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FILED

Superior Court Of California
 County Of Riverside
 12/28/2015
 A.RANGEL
 BY FAX

11 Counsel for Plaintiff, THE SCHARPEN
 12 FOUNDATION
 13 *Pro hac vice applications pending

14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
 15 **IN AND FOR THE COUNTY OF RIVERSIDE**

16 THE SCHARPEN FOUNDATION, INC. dba ICU
 17 MOBILE RIVERSIDE COUNTY,

18 Plaintiffs,

19 v.

20 KAMALA HARRIS, Attorney General of the State
 21 of California, in her official capacity; KAREN
 22 SMITH, M.D., Director of California Department of
 23 Public Health, in her official capacity; PETER
 24 THORSON, City Attorney of the City of Temecula,
 25 California, in his official capacity; Gregory P.
 Priamos, County Counsel for the County of
 Riverside; and DOES 1 through 10, Inclusive,

26 Defendants.

Case No. RIC 1514022

27 **VERIFIED FIRST AMENDED**
 28 **COMPLAINT FOR:**

- 1) **FREE SPEECH CLAIM UNDER ARTICLE I, § 2 OF THE CALIFORNIA CONSTITUTION**
- 2) **FREEDOM OF ASSEMBLY CLAIM UNDER ARTICLE I, § 3 OF THE CALIFORNIA CONSTITUTION**
- 3) **FREE EXERCISE OF RELIGION CLAIM UNDER ARTICLE I, § 4 OF THE CALIFORNIA CONSTITUTION**

27 Plaintiff, The Scharpen Foundation, Inc., doing business as ICU Mobile Riverside County,
 28 Image Clear Ultrasound Temecula, and Go Mobile For Life (hereafter collectively referred to as "ICU

1 Mobile”) by its undersigned counsel, brings this First Amended Complaint against the Defendants, their
2 agents, servants, officers, employees, and successors in office and all those persons in active concert
3 and participation with them, and for its Complaint state as follows:

4 This action challenges the constitutionality of the so-called “Reproductive FACT Act”
5 (hereafter “the Act”), Article 2.7 of Chapter 2 of Part 2 of Division 106 of the California Health and
6 Safety Code. The Act, by requiring Plaintiffs to post a politically driven message they do not wish to
7 communicate, violates Plaintiffs’ fundamental rights as guaranteed by Article I, §§ 2, 3, and 4 of the
8 California Constitution.

9 **JURISDICTION AND VENUE**

10 1. ICU Mobile is a licensed Primary Care Community Clinic that operates at 32225
11 Parkway, in Temecula, California, 92592 in the County of Riverside. ICU Mobile maintains a business
12 license issued by the City of Temecula to operate a Primary Care Community Clinic within the
13 aforementioned city and ICU Mobile operates its Primary Care Community Clinic within the City of
14 Temecula.

15 2. Defendant Peter Thorson, City Attorney for the City of Temecula, who is sued in his
16 official capacity, performs his responsibilities as City Attorney in the City of Temecula and maintains
17 an office at City Hall, which is located at 41000 Main Street, Temecula, California, 92590 in the
18 County of Riverside.

19 3. Defendant, Kamala Harris, is Attorney General of California and maintains offices in
20 Sacramento and San Diego, California, among other locations within the State of California. She is
21 sued in her official capacity.

22 4. Defendant, Karen Smith, M.D., is Director of Public Health for the State of California
23 and maintains offices in Sacramento, California, among other locations within the State California. She
24 is sued in her official capacity.

25 5. Defendant Gregory P. Priamos, County Counsel for the County of Riverside, maintains
26 his Office of County Counsel in the County of Riverside at 3960 Orange Street, Suite 500, Riverside,
27 California. He is sued in his official capacity.

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1 6. In that the actions complained of herein occurred or will occur in the City of Temecula
2 in the County of Riverside, State of California, venue is proper in this Court.

3 **PARTIES**

4 **The Plaintiff**

5 7. The Scharpen Foundation, Inc. is a California religious non-profit corporation and is also
6 tax-exempt under § 501c3 of the Internal Revenue Code. It is licensed by the California Department of
7 Public Health to operate a Primary Care Community Clinic in the County of Riverside and maintains an
8 office at 22433 Stanley Lane, Wildomar, California, 92595 in the County of Riverside.

