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10 CALIFORNIA PRIMARY CARE ASSOCIATION,
CLINICAS DEL CAMINO REAL, INC., and
11 SOUTHERN TRINITY HEALTH SERVICES, INC.

12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 IN AND FOR THE COUNTY OF SACRAMENTO

14
15 CALIFORNIA PRIMARY CARE
ASSOCIATION, a California non-profit
16 corporation; CLINICAS DEL CAMINO
REAL, INC., a California non-profit
17 corporation; and SOUTHERN TRINITY
HEALTH SERVICES, INC., a California
18 non-profit corporation,

19 Petitioners and Plaintiffs,

20 v.

21 STATE OF CALIFORNIA, acting by and
through the DEPARTMENT OF HEALTH
22 CARE SERVICES,

23 Respondent and Defendant.

) Case No.: 34-2009-00042805-CU-WM-GDS

) **DECLARATION OF ROBERTO S.
JUAREZ IN SUPPORT OF VERIFIED
PETITION FOR WRIT OF MANDATE**

) **DATE: June 12, 2009**
TIME: 11:00 a.m.
DEPT.: 29

) **JUDGE: Hon. Timothy M. Frawley**

1 I, ROBERTO S. JUAREZ, declare as follows:

2 1. I am the Chief Executive Officer of Clinicas del Camino Real, Incorporated
3 (“Clinicas”), and have held that position for over thirty years. As CEO, I am responsible
4 for budgetary oversight, contracts, facilities, general management oversight, interacting
5 with federal and state officials, strategic planning, business planning, and other such
6 oversight tasks. As CEO, I am very familiar with California and federal requirements for
7 Federally Qualified Health Centers (“FQHCs”), in particular as those requirements have
8 been applied to Clinicas. I am one of the founders of Clinicas, and have been involved
9 with the clinic since its founding in 1971.

10 2. I make this declaration of my own personal knowledge in support of the
11 above-referenced Petition for Writ of Mandate, and, if called upon as a witness to testify in
12 this matter, I could and would testify competently to the matters stated herein.

13 3. Clinicas is a FQHC. Clinicas has been providing quality primary health care
14 to the residents of Ventura County for more than thirty-seven years. Started as a “Free
15 Clinic” providing medical care to migrant farm workers in Santa Paula, California in 1971,
16 Clinicas operates ten Joint Commission accredited health centers within Ventura County.
17 Clinicas also operates approximately thirty school-based mental health sites, from
18 elementary to high school, providing on-site psychological evaluations. Clinicas provides
19 similar psychological counseling at seven area adolescent group homes. Clinicas also
20 operates three mobile clinics, including a mobile dental clinic. While Clinicas primary
21 patient population continues to be migrant and seasonal farm workers and their families,
22 CDCR has grown to include all persons within Ventura County, and parts of Los Angeles
23 and Santa Barbara Counties, who lack access to comprehensive affordable health care
24 services.

25 4. Clinicas provides a comprehensive array of health care services, including
26 Family Practice, Pediatrics, OB/GYN, Internal Medicine, Cardiology, Neurology,
27 Chiropractic, Podiatry, Family Dentistry, Optometry, Pain Management, Psychiatry and
28 Behavioral Health Counseling. Clinicas also offers on-site basic laboratory and x-ray

1 services, including mamography. Clinicas annually serves approximately 47,000 users in
2 over 200,000 patient encounters.

3 5. Clinicas employees include the full time equivalent of 23 physicians, 8
4 physician assistants/nurse practitioners, 8.3 dentists, 27 Psychologists and Marriage Family
5 Therapists, 3 Optometrists, 1.3 Chiropractors, and a 0.4 Podiatrist. In total, Clinicas
6 employs approximately 430 people.

7 6. Clinicas participates in several programs designed to serve special
8 populations: (1) the Children's Health and Disability Prevention Program and the Vaccines
9 for Children Program, which provide medical examinations, physicals, education, medical
10 testing and immunizations for children of low income families; (2) California Children's
11 Services Program, which provides medical care for children with neurological conditions
12 and disabilities; (3) the Every Woman Counts Cancer Detection Program, which provides
13 breast and cervical cancer detection and treatment for low income women; (4) the Family
14 Planning, Access, Care and Treatment Program, which provides family planning and
15 sexually transmitted disease related services to low income men and women; (5) the
16 Expanded Access to Primary Care Program, which provides primary care services to
17 qualifying low income persons; (6) Medicaid; (7) Medicare and; (8) States Children's
18 Health Insurance Program.

19 7. As an example of the critical services provided by Clinicas, Clinicas caught
20 five of the first six confirmed cases of swine flu in Ventura County this year. Clinicas'
21 accessible locations and quick action were critical in minimizing the spread of the virus in
22 our community. If Clinicas were forced to close some of its clinics due to the Department
23 of Health Care Services' ("DHCS") decision to stop reimbursing Clinicas for certain
24 services, the individuals in our community would lose access to healthcare of all types.
25 Because the County healthcare system already is overburdened, it could not absorb the
26 patient load currently served by Clinicas, and public health risks to all would increase.

27 8. A critical federal requirement for an FQHC, such as Clinicas, is that it must
28 provide services to all persons in the clinic's defined service areas regardless of the

1 patient's ability to pay. What this means is that Clinicas, like other FQHCs, cannot control
2 its payor mix and revenues by limiting the number of Medi-Cal beneficiaries it serves and
3 accepting more patients insured by higher-paying payors, such as private insurance.
4 Rather, if an FQHC offers a service, it must provide that service to any patient seeking
5 treatment, even if the person cannot afford to pay anything. Because FQHCs serve
6 everyone, they are truly "safety net" providers, ensuring that those who cannot afford
7 medical care have a place, other than hospital emergency rooms, where they can receive
8 necessary medical care.

