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10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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 15 **STATE OF CALIFORNIA, BY AND THROUGH**
ATTORNEY GENERAL XAVIER BECERRA,

16 Plaintiff,

17 v.

18 **ALEX M. AZAR, IN HIS OFFICIAL CAPACITY**
 19 **AS SECRETARY OF THE U.S. DEPARTMENT OF**
HEALTH & HUMAN SERVICES; U.S.
 20 **DEPARTMENT OF HEALTH AND**
HUMAN SERVICES; DOES 1-100,

21 Defendants.
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Case No. 4:19-cv-02769-HSG

**PLAINTIFF STATE OF CALIFORNIA'S
 ADMINISTRATIVE MOTION TO
 SHORTEN TIME TO HEAR PLAINTIFF'S
 MOTION FOR PRELIMINARY
 INJUNCTION**

Judge: Honorable Haywood S.
 Gilliam, Jr.
 Trial Date: None Set
 Action Filed: May 21, 2019

1 **NOTICE OF MOTION AND MOTION FOR RELIEF TO SHORTEN TIME**

2 PLEASE TAKE NOTICE that Plaintiff State of California hereby moves under N.D. Cal.
3 Civil Local Rule 6-3 for an order shortening time so that Plaintiff's Motion for Preliminary
4 Injunction (PI Motion) (dkt. 11) can be heard on Thursday, July 18, 2019 at 2:00 p.m. While the
5 next available law and motion date on the Court's calendar is October 10, 2019, as detailed
6 below, Plaintiff requests a hearing date of July 18, 2019 in order to obtain preliminary relief to
7 address the substantial harm and prejudice that Plaintiff faces due to imminent implementation of
8 a devastating Final Rule, which goes into effect on July 22, 2019. This motion is based on the
9 Notice of Motion and Motion, the Memorandum of Points and Authorities, the accompanying
10 declaration, as well as the papers, evidence, and records on file, and any other written oral
11 evidence as may be presented.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **BACKGROUND**

14 On January 26, 2018, Defendants Alex M. Azar, in his official capacity as Secretary of the
15 U.S. Department of Health and Human Services, and the U.S. Department of Health and Human
16 Services (HHS) (collectively, Defendants) issued a Notice of Proposed Rulemaking (NPRM) to
17 vastly expand implementation and enforcement of over two dozen federal conscience laws. 83
18 Fed. Reg. 3880. The NPRM proposed a broad exemption to opt out of healthcare services on the
19 basis of "conscience, religious beliefs, or moral convictions" not only to medical providers but
20 also to anyone with an "articulable connection" to the provision of that service, including helping
21 to make a referral for that service. 83 Fed. Reg. at 3881, 3923. Specific scenarios included
22 abortion, sterilization, euthanasia, certain vaccinations if there is a connection to use of "aborted
23 fetal tissue," contraception, gender transition/gender dysphoria, tubal ligations, hysterectomies,
24 assisted suicide, and referrals for advanced directives, and "other health services." 83 Fed. Reg. at
25 3903. HHS also proposed to grant responsibility for enforcement of two dozen federal conscience
26 laws to HHS's Office of Civil Rights (OCR) by conferring OCR with the authority to not only
27 receive complaints, but also to initiate compliance reviews, conduct investigations, supervise and
28 coordinate compliance, and use broad enforcement tools to address violations, including

1 temporarily withholding payments; denying use of HHS funds; suspending award activities;
2 terminating HHS funds; and withholding new HHS funds. 83 Fed. Reg. at 3931.

3 HHS received over 242,000 comments to the NPRM.¹ Comments in opposition came from
4 a broad array of individuals, major medical associations, public health experts, state and local
5 governments, healthcare providers, and other patient advocacy organizations.

6 On May 21, 2019, HHS issued the final rule (Rule). Despite the over 242,000 comments in
7 opposition, the Rule is largely identical to the NPRM. Like the proposed rule, the final Rule
8 conflicts with existing law and impedes the provision of and access to medical information and
9 healthcare by attempting to create limitless categories under which medical information and care
10 can be refused. The final Rule so conflicts by misconstruing and exceeding the bounds of federal
11 statutes, including well-established statutory language and definitions. These expansions include
12 broadening the definition of “assist in the performance” of an activity to encompass “counseling,
13 referral, training, or otherwise making arrangements” for the procedure, health program, or
14 research activity. 84 Fed. Reg. at 23263. The Rule expands the definition of “health care entity”
15 to include “health care personnel,” thus permitting significantly broader categories of personnel
16 could refuse to provide services—potentially including even a receptionist making an
17 appointment for a patient. 84 Fed. Reg. at 23264. Similarly, the term “health care entity” is
18 expanded to include “a plan sponsor, issuer, or third-party administrator, or any other kind of health
19 care organization, facility, or plan.” 84 Fed. Reg. at 23264.