9 8. ICU Mobile exists to serve women and their unborn children in the local community.
10 The clinic provides compassionate and loving services and information for women with the goal of
11 holistically serving their medical, emotional, spiritual, and material needs.

12 9. ICU Mobile provides the following services free of charge: pregnancy testing and
13 verification, limited obstetrical ultrasounds, medical referrals, pregnancy options education, and
14 emotional support.

15 10. ICU Mobile also provides the following information as appropriate: information on
16 STDs/STIs, information on birth control, information on community referrals, and resources for
17 additional pregnancy and post-pregnancy needs beyond the clinic.

18 11. ICU Mobile provides the above-mentioned services and information pursuant to its pro-
19 life viewpoint, desiring to equip women to make an informed decision to choose parenting or adoption,
20 rather than abortion.

21 12. The primary mission for The Scharpen Foundation, Inc., and ICU Mobile is to promote
22 the principles of Christianity through a combination of training, education, mentorship, consulting,
23 encouragement and prayer. ICU Mobile is a fictitious business name used by The Scharpen Foundation,
24 Inc. to further the mission and ministry of The Scharpen Foundation, Inc.

25 13. ICU Mobile's medical professionals include a medical director who is an
26 obstetrician/gynecologist, three registered nurses trained in sonography, and one registered diagnostic
27 medical sonographer.

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1 14. ICU Mobile shares its pro-life message as an exercise of its religious belief that life is a
2 gift from God. As a result, ICU Mobile does not, and will not, refer for, recommend, encourage or
3 facilitate clients to obtain abortions. Therefore, ICU Mobile does not intend to comply with the Act's
4 requirement that it provide the notice set forth in the Act as of January 1, 2016.

5 15. All of ICU Mobile's services are provided free of charge, and ICU Mobile never asks
6 clients for donations or reimbursement. ICU Mobile does not have an economically motivated interest
7 in, or seek any financial profit from, the services it provides.

8 16. The Scharpen Foundation and ICU Mobile has paid sales tax in 2015 on a variety of
9 office equipment and supplies it purchased. For example, on January 13, 2015, ICU Mobile purchased
10 a laptop computer in Temecula, California and paid sales tax on the computer in the amount of \$99.92.

11 17. In 2015, the Scharpen Foundation and ICU Mobile purchased gasoline in Riverside
12 County for its mobile clinic on numerous occasions and, as a result, has paid the California and Federal
13 taxes levied on gasoline.

14 18. In 2015, the Scharpen Foundation and ICU Mobile paid a fee of \$36.00 to the city of
15 Temecula for its business license.

16 19. Scott Scharpen, the founder and President of The Scharpen Foundation, Inc., is a
17 resident of the City of Wildomar, California, which is located in Riverside County. Scott Scharpen has
18 been a resident of Wildomar, California since 2008 and has paid personal income and sales taxes each
19 year, both state and federal, during his time as a resident.

20 **The Defendants**

21 20. Defendant, Kamala Harris, Attorney General of California, is charged with enforcement
22 of the Act. Defendant, Karen Smith, M.D., is sued only in her capacity as Director of Public Health for
23 the State of California. As Director of Public Health, Karen Smith is responsible for the enforcement of
24 public health laws and regulations such as the Act, and the licensure of Plaintiffs. As the Director, she
25 has the authority to bring "legal action to enjoin the violation or threatened violation of Section 1205
26 [of the Health and Safety Code] in the superior court in and for the county in which the violation
27 occurred or is about to occur." (Health & Saf. Code, § 1236.) Health and Safety Code § 1207 requires
28 that the Department of Public Health inspect and license ICU Mobile's clinic. The Director also has the

1 authority to revoke or suspend ICU Mobile’s license for failing to post the notice required by the
2 Reproductive FACT Act. (Health & Saf. Code, § 1240.)

3 21. Defendant Peter Thorson is City Attorney of the City of Temecula and is charged with
4 enforcement of the Act.

5 22. Defendant Gregory P. Priamos, County Counsel for the County of Riverside, is charged
6 with enforcement of the Act.

7 23. ICU Mobile does not know the true names of defendants, Doe 1 through Doe 10,
8 inclusive, and therefore sues them by these fictitious names. ICU Mobile will amend this complaint to
9 include their names and capacities once they are known. ICU Mobile is informed and believes, and
10 based on that information and belief alleges, that each of the defendants designated as a DOE is legally
11 responsible in some manner for the occurrences alleged in this complaint, and unlawfully caused the
12 injuries and damages to plaintiff as alleged in this complaint.

