.

14 4. SJH demurs to the fourth cause of action for alleged violation of the Unfair
15 Competition Law (Business & Professions Code § 17200) on the ground that the Complaint does
16 not allege facts sufficient to state a cause of action.

17 Dated: December 23, 2024

MANATT, PHELPS & PHILLIPS, LLP

18
19 By: 

20 Harvey L. Rochman
21 *Attorneys for Defendant*
22 ST. JOSEPH HEALTH NORTHERN
23 CALIFORNIA, LLC
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1 addition, any use of the Unruh Act to enjoin and/or penalize SJH for complying with a faith-based
2 policy would violate SJH's constitutional rights to free exercise of religion and free expression.

3 Fourth, the Complaint fails to state a claim for unlawful conduct in violation of the Unfair
4 Competition Law ("UCL"), Bus. & Prof. Code § 17200 et seq., because it does not allege a
5 violation of the ESL or the Unruh Act.

6 Fifth, the AG cannot use the ESL, Unruh Act and UCL to prohibit a Catholic hospital
7 from applying faith-based policies on a case-by-case basis or to penalize a Catholic hospital for
8 applying faith-based policies and procedures.³ SJH is a Catholic hospital founded in 1920 by the
9 Sisters of St. Joseph of Orange. Like all Catholic hospitals, SJH is required to follow the Ethical
10 and Religious Directives for Catholic Health Care Services ("ERDs") issued by the United States
11 Conference of Catholic Bishops (the "USCCB"). The Complaint alleges that SJH unlawfully
12 applied a faith-based policy regarding the termination of pregnancies. However, none of the
13 statutes alleged require a hospital to allow any specific procedure to terminate a pregnancy. The
14 AG improperly seeks to use these laws to force SJH to perform any procedure that a physician
15 may seek, including procedures that may not be allowed at a Catholic hospital under a specific set
16 of circumstances. The Complaint fails to state a claim because, as a Catholic hospital, SJH has a
17 First Amendment right to apply faith-based policies, which entail a case-by-case determination of
18 the permissible interventions. Indeed, the AG expressly acknowledged and agreed in approving
19 the 2015 ministry affiliation between St. Joseph Health System and Providence Health & Services
20 that this very process, specifically including the application of the ERDs, would continue at SJH:

21 For eleven fiscal years after the closing date of the Health System Combination
22 Agreement, all of the entities listed in Condition I shall continue to maintain multi-
23 disciplinary local ministry ethics teams at each hospital and the teams shall consist
24 of physicians, nurses, social workers, chaplains, and ethicists. **The application of
the Ethical and Religious Directives shall continue to be conducted on a case-
by-case basis taking into account the clinical and ethical factors presented in**

25
26 ³ The stipulation and order entered on October 29, 2024 (the "Stipulation") state that SJH intends to
27 comply with its own existing policies that are consistent with the ESL and that SJH does not admit any
28 liability related to the claims asserted in this lawsuit. To the extent that the AG contends the Stipulation
requires SJH to allow procedures that are not permitted by the ERDs, SJH reserves the right to modify or
vacate the Stipulation if and when appropriate.

1 each case by the multi-disciplinary local ministry ethics teams. RJN, Ex. 1,
2 Section XIV (emphasis added) (SJH RJN Page 008).⁴

3 **II. RELEVANT ALLEGATIONS AND BACKGROUND FACTS**

4 SJH is a Catholic hospital.⁵ It is listed in the Official Catholic Directory (“OCD”),
5 establishing that it is an official part of the Catholic Church. RJN, Ex. 2, at p. 039.⁶ As a
6 Catholic hospital, SJH is *required* to follow the ERDs, which “provide authoritative guidance” to
7 all Catholic health care facilities. *Means v. U.S. Conference of Catholic Bishops*, 2015 WL
8 3970046, *3 (W.D. Mich. June 30, 2015) (the ERDs “reaffirm the ethical standards of behavior in
9 health care that flow from the Church’s teachings about the dignity of the human person” and
10 “provide authoritative guidance on certain moral issues that face Catholic health care today”),
11 *aff’d* 836 F. 3d 643 (6th Cir. 2016). Directive 5 of the ERDs provides that “Catholic health care
12 services *must adopt these Directives as a policy*, [and] *require adherence to them* within the
13 institution as a condition for medical privileges and employment . . .” SJH RJN, Page 050
14 (emphasis added). Catholic hospitals that fail to adhere to the ERDs violate their own mission as
15 well as the basic tenets of the Catholic faith and may lose their status as a “Catholic” hospital.
16 Code of Canon Law, Canon 216 (“Nevertheless, no undertaking is to claim the name Catholic
17 without the consent of competent ecclesiastical authority”).⁷

18 ERD 44 provides that “[a] Catholic health care institution should provide prenatal,
19 obstetric, and postnatal services for mothers and their children in a manner consonant with its
20 mission.” SJH RJN, Ex. 3, at page 059. The ERDs distinguish between pregnancy terminations
21 that are strictly prohibited and other interventions that may result in the termination of a

22 ⁴ SJH is filing concurrently herewith a Request for Judicial Notice (RJN) of: (i) the Conditions of Consent
23 in which the AG acknowledged that the ERDs will apply to SJH; (ii) SJH’s listing in the Official Catholic
24 Directory (OCD) showing that SJH is an official part of the Catholic Church; (iii) the ERDs governing
25 SJH; and (iv) SJH’s receipt of federal Hill-Burton funds. The RJN has been consecutively page numbered.

