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 Senior Assistant Attorney General
 3 KATHLEEN BOERGERS, State Bar No. 213530
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 9 *Attorneys for Plaintiff State of California, by and
 through Attorney General Xavier Becerra*

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12
 13
 14

15 **STATE OF CALIFORNIA, by and through**
 16 **ATTORNEY GENERAL XAVIER**
BECERRA,

17 Plaintiff,

18 v.

19 **ALEX M. AZAR, in his official capacity as**
 20 **Secretary of the U.S. DEPARTMENT OF**
 21 **HEALTH & HUMAN SERVICES; a U.S.**
 22 **DEPARTMENT OF HEALTH AND**
 23 **HUMAN SERVICES; DOES 1-100,**

24 Defendants.
 25
 26
 27
 28

3:19-cv-02769-WHA

STATE OF CALIFORNIA'S
OPPOSITION TO DEFENDANTS'
ADMINISTRATIVE MOTION

Judge: Honorable William H. Alsup
 Trial Date: None Set
 Action Filed: May 21, 2019

INTRODUCTION

1
2 Defendants' eleventh hour request "to hold plaintiff's motion for a preliminary injunction in
3 abeyance or, in the alternative, to enlarge time to file their opposition to plaintiff's motion for a
4 preliminary injunction" should be denied. Dkt. No. 34. Defendants propose to "delay
5 enforcement" of the rule "Protecting Statutory Conscience Rights in Health Care; Delegations of
6 Authority" (hereinafter "Refusal Rule" or "Rule") until November 22, 2019, while keeping the
7 effective date of the Refusal Rule July 22, 2019. *Id.* But the irreparable harms described in the
8 State's motion for a preliminary injunction do not hinge on "enforcement" of the Refusal Rule;
9 they turn on the complete alteration of the nation's public and private healthcare systems
10 immediately upon the effective date of Defendants' Rule.

11 When this Rule becomes law on July 22, 2019, it will result in a domino effect—allowing
12 healthcare providers and any person associated with the provision of care—to deny a patient care,
13 even in emergency situations. Dkt. No. 11 at 1. With an effective Rule, California will be
14 required to amend its regulation of the practice of medicine contrary to state law and policy and in
15 a manner that will interfere with the patient relationships. *Id.* at 37. Further, once the Rule takes
16 effect, the State fears that Defendants will take immediate action against it jeopardizing nearly
17 half a trillion federal dollars that are at risk as a result of this rule. *Id.* at 7-11. Allowing the Rule
18 to go into effect will not only harm providers, clinics, hospitals and health programs, but will also
19 cause confusion among covered entities and patients over what is required under this ambiguous
20 directive with no formal guidance from the federal government. This is why the State's motion
21 does not seek to enjoin *enforcement* of the Rule; it asks the Court to "enjoin *implementation* of
22 the Rule." Dkt. No. 11 at 43 (emphasis added).

23 The State has endeavored, in good faith, to negotiate a delayed effective date for the Rule
24 and a briefing schedule on dispositive motions. Palma Dec., Ex. 1-6. But the State's efforts have
25 not been reciprocated. The Court should not reward Defendants' gamesmanship at the expense of
26 vulnerable patients across the State—indeed the country—who will be immediately harmed on
27 the July 22, 2019 effective date of the Rule.
28

1 **I. DEFENDANTS’ PROMISE TO DELAY ENFORCEMENT IS OF NO CONSEQUENCE AND**
 2 **UNSUPPORTED BY CASE LAW**

3 Before the Court are three amply supported motions for preliminary injunctions detailing
 4 immediate and irreparable harm that will result upon the Rule’s effective start date to California’s
 5 healthcare providers, including its doctors and hospitals and vulnerable patient groups. In
 6 response, Defendants have offered nothing to diminish this immediate harm or provide clarity for
 7 the State, patients, or providers. That is because once the Rule goes into effect, it is the law
 8 regardless of whether or not it is being enforced by Defendants. The effective date of a rule is
 9 understood to mean the date upon which the rule becomes enforceable and adherence to it is
 10 required. *See* Effective Date, Black’s Law Dictionary (10th ed. 2014) (defining “effective date”
 11 as “the date on which a statute . . . becomes enforceable or otherwise takes effect”); *NRDC v. EPA*,
 12 683 F.2d 752, 762 (3d Cir. 1982) (“without an effective date, the agency statement would have no
 13 future effect, and could not serve to implement, interpret, or prescribe law or policy”) (internal
 14 quotations omitted). Congress provided a gap between a rule’s finalization and its effectiveness
 15 in order “to give affected parties a reasonable time to adjust their behavior before the final rule
 16 takes effect.” *Omnipoint Corp. v. FCC*, 78 F.3d 620, 631 (D.C. Cir. 1996).

17 Moreover, Defendants have not provided any legal authority to support their proposed
 18 delayed enforcement. Generally, agencies must enforce their regulations even if they are under
 19 reconsideration. *Clean Air Council v. Pruitt*, 862 F.3d 1 (D.C. Cir. 2017). An agency, “must
 20 consider . . . the wisdom of its policy on a continuing basis, for example, in response to changed
 21 factual circumstances, or a change in administrations.” *Nat’l Cable & Telecomms. Ass’n v. Brand*
 22 *X Internet Servs.*, 545 U.S. 967, 981 (2005) (citation omitted).

23 As such, the Court should reject Defendants’ request to delay ruling on the preliminary
 24 injunction motions, absent a stay of the implementation of the Rule.

25 **II. THE EVIDENCE SHOWS THERE WILL BE IMMEDIATE IRREPARABLE HARMS UPON**
 26 **THE RULE’S EFFECTIVE DATE**

27 As set forth in the State’s moving papers, the Refusal Rule will cause immediate irreparable
 28 harm to the State and its citizens—harms that will not be mitigated in any way by Defendants’

1 assertion that they will not seek to take any administrative action to enforce the Rule until
2 November 22, 2019. Defendants' promise of delayed enforcement only limits Defendants'
3 conduct; it has no effect on the conduct of any medical providers, personnel, or health insurers
4 who, under the Rule, are emboldened to deny healthcare services, even during medical
5 emergencies, come July 22, 2019.

6 Once the Rule is effective, the harms will be immediately felt. The Rule will decrease
7 access to healthcare for patients, especially in vulnerable communities, including LGBTQ
8 individuals. *See* Price Dec. ¶ 10; Harris-Caldwell Dec. ¶ 13. The Rule will directly hinder the
9 California Department of Corrections and Rehabilitation's ability to ensure medically necessary
10 care to its transgender inmates. Toche Dec. ¶¶ 6-8. The Rule harms access to reproductive
11 healthcare and end-of-life care, and especially for vulnerable patient populations. Aizuss Dec. ¶¶
12 11-16; Zahn Dec. ¶ 8 (explaining that refusals to dispense family planning services to women
13 place a disproportionate burden on disenfranchised women in resource-poor areas). Defendants'
14 proposal will only heighten, not limit, the consumer and healthcare industry confusion discussed
15 in the State's moving papers. *See* State's Br. at 35-37.

