

EXHIBIT A

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

CALIFORNIA TRIBAL FAMILIES COALITION,
 YUOK TRIBE, CHEROKEE NATION, FACING
 FOSTER CARE IN ALASKA, ARK OF
 FREEDOM ALLIANCE, RUTH ELLIS CENTER,
 and TRUE COLORS, INC.,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
 Secretary of Health and Human Services,
 JOOYEUN CHANG, in her official capacity as
 Acting Assistant Secretary for the Administration for
 Children and Families, U.S. DEPARTMENT OF
 HEALTH AND HUMAN SERVICES, and
 ADMINISTRATION FOR CHILDREN AND
 FAMILIES,

Defendants.

Case No. 20-cv-6018 (MMC)

**DECLARATION OF
 DELIA SHARPE
 IN SUPPORT OF PLAINTIFFS'
 MOTION FOR
 SUMMARY JUDGMENT**

DECLARATION OF DELIA SHARPE ISO PLS.
 MOT. FOR SUMM. J. CASE NO. 20-cv-6018
 (MMC)

1 I, Delia Sharpe, hereby state as follows:

2 1. The information set forth in this affidavit is based on my personal knowledge.

3 2. I am the founding Executive Director of California Tribal Families Coalition (“CTFC”)
4 and have been since June, 2017.

5 3. In that role I supervise five staff. My responsibilities include interfacing with the
6 Member Tribes, working with the Board to establish and report back on organizational priorities,
7 guiding the organization’s legislative and policy work, overseeing direct services provided to
8 member tribes on various areas of child welfare, advancing advocacy for the members tribes, and
9 ensuring that the child welfare policy and legal interests of the tribal community are protected.
10

11 4. CTFC is a 501(c)(4) non-profit tribal organization comprised of 38 federally recognized
12 member tribes, including Plaintiff Yurok Tribe, and three Tribal Leaders’ Associations. Its principal
13 place of business is 305 Freeport Blvd. Ste. 154, Sacramento, California 95818.
14

15 5. CTFC is guided and governed by its member tribes, which join the organization through
16 tribal government resolution. The CTFC’s Board of Directors is comprised of elected leaders of the
17 member tribes. The Board of Directors sets the priorities of CTFC and regularly provides guidance
18 regarding how CTFC carries out its mission and work, especially in considering organizational
19 priorities, shaping organizational responses to changes in state or federal policy, and understanding
20 the community effects of policy, regulatory and legal developments.
21

22 6. CTFC’s broad mission is to promote and protect the health, safety, and welfare of tribal
23 children and families, which are inherent tribal governmental functions and at the core of tribal
24 sovereignty and governance. CTFC was formed to carry out the recommendations of California’s
25 Indian Child Welfare Act (“ICWA”) Compliance Task Force. The Task Force was an independent
26 and tribal-led group comprised of tribal leaders, representatives, and advocates that was formed to
27 identify ways to improve the implementation of ICWA and California’s corresponding state
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1 legislation for the benefit of tribes, Indian families, and their children. The Task Force’s efforts
2 culminated in a 2017 Final Report that issued a series of recommendations for improving ICWA
3 implementation, including improvements to ICWA data collection.¹

4
5 7. To correct pervasive ICWA implementation issues, CTFC engages in a variety of
6 activities guided by the Task Force Report. These activities include efforts to directly improve
7 ICWA implementation and to expand ICWA-related data collection, which will further facilitate
8 improved implementation.

9 8. To improve ICWA implementation directly, CTFC provides free ICWA training to child
10 welfare agencies and social workers in the child welfare system. CTFC also advocates for policy
11 changes that will result in improved ICWA competency. For example, CTFC regularly engages with
12 the California Department of Social Services (“CDSS”) to improve the agency’s ICWA
13 implementation, including enhanced oversight of the county-level subdivisions that are responsible
14 for complying with ICWA’s requirements. Similarly, CTFC has advocated to revise court rules that
15 would mandate ICWA competency among attorneys, party representatives, and social workers.
16

17 9. CTFC also works to improve ICWA implementation by addressing various challenges
18 that tribes face when seeking to intervene in state court cases involving tribal children. For instance,
19 CTFC has worked to secure the right of tribes to participate in courtroom proceedings, improve
20 tribal access to case records, and ensure that tribes obtain legal counsel. As part of the latter effort,
21 CTFC is currently engaging in fundraising and strategic planning to provide tribes with legal counsel
22 in ICWA cases in state court. As explained further below, and as the Task Force Report recognized,
23 each of these efforts is seriously hindered by a lack of ICWA data.
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25
26

27 ¹ California ICWA Compliance Task Force, *Report to the California Attorney General’s Bureau*
28 *of Children’s Justice* (2017) (“Task Force Report”), [https://theacademy.sdsu.edu/wp-](https://theacademy.sdsu.edu/wp-content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf)
[content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf](https://theacademy.sdsu.edu/wp-content/uploads/2015/06/icwa-compliance-task-force-final-report-2017.pdf).