26 ⁵ St. Joseph has been a Catholic hospital for over 100 years, dating from 1920 when the Sisters of St.
27 Joseph of Orange opened their first hospital in Eureka to provide essential health care to the community,
28 stemming from the 1918 flu epidemic. See <https://www.providence.org/locations/norcal/st-joseph-hospital-eureka/about-us> (last accessed December 19, 2024).

⁶ “An entity is listed in the [OCD] only if a bishop of the Roman Catholic Church determines the entity is
‘operated, supervised, or controlled by or in connection with the Roman Catholic Church.’ Courts view
the [OCD] listing as a public declaration by the Roman Catholic Church that an organization is associated
with the Church.” *Overall v. Ascension*, 23 F. Supp. 3d 816, 831 (E.D. Mich. 2014) (citation omitted).

⁷ The Code of Canon Law is available at https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib2-cann208-329_en.html#TITLE_I (last accessed December 19, 2024).

1 pregnancy, which are allowed in certain cases. ERD 45 prohibits “the directly intended
2 termination of a pregnancy before viability or the directly intended destruction of a viable fetus”.
3 *Id.*, pp. 059-060 (emphasis added). However, ERD 47 provides that “[o]perations, treatments,
4 and medications that have as their direct purpose the cure of a proportionately serious
5 pathological condition of a pregnant woman are permitted when they cannot be safely postponed
6 until the unborn child is viable, even if they will result in the death of the unborn child.” *Id.*, p.
7 060.

8 Consistent with ERD 44, the Complaint alleges that SJH provided multiple forms of
9 pregnancy-related care and treatments. Complaint, ¶¶ 53-61. However, the Complaint alleges
10 that the treating physician stated that termination of the pregnancy was not permitted because of
11 “hospital policy.” Complaint, ¶ 4 (alleging “hospital policy” prohibited termination if the fetus
12 had “detectable heart tones”); *id.*, ¶¶ 63, 84, 93 (same). As an alternative, the physician offered to
13 transfer Ms. Nusslock by helicopter to UCSF or to Mad River Hospital by ambulance. *Id.*, ¶¶ 67,
14 71. Ms. Nusslock allegedly refused both transfers. *Id.*, ¶¶ 68, 71-72.

15 Although the Complaint conspicuously avoids mention that SJH is a Catholic hospital and
16 that the ERDs, which the AG acknowledged years ago, govern the provision of care at SJH (*see*
17 SJH RJN, Ex. 1, at p. 008), the Complaint clearly alleges that SJH violated the ESL *because* it
18 applied a faith-based policy as a Catholic hospital subject to the ERDs.⁸

19 **III. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION.**

20 **A. This Action Should Be Stayed Because the CDPH Has Primary Jurisdiction** 21 **Over Alleged Violations of Health & Safety Code § 1317 et seq.**

22 The Complaint asks the Court to determine that SJH violated §§ 1317 and 1317.2 and to
23 enjoin the hospital from violating these statutes. This is contrary to the Legislature’s intended
24 enforcement mechanism. “It is the intent of the Legislature that the state department [CDPH⁹]
25 has *primary responsibility for regulating the conduct of hospital emergency departments . . .*”

26 ⁸ The AG has acknowledged SJH’s Catholic status and that the alleged policy is based upon its Catholic
27 faith in other documents filed in this case. *See* Motion for Preliminary Injunction, p. 10:1-2, p. 15:22-23.
28 The Court can take judicial notice that St. Joseph is a Catholic hospital that must abide by the ERDs. *See*
RJN, ¶¶ 2-3.

⁹ “‘State department’ means the State Department of Public Health” or CDPH. § 1317.1(e).

1 § 1317.6(e) (emphasis added). “**All** alleged violations of this article and the regulations adopted
2 hereunder **shall be investigated by the state department.**” § 1317.5(a) (emphasis added). The
3 Complaint contains no allegations of any CDPH investigation or agency action. CDPH’s
4 “primary” responsibility for the subject matter establishes that the court should stay proceedings
5 until the CDPH can consider the facts and determine whether there has been a violation.