16 Furthermore, state agencies will be immediately impacted. Once refusals happen, the
17 State's regulatory bodies will have to investigate and enforce California law at great expense to
18 the State. Morris Dec. ¶¶ 7-11 (Board of Registered Nursing); Pines Dec. ¶¶ 9-14 (Medical
19 Board of California); Kish Dec. ¶¶ 13-15. The State's community colleges may have to revise
20 curriculum if students refuse training on "objectionable" treatments. Parmelee Dec. ¶ 10.
21 Moreover, State entities will still have to implement an assurance and certification compliance
22 program, necessitating additional State expenses on staff time. Nunes Dec. ¶¶ 13-14; Toche Dec.
23 ¶¶ 10-11; Harris-Caldwell Dec. ¶¶ 9-11; Hinze Dec. ¶¶ 1-7; Cantwell Dec. ¶ 6.

24 **III. DEFENDANTS MISREPRESENT THE NEGOTIATIONS TO DATE**

25 Defendants' reliance on the parties' scheduling negotiations as a basis to delay a ruling on
26 the State's motion is equally unavailing. As the attached emails demonstrate, throughout the
27 negotiations Defendants had offered to delay implementation of the Rule by publishing their
28 decision to push out the Rule's effective date in the Federal Register. It was not until yesterday

1 that Defendants abruptly switched course, now offering only to stay “enforcement.” This is a
2 distinction with a significant difference, as discussed above. Among other things, the prior offer
3 was to ensure that, nationwide, all parties were operating under the existing 2011 rule until the
4 Court could resolve the merits of this case. Defendants fail to provide any details regarding the
5 metes and bounds of what the proposed non-enforcement of the Rule would entail. For example,
6 Defendants fail to address whether they will pursue “violations” of the Rule retroactively after the
7 delay period or whether they will stay enforcement of ongoing investigations of California (or
8 any other entity) during that period.

9 **IV. THE MOTION SHOULD ALSO BE DENIED ON PROCEDURAL GROUNDS**

10 In addition to the substantive reasons to deny Defendants’ motion, the motion also violates
11 local rules. This Court’s rules require that any “motion which affects a hearing or proceeding on
12 the Court’s calendar must be filed no later than 14 days before the scheduled event.” Civ. LR 6-
13 1(b). But, Defendants waited to file their motion for an enlargement of time until the day before
14 it was due. The Local Rules further require that the party moving for an enlargement of the time
15 “[i]dentif[y] the substantial harm or prejudice that would occur if the Court did not change the
16 time.” Civ. LR 6-3(a)(3). Defendants have also not complied with this requirement.

17 This Court set the briefing schedule on June 14, 2019. Dkt. No. 28. The Court explained
18 that “[i]n order to ensure the motions’ timely resolution,” “Defendants shall file a consolidated
19 opposition” by June 26, 2019 at noon. *Id.* Defendants are now in violation of the Court’s order,
20 thereby threatening the ability of the Court to timely resolve the Plaintiffs’ motions for a
21 preliminary injunction. The current crisis is of Defendants’ own doing. They should not be
22 rewarded for their dilatory actions.

23 **CONCLUSION**

24 While Defendants’ proposal does not negate the harms outlined above, the State remains
25 open to a discussion about enlarging the time for Defendants’ to respond to the State’s motion for
26 a preliminary injunction if Defendants delay implementation of the Rule. But absent official
27 delay of the effective start date of the Rule or relief from the Court under 5 U.S.C. § 705 to
28

1 postpone the effective date of the Rule, the State must continue to seek the provisional relief
2 outlined in its motion for preliminary injunction prior to the effective date of July 22, 2019.

3
4 Dated: June 26, 2019

Respectfully Submitted,

5 XAVIER BECERRA
6 Attorney General of California
7 MICHAEL NEWMAN
8 Senior Assistant Attorney General
9 KATHLEEN BOERGERS
10 Supervising Deputy Attorney General

/s/ Neli Palma

11 NELI PALMA
12 KARLI EISENBERG
13 STEPHANIE YU
14 Deputy Attorneys General
15 *Attorneys for Plaintiff State of California, by*
16 *and through Attorney General Xavier*
17 *Becerra*

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CERTIFICATE OF SERVICE

Case Name: State of California v. Alex M. Azar No. 3:19-cv-02769-WHA

I hereby certify that on June 26, 2019, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

STATE OF CALIFORNIA'S OPPOSITION TO DEFENDANTS' ADMINISTRATIVE MOTION

DECLARATION OF NELI PALMA IN SUPPORT OF STATE OF CALIFORNIA'S OPPOSITION TO DEFENDANTS' ADMINISTRATIVE MOTION

[PROPOSED] ORDER DENYING DEFENDANTS' ADMINISTRATIVE MOTION

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 26, 2019, at Sacramento, California.

Priscilla Lucas

Declarant

/s/ Priscilla Lucas

Signature

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13865032.docx

1 XAVIER BECERRA, State Bar No. 118517
 Attorney General of California
 2 MICHAEL NEWMAN, State Bar No. 222993
 Senior Assistant Attorney General
 3 KATHLEEN BOERGERS, State Bar No. 213530
 Supervising Deputy Attorney General
 4 KARLI EISENBERG, State Bar No. 281923
 STEPHANIE YU, State Bar No. 294405
 5 NELI N. PALMA, State Bar No. 203374
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 6 1300 I Street, Suite 125
 P.O. Box 944255
 7 Sacramento, CA 94244-2550
 Telephone: (916) 445-2482
 8 Fax: (916) 322-8288
 E-mail: Neli.Palma@doj.ca.gov
 9 *Attorneys for Plaintiff State of California, by and
 through Attorney General Xavier Becerra*

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 11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13
 14

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

17 Plaintiff,

18 v.

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

24 Defendants.

Case No. 3:19-cv-02769-WHA

**DECLARATION OF NELI PALMA IN
 SUPPORT OF STATE OF CALIFORNIA'S
 OPPOSITION TO DEFENDANTS'
 ADMINISTRATIVE MOTION**

Judge: Honorable William H. Alsup
 Trial Date: None Set
 Action Filed: May 21, 2019

25 I, Neli Palma, declare as follows:

26 1. I have personal knowledge of the facts set forth in this declaration. If called as a
 27 witness, I could and would testify competently to the matters set forth below.

28 2. I am a Deputy Attorney General with the California Department of Justice, and am
 counsel of record for Plaintiff the State of California in this matter.