13 **ALLEGATIONS OF FACT**

14 24. On or about September 9, 2015, the California legislature enacted AB 775, the
15 “Reproductive FACT Act.”

16 25. On or about October 9, 2015, Governor Brown signed the bill into law.

17 26. Pursuant to California law, the Act is scheduled to go into effect on January 1, 2016.

18 27. The Act, in pertinent part, requires “licensed covered facilities” to do the following:

19 (a) A licensed covered facility shall disseminate to clients on site the following
20 notice in English and in the primary threshold languages for Medi-Cal
21 beneficiaries as determined by the State Department of Health Care Services for
22 the county in which the facility is located.

23 (1) The notice shall state:

24 “California has public programs that provide immediate free or low-cost access to
25 comprehensive family planning services (including all FDA-approved methods of
26 contraception), prenatal care, and abortion for eligible women. To determine
27 whether you qualify, contact the county social services office at [insert the
28 telephone number].”

1 (2) The information shall be disclosed in one of the following ways:

2 (A) A public notice posted in a conspicuous place where individuals wait that
3 may be easily read by those seeking services from the facility. The notice shall be
4 at least 8.5 inches by 11 inches and written in no less than 22-point type.

5 (B) A printed notice distributed to all clients in no less than 14-point type.

6 (C) A digital notice distributed to all clients that can be read at the time of check-
7 in or arrival, in the same point type as other digital disclosures. A printed notice
8 as described in subparagraph (B) shall be available for all clients who cannot or
9 do not wish to receive the information in a digital format.

10 (3) The notice may be combined with other mandated disclosures.

11 28. The Act provides exemptions from its disclosure requirement for (1) clinics conducted
12 and operated by the United States or any of its departments; and (2) a licensed primary care clinic that is
13 enrolled as a Medi-Cal provider and a provider in the Family Planning, Access, Care, and Treatment
14 Program (FPACT).

15 29. On information and belief, the exemption for Medi-Cal/FPACT providers applies to
16 approximately 1,700 entities that provide services similar to those offered by Plaintiff ICU Mobile with
17 the exception of contraceptive and abortion services or referrals.

18 30. The Act had two co-sponsors in the Legislature: Black Women for Wellness and
19 NARAL Pro-Choice California. The latter co-sponsor has for many years led a campaign specifically
20 intended to interfere with, control, harass, and suppress the right of entities such as ICU Mobile to
21 engage freely in its constitutionally protected rights of freedom of speech, assembly, and religion. In
22 furtherance of that campaign, the Act targets entities such as ICU Mobile herein while exempting
23 numerous other private organizations that do not share ICU Mobile's beliefs, mission, and goals.
24 Failure to comply with the Act carries with it a civil penalty of \$500 for a first offense and \$1,000 for
25 each subsequent offense.

26 31. The Act provides that the Attorney General or city attorney may bring an action to
27 impose a civil penalty on any licensed covered facility that fails to comply with the Act's disclosure
28 provision.

1 32. ICU Mobile meets the definition of a “licensed covered facility” as set forth in the Act,
2 and thus must comply with the Act’s disclosure provision.

3 33. ICU Mobile strongly objects to being compelled to speak the message required by the
4 Act’s disclosure provision. ICU Mobile considers the required notice to be the equivalent of directly
5 referring clients for abortions and other services that ICU Mobile does not provide or refer for based on
6 its religious beliefs and organizational purpose.

7 34. ICU Mobile believes that posting the required notice would undermine the patient/client
8 and medical provider relationship by requiring it to provide a referral to an agency that determines
9 eligibility for state-funded abortion before the patient/client is seen by a medical provider. This gives
10 patients and clients the impression that a recommendation for treatment has been made by the clinician
11 before the patient/client has been evaluated.

12 35. Being compelled to post the notice required by the Act would require ICU Mobile to
13 disseminate a message that contradicts its organizational mission and beliefs.

14 **ALLEGATIONS OF LAW**

15 36. All of the conduct of the Defendants as set forth in this Complaint, whether taken or
16 threatened to be taken, constitutes state action.

17 37. Article I, §§ 2, 3, and 4 of the California Constitution protects the freedoms of speech
18 and assembly, and the free exercise of religion.

19 38. Both the Act and the threat of civil penalties for violations thereof injure rights protected
20 by the California Constitution.