9 9. If FQHCs did not offer certain services, some patients would have no option
10 but to seek treatment at emergency rooms, a much more expensive option. For example,
11 Ventura County does not provide or arrange for dental care, chiropractic services, or
12 optometry services for the indigent through the County health care system. If Clinicas were
13 to stop providing those services, the indigent in Ventura County would have no option in
14 the County but to delay any such medical care until their condition became so severe that it
15 required a visit to an emergency room.

16 10. Because of the requirement that FQHCs accept all patients, regardless of
17 ability to pay, federal and state law provide for a different type of reimbursement to
18 FQHCs. That reimbursement system is supposed to allow FQHCs to recover the reasonable
19 costs of providing covered benefits. In this way, FQHCs are different from other Medi-Cal
20 providers. FQHCs are reimbursed at a flat prospective payment system ("PPS") rate for
21 each "visit" – face-to-face encounter between a patient and a physician or other specified
22 medical professional – regardless of the type of service provided. In comparison, other
23 Medi-Cal providers are reimbursed based on the specific type of service provided, and the
24 rates vary depending on the service.

25 11. Although FQHCs cannot deny patients services that the FQHC offers, that
26 does not mean that FQHCs have unlimited capacity. For example, Clinicas has a waiting
27 list for access to routine, preventive dental services, which currently requires approximately
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1 a three to four week wait to see a dentist. Of course, a patient with a critical need would be
2 triaged and seen as quickly as possible.

3 12. In response to the recent addition of Welfare and Institutions Code section
4 14131.10 ("Section 14131.10") and the statements by DHCS that it would apply Section
5 14131.10 to FQHCs, Clinicas has had to carefully consider and address the implications of
6 that statute and DHCS' position.

7 13. If Section 14131.10 were applied to Clinicas, it is very likely that Clinicas
8 would no longer be able to provide the dental services, and possibly other services, for
9 which DHCS intends to deny FQHCs reimbursement. For example, although Clinicas
10 would still be entitled to receive reimbursement for providing dental services to children
11 and pregnant women, we could not offer dental services **only** to those populations. That is,
12 if Clinicas offers dental services, it must offer them to everyone, regardless of the patient's
13 ability to pay. In effect, Clinicas would have to provide dental care to patients who could
14 not afford to cover the cost of the services, while not receiving funds sufficient to cover the
15 cost of providing those services. Clinicas does not have excess funding from other sources
16 to cover the shortfall in dental services. As a result, application of Section 14131.10 to
17 Clinicas ultimately will force Clinicas to discontinue all dental services, including those for
18 which it could continue to receive reimbursement.

19 14. I understand that Clinicas obtains approximately one-third of its Medi-Cal
20 revenue from providing the services described in Section 14131.10. If Clinicas were
21 denied that revenue, it may have to close sites whose overhead cannot be maintained
22 without the revenue from providing dental and other services for which DHCS intends to
23 deny Clinicas reimbursement.

24 15. In anticipation of the State no longer reimbursing for services delineated in
25 Section 14131.10, Clinicas is now not scheduling patients for those types of services, if the
26 services will not be complete by July 1. That is, unless and until this dispute is resolved,
27 Clinicas cannot risk offering those services after July 1. Since Clinicas is not scheduling
28 patients for services for which DHCS proposes to stop reimbursement as of July 1, if the

1 patient's treatment would not be complete by July 1, this likely has resulted in some Medi-
2 Cal beneficiaries being unable to schedule procedures that their physicians (as that term is
3 defined in Welfare and Institutions Code section 14132.100(g)) consider to be medically
4 necessary, unless the Medi-Cal beneficiary has been able to locate another provider to
5 perform the service.

6 16. Clinicas' staff is aware of DHCS' interpretation, and it is causing significant
7 anxiety. I am concerned that critical staff may be looking for different positions outside of
8 Clinicas. This is of particular concern because it is difficult to recruit and retain qualified
9 staff – especially bilingual staff – even under the best of circumstances. In order to retain
10 as many of the staff members as possible, Clinicas is allowing lateral transfers among its
11 clinics and departments. However, due to DHCS' interpretation, Clinicas has stopped
12 recruiting to fill vacant positions related to the services listed in Section 14131.10 until this
13 dispute is resolved. Clinicas has refrained from making offers to qualified dentists
14 interested in working at Clinicas due to DHCS' interpretation, because Clinicas cannot
15 guaranty the dentists that they will have a job on or after July 1. In fact, one dentist who
16 was offered a position declined the position because Clinicas could not guaranty him a job
17 after July 1.

18 17. Absent the DHCS' position on Section 14131.10, Clinicas would continue to
19 offer dental services. In fact, when Clinicas last expanded its facilities, it was informed by
20 a federal official that, if Clinicas did not offer dental services, Clinicas would risk losing its
21 Section 330 funding and FQHC designation. DHCS' position will force Clinicas to seek to
22 amend its "Scope of Project" with the federal government, its agreement with respect to
23 what services it will (and can) provide. Clinicas' current approved Scope of Project
24 includes adult dental services, clinical psychology services, podiatry services, optometry
25 services, and chiropractic services, among others.

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1 18. Until Clinicas' Scope of Project is amended – if the amendment is accepted –
2 Clinicas will be forced either to be in violation of its agreement by not providing dental
3 services, or to provide dental services knowing that DHCS' position is that Clinicas will
4 not be reimbursed for those costs. DHCS' interpretation has put Clinicas in a truly
5 untenable position.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct and, if called as a witness, I could competently testify to the
8 foregoing facts from my own personal knowledge.

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10 Executed at Sacramento, California on May 12, 2009.

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14 ROBERTO S. JUAREZ
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