1 3. On June 4, 2019, Plaintiff California filed a Motion for Preliminary Injunction
2 seeking to prevent Defendants from implementing a harmful final rule, 84 Fed. Reg. 23170 (May
3 21, 2019), that would allow virtually any healthcare worker to discriminate against patients and
4 would lead to the loss of billions of dollars of funding to California should the state be found in
5 violation of the rule.

6 4. On June 14, 2019, the Court issued its Order Setting Briefing Schedule on Motions
7 for Provisional Relief in the now related matters, including *City and County of San Francisco v.*
8 *Azar*, Case No. 19-cv-02405, *State of California v. Azar*, Case No. 19-cv-02769, and *County of*
9 *Santa Clara v. U.S. Department of Health and Human Services*, Case No. 19-cv-02916. Dkt. No.
10 39.

11 5. On or about June 17, 2019, Benjamin T. Takemoto, counsel for Defendants emailed
12 me with a proposal to “delay the effective date of the Protecting Statutory Conscience Rights in
13 Health Care; Delegations of Authority Rule until October 31, 2019.” This email also proposed
14 plaintiff withdrawing its motion for preliminary injunction and instead proposed a briefing
15 schedule for dispositive motions. Attached hereto as Exhibit 1 is a true and correct copy of this
16 email.

17 6. On June 19, 2019, I spoke with Mr. Takemoto and Rebecca Kopplin (also counsel for
18 defendants) on the phone about plaintiff’s concerns related to the schedule defendants were
19 proposing, most notably that the proposal gives plaintiff only 30 days to review the administrative
20 record (which plaintiff has not yet seen) and to draft their motions for summary judgment. I also
21 inquired whether defendants would be open to a different (longer) effective start date for the rule,
22 and a more extended briefing schedule on dispositive motions. I also inquired about the
23 preliminary injunction motions being held in abeyance rather than withdrawn. Mr. Takemoto
24 said he was only able to offer the effective start date and briefing schedule communicated in his
25 June 17, 2019 email (Exhibit 1). He also asked if plaintiff had a counter offer to propose for
26 defendants to consider.

27 ///

28 ///

EXHIBIT 1

From: [Takemoto, Benjamin \(CIV\)](#)
To: [Neli Palma](#); [Karl Eisenberg](#); [Kathleen Boergers](#); [Michael L. Newman](#); [Stephanie Yu](#)
Cc: [Kopplin, Rebecca M. \(CIV\)](#)
Subject: California v. Azar / Schedule
Date: Monday, June 17, 2019 1:48:17 PM

Counsel,

I hope this e-mail finds you well. I write because we believe it would be more efficient to resolve the issues raised in the *California v. Azar* and in other similar cases through cross-motions for summary judgment on the basis of the administrative record rather than through briefing on the plaintiffs' request for preliminary relief.

Therefore, we're proposing to all of the plaintiffs that:

- HHS will delay the effective date of the Protecting Statutory Conscience Rights in Health Care; Delegations of Authority Rule until October 31, 2019.
- Plaintiffs withdraw their motions for preliminary injunction.
- HHS will provide the administrative record by July 15, 2019.
- Summary judgment briefing on a schedule that will permit hearings and rulings by October 31, 2019:
 - Plaintiffs' motions for summary judgment by August 15, 2019.
 - Defendants' oppositions and cross motions by September 6, 2019.
 - Plaintiffs' replies and oppositions by September 20, 2019.
 - Defendants' replies by October 4, 2019.

Would you please let us know your position on this proposal? If all of the plaintiffs agree we hope that it would be straightforward to get this schedule entered by the courts.

Thanks,
Ben

--

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station, Washington, DC 20044
Tel: (202) 532-4252 / Fax: (202) 616-8460

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EXHIBIT 2

From: Takemoto, Benjamin (CIV)
To: Neil Palma; Karl Eisenberg; Kathleen Boergers; Michael L. Newman; Stephanie Yu
Cc: Kopplin, Rebecca M. (CIV)
Subject: RE: California v. Azar / Schedule
Date: Thursday, June 20, 2019 1:24:59 PM

Hi Neli,

Thanks again for talking with Rebecca and me yesterday. We appreciate your concerns about the proposed schedule, but that remains the offer on the table. Given the quickly approaching deadline for our PI opposition, would you please let us know Plaintiff's position on our proposal by noon tomorrow?

Regardless of Plaintiff's position, HHS intends to file a notice in the Federal Register delaying the effective date of the Rule until October 31, 2019.

If Plaintiff does not consent to Defendants' proposal, Defendants intend to file a contested motion requesting that the Court deny Plaintiff's motion for a preliminary injunction without prejudice in light of the delayed effective date and set briefing for cross motions for summary judgment according to the schedule we proposed in our email from Monday, with the view that this will permit the Court to rule on those motions by October 31, 2019.

If the Court does not adopt the requested MSJ schedule, Defendants will seek, in the alternative, an extension of time to respond to the preliminary injunction motion until July 31, 2019, at which point Defendants may also move for summary judgment. If Plaintiff does not consent to the proposed summary judgment briefing schedule, would you please let me know Plaintiff's position regarding this alternative request for an extension of the preliminary injunction opposition deadline by noon this Friday as well? We would hope that, in light of Defendants' extension of the effective date of the Rule, Plaintiff would have no objection to our request for an extension of that deadline.

Thank you,
Ben

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
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From: Takemoto, Benjamin (CIV)
Sent: Monday, June 17, 2019 4:48 PM

To: Neli.Palma@doj.Ca.Gov; Karli.Eisenberg@doj.Ca.Gov; Kathleen.Boergers@doj.Ca.Gov;
Michael.Newman@doj.Ca.Gov; Stephanie.Yu@doj.Ca.Gov
Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: California v. Azar / Schedule

Counsel,

I hope this e-mail finds you well. I write because we believe it would be more efficient to resolve the issues raised in the *California v. Azar* and in other similar cases through cross-motions for summary judgment on the basis of the administrative record rather than through briefing on the plaintiffs' request for preliminary relief.

Therefore, we're proposing to all of the plaintiffs that:

- HHS will delay the effective date of the Protecting Statutory Conscience Rights in Health Care; Delegations of Authority Rule until October 31, 2019.
- Plaintiffs withdraw their motions for preliminary injunction.
- HHS will provide the administrative record by July 15, 2019.
- Summary judgment briefing on a schedule that will permit hearings and rulings by October 31, 2019:
 - Plaintiffs' motions for summary judgment by August 15, 2019.
 - Defendants' oppositions and cross motions by September 6, 2019.
 - Plaintiffs' replies and oppositions by September 20, 2019.
 - Defendants' replies by October 4, 2019.

Would you please let us know your position on this proposal? If all of the plaintiffs agree we hope that it would be straightforward to get this schedule entered by the courts.