20 Under the guise of an “anti-discrimination” framework, the Rule seeks to strip patients of
21 their access to vital, life-saving healthcare services in order to promote a nebulous, untethered
22 “right” to object to such services. The Rule will result in decreased access to healthcare services
23 that will disproportionately harm marginalized groups in California, including individuals in rural
24 communities, LGBTQ individuals, and women. Dkt. 11 at 23-26. The Rule will also result in
25 consumer confusion about which providers will perform what services, healthcare industry

26 _____
27 ¹Comments are available at
28 <https://www.regulations.gov/docketBrowser?rpp=50&so=DESC&sb=postedDate&po=0&dct=PS&D=HHS-OCR-2018-0002>. Although the website shows 72,417 comments, the Rule lists 242,000 comments as of the date the Rule was published. 84 Fed. Reg. at 23180, n. 41.

1 confusion as to adoption of programmatic changes to account for refusals and to ensure that
 2 patients receive medically necessary care, loss of billions of dollars of federal funding to
 3 recipients found in violation of the Rule's broad scope, and immediate and onerous
 4 implementation costs to the State. Dkt. 11 at 33-42.

5 DISCUSSION

6 Local Rule 6-3(a) sets forth the requirements for a motion to change time, and requires that
 7 a party by declaration do the following: "(1) [s]et[] forth with particularity, the reasons for the
 8 requested enlargement or shortening of time; (2) [d]escribe the effort the party has made to obtain
 9 a stipulation to the time change; (3) [i]dentif[y] the substantial harm or prejudice that would occur
 10 if the Court did not change the time; (4) [i]f the motion is to shorten time for the Court to hear a
 11 motion . . . [d]escribe the nature of the underlying dispute that would be addressed in the motion
 12 and briefly summarize[] the position each party has taken; (5) [d]isclose[] all previous time
 13 modifications in the case, whether by stipulation or Court order; [and] (6) [d]escribe[] the effect
 14 the requested time modification would have on the schedule for the case." As described below
 15 and in the declaration of Stephanie Yu (Yu Dec.) accompanying this motion, Plaintiff satisfies
 16 each of these requirements.

17 1. The Reasons for the Requested Shortening of Time

18 On May 21, 2019, the same day that Defendants issued the Rule, Plaintiff California filed a
 19 Complaint alleging that the Rule was in violation of the Administrative Procedure Act, the
 20 Spending Clause, and the Establishment Clause. Dkt. 1. On June 4, 2019, Plaintiff filed a PI
 21 Motion to prevent the Rule from going into effect, as it would cause irreparable harm to the State.
 22 Dkt. 11. On the same date, the case was assigned to Judge Haywood Gilliam Jr. Dkt. 10. Judge
 23 Gilliam does not have an available law and motion hearing date until October 2019.² The Rule,
 24 however, is set to go in effect on July 22, 2019. 84 Fed. Reg. at 23170.

25 A July 18, 2019 hearing date is necessary in order to obtain the preliminary relief requested
 26 by Plaintiff California in its PI Motion. Defendants have already made clear in the Rule that it is

27 ² See Judge Gilliam's Schedule Notes available at
 28 <http://www.cand.uscourts.gov/CEO/cfd.aspx?7151#Notes>.

1 setting up an unavoidable conflict between OCR and California. The Rule explicitly targets
2 California and its laws and policies balancing conscience protections and patient rights.³ The
3 Rule states that it seeks to resolve confusion caused by OCR's "high-profile" closing of three
4 Weldon Amendment complaints against California by reopening the previously closed
5 investigations. 84 Fed. Reg. at 23178-23179. On top of the reopening of the DMHC
6 investigation, on January 17, 2019, OCR issued a letter to California entitled a Notice of
7 Violation, regarding California's Reproductive FACT Act, and concluded that California had
8 violated the Weldon Amendment and the Coats-Snowe Amendment. 84 Fed. Reg. at 23177.
9 Because Defendants have already found California to be in violation of the Rule, California
10 stands to lose billions of dollars of funding and, as a result, be irreparably harmed if the Rule is to
11 go into effect. Moreover, vulnerable patient populations will lose access to life-sustaining health
12 care if the Rule goes into effect. Defendants even concede that "patients in rural areas are more
13 likely than patients in urban areas to suffer adverse health outcomes as a result of being denied
14 care." 84 Fed. Reg. at 23253. Yet they dismiss this concern by citing to unsupported assertions
15 that this harm will be negated by providers who will no longer be "driven out" of the profession
16 with conscience protections. *Id.* at 23253-54.