1 10. Data on children protected by ICWA, their experiences in care, and agencies' efforts to
2 implement ICWA are critical for all these activities. Unfortunately, comprehensive data is currently
3 unavailable. For example, CTFC regularly works with the California Child Welfare Indicators
4 Project ("CCWIP") database, which is operated under contract with CDSS. The CCWIP database,
5 which is separate from AFCARS data, makes CMS/CWS data on children in care in California
6 accessible for policy development and research. The CWWIP does attempt to identify American
7 Indian children by race and track ICWA applicability. However, this data is almost certainly
8 inaccurate. Based on CTFC's own data collection and work in the field, together with its knowledge
9 of member Tribes' caseload, CTFC has observed that the CCWIP significantly undercounts
10 dependent children eligible for ICWA. In fact, CTFC believes that only one-quarter of eligible cases
11 are represented in the database. Similarly, CTFC's efforts to gather its own data from ICWA court
12 cases is limited to cases that reach the appellate level; trial level data is currently unavailable because
13 it is not included in any legal database the way appellate decisions are.
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16 11. Because of the critical importance of data to these activities and the lack of adequate data
17 at present, CTFC has also engaged in various efforts at the federal and state levels to improve ICWA
18 data collection. At the federal level, CTFC submitted comments in 2015 to support and provide
19 recommendations for the data collection requirements that were finalized in 2016. CTFC also
20 submitted comments in 2018 and 2019 opposing ACF's proposal to remove ICWA data elements
21 from AFCARS. *See* AR 1049; AR 2014; AR 2472.
22

23 12. Once it became clear that ACF intended to gut ICWA data elements from the AFCARS
24 reporting requirements, CTFC began working with California's Department of Social Services to
25 develop and implement state-level data collection requirements. This required a significant
26 redirection of CTFC's resources that would have been unnecessary had the 2016 Final Rule
27 remained in force. This redirection of CTFC's limited resources meant that other priorities of the
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1 organization could not be advanced or had to be cut back, such as the 2021 state legislative priorities.
2 Further, CTFC redirected limited resources to hire an additional staff member to have enough
3 capacity to fully respond to the removal of the AFCARS data elements and still be able to address
4 Tribally-directed priorities, like responding to the emerging Covid-19 crisis.

5
6 13. This lack of comprehensive and national ICWA data would have been addressed in part
7 by the 2016 Final Rule, which required state title IV-E agencies to report ICWA data to AFCARS.
8 By removing those data elements, the 2020 Final Rule directly harms CTFC by impeding its ability
9 to carry out its mission to protect the health, safety, and welfare of tribal children, implement the
10 recommendations of California's ICWA Compliance Task Force, train child welfare workers, and
11 obtain funding for its activities.

12
13 14. First, the lack of data impedes CTFC's ability to effectively allocate resources and to
14 design and advocate for legislation, regulations, and policies that target flaws in ICWA
15 implementation. If armed with such data, CTFC would have a detailed, evidentiary record of the
16 problems faced by child welfare agencies and state courts when implementing ICWA. This would
17 in turn enable CTFC to craft appropriate policy solutions. As a direct result of the 2020 Final Rule,
18 CTFC must instead pursue more expensive and less effective reforms.

19
20 15. By removing the data elements on ICWA implementation, the 2020 Final Rule deprives
21 CTFC of persuasive, empirical evidence that it would use in its efforts to advocate for reforms. In
22 the absence of such data, CTFC has historically encountered resistance from stakeholders who are
23 reluctant to act without empirical evidence of the need for reform. For example, when CTFC sought
24 legislation to fund diversion programs for high-risk AI/AN youth, the California Department of
25 Finance—which analyzes legislative fiscal impacts—requested data on the population that would
26 be served. Because CTFC was unable to provide the data, the legislation that was ultimately enacted
27 provided a one-time funding allocation, rather than ongoing funding. The 2020 Final Rule's removal
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1 of the ICWA data elements thus renders CTFC's advocacy efforts less effective and more time-
2 consuming than they otherwise would be. This will divert resources away from CTFC's other
3 activities, such as their work to ensure that tribes have access to legal counsel and the right to
4 participate in courtroom proceedings concerning tribes, Indian families, and their children.