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Ben

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EXHIBIT 3

From: [Takemoto, Benjamin \(CIV\)](#)
To: [Neli Palma](#); [Karli Eisenberg](#); [Kathleen Boergers](#); [Michael L. Newman](#); [Stephanie Yu](#)
Cc: [Kopplin, Rebecca M. \(CIV\)](#)
Subject: RE: California v. Azar / Schedule
Date: Thursday, June 20, 2019 6:39:12 PM

Hi Neli,

Apologies for any confusion, but HHS is in fact prepared to delay the effective date of the rule until November 22, 2019, not October 31, 2019 as I said earlier. In light of that new effective date, Defendants propose the following schedule:

- HHS will provide the administrative record by July 22, 2019.
- Plaintiff's motion for summary judgment by September 5, 2019.
- Defendants' oppositions and cross motions by September 27, 2019.
- Plaintiff's reply and opposition by October 11, 2019.
- Defendants' replies by October 25, 2019.

Best,
Ben

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station, Washington, DC 20044
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From: Takemoto, Benjamin (CIV)
Sent: Thursday, June 20, 2019 4:25 PM
To: 'Neli.Palma@doj.Ca.Gov' <Neli.Palma@doj.Ca.Gov>; 'Karli.Eisenberg@doj.Ca.Gov' <Karli.Eisenberg@doj.Ca.Gov>; 'Kathleen.Boergers@doj.Ca.Gov' <Kathleen.Boergers@doj.Ca.Gov>; 'Michael.Newman@doj.Ca.Gov' <Michael.Newman@doj.Ca.Gov>; 'Stephanie.Yu@doj.Ca.Gov' <Stephanie.Yu@doj.Ca.Gov>
Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
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Regardless of Plaintiff's position, HHS intends to file a notice in the Federal Register delaying the effective date of the Rule until October 31, 2019.

If Plaintiff does not consent to Defendants' proposal, Defendants intend to file a contested motion requesting that the Court deny Plaintiff's motion for a preliminary injunction without prejudice in light of the delayed effective date and set briefing for cross motions for summary judgment according to the schedule we proposed in our email from Monday, with the view that this will permit the Court to rule on those motions by October 31, 2019.

If the Court does not adopt the requested MSJ schedule, Defendants will seek, in the alternative, an extension of time to respond to the preliminary injunction motion until July 31, 2019, at which point Defendants may also move for summary judgment. If Plaintiff does not consent to the proposed summary judgment briefing schedule, would you please let me know Plaintiff's position regarding this alternative request for an extension of the preliminary injunction opposition deadline by noon this Friday as well? We would hope that, in light of Defendants' extension of the effective date of the Rule, Plaintiff would have no objection to our request for an extension of that deadline.

Thank you,
Ben

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Michael.Newman@doj.Ca.Gov; Stephanie.Yu@doj.Ca.Gov
Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: California v. Azar / Schedule

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plaintiffs' request for preliminary relief.

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Benjamin T. Takemoto

Trial Attorney

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EXHIBIT 4

From: Neli Palma
To: "Takemoto, Benjamin (CIV)"; Karli Eisenberg; Kathleen Boergers; Michael L. Newman; Stephanie Yu
Cc: Kopplin, Rebecca M. (CIV)
Bcc: Ashley Harrison; Neli Palma
Subject: RE: California v. Azar / Schedule
Date: Friday, June 21, 2019 12:14:00 PM

Hi Ben,

Thank you for your email and for your revised proposal.

While we welcome a delay in the Rule's effective date, we do not believe that a delay until November 22, 2019 or the briefing schedule that you propose is sufficient for the parties to adequately litigate and for the court to properly decide the important legal issues in this case. This is particularly so in light of the massive administrative record that HHS will have to compile and the Plaintiffs will have to review before any merits briefing can be started. We therefore cannot agree to your revised proposal.

We are willing, however, to offer the following counter-proposal:

- July 22, 2019 – Defendants produce the administrative record
- Oct. 1, 2019 – Plaintiffs move for summary judgment
- Nov. 1, 2019 – Defendants oppose and cross-move
- Dec. 2, 2019 – Plaintiffs file their reply and opposition
- Dec. 20, 2019 – Defendants file their reply
- Month of Jan. 2020 or at the Court's convenience – argument on cross-motions
- Feb. 15, 2020 – Rule's delayed effective date

We reserve the right to seek modification of the briefing schedule upon review of the administrative record should the size of the record or any sufficiency issues warrant such modification. Additionally, our position is that the motions for preliminary injunction should be held in abeyance instead of being withdrawn.

If the above is not agreeable to Defendants, we will contest Defendants' motion to set the summary judgment briefing schedule that you have proposed.

You stated that if the Court does not adopt Defendants' proposed summary judgment

schedule, you will seek, in the alternative, an extension of time to respond to Plaintiffs' preliminary injunction motions until July 31, 2019. Until Rule's effective date is pushed back, we are not in a position to agree to such an extension. However, once the Rule's effective date is delayed through Nov. 22, 2019, we anticipate that we will be able to agree to an extended schedule for briefing the preliminary injunction motions.

Thanks again.

Neli

From: Takemoto, Benjamin (CIV) <Benjamin.Takemoto@usdoj.gov>
Sent: Thursday, June 20, 2019 6:39 PM
To: Neli Palma <Neli.Palma@doj.ca.gov>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>; Stephanie Yu <Stephanie.Yu@doj.ca.gov>
Cc: Kopplin, Rebecca M. (CIV) <Rebecca.M.Kopplin@usdoj.gov>
Subject: RE: California v. Azar / Schedule

Hi Neli,

Apologies for any confusion, but HHS is in fact prepared to delay the effective date of the rule until November 22, 2019, not October 31, 2019 as I said earlier. In light of that new effective date, Defendants propose the following schedule:

- HHS will provide the administrative record by July 22, 2019.
- Plaintiff's motion for summary judgment by September 5, 2019.
- Defendants' oppositions and cross motions by September 27, 2019.
- Plaintiff's reply and opposition by October 11, 2019.
- Defendants' replies by October 25, 2019.

Best,
Ben

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station, Washington, DC 20044
Tel: (202) 532-4252 / Fax: (202) 616-8460

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copies of it. I appreciate your cooperation.

From: Takemoto, Benjamin (CIV)
Sent: Thursday, June 20, 2019 4:25 PM
To: 'Neli.Palma@doj.Ca.Gov' <Neli.Palma@doj.Ca.Gov>; 'Karli.Eisenberg@doj.Ca.Gov' <Karli.Eisenberg@doj.Ca.Gov>; 'Kathleen.Boergers@doj.Ca.Gov' <Kathleen.Boergers@doj.Ca.Gov>; 'Michael.Newman@doj.Ca.Gov' <Michael.Newman@doj.Ca.Gov>; 'Stephanie.Yu@doj.Ca.Gov' <Stephanie.Yu@doj.Ca.Gov>
Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: RE: California v. Azar / Schedule

Hi Neli,

Thanks again for talking with Rebecca and me yesterday. We appreciate your concerns about the proposed schedule, but that remains the offer on the table. Given the quickly approaching deadline for our PI opposition, would you please let us know Plaintiff's position on our proposal by noon tomorrow?