6 “‘Primary jurisdiction[]’ . . . applies . . . whenever enforcement of the claim requires the
7 resolution of issues which, under a regulatory scheme, have been placed within the special
8 competence of an administrative body; in such a case the judicial process is suspended pending
9 referral of such issues to the administrative body for its views.” *Farmers Ins. Exch. v. Superior*
10 *Court*, 2 Cal. 4th 377, 390 (1992) (quoting *United States v. Western Pac. R. Co.*, 352 U.S. 59, 63-
11 64 (1956) (emphasis omitted); *see also Jonathan Neil & Assocs. v. Jones*, 33 Cal. 4th 917, 931-32
12 (2004). “[T]he primary jurisdiction doctrine . . . enhances court decisionmaking and efficiency
13 by allowing courts to take advantage of administrative expertise, and it helps assure uniform
14 application of regulatory laws.” *Farmers*, 2 Cal. 4th at 391; *see also Jonathan Neil*, 33 Cal. 4th at
15 932. Unless the statutory scheme “precludes a court from exercising discretion,” a court may stay
16 an action pending administrative determination. *Farmers*, 2 Cal. 4th at 394 (abuse of discretion
17 not to stay case based on primary jurisdiction); *Jonathan Neil*, 33 Cal. 4th at 935 (same).¹⁰

18 The CDPH has special expertise in determining whether Sections 1317 and 1317.2 have
19 been violated and the Legislature has expressly tasked the CDPH with investigating and
20 determining all such claims.¹¹ § 1317.6(e). Consequently, “the case for invoking the primary
21 jurisdiction of [CDPH] is compelling.” *Jonathan Neil*, 33 Cal. 4th at 934.

22 *First*, the Legislature has not precluded courts from applying primary jurisdiction—the
23 “threshold question.” *Farmers*, 2 Cal. 4th at 394. To the contrary, the statute reinforces it by
24 permitting civil suits (including by the AG) based on “the violations,” an apparent reference to

25 ¹⁰ The fact that the Complaint is brought by the Attorney General does not change the analysis. *Farmers*,
26 2 Cal. 4th at 401 (“The reasons supporting the doctrine apply to private citizens and the Attorney General
alike, and the two classes of plaintiffs should be treated equally.”).

27 ¹¹ The Complaint also alleges that the SJH’s alleged failure to provide emergency services violated the
28 Unruh Act. While the CDPH does not have special expertise in alleged discrimination, its “expertise is
nevertheless relevant” to evaluating the SJH’s justifications for its alleged acts, including whether they are
pretextual. *Bradley v. CVS Pharmacy, Inc.*, 64 Cal. App. 5th 902, 916 n.7 (2021).

1 “violations” that are to be reported to and investigated by the CDPH in the first instance.
2 § 1317.5(a); § 1317.6(a), (j). Likewise, the UCL “discloses no legislative intent to preclude a
3 court from exercising discretion under the primary jurisdiction doctrine before entertaining a civil
4 action under section 17200 of the Business and Professions Code.” *Farmers*, 2 Cal.4th at 394-95.

5 *Second*, CDPH “has at [its] disposal a ‘pervasive and self-contained system of
6 administrative procedure’ to deal with the precise questions involved herein” through its
7 complaint and mandated investigation, reporting, remediation, and penalty processes. *Farmers*, 2
8 Cal. 4th at 396; *Jonathan Neil*, 33 Cal. 4th at 934. The statutory scheme explicitly contemplates
9 that a “violation” of section 1317 or 1317.2 is to be investigated, determined, and (if a violation is
10 found) penalized in the first instance by CDPH.¹² Section 1317.5(a) requires that “[a]ll alleged
11 violations . . . shall be investigated by the state department. . . . The investigation shall be
12 conducted pursuant to procedures established by the state department and shall be completed no
13 later than 60 days after the report of apparent violation is received by” CDPH.

14 The CDPH also has the expertise and authority to receive and investigate reports of
15 noncompliance with the ESL. Sections 1279 and 1279.2 specify the process for CDPH to inspect
16 hospitals “for compliance with provisions of state law and regulations,” including cases where
17 CDPH receives a complaint “that indicates an ongoing threat of imminent danger of death or
18 serious bodily harm.” Section 1280(b) requires CDPH to notify a hospital of all deficiencies and
19 to provide an opportunity for the facility to come into compliance. *See also* Cal. Code Regs., tit.
20 22, §§ 70351(b)(1), (5), § 70363(a) (vesting CDPH with authority to issue the special permit
21 required to provide emergency medical services and ensure “[a]ll hospitals . . . maintain
22 continuous compliance with the special permit requirements”).

23 The CDPH is also authorized to penalize a noncompliant hospital.¹³ Sections 1317.6(a)
24 and (g) provide for CDPH’s imposition of civil penalties and revocation or suspension of a
25 hospital’s emergency medical service permit if violations are found. Section 1280.3 authorizes

26 ¹² The CDPH has created procedures for receiving and investigating complaints of violations. *See*
27 [https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/pages/complaintinvestigationprocess.aspx](https://www.cdph.ca.gov/Programs/CHCQ/LCP/CalHealthFind/pages/complaintinvestigationprocess.aspx#InvestigatingComplaint)
28 [#InvestigatingComplaint](#) (last accessed December 19, 2024).