21 39. By compelling ICU Mobile to post and/or disseminate the notice in question, the Act
22 unlawfully compels ICU Mobile, against its wishes, to speak a message that contradicts its beliefs and
23 mission.

24 40. By compelling ICU Mobile to post and/or disseminate the notice in question, the Act
25 unlawfully interferes with and infringes upon ICU Mobile’s ability to meet and speak with pregnant
26 women unless ICU Mobile complies with the Act.

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1 41. ICU Mobile has no plain, speedy or adequate remedy at law, and the violation of its
2 California Constitutional rights imposes irreparable harm. For that reason. ICU Mobile seeks injunctive
3 relief.

4 **CAUSES OF ACTION**

5 **Count One**

6 **(Free Speech Claim under Article I, § 2 of the California Constitution**

7 **- Against all Defendants)**

8 42. ICU Mobile repeats and re-alleges the preceding paragraphs of this Complaint.

9 43. The Act unconstitutionally burdens, restricts, and infringes upon ICU Mobile's right of
10 Free Speech guaranteed by Article I, § 2 of the California Constitution

11 44. The Act unconstitutionally compels ICU Mobile to speak messages it has not chosen for
12 itself, with which it does not agree, and that detract from, undermine, and interfere with messages it has
13 chosen to speak.

14 45. The Act unlawfully forces ICU Mobile, on pain of government penalty, to engage in
15 government disclaimers that ICU Mobile would not otherwise recite, that undermine ICU Mobile's
16 message and contradict the viewpoint from which ICU Mobile speaks.

17 46. The Act is unconstitutional not only as applied to ICU Mobile, but on its face as applied
18 to any facility.

19 47. Accordingly, the Act violates the Free Speech Clause of the California Constitution,
20 Article I, § 2.

21 WHEREFORE, ICU Mobile requests the relief set forth below in the prayer for relief.

22 **Count Two**

23 **(Freedom of Assembly Claim under Article I, § 3 of the California Constitution**

24 **- Against all Defendants)**

25 48. ICU Mobile repeats and re-alleges the preceding paragraphs of this Complaint.

26 49. The Act unconstitutionally burdens ICU Mobile's right to freedom of assembly and
27 association guaranteed by Article I, § 3 of the California Constitution, because it impermissibly

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1 interferes with, restrains, and undermines the ability of ICU Mobile to meet and speak with its clients
2 and patients without complying with the Act.

3 WHEREFORE, ICU Mobile requests the relief set forth below in the prayer for relief.

4 **Count Three**

5 **(Free Exercise of Religion Claim under Article I, § 4 of the California Constitution**
6 **- Against all Defendants)**

7 50. ICU Mobile repeats and re-alleges the preceding paragraphs of this Complaint.

8 51. ICU Mobile exercises its religion by promoting their pro-life message through
9 information and services, and in the way in which they choose to speak and not speak during the same.

10 52. Forcing ICU Mobile to recite the Act's disclosures substantially burdens the exercise of
11 its religious beliefs, undermining its pro-life message and the way in which they promote that message
12 in pursuit of their religious beliefs.

13 53. The Act targets, singles out, and penalizes ICU Mobile for acting in accordance with its
14 religious beliefs and practices.

15 54. The Act therefore violates ICU Mobile's rights under the Free Exercise of Religion
16 Clause of the California Constitution, Article I, § 4.

17 WHEREFORE, ICU Mobile requests the relief set forth below in the prayer for relief.

18 **PRAYER FOR RELIEF**

19 On its foregoing causes of action, ICU Mobile respectfully request the Court to grant the
20 following relief:

21 A. A preliminary and permanent injunction barring the Defendants and all persons in active
22 concert with them from enforcing the Act against ICU Mobile;

23 B. A declaratory judgment that the Act violates Article I, §§ 2, 3, and 4 of the California
24 Constitution on its face, and as applied to ICU Mobile;

25 C. Attorney's fees according to proof, pursuant to Code Civ. Proc. § 1021.5 or other
26 applicable law;

27 D. ICU Mobile's cost of suit; and

28 E. Any and all further relief the Court deems just and proper.


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JURY DEMAND

ICU Mobile hereby demands a jury for all issues so triable.