Regardless of Plaintiff's position, HHS intends to file a notice in the Federal Register delaying the effective date of the Rule until October 31, 2019.

If Plaintiff does not consent to Defendants' proposal, Defendants intend to file a contested motion requesting that the Court deny Plaintiff's motion for a preliminary injunction without prejudice in light of the delayed effective date and set briefing for cross motions for summary judgment according to the schedule we proposed in our email from Monday, with the view that this will permit the Court to rule on those motions by October 31, 2019.

If the Court does not adopt the requested MSJ schedule, Defendants will seek, in the alternative, an extension of time to respond to the preliminary injunction motion until July 31, 2019, at which point Defendants may also move for summary judgment. If Plaintiff does not consent to the proposed summary judgment briefing schedule, would you please let me know Plaintiff's position regarding this alternative request for an extension of the preliminary injunction opposition deadline by noon this Friday as well? We would hope that, in light of Defendants' extension of the effective date of the Rule, Plaintiff would have no objection to our request for an extension of that deadline.

Thank you,
Ben

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station, Washington, DC 20044
Tel: (202) 532-4252 / Fax: (202) 616-8460

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distribution, or copying of this e-mail is prohibited except by or on behalf of the intended recipient. If you have received this e-mail in error, please notify me immediately and destroy all copies of it. I appreciate your cooperation.

From: Takemoto, Benjamin (CIV)

Sent: Monday, June 17, 2019 4:48 PM

To: Neli.Palma@doj.Ca.Gov; Karli.Eisenberg@doj.Ca.Gov; Kathleen.Boergers@doj.Ca.Gov; Michael.Newman@doj.Ca.Gov; Stephanie.Yu@doj.Ca.Gov

Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>

Subject: California v. Azar / Schedule

Counsel,

I hope this e-mail finds you well. I write because we believe it would be more efficient to resolve the issues raised in the *California v. Azar* and in other similar cases through cross-motions for summary judgment on the basis of the administrative record rather than through briefing on the plaintiffs' request for preliminary relief.

Therefore, we're proposing to all of the plaintiffs that:

- HHS will delay the effective date of the Protecting Statutory Conscience Rights in Health Care; Delegations of Authority Rule until October 31, 2019.
- Plaintiffs withdraw their motions for preliminary injunction.
- HHS will provide the administrative record by July 15, 2019.
- Summary judgment briefing on a schedule that will permit hearings and rulings by October 31, 2019:
 - Plaintiffs' motions for summary judgment by August 15, 2019.
 - Defendants' oppositions and cross motions by September 6, 2019.
 - Plaintiffs' replies and oppositions by September 20, 2019.
 - Defendants' replies by October 4, 2019.

Would you please let us know your position on this proposal? If all of the plaintiffs agree we hope that it would be straightforward to get this schedule entered by the courts.

Thanks,
Ben

--

Benjamin T. Takemoto

Trial Attorney

U.S. Department of Justice, Civil Division, Federal Programs Branch

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EXHIBIT 5

From: [Neli Palma](#)
To: "[Takemoto, Benjamin \(CIV\)](#)"; [Karli Eisenberg](#); [Kathleen Boergers](#); [Michael L. Newman](#); [Stephanie Yu](#)
Cc: [Kopplin, Rebecca M. \(CIV\)](#)
Bcc: [Ashley Harrison](#)
Subject: RE: California v. Azar / Schedule
Date: Tuesday, June 25, 2019 11:16:00 AM

Hi Ben,

Can you please provide an update on the status of our discussion related to the scheduling on the preliminary injunction motions? We thought that the discussion regarding the filing of the answer was part of a larger stipulation that addressed the preliminary injunction motions also.

Looking forward to hearing from you on where things stand.

Thank you.

Neli

From: Takemoto, Benjamin (CIV) <Benjamin.Takemoto@usdoj.gov>
Sent: Tuesday, June 25, 2019 7:36 AM
To: Neli Palma <Neli.Palma@doj.ca.gov>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>; Stephanie Yu <Stephanie.Yu@doj.ca.gov>
Cc: Kopplin, Rebecca M. (CIV) <Rebecca.M.Kopplin@usdoj.gov>
Subject: RE: California v. Azar / Schedule

Hi Neli,

Please let me know what you think of the attached stipulation and if I have your permission to file with your signature.

Thanks,
Ben

--

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station, Washington, DC 20044
Tel: (202) 532-4252 / Fax: (202) 616-8460

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Sent: Monday, June 24, 2019 4:45 PM
To: Neli Palma <Neli.Palma@doj.ca.gov>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>; Stephanie Yu <Stephanie.Yu@doj.ca.gov>
Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: RE: California v. Azar / Schedule

Thanks very much, Neli. We'll prepare a stipulation and will send it to you shortly for your review.

Ben

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station, Washington, DC 20044
Tel: (202) 532-4252 / Fax: (202) 616-8460

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From: Neli Palma <Neli.Palma@doj.ca.gov>
Sent: Monday, June 24, 2019 4:41 PM
To: Takemoto, Benjamin (CIV) <btakemot@CIV.USDOJ.GOV>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>; Stephanie Yu <Stephanie.Yu@doj.ca.gov>
Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: RE: California v. Azar / Schedule

Hi Ben,

One answer sixty days after service is agreeable to California.

Neli

From: Takemoto, Benjamin (CIV) <Benjamin.Takemoto@usdoj.gov>
Sent: Monday, June 24, 2019 12:44 PM
To: Neli Palma <Neli.Palma@doj.ca.gov>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>;

Stephanie Yu <Stephanie.Yu@doj.ca.gov>

Cc: Kopplin, Rebecca M. (CIV) <Rebecca.M.Kopplin@usdoj.gov>

Subject: RE: California v. Azar / Schedule

Hi Neli,

Thanks for this e-mail. We actually had one additional question: Defendants would like to file one answer sixty days after service; would you please let me know whether California would consent to that? I believe that Defendants' answer with respect to California's FOIA claim is currently due thirty days after service.

Thanks,
Ben

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station, Washington, DC 20044
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From: Neli Palma <Neli.Palma@doj.ca.gov>

Sent: Friday, June 21, 2019 3:15 PM

To: Takemoto, Benjamin (CIV) <btakemot@CIV.USDOJ.GOV>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>; Stephanie Yu <Stephanie.Yu@doj.ca.gov>

Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>

Subject: RE: California v. Azar / Schedule

Hi Ben,

Thank you for your email and for your revised proposal.