¹³ However, the CDPH would not have the authority to burden SJH’s free exercise of religion for the
reasons described in Section F, *infra*.

1 CDPH to impose administrative penalties and permits a facility to request a hearing. CDPH may
2 also suspend or revoke a facility's special permit pursuant to the procedures in Government Code
3 section 11500 et seq. for administrative adjudications. Cal. Code Regs., tit. 22, § 70369.

4 These administrative procedures clearly support the application of primary jurisdiction.
5 *See Farmers*, 2 Cal. 4th at 384-85 (applying primary jurisdiction where law provides Insurance
6 Commissioner shall investigate, notify insurers of noncompliance, provide a time for correction,
7 impose penalties, including license suspension, and the insurer is entitled to a hearing and judicial
8 review); *Bradley*, 64 Cal. App. 5th at 914 (describing the statutory scheme that gives the State
9 Board of Pharmacy "the responsibility to decide whether a pharmaceutical licensee has violated a
10 duty to fill prescriptions under Business and Professions Code section 733" and to issue citations,
11 fines, and orders of abatement for violating the statute).

12 *Third*, "[t]he issues raised in the [Complaint] directly implicate the regulatory authority
13 and expertise of the [CDPH]." *Jonathan Neil*, 33 Cal. 4th at 934; *see also Farmers*, 2 Cal. 4th at
14 396. The Complaint alleges violations of statutes that govern hospitals' obligations to provide
15 emergency services, "demonstrat[ing] the 'paramount need for specialized agency fact-finding
16 expertise.'" *Farmers*, 2 Cal. 4th at 398 (citation omitted). To determine whether the violations
17 occurred requires resolution of factual questions, including whether SJH was required to render
18 emergency services, whether such services were rendered, whether a transfer occurred, and, if so,
19 whether the statutory conditions were met, and any countervailing factors and arguments asserted
20 by SJH. Complaint, ¶¶ 93-95 (alleging SJH failed to provide required emergency services); *id.*,
21 ¶¶ 99-102 (alleging SJH failed to observe transfer requirements); *id.*, ¶ 107 (alleging SJH "denied
22 the full range of emergency medical services" to pregnant patients).

23 "The resolution of these questions mandates exercise of expertise presumably possessed
24 by the [CDPH], and poses a risk of inconsistent application of the regulatory statutes if courts are
25 forced to rule on such matters without benefit of the views of the agency charged with regulating"
26 hospitals' compliance with obligations to render emergency services. *Farmers*, 2 Cal. 4th at 398;
27 *see also Jonathan Neil*, 33 Cal. 4th at 934 ("The DOI's interpretation and application of these
28 regulations in the first instance is necessary to secure regulatory uniformity informed by its

1 expertise and extensive experience with this area of regulation”); *Bradley*, 64 Cal. App. 5th at 917
2 (Pharmacy Board has “unique ability to evaluate whether a decision not to fill prescriptions was
3 justified” and to “evaluate the scope of CVS’s *obligation* not to fill particular prescriptions”).

4 All conditions to apply primary jurisdiction exist here. The AG is attempting improperly
5 to use this lawsuit to investigate alleged violations of the ESL, which is not appropriate in the
6 eyes of the Legislature. This case should be stayed to allow the CDPH to investigate and
7 determine whether any violation occurred.

8 **B. The Second Cause of Action for Violation of the ESL’s Nonmedical Transfer**
9 **Provision Fails Because the Complaint Alleges a Transfer for Medical**
10 **Reasons.**

11 The Complaint alleges a claim under Section 1317.2, which prohibits a hospital from
12 transferring an emergency department patient for nonmedical reasons unless certain conditions
13 are met, and that SJH failed to meet those conditions. Complaint, ¶ 98. However, Section
14 1317.2(i) expressly states that this section “shall not apply to a transfer of a patient for medical
15 reasons”. The Complaint clearly pleads that the transfer was for medical reasons including to
16 obtain medical procedures that allegedly were not permitted at SJH. Complaint, ¶ 70.
Accordingly, the Complaint fails to state a claim under Section 1317.2.

17 **C. The Third Cause of Action for Violation of the Unruh Act Fails as a Matter of**
18 **Law.**

19 The Unruh Act only prohibits *intentional* acts of discrimination. *Harris v. Capital*
20 *Growth Investors XIV*, 52 Cal. 3d 1142, 1172 (1991); *Koebke v. Bernardo Heights Country Club*,
21 36 Cal. 4th 824, 854 (2005). Facially neutral policies are not prohibited even if the application of
22 the policy has a disparate impact on a protected class. Civ. Code § 51(c); *Turner v. Association of*
23 *American Medical Colleges*, 167 Cal. App. 4th 1401, 1408 (2008) (“A policy that is neutral on its
24 face is not actionable under the Unruh Act, *even when it has a disproportionate impact on a*
25 *protected class*”) (emphasis added); *Harris*, 52 Cal. 3d at 1172 (landlord’s minimum income
26 policy did not violate Unruh Act notwithstanding disparate impact on women); *Koebke*, 36 Cal.
27 4th at 853 (club’s policy extending benefits to spouses did not violate the Unruh Act
28 notwithstanding disparate impact on unmarried same sex couples); *Martinez v. Cot’n Wash, Inc.*,

1 81 Cal. App. 5th 1026, 1036 (2022) (absent “an ADA violation, the Unruh Civil Rights Act
2 requires allegations supporting willful, affirmative misconduct with the specific intent to
3 accomplish discrimination” (citations and internal quotation marks omitted)).