TYLER & BURSCH, LLP

Dated: December 28, 2015

By: 
Robert H. Tyler, Esq.
Counsel for Plaintiff, **THE SCHARPEN
FOUNDATION**

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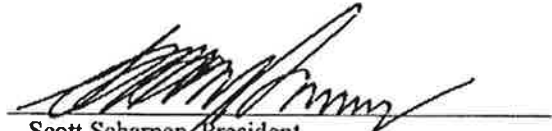
VERIFICATION BY OFFICER

The Scharpen Foundation Inc., et al. v. Harris, et al.
Riverside County Superior Court, Case No.: RIC 1514022

The undersigned hereby asserts as follows:

I am an officer of The Scharpen Foundation, Inc., one of the parties hereto; I am authorized to and make this verification for and on behalf of said corporation; I have read the foregoing **VERIFIED FIRST AMENDED COMPLAINT** and am informed and believe the matters therein are true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 28, 2015, at Wildomar, California.



Scott Scharpen, President
The Scharpen Foundation, Inc.

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11 Counsel for Plaintiff, **THE SHARPEN**
FOUNDATION
12 **Pro hac vice applications pending*

14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF RIVERSIDE**

16 THE SHARPEN FOUNDATION, INC. dba ICU
17 MOBILE RIVERSIDE COUNTY,

18 Plaintiffs,

19 v.

20 KAMALA HARRIS, Attorney General of the State
21 of California, in her official capacity; KAREN
SMITH, M.D., Director of California Department of
22 Public Health, in her official capacity; PETER
23 THORSON, City Attorney of the City of Temecula,
California, in his official capacity; and DOES 1
24 through 10, Inclusive;

25 Defendants.

Case No. RIC 1514022

**PROOF OF SERVICE OF VERIFIED
FIRST AMENDED COMPLAINT AND
FIRST AMENDED SUMMONS**

1 **PROOF OF SERVICE**

2 *The Scharpen Foundation, Inc. v. Harris, et al.*
3 *Riverside County Superior Court Case No.: RIC 1514022*

4 I am employed in the county of Riverside, State of California. I am over the age of 18 and not a party to
5 the within action; my business address is 24910 Las Brisas Road, Suite 110, Murrieta, California 92562.

6 On December 30, 2015, I caused to be served the foregoing documents described as **VERIFIED
7 FIRST AMENDED COMPLAINT AND FIRST AMENDED SUMMONS** on the interested parties in
8 this action:

9 **SEE ATTACHED SERVICE LIST**

10 by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached
11 mailing list:

12 **BY UNITED STATES POSTAL SERVICE.** I am readily familiar with the practice for collection and
13 processing of correspondence for mailing and deposit on the same day in the ordinary course of business
14 with the United States Postal Service. Pursuant to that practice, the above-referenced document(s) were
15 sealed in an envelope, with postage paid, and deposited in a post office, mail box, sub-post office,
16 substation, mail chute or other like facility regularly maintained by the United States Postal Service on
17 December 30, 2015, at or near Murrieta, California.

18 **BY OVERNIGHT MAIL SERVICE.** I deposited in a box or other facility regularly maintained by
19 Norco Overnight/Federal Express, an express service carrier, in Murrieta, California, or delivered to an
20 authorized courier or driver authorized by the express service carrier to receive documents, an envelope
21 or package designated by the express service carrier with delivery fees paid or provided for, a copy of
22 the above-referenced documents.

23 **BY ELECTRONIC TRANSMISSION.** Pursuant to agreement and written confirmation of the parties
24 to accept service by electronic transmission, I transmitted originals true copies of the above-
25 referenced document(s) on the interested parties in this action by electronic transmission on
26 December 30, 2015. Said electronic transmission was reported as complete and without error.

27 **BY FACSIMILE TRANSMISSION.** Pursuant to agreement and written confirmation of the parties to
28 accept service by facsimile transmission, I transmitted originals true copies of the above-
referenced document(s) on the interested parties in this action by facsimile transmission from (951) 600-
4996 on December 30, 2015. A transmission report was properly issued by the transmitting facsimile
machine and the transmission was reported as complete and without error. A copy of said transmission
report is attached hereto.

BY PERSONAL SERVICE. I caused to be delivered copies of the above-referenced documents to the
addressee(s) noted above, on December 30, 2015.

I declare under penalty of perjury under the laws of the State of California and the United States of
America that the above is true and correct. Executed December 30, 2015, at Murrieta, California.



Joyce A. Lloyd

SERVICE LIST

The Scharpen Foundation, Inc. v. Harris, et al.
Riverside County Superior Court Case No.: RIC 1514022

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