While we welcome a delay in the Rule's effective date, we do not believe that a delay until November 22, 2019 or the briefing schedule that you propose is sufficient for the parties to adequately litigate and for the court to properly decide the important legal issues in this case. This is particularly so in light of the massive administrative record that HHS will have to compile and the Plaintiffs will have to review before any merits briefing can be started. We therefore cannot agree to your revised proposal.

We are willing, however, to offer the following counter-proposal:

- July 22, 2019 – Defendants produce the administrative record
- Oct. 1, 2019 – Plaintiffs move for summary judgment
- Nov. 1, 2019 – Defendants oppose and cross-move
- Dec. 2, 2019 – Plaintiffs file their reply and opposition
- Dec. 20, 2019 – Defendants file their reply
- Month of Jan. 2020 or at the Court's convenience – argument on cross-motions
- Feb. 15, 2020 – Rule's delayed effective date

We reserve the right to seek modification of the briefing schedule upon review of the administrative record should the size of the record or any sufficiency issues warrant such modification. Additionally, our position is that the motions for preliminary injunction should be held in abeyance instead of being withdrawn.

If the above is not agreeable to Defendants, we will contest Defendants' motion to set the summary judgment briefing schedule that you have proposed.

You stated that if the Court does not adopt Defendants' proposed summary judgment schedule, you will seek, in the alternative, an extension of time to respond to Plaintiffs' preliminary injunction motions until July 31, 2019. Until Rule's effective date is pushed back, we are not in a position to agree to such an extension. However, once the Rule's effective date is delayed through Nov. 22, 2019, we anticipate that we will be able to agree to an extended schedule for briefing the preliminary injunction motions.

Thanks again.

Neli

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Sent: Thursday, June 20, 2019 6:39 PM

To: Neli Palma <Neli.Palma@doj.ca.gov>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>; Stephanie Yu <Stephanie.Yu@doj.ca.gov>

Cc: Kopplin, Rebecca M. (CIV) <Rebecca.M.Kopplin@usdoj.gov>

Subject: RE: California v. Azar / Schedule

Hi Neli,

Apologies for any confusion, but HHS is in fact prepared to delay the effective date of the rule until November 22, 2019, not October 31, 2019 as I said earlier. In light of that new effective date, Defendants propose the following schedule:

- HHS will provide the administrative record by July 22, 2019.
- Plaintiff's motion for summary judgment by September 5, 2019.
- Defendants' oppositions and cross motions by September 27, 2019.
- Plaintiff's reply and opposition by October 11, 2019.
- Defendants' replies by October 25, 2019.

Best,
Ben

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station, Washington, DC 20044
Tel: (202) 532-4252 / Fax: (202) 616-8460

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Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: RE: California v. Azar / Schedule

Hi Neli,

Thanks again for talking with Rebecca and me yesterday. We appreciate your concerns about the proposed schedule, but that remains the offer on the table. Given the quickly approaching deadline for our PI opposition, would you please let us know Plaintiff's position on our proposal by noon tomorrow?

Regardless of Plaintiff's position, HHS intends to file a notice in the Federal Register delaying the

effective date of the Rule until October 31, 2019.

If Plaintiff does not consent to Defendants' proposal, Defendants intend to file a contested motion requesting that the Court deny Plaintiff's motion for a preliminary injunction without prejudice in light of the delayed effective date and set briefing for cross motions for summary judgment according to the schedule we proposed in our email from Monday, with the view that this will permit the Court to rule on those motions by October 31, 2019.

If the Court does not adopt the requested MSJ schedule, Defendants will seek, in the alternative, an extension of time to respond to the preliminary injunction motion until July 31, 2019, at which point Defendants may also move for summary judgment. If Plaintiff does not consent to the proposed summary judgment briefing schedule, would you please let me know Plaintiff's position regarding this alternative request for an extension of the preliminary injunction opposition deadline by noon this Friday as well? We would hope that, in light of Defendants' extension of the effective date of the Rule, Plaintiff would have no objection to our request for an extension of that deadline.

Thank you,
Ben

Benjamin T. Takemoto
Trial Attorney
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Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: California v. Azar / Schedule

Counsel,

I hope this e-mail finds you well. I write because we believe it would be more efficient to resolve the issues raised in the *California v. Azar* and in other similar cases through cross-motions for summary judgment on the basis of the administrative record rather than through briefing on the plaintiffs' request for preliminary relief.

Therefore, we're proposing to all of the plaintiffs that:

- HHS will delay the effective date of the Protecting Statutory Conscience Rights in Health Care; Delegations of Authority Rule until October 31, 2019.
- Plaintiffs withdraw their motions for preliminary injunction.
- HHS will provide the administrative record by July 15, 2019.
- Summary judgment briefing on a schedule that will permit hearings and rulings by October 31, 2019:
 - Plaintiffs' motions for summary judgment by August 15, 2019.
 - Defendants' oppositions and cross motions by September 6, 2019.
 - Plaintiffs' replies and oppositions by September 20, 2019.
 - Defendants' replies by October 4, 2019.

Would you please let us know your position on this proposal? If all of the plaintiffs agree we hope that it would be straightforward to get this schedule entered by the courts.

Thanks,
Ben

--

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
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1 [Plaintiff's Signature Block]

2 JOSEPH H. HUNT
Assistant Attorney General

3 MICHELLE R. BENNETT
4 Assistant Branch Director
Civil Division

5 REBECCA M. KOPPLIN
6 (CA Bar # 313970)
7 BENJAMIN T. TAKEMOTO
(CA Bar # 308075)
8 Trial Attorney
9 United States Department of Justice
Civil Division, Federal Programs Branch
10 P.O. Box 883, Ben Franklin Station
Washington, DC 20044
11 Tel: (202) 532-4252
Fax: (202) 616-8460
E-mail: benjamin.takemoto@usdoj.gov

12 *Attorneys for Defendants*

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO DIVISION**

16 STATE OF CALIFORNIA,

17 Plaintiff,

18 v.

19 ALEX M. AZAR II, *in his official capacity as*
20 *Secretary of Health and Human Services,*
21 UNITED STATES DEPARTMENT OF
22 HEALTH AND HUMAN SERVICES, and
DOES 1-100,

23 Defendants.

Case No. 4:19-cv-2769-WHA

**STIPULATION TO ENLARGE TIME
TO ANSWER**

Hon. William Alsup
Hearing: July 17, 2019, 8:00 a.m.

Phillip Burton Federal Building & United
States Courthouse, Courtroom 12, 19th
Floor,
450 Golden Gate Ave., San Francisco, CA
94102

1 The parties stipulate pursuant to Rule 6-1(a) of the Local Rules of Practice in Civil Proceedings
2 before the United States District Court for the Northern District of California that, absent further order of
3 the Court, Defendants' answer shall be due July 27, 2019, sixty days after service. This includes
4 Defendants' answer to Plaintiff's Freedom of Information Act claim, which would otherwise be due on
5 June 27, 2019.