4 To state a claim for sex discrimination the plaintiff must allege intentional discrimination
5 *based upon sex*.¹⁴ *Cohn v. Corinthian Colleges, Inc.*, 169 Cal. App. 4th 523, 528 (2008) (“A
6 viable gender discrimination case must be because of the group’s sex, not merely a resultant
7 correlation”); *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 270 (1993)
8 (organizations impeding access to abortion clinics did not discriminate on the basis of sex,
9 because objections to abortion are not “motivated by a purpose (malevolent *or* benign) directed
10 specifically at women as a class” and do not “focus[] upon women *by reason of their sex*”).

11 Here, the Complaint fails to allege intentional discrimination on the basis of sex. To the
12 contrary, the Complaint establishes that SJH routinely provides care to pregnant people and
13 pregnant people with medical conditions and that it provided such care to Ms. Nusslock. *See*
14 Complaint ¶¶ 50-56. Instead, the Complaint alleges that SJH did not provide a specific procedure
15 because of the nature of that procedure, Complaint, ¶¶ 4, 63, not because of the patient’s sex or
16 because she was pregnant or had a medical condition, as is required to state a claim for intentional
17 discrimination. No intent to single out such groups is alleged or could ever be alleged. To the
18 contrary, the distinction is based on the nature of the procedure.¹⁵

19 As a Catholic hospital, SJH treats all its patients with respect and compassion. The
20 Church articulated this requirement at the Second Vatican Council in 1965, stating: “with respect
21 to the fundamental right of the person, *every type of discrimination*, whether social or cultural,
22 whether based on sex, race, color, social condition, language or religion, is to be overcome and

23 ¹⁴ The Unruh Act defines “sex” to include pregnancy and medical conditions related to pregnancy. Civ.
24 Code § 51(e)(5). Although the Complaint focuses on discrimination based upon a diagnosis of Previabable
25 PPROM (Complaint ¶¶ 1, 2, 55-63), such claims are not actionable under the Unruh Act’s prohibition of
26 medical condition discrimination which is narrowly defined and does not include Previabable PPROM. Civ.
27 Code § 51(c), (e)(3); Gov’t Code § 12926, subd. (i).

28 ¹⁵ This case is unlike *Minton v. Dignity Health*, 39 Cal. App. 5th 1155 (2019), which held that a hospital
potentially violated the Unruh Act by allegedly refusing to perform a procedure on religious grounds due
to the patient’s diagnosis of gender dysphoria, even though it allowed other patients to undergo the same
procedure as treatment for other diagnoses. *Minton*, 39 Cal. App. 5th at 1162-63. Here, in contrast, the
AG alleges that SJH had a policy of not allowing anyone to terminate a pregnancy under specified
circumstances. Complaint, ¶ 84; *see also id.*, ¶¶ 4, 63, 93.

1 eradicated as contrary to God’s intent.”¹⁶ And ERD 23 provides that “[t]he inherent dignity of
2 the human person must be respected and protected regardless of the nature of the person’s health
3 problem or social status. The respect for human dignity extends to *all persons who are served by*
4 *Catholic health care.*” SJH RJN, Ex. 3, at p. 054 (emphasis added).

5 In short, the AG fails to state a claim for intentional discrimination under the Unruh Act.
6 In addition, any attempt to use the Unruh Act to force SJH to violate the ERDs would also violate
7 the Hospital’s constitutional rights, as discussed in Section F, *infra*. *Ingels v. Westwood One*
8 *Broad. Servs., Inc.*, 129 Cal. App. 4th 1050, 1070-74 (2005) (application of Unruh Act to
9 circumstances implicating First Amendment rights is subject to strict scrutiny).

10 **D. The Fourth Cause of Action for Violation of the UCL Fails as a Matter of**
11 **Law.**

12 The Complaint alleges a cause of action under the UCL based on purported violations of
13 the ESL and the Unruh Act. Complaint, ¶ 110.¹⁷ However, a claim under the UCL’s “unlawful”
14 prong fails where there is no underlying violation of law because “[a] defendant cannot be liable
15 under § 17200 for committing ‘unlawful business practices’ without having violated another
16 law.” *Ingels*, 129 Cal. App. 4th at 1060. Mere legal conclusions regarding unlawfulness are not
17 sufficient. *Berryman v. Merit Property Mgmt., Inc.*, 152 Cal. App. 4th 1544, 1554 (2007). As
18 shown, the Complaint alleges no violation of the ESL or the Unruh Act.