5 16. Second, the removal of ICWA data impedes CTFC's ability to improve ICWA
6 competency by training individuals that work in the child welfare system. If CTFC had access to
7 the ICWA data removed by the Rule, which tracks how state child welfare agencies and state courts
8 are implementing ICWA's requirements, CTFC would be able to identify the most frequent and
9 prevalent flaws in ICWA implementation. This would in turn allow CTFC to focus its finite training
10 resources where they are most needed. The absence of such data therefore renders CTFC's training
11 services less effective and more time-consuming than they otherwise would be, diverting resources
12 away from CTFC's other activities.
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14

15 17. Third, the 2020 Final Rule harms CTFC by impairing its ability to obtain funding.
16 Without the data provided by the 2020 Final Rule, CTFC cannot provide data to support its own
17 budgetary needs or support member tribe needs when negotiating allocations from state, federal or
18 philanthropic sources. For example, CTFC is currently fundraising to support its efforts to provide
19 tribes with legal counsel in ICWA cases in state court. These efforts have been seriously hindered
20 by a lack of county-level ICWA data. For example, when CTFC requests financial support from
21 elected tribal leaders, they often, rightfully, want to see data that can illuminate the needs of their
22 specific tribal members in the counties contiguous to their tribal lands. Without accurate data CTFC
23 is unable to illustrate for tribal leaders the local conditions of tribal citizens and ICWA non-
24 compliance which would motivate those leaders to donate funds to CTFC.
25

26 18. In addition to impairing CTFC's activities, the 2020 Final Rule harms CTFC's member
27 tribes by impairing their ability to protect and provide services to their children and vindicate their
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1 rights under ICWA. CTFC tribes provide child welfare services to citizens of their tribes, work with
2 state child welfare agencies to ensure appropriate treatment and services, and participate in state
3 court proceedings for tribal citizens. The absence of AFCARS data makes these efforts more
4 expensive and less effective in several ways.

5
6 19. First, CTFC's member tribes—including Plaintiff Yurok Tribe—will be less able to
7 work with state child welfare agencies to improve their implementation of ICWA's protections. For
8 instance, state child welfare agencies have historically struggled to identify Indian children and to
9 provide timely notice of such cases to the child's tribe. Indeed, over the past 3 years, 92 percent of
10 appeals of termination of parental rights cases involving ICWA were about inquiry and notice. And
11 57 percent of those appeals were remanded for failure to comply with ICWA's inquiry and notice
12 requirements. This is consistent with the experience of CTFC's member tribes, who often receive
13 notice of a case at the *end* of the adjudication, rather than the beginning.

14
15 20. This suggests that the agencies may be struggling to implement ICWA's requirement
16 that agencies make inquiries with a child's biological and adoptive parents, guardians, and extended
17 family to determine whether a child is protected by ICWA. Alternatively, they may be struggling
18 with the requirement to provide timely notice to the child's parents and tribe(s) before initiating
19 proceedings to terminate parental rights or put the child in foster care. By removing ICWA data
20 from AFCARS, the 2020 Final Rule makes it more difficult for CTFC's member tribes to understand
21 which aspect of the requirements state child welfare agencies are struggling with. This in turn makes
22 it more difficult for tribes to work with state child welfare agencies to improve their identification
23 and inquiry efforts. *See* Ex. B ¶¶ 10-11 (describing how the lack of ICWA data impairs Plaintiff
24 Yurok Tribe's ability to improve ICWA identification and inquiry).

25
26 21. Second, by making it more difficult to improve ICWA implementation, the 2020 Final
27 Rule also impairs CTFC tribes from providing timely and relevant services to their children and
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1 from fully participating in state court proceedings that involve their children. For example, ICWA's
2 notice requirement is critical to keeping Indian children in their community because it allows tribes
3 to intervene at an early stage with services that can help prevent unwarranted removals, reunite
4 removed children with their families, and otherwise achieve permanent placements for children.
5 When state agencies fail to make sufficient inquiries to identify Indian children or to provide timely
6 notice to tribes, CTFC's member tribes must rely on anecdotal or incomplete information to identify
7 their children in state child welfare systems. In those instances where the tribes are not able to locate
8 their children, they are prevented from providing services in a timely fashion. *Id.* ¶¶ 12-15
9 (describing the services that Plaintiff Yurok Tribe is unable to provide when state child welfare
10 agencies fail to identify or provide notice of Yurok's children). This often results in negative
11 outcomes for the children, including a delay in permanent placements.
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13
14 22. Further, without the necessary data, Tribes are hindered in their ability to plan for and
15 build needed and relevant services for their children. The types of culturally appropriate services a
16 child needs changes depending on their unique demographics, some as simple as age and days in
17 care, but some more complex. For example, some children may need mental health services prior to
18 being able to benefit from educational support. Others may need special care if they have been
19 subject to sexual exploitation or trafficking. To be effective, supportive services must be identified,
20 developed, funded, and sustained—all of which requires data as to family and child needs.
21

22 23. I declare under penalty of perjury under the laws of the United States that the foregoing
23 is true and correct to the best of my knowledge.

24 Dated: May 17, 2021

Respectfully submitted,

25
26 

27 _____
28 Delia Sharpe