6 Dated: June X, 2019

7 [Plaintiff's Signature Block]

Respectfully Submitted,

8 JOSEPH H. HUNT
Assistant Attorney General

9 MICHELLE R. BENNETT
Assistant Branch Director
10 Civil Division

11 /s/ Benjamin T. Takemoto
12 REBECCA M. KOPPLIN
(CA Bar # 313970)
13 BENJAMIN T. TAKEMOTO
(CA Bar # 308075)
14 Trial Attorney
United States Department of Justice
15 Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station
16 Washington, DC 20044
Tel: (202) 532-4252
17 Fax: (202) 616-8460
E-mail: benjamin.takemoto@usdoj.gov

18 *Attorneys for Defendants*

19 **RULE 5-1(i)(3) ATTESTATION**

20 I, Benjamin T. Takemoto, attest pursuant to Rule 5-1(i)(3) of the Local Rules of Practice in Civil
21 Proceedings before the United States District Court for the Northern District of California that I have
22 obtained the concurrence in the filing of the above joint case management statement from Neli Palma,
23 counsel for Plaintiff.

24 /s/ Benjamin T. Takemoto
25 Benjamin T. Takemoto

EXHIBIT 6

From: [Takemoto, Benjamin \(CIV\)](#)
To: [Neli Palma](#); [Karli Eisenberg](#); [Kathleen Boergers](#); [Michael L. Newman](#); [Stephanie Yu](#)
Cc: [Kopplin, Rebecca M. \(CIV\)](#)
Subject: RE: California v. Azar / Schedule
Date: Tuesday, June 25, 2019 6:34:45 PM

Hi Neli,

Yes, of course. After further deliberations, HHS no longer intends to delay the effective date of the rule with a notice in the Federal Register. HHS will, however, delay any enforcement of the Rule until November 22, 2019. We intend to file a motion this evening asking the Court to enter the following briefing schedule (which is largely similar to our initial proposal, except the order of summary judgment motions is switched):

- July 22, 2019: HHS lodges the administrative record.
- September 5, 2019: Defendants file their motion for summary judgment.
- September 27, 2019: Plaintiff files its opposition to Defendants' motion for summary judgment (and cross-motion for summary judgment, if any).
- October 11, 2019: Defendants file their reply (and opposition, if any).
- October 25, 2019: Plaintiff files its reply in support of its motion for summary judgment, if any.

In the alternative, if the Court rejects that proposal, we will be asking for an extension of the PI opposition deadline until July 31.

Based on your earlier response, I understand that Plaintiff opposes our request, but I wanted to let you know nonetheless about the modification to our prior representation. We plan to file later this evening and, unless we hear differently from you, we'll indicate that Plaintiffs oppose our motion. Apologies for the tight timing on this.

I hope that, despite the disagreement on the schedule, we can still agree on the answer stipulation that I circulated earlier. In addition, we will seek a page limit extension to 55 pages. If you agree to that, I can add language to that effect in the stipulation.

Thanks,
Ben

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station, Washington, DC 20044
Tel: (202) 532-4252 / Fax: (202) 616-8460

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Sent: Tuesday, June 25, 2019 2:17 PM
To: Takemoto, Benjamin (CIV) <btakemot@CIV.USDOJ.GOV>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>; Stephanie Yu <Stephanie.Yu@doj.ca.gov>
Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: RE: California v. Azar / Schedule

Hi Ben,

Can you please provide an update on the status of our discussion related to the scheduling on the preliminary injunction motions? We thought that the discussion regarding the filing of the answer was part of a larger stipulation that addressed the preliminary injunction motions also.

Looking forward to hearing from you on where things stand.

Thank you.

Neli

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Cc: Kopplin, Rebecca M. (CIV) <Rebecca.M.Kopplin@usdoj.gov>
Subject: RE: California v. Azar / Schedule

Hi Neli,

Please let me know what you think of the attached stipulation and if I have your permission to file with your signature.

Thanks,
Ben

--

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station, Washington, DC 20044
Tel: (202) 532-4252 / Fax: (202) 616-8460

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Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: RE: California v. Azar / Schedule

Thanks very much, Neli. We'll prepare a stipulation and will send it to you shortly for your review.

Ben

Benjamin T. Takemoto
Trial Attorney
U.S. Department of Justice, Civil Division, Federal Programs Branch
P.O. Box 883, Ben Franklin Station, Washington, DC 20044
Tel: (202) 532-4252 / Fax: (202) 616-8460

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From: Neli Palma <Neli.Palma@doj.ca.gov>
Sent: Monday, June 24, 2019 4:41 PM
To: Takemoto, Benjamin (CIV) <btakemot@CIV.USDOJ.GOV>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>; Stephanie Yu <Stephanie.Yu@doj.ca.gov>
Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: RE: California v. Azar / Schedule

Hi Ben,

One answer sixty days after service is agreeable to California.

Neli

From: Takemoto, Benjamin (CIV) <Benjamin.Takemoto@usdoj.gov>
Sent: Monday, June 24, 2019 12:44 PM

To: Neli Palma <Neli.Palma@doj.ca.gov>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>; Stephanie Yu <Stephanie.Yu@doj.ca.gov>
Cc: Kopplin, Rebecca M. (CIV) <Rebecca.M.Kopplin@usdoj.gov>
Subject: RE: California v. Azar / Schedule

Hi Neli,

Thanks for this e-mail. We actually had one additional question: Defendants would like to file one answer sixty days after service; would you please let me know whether California would consent to that? I believe that Defendants' answer with respect to California's FOIA claim is currently due thirty days after service.

Thanks,
Ben

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From: Neli Palma <Neli.Palma@doj.ca.gov>
Sent: Friday, June 21, 2019 3:15 PM
To: Takemoto, Benjamin (CIV) <btakemot@CIV.USDOJ.GOV>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>; Stephanie Yu <Stephanie.Yu@doj.ca.gov>
Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: RE: California v. Azar / Schedule

Hi Ben,

Thank you for your email and for your revised proposal.

While we welcome a delay in the Rule's effective date, we do not believe that a delay until November 22, 2019 or the briefing schedule that you propose is sufficient for the parties to adequately litigate and for the court to properly decide the important legal issues in this case. This is particularly so in light of the massive administrative record that HHS will have to compile and the Plaintiffs will have to review before any merits briefing can be started. We

therefore cannot agree to your revised proposal.