17 Given that Defendants are setting California up to already be in violation of the Rule, the
18 Rule becoming effective on July 22 will inevitably lead to loss of access to care of California
19 patients, loss of billions of dollars of funding to the State, and increased and costly administrative
20 burdens to the State

21 **2. Efforts to Obtain a Stipulation**

22 On June 4, 2019, Plaintiff California notified Defendants over email and via telephone of its
23 intention to move to shorten time. Yu Dec. ¶ 8. Counsel for Defendants stated that they are
24 considering their position. *Id.* Counsel then followed up by e-mail to tentatively agree to shorten
25 time if Plaintiff would agree to Defendants' opposition being due on June 28. *Id.* Discussions are
26 ongoing and the parties will continue to meet and confer on the issue to reach a stipulation.

27
28 ³ Indeed, the Rule mentions California no less than 44 times. *See generally* 84 Fed. Reg. 23170.

1 **3. Substantial Harm or Prejudice Caused if the Motion to Shorten Time**
2 **is Not Granted**

3 As discussed supra and in Plaintiff's PI Motion (dkt. 11 at 33-42), California is likely
4 to suffer irreparable harm in the absence of preliminary relief from the Court. Plaintiff California
5 filed 17 declarations describing the harm caused by loss of federal funding and patient access to
6 care. Dkts. 11-1-11-17. Because Defendants have already found California to be in violation of
7 the Rule, Plaintiff California will begin to experience these harms in the absence of preliminary
8 relief, and thus, Plaintiff California will be substantially prejudiced if the hearing is held later than
9 July 22, 2019.

10 **4. Nature of Dispute and Summary of Parties' Positions**

11 Plaintiff California filed a PI Motion to prevent Defendants from implementing a harmful
12 final Rule that would allow virtually any healthcare worker to discriminate against patients and
13 would lead to the loss of billions of dollars of funding to California. Yu Dec. ¶ 3. Plaintiff
14 California is likely to succeed on the merits of its claims because Defendants' Rule violates
15 several statutory and constitutional provisions, including the Administrative Procedure Act and
16 the Spending and Establishment Clauses of the United States Constitution. *Id.* at ¶ 4. Further,
17 Plaintiff has shown that it is likely to experience irreparable harm, and has established the other
18 preliminary injunction factors; namely, that the balance of equities tips in its favor and that an
19 injunction is in the public interest. *Id.* at ¶¶ 5-6. Defendants have not filed a notice of appearance
20 in this litigation, and thus, have yet to present their position. *Id.* at ¶ 9.

21 **5. All Time Modifications in This Case**

22 There have been no time modifications in this case. *Id.* at ¶ 10.

23 **6. The Effect the Requested Modification Will Have on the Schedule in**
24 **This Case**

25 No schedule has been set in this case, so Plaintiff's Motion will have no impact on the
26 case's schedule. *Id.* at ¶ 11.

27 **CONCLUSION**

28 Plaintiff California respectfully request that the Court grant their motion to shorten time to
hold a hearing on Plaintiff's PI Motion on July 18, 2019.

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Dated: June 4, 2019

Respectfully Submitted,
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/s/ Stephanie Yu

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notice of motion and motion to shorten time.docx

CERTIFICATE OF SERVICE

Case Name: **STATE OF CALIFORNIA, by** No. 4:19-cv-02769-HSG
and through ATTORNEY
GENERAL XAVIER
BECERRA
v. ALEX M. AZAR, Secretary
of the U.S. DEPARTMENT OF
HEALTH & HUMAN
SERVICES, et al.,

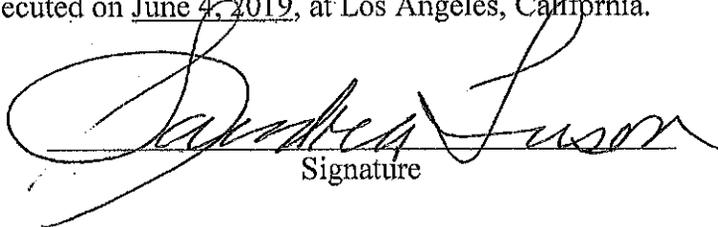
I hereby certify that on June 4, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

PLAINTIFF STATE OF CALIFORNIA'S ADMINISTRATIVE MOTION TO SHORTEN TIME TO HEAR PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 4, 2019, at Los Angeles, California.

Sandra Tinson
Declarant



Signature

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