19 **E. Conscience Clause Legislation Bars the ESL Causes of Action.**

20 Health care conscience clause legislation also bars this action. Congress recognized the
21 need for deference to the “conscience rights” of religious hospitals. The Church Amendment
22 provides that a hospital *cannot* be forced to “make its facilities available for the performance of
23 any . . . abortion if the performance of such procedure or abortion in such facilities is prohibited
24 by the entity on the basis of religious or moral convictions.” 42 U.S.C. §300a-7(b). The Church
25 Amendment applies to all hospitals, like SJH, which received Hill-Burton funding. *Chrisman v.*

26 ¹⁶ See https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html (last accessed December 19, 2024) (Vatican Council II,
27 Pastoral Constitution of the Church in the Modern World, n. 29) (emphasis added).

28 ¹⁷ The Complaint references the UCL’s “unfair” and “fraudulent” prongs but alleges no relevant facts and clearly is based on the “unlawful” prong alone. Complaint, ¶ 110.

1 *Sisters of St. Joseph of Peace*, 506 F.2d 308, 311 (9th Cir. 1974); RJN, Ex. 4. As the Department
2 of Health and Human Services (“HHS”) has explained, “the conscience provisions contained in . .
3 . the ‘Church Amendments[]’ were enacted in the 1970s to protect the conscience rights of
4 individuals and entities that object to . . . the performance of abortion . . . procedures if doing so
5 would be contrary to the provider’s religious beliefs or moral convictions.”¹⁸ *See also* Robin
6 Fretwell Wilson, *The Erupting Clash Between Religion & the State Over Contraception,*
7 *Sterilization & Abortion*, 135, 144 (Allen D. Hertzke ed., 2015) (the Church Amendment
8 “provides an absolute, unqualified ground for objecting to assisting with an abortion or
9 sterilization if it would be ‘contrary to one’s religious beliefs or moral convictions’”); *Chrisman*
10 *v. Sisters of St. Joseph of Peace*, 506 F.2d at 312 (“Congress quite properly sought to protect the
11 freedom of religion of those with religious or moral scruples against . . . abortions”).

12 Section 245 of the Public Health Service Act (the “Coats-Snowe Amendment”) prohibits
13 the federal government and any state or local government receiving federal financial assistance
14 from discriminating against any health care entity on the basis that the entity refuses to perform
15 abortions. 42 U.S.C. § 238n. The Weldon Amendment, which has been incorporated into every
16 HHS appropriations act since 2005, also provides that none of the funds made available in those
17 appropriations acts may be made available to a state government if the state discriminates against
18 any health care entity on the basis that the entity does not provide abortions.¹⁹

19 The provision of health care necessarily implicates the moral and religious values of faith-
20 based health care providers. This is exemplified by the enormous contribution of Catholic orders
21 of women religious to the provision of health care. SJH and Catholic hospitals in this country
22 exist because women religious, such as the Sisters of St. Joseph of Orange who founded SJH,
23 carry out the healing ministry of Jesus bringing health care to millions of people. *See* American
24 Medical Association House of Delegates Policy H-420.959 (reaffirming policy that “neither
25

26 ¹⁸ <https://www.hhs.gov/conscience/your-protections-against-discrimination-based-on-conscience-and-religion/index.html> (last accessed December 19, 2024).

27 ¹⁹ https://www.hhs.gov/sites/default/files/ocr/civilrights/understanding/ConscienceProtect/publaw111_117_123_stat_3034.pdf (last accessed December 19, 2024).

1 physician, hospital, nor hospital personnel shall be required to perform any act violative of
2 personally held moral principles”). There is universal agreement among courts, legislators, and
3 regulators that the conscience rights of health care providers must be respected.

4 **F. The Complaint Is Barred by SJH’s Constitutional Rights to Free Exercise of**
5 **Religion and Free Expression.**

6 1. **Enforcement of the AG’s Claims to Compel SJH to Allow Abortions**
7 **That Conflict with Catholic Religious Doctrine Would Substantially**
8 **Burden SJH’s Free Exercise of Religion.**

9 SJH is committed to providing emergency care consistent with state and federal law. At
10 the same time, SJH also has a constitutional right to comply with the ERDs. The right to free
11 exercise of religion is enshrined in the state and federal constitutions. U.S. Const., 1st Am.;
12 *People v. Woody*, 61 Cal.2d 716, 727 (1964). Here, the AG improperly seeks to intervene in the
13 faith-based processes of a Catholic hospital and seeks an injunction that would prohibit SJH from
14 adhering to faith-based policies regarding the termination of a pregnancy. The Constitution
15 precludes any such claim. *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049,
16 2060 (2020) (the U.S. Constitution protects religious institutions’ “autonomy with respect to
17 internal management decisions that are essential to the institution’s central mission”). SJH could
18 not comply with such an order without forsaking its Catholic identity—the ultimate burden in a
19 religious freedom case. Any such action could also lead to the formal withdrawal of SJH’s
20 Catholic status. Accordingly, forcing SJH to permit procedures not permitted under the ERDs
21 would substantially burden SJH’s religious beliefs.

