

EXHIBIT B

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 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
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 14 M.W., by and through her guardian ad litem,
 HOPE W., and the AMERICAN DIABETES
 15 ASSOCIATION,

16 Plaintiffs,

17 v.

18 UNITED STATES DEPARTMENT OF THE
 19 ARMY, *et al.*

20 Defendants.

Case No. 5:16-cv-04051-LHK

**DECLARATION OF HOPE W. IN
 SUPPORT OF PLAINTIFFS’
 OPPOSITION TO DEFENDANTS
 MOTION TO DISMISS**

Date: November 30, 2017

Time: 1:30 p.m.

Place: Courtroom 8, 4th Floor

Judge: Honorable Lucy H. Koh

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1 I, Hope W., declare:

2 1. I am an individual residing in the State of California. The facts stated in this
3 declaration are based upon my own experience and observation. If called upon to testify, I could
4 and would testify competently to these facts.

5 2. I am M.W.'s mother and her court-appointed guardian ad litem in this case.

6 3. I am a member of the American Diabetes Association.

7 4. M.W. is an eight-year-old child with type 1 diabetes.

8 5. M.W. is eligible to attend Child, Youth and School Services ("CYSS") programs
9 at the Presidio of Monterey. She began attending CYSS programs when she was in preschool.
10 On June 14, 2015, during the summer before she started first grade, M.W. was diagnosed with
11 type 1 diabetes. It was summer vacation at the time, and M.W. did not need CYSS care.

12 6. Because I wanted M.W. to continue to attend CYSS after-school programs at the
13 Presidio of Monterey when school started in August 2015, I contacted CYSS on June 22, 2015 to
14 explain M.W.'s diagnosis and need for accommodations.

15 7. In order to attend CYSS programs, M.W. needs the following diabetes-related
16 accommodations: administration of glucagon (which is a rescue medication used only in an
17 emergency), supervision of blood glucose testing, appropriate responses to high or low blood
18 glucose levels (for example, giving M.W. juice or calling me for help), assistance with
19 administration of insulin using her insulin pump, administration of insulin by injection if her
20 pump malfunctions, carbohydrate counting, and monitoring of her food intake.

21 8. Between June 22, 2015 and approximately September 30, 2015, I communicated
22 with CYSS on numerous occasions by telephone, email, and in-person meetings trying to get
23 M.W. back into care at CYSS, but CYSS staff refused to provide several crucial diabetes-related
24 accommodations for M.W. CYSS refused to interpret the results of her blood glucose monitor,
25 administer insulin injections, administer glucagon, operate an insulin pump, count carbohydrates,
26 or properly respond to symptoms of low blood glucose, even by giving M.W. orange juice.

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1 CYSS staff explained that they could not take care of M.W. because of an Army policy that
2 restricted the type of care they could offer to children with diabetes.

3 9. In August 2015, I contacted the American Diabetes Association for assistance and
4 advice about the Army policy and CYSS's decision not to accommodate M.W. I communicated
5 with Sarah Fech-Baughman at the American Diabetes Association by phone and email about
6 M.W.'s situation. She was a great resource for my family while we were trying to figure out
7 what to do, and I found her to be very informative and supportive.

8 10. Given that CYSS refused to provide the accommodations that M.W. needed, my
9 husband and I decided that we could not send M.W. to CYSS programs. My husband and I
10 sought alternate after-school care for M.W. but we were unable to find an appropriate alternate
11 program. As a result, my husband started taking care of M.W. after school. The reduced number
12 of hours he could work meant reduced income for our family.

13 11. Because CYSS refused to care for M.W., she lost the opportunity to participate in
14 CYSS programs and activities with her friends. In addition, she was extremely upset because
15 she was afraid that the adults who took care of her at CYSS didn't care about her anymore. In
16 January and February 2016, M.W. often asked me when she could go back to CYSS. I worry
17 that any situation where my daughter is excluded because of her diabetes will have a negative
18 psychological effect on her in the future.

19 12. On November 3, 2016, almost four months after we filed this case, the Army
20 finally granted an exception to their diabetes care policy for M.W. This exception did not mean
21 that M.W. could be admitted to CYSS programs immediately. Instead, it started a process where
22 I had to request accommodations again and have the request evaluated by CYSS.

23 13. The Army did not approve the accommodations I requested for M.W. until May
24 23, 2017, in a memorandum titled, "Approval of Requested Accommodations." In this
25 memorandum, the Army allowed CYSS staff to monitor and document M.W.'s food intake,
26 monitor her blood glucose using her continuous blood glucose monitor and finger-stick, monitor
27 ketones, and respond to an emergency per M.W.'s medical provider's instructions in her Medical
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1 Action Plan (“MAP”), including by administering glucagon. The Army also directed our local
2 CYSS program to use contract nurse(s) to count carbohydrates and to determine insulin dosages
3 and administer insulin per her MAP.