22 Although the U.S. Supreme Court has held that neutral laws of general applicability may
23 be enforced even when doing so substantially burdens an individual’s religious exercise, *Emp.*
24 *Div. Or. Dep’t of Human Res. v. Smith*, 494 U.S. 872, 885 (1990); *Fulton v. City of Phila.*, 593
25 U.S. 522, 533 (2021), to “avoid strict scrutiny, laws that burden religious exercise must be both
26 neutral and generally applicable.” *Fellowship of Christian Athletes v. San Jose Unified School*
27 *District Board of Education*, 82 F.4th 664, 685 (9th Cir. 2023). For the reasons discussed below,
28 strict scrutiny applies to the ESL claims alleged in the Complaint and the claims fail that test.
The Unruh Act claim is also subject to strict scrutiny. *See supra* Section III.C.

1 2. **The ESL Treats Comparable Secular Activity More Favorably Than**
2 **Religious Exercise and Therefore Is Not Neutral.**

3 Strict scrutiny applies to the ESL because it treats secular activity more favorably than
4 religious exercise and therefore is not neutral. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021)
5 (“[G]overnment regulations are not neutral and generally applicable, and therefore trigger strict
6 scrutiny under the Free Exercise Clause, whenever they treat any comparable secular activity
7 more favorably than religious exercise.”). The ESL expressly provides that a hospital is not
8 required to provide emergency services if it does not have the “appropriate facilities and qualified
9 personnel available to provide the services or care.” § 1317(a). This includes when the hospital
10 has simply chosen to send its emergency personnel to a training course. *Brooker v. Desert Hosp.*
11 *Corp.*, 947 F.2d 412, 416 (9th Cir. 1991) (no violation of ESL where hospital chose to send its
12 physicians to a training program). The ESL clearly treats these secular activities more favorably
13 than religious exercise because it provides express exceptions for circumstances in which a
14 hospital cannot provide the services for secular reasons without providing an express exception
15 for hospitals that cannot provide the services for religious reasons. This requires the application
16 of strict scrutiny. *Tandon*, 593 U.S. at 62.

17 3. **The ESL Has A Mechanism For Individualized Exemptions and**
18 **Therefore Is Not Generally Applicable.**

19 Strict scrutiny also applies to the ESL because the enforcement process under the ESL
20 contains “a formal mechanism for granting exceptions [that] invites the government to decide
21 which reasons for not complying with the policy are worthy of solicitude.” *Fulton*, 593 U.S. at
22 537. “[T]he mere existence of government discretion is enough to render a policy not generally
23 applicable.” *Fellowship of Christian Athletes*, 82 F.4th at 685 (citing *Fulton*, 593 U.S. at 537).
24 As discussed above, violations of the ESL are determined by the CDPH on a case-by-case basis.
25 See Section III.A and fn. 12, *supra*. Upon receipt of a complaint, CDPH conducts a site visit,
26 conducts interviews, determines whether a violation of any statutes or regulations has occurred,
27 and then determines severity and scope of any deficiencies found. §§ 1279, 1279.2, 1280,
28 1280.3, and 1317.6. There are numerous points within that process at which the CDPH exercises
discretion as to whether and to what extent to apply and enforce the ESL, thus rendering the law

1 not generally applicable. *Fulton*, 593 U.S. at 537.

2 4. **The ESL Claims Are Also Subject to Strict Scrutiny Because They**
3 **Violate SJH’s Rights to Free Expression and Association.**

4 A court cannot force SJH to be associated with procedures that are not permitted under the
5 ERDs. The ERDs are *expressive* as well as prescriptive. They provide that “Catholic health care
6 *expresses* the healing ministry of Christ,” and that “[t]he mystery of Christ *casts light on every*
7 *facet of Catholic health care.*” SJH RJN, Ex. 3, pp. 047, 048 (emphasis added). Every Catholic
8 bishop is instructed to “ensure[] the moral and religious identity of the health care ministry in
9 whatever setting is it carried out in the diocese.” *Id.*, p. 048. The Complaint seeks to compel SJH
10 to permit pregnancy terminations without exceptions for circumstances in which the procedures
11 are “never permitted.” *Id.*, p. 059 (Directive 45) (prohibiting the directly intended termination of
12 a pregnancy). This is precisely the sort of situation in which “conduct may be ‘sufficiently
13 imbued with elements of communication to fall within the scope of the First and Fourteenth
14 Amendments.’” *Texas v. Johnson*, 491 U.S. 397, 404 (1989); *see also Hurley v. Irish-American*
15 *Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 569 (1995) (“[T]he Constitution looks
16 beyond written or spoken words as mediums of expression.”). Indeed, the First Amendment
17 “ensures that religious organizations and persons are given proper protection as they seek to teach
18 the principles that are so fulfilling and central to their lives and faiths.” *Obergefell v. Hodges*,
19 576 U.S. 644, 679-680 (2015).

20 Forcing SJH to allow procedures to terminate a pregnancy that are not permitted by the
21 Catholic faith would unquestionably impede SJH’s constitutionally protected ability to
22 communicate its faith-based message that such procedures are intrinsically wrong. *See National*
23 *Institute of Family and Life Advocates v. Becerra*, 585 U.S. 755, 766 (2018) (“NIFLA”)
24 (“[R]equiring [Christian organizations located in California] to inform women how they can
25 obtain state-subsidized abortions—at the same time [the organizations] try to dissuade women
26 from choosing that option—. . . plainly ‘alters the content’ of [the clinics’] speech.”).²⁰

27 ²⁰ *Minton* rejected a hospital’s freedom of expression argument, in a case by a transgender patient alleging
28 a violation of the Unruh Act when it declined for religious reasons to permit gender transition
surgery. *Minton*, 39 Cal. App. 5th at 1165-1166. The *Minton* court relied on *Catholic Charities of*
Sacramento v. Superior Court, 32 Cal. 4th 527, 558 (2004). But *Catholic Charities* did not involve health

1 5. **The AG’s Claims Fail Strict Scrutiny Because They Are Not Narrowly**
2 **Tailored.**

3 A government policy that burdens the free exercise of religion can survive strict scrutiny
4 only if it advances “interests of the highest order” and is narrowly tailored to achieve those
5 interests. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 546 (1993). “Put
6 another way, so long as the government can achieve its interests in a manner that does not burden
7 religion, it must do so.” *Fulton*, 593 U.S. at 541. The burden is on the government to
8 demonstrate that its policy satisfies each of these tests. *Lukumi*, 508 U.S. at 546. Here, the AG
9 has failed to plead and cannot show that there is no less restrictive alternative by which the
10 government can achieve its policy goals. Indeed, there is an obvious alternative that is less
11 restrictive: continuing to permit SJH to apply the ERDs on a case-by-case basis. The AG has
12 already consented to such a process at SJH. *See* Section I, *supra*; RJN, Ex. 1. In addition,
13 although the Complaint notes that Mad River Hospital recently closed its labor and delivery
14 services (Complaint ¶ 8), the Complaint does not allege that the State took any action to preserve
15 or expand Mad River’s labor and delivery service as an alternative to compelling a religious
16 hospital to violate the ERDs. Consequently, the AG cannot demonstrate that forcing SJH to
17 permit the termination of a pregnancy in violation of the ERDs is the least restrictive alternative.

18 **IV. CONCLUSION.**

19 This action should be stayed under the doctrine of primary jurisdiction. Otherwise, the
20 Complaint is defective and does not state actionable claims, such that the demurrers should be
21 sustained without leave to amend.

22 Dated: December 23, 2024

MANATT, PHELPS & PHILLIPS, LLP

23 By: 

24 Harvey L. Rochman
25 Attorneys for Defendant
26 ST. JOSEPH HEALTH NORTHERN
27 CALIFORNIA, LLC

28 _____
care at a Catholic hospital and did not mention the ERDs at all, much less the ERDs’ express prohibition
on certain pregnancy terminations at Catholic hospitals, and that 2004 decision predates more recent U.S.
Supreme Court decisions, such as *NIFLA*, that clearly support SJH’s First Amendment freedom of
expression rights.

1 **PROOF OF SERVICE**

2 ***The People of the State of California v. St. Joseph Health Northern California, LLC.***
3 Humboldt Superior Court Case No. CV2401832

4 I, Regina Coprich, declare as follows:

5 I am employed in Los Angeles County, Los Angeles, California. I am over the age of
6 eighteen years and not a party to this action. My business address is MANATT, PHELPS &
7 PHILLIPS, LLP, 2049 Century Park East, Suite 1700, Los Angeles, California 90067. On
8 **December 23, 2024**, I served the within:

9 **DEFENDANT ST. JOSEPH HEALTH NORTHERN CALIFORNIA, LLC'S**
10 **NOTICE OF DEMURRERS AND DEMURRERS TO COMPLAINT;**
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **THE INTERESTED PARTIES IN THIS ACTION ADDRESSED AS FOLLOWS:**

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1 ☒ **(BY PERSONAL SERVICE)** By causing such document(s) to be delivered by hand, as
2 addressed by delivering same to *Nationwide Attorney Service* with instructions that it be
personally served.

3 ☒ **(BY ELECTRONIC MAIL)** By transmitting such document(s) electronically from my
4 e-mail address, rcoprigh@manatt.com (at Manatt, Phelps & Phillips, LLP, Los Angeles,
California), to the person(s) at the electronic mail addresses listed above. The
5 transmission was reported as complete and without error.

6 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct, and that this declaration was executed on **December 23, 2024** at
7 Los Angeles, California.

8 
Regina Coprich