4 14. The Army did not approve my request for staff to administer insulin by injection
5 if M.W.’s pump fails. They informed me that I need to submit a new MAP from M.W.’s
6 medical provider for them to consider this accommodation. Because I do not want to have to
7 restart this process all over again, I have agreed to go to CYSS myself to administer insulin
8 injections if M.W.’s insulin pump malfunctions.

9 15. M.W. started participating in her CYSS after-school program with her approved
10 accommodations on August 2, 2017, which was her first day of third grade.

11 16. Between June 3 2017, and August 2, 2017, M.W. was on summer vacation and
12 therefore did not need after-school care. In addition, staff had not yet been trained.

13 17. During this time before school started, I sought clarification about the “Approval
14 of Requested Accommodations” memo. In particular, I wanted information about the differences
15 I noticed between the accommodations I had asked for and the accommodations described in the
16 memorandum, information about the contract nurse(s) who would be assigned to provide care to
17 M.W., and information about how training would work. I did not feel comfortable enrolling
18 M.W. in CYSS programs until I felt confident that I fully understood the accommodations CYSS
19 had offered and how they would be provided, especially because of my past experience with
20 CYSS refusing to provide the care that M.W. needs. It was particularly important to me that I
21 review CYSS’s diabetes training materials and attend and participate in the training for CYSS
22 staff before I enrolled M.W. in care. This training took place on July 31, 2017.

23 18. M.W. is currently enrolled in CYSS programs at the Presidio of Monterey and is
24 receiving the diabetes-related accommodations in her MAP. A contract nurse is on site
25 whenever M.W. is there. However, CYSS has mentioned to me that funding for the contract
26 nurse positions is not guaranteed in the future. I am worried that without the contract nurse,
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1 CYSS would not provide accommodations for M.W. and she would be excluded from CYSS
2 again.

3 19. Under the May 23, 2017 memo approving accommodations for M.W., we must go
4 through a Multidisciplinary Inclusion Action Team review of her accommodations semiannually.
5 If M.W.'s needs change, I must submit documentation for CYSS review before her
6 accommodations can be updated.

7 20. M.W. currently uses an insulin pump and a continuous glucose monitor, which
8 she wears all the time to regulate her body's insulin levels and manage her diabetes, but her
9 diabetes care regimen might change in the future.

10 21. For example, M.W.'s medical care team has explained to me that people with type
11 1 diabetes commonly experience diabetes burnout, which means that they get frustrated with
12 their condition. Sometimes they stop complying with their diabetes care regimen, partly because
13 they get tired of being connected to machines and monitored by them twenty-four hours a day.

14 22. M.W. sometimes tells me that she hates her pump and being hooked up to wires
15 all of the time. When she says this, I give her a choice to switch to injections. So far, she has
16 always chosen to stay on the pump, but I feel strongly that it should be her choice. I will switch
17 her to insulin injections at any time if that is what she wants to do.

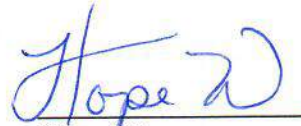
18 23. In addition, one of the challenges of wearing an insulin pump is that you need to
19 find a good infusion site for insulin to enter the body. M.W. is small for her age and has a low
20 body fat percentage, which makes it even harder to find a good infusion site. M.W.'s medical
21 care team has explained that if we use an infusion site too often, scar tissue can form, and that
22 would mean that we couldn't use that site again. For this reason, we have discussed the
23 possibility of having to give M.W. a break from the insulin pump to make sure that she can use
24 infusion sites in the future. If she took a break from the insulin pump for this reason, she would
25 need to switch to insulin injections in lieu of the pump in the meantime to manage her diabetes.

26 24. While I am pleased that M.W. has been able to return to CYSS programs, I am
27 frustrated that it took two years and a lawsuit to make it happen. I am also worried that M.W.'s
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1 participation in CYSS programs is uncertain going forward. Every six months, CYSS will
2 reassess M.W. and her accommodations and those accommodations could be revisited. CYSS
3 has also mentioned that funding for the contract nurses who currently help M.W. might not
4 continue, which could mean that CYSS would refuse to provide accommodations going forward.
5 Finally, if M.W.'s needs change (for example, if she needs to switch to insulin injections instead
6 of her insulin pump), we would need to ask for new accommodations under the Army's Revised
7 Policy. Under this Revised Policy, our requests could again be evaluated by officials up the
8 chain of command over a period of several months. During this time, we would need to look for
9 other childcare options or keep M.W. at home after school, interfering with my husband's ability
10 to work.

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12 I declare under penalty of perjury that the foregoing is true and correct, and that this
13 declaration was executed on August 17, 2017 in the State of California.

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17 Hope W.
18 Parent and Guardian ad Litem to M.W.

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