We are willing, however, to offer the following counter-proposal:

- July 22, 2019 – Defendants produce the administrative record
- Oct. 1, 2019 – Plaintiffs move for summary judgment
- Nov. 1, 2019 – Defendants oppose and cross-move
- Dec. 2, 2019 – Plaintiffs file their reply and opposition
- Dec. 20, 2019 – Defendants file their reply
- Month of Jan. 2020 or at the Court's convenience – argument on cross-motions
- Feb. 15, 2020 – Rule's delayed effective date

We reserve the right to seek modification of the briefing schedule upon review of the administrative record should the size of the record or any sufficiency issues warrant such modification. Additionally, our position is that the motions for preliminary injunction should be held in abeyance instead of being withdrawn.

If the above is not agreeable to Defendants, we will contest Defendants' motion to set the summary judgment briefing schedule that you have proposed.

You stated that if the Court does not adopt Defendants' proposed summary judgment schedule, you will seek, in the alternative, an extension of time to respond to Plaintiffs' preliminary injunction motions until July 31, 2019. Until Rule's effective date is pushed back, we are not in a position to agree to such an extension. However, once the Rule's effective date is delayed through Nov. 22, 2019, we anticipate that we will be able to agree to an extended schedule for briefing the preliminary injunction motions.

Thanks again.

Neli

From: Takemoto, Benjamin (CIV) <Benjamin.Takemoto@usdoj.gov>

Sent: Thursday, June 20, 2019 6:39 PM

To: Neli Palma <Neli.Palma@doj.ca.gov>; Karli Eisenberg <Karli.Eisenberg@doj.ca.gov>; Kathleen Boergers <Kathleen.Boergers@doj.ca.gov>; Michael L. Newman <Michael.Newman@doj.ca.gov>;

Stephanie Yu <Stephanie.Yu@doj.ca.gov>

Cc: Kopplin, Rebecca M. (CIV) <Rebecca.M.Kopplin@usdoj.gov>

Subject: RE: California v. Azar / Schedule

Hi Neli,

Apologies for any confusion, but HHS is in fact prepared to delay the effective date of the rule until November 22, 2019, not October 31, 2019 as I said earlier. In light of that new effective date, Defendants propose the following schedule:

- HHS will provide the administrative record by July 22, 2019.
- Plaintiff's motion for summary judgment by September 5, 2019.
- Defendants' oppositions and cross motions by September 27, 2019.
- Plaintiff's reply and opposition by October 11, 2019.
- Defendants' replies by October 25, 2019.

Best,
Ben

Benjamin T. Takemoto

Trial Attorney

U.S. Department of Justice, Civil Division, Federal Programs Branch

P.O. Box 883, Ben Franklin Station, Washington, DC 20044

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From: Takemoto, Benjamin (CIV)

Sent: Thursday, June 20, 2019 4:25 PM

To: 'Neli.Palma@doj.Ca.Gov' <Neli.Palma@doj.Ca.Gov>; 'Karli.Eisenberg@doj.Ca.Gov' <Karli.Eisenberg@doj.Ca.Gov>; 'Kathleen.Boergers@doj.Ca.Gov' <Kathleen.Boergers@doj.Ca.Gov>; 'Michael.Newman@doj.Ca.Gov' <Michael.Newman@doj.Ca.Gov>; 'Stephanie.Yu@doj.Ca.Gov' <Stephanie.Yu@doj.Ca.Gov>

Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>

Subject: RE: California v. Azar / Schedule

Hi Neli,

Thanks again for talking with Rebecca and me yesterday. We appreciate your concerns about the proposed schedule, but that remains the offer on the table. Given the quickly approaching deadline for our PI opposition, would you please let us know Plaintiff's position on our proposal by noon tomorrow?

Regardless of Plaintiff's position, HHS intends to file a notice in the Federal Register delaying the effective date of the Rule until October 31, 2019.

If Plaintiff does not consent to Defendants' proposal, Defendants intend to file a contested motion requesting that the Court deny Plaintiff's motion for a preliminary injunction without prejudice in light of the delayed effective date and set briefing for cross motions for summary judgment according to the schedule we proposed in our email from Monday, with the view that this will permit the Court to rule on those motions by October 31, 2019.

If the Court does not adopt the requested MSJ schedule, Defendants will seek, in the alternative, an extension of time to respond to the preliminary injunction motion until July 31, 2019, at which point Defendants may also move for summary judgment. If Plaintiff does not consent to the proposed summary judgment briefing schedule, would you please let me know Plaintiff's position regarding this alternative request for an extension of the preliminary injunction opposition deadline by noon this Friday as well? We would hope that, in light of Defendants' extension of the effective date of the Rule, Plaintiff would have no objection to our request for an extension of that deadline.

Thank you,
Ben

--

Benjamin T. Takemoto
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From: Takemoto, Benjamin (CIV)
Sent: Monday, June 17, 2019 4:48 PM
To: Neli.Palma@doj.Ca.Gov; Karli.Eisenberg@doj.Ca.Gov; Kathleen.Boergers@doj.Ca.Gov;
Michael.Newman@doj.Ca.Gov; Stephanie.Yu@doj.Ca.Gov
Cc: Kopplin, Rebecca M. (CIV) <rkopplin@CIV.USDOJ.GOV>
Subject: California v. Azar / Schedule

Counsel,

I hope this e-mail finds you well. I write because we believe it would be more efficient to resolve the issues raised in the *California v. Azar* and in other similar cases through cross-motions for summary judgment on the basis of the administrative record rather than through briefing on the plaintiffs' request for preliminary relief.

Therefore, we're proposing to all of the plaintiffs that:

- HHS will delay the effective date of the Protecting Statutory Conscience Rights in Health Care; Delegations of Authority Rule until October 31, 2019.
- Plaintiffs withdraw their motions for preliminary injunction.
- HHS will provide the administrative record by July 15, 2019.
- Summary judgment briefing on a schedule that will permit hearings and rulings by October 31, 2019:
 - Plaintiffs' motions for summary judgment by August 15, 2019.
 - Defendants' oppositions and cross motions by September 6, 2019.
 - Plaintiffs' replies and oppositions by September 20, 2019.
 - Defendants' replies by October 4, 2019.

Would you please let us know your position on this proposal? If all of the plaintiffs agree we hope that it would be straightforward to get this schedule entered by the courts.

Thanks,
Ben

--

Benjamin T. Takemoto
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**STATE OF CALIFORNIA, by and through
ATTORNEY GENERAL XAVIER
BECERRA,**

Plaintiff,

v.

**ALEX M. AZAR, in his official capacity as
Secretary of the U.S. DEPARTMENT OF
HEALTH & HUMAN SERVICES; U.S.
DEPARTMENT OF HEALTH AND
HUMAN SERVICES; DOES 1-100,**

Defendants.

Case No. 3:19-cv-02769-WHA

**[PROPOSED] ORDER DENYING
DEFENDANTS' ADMINISTRATIVE
MOTION**

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Upon consideration of Defendants’ Administrative Motion to Set a Summary Judgment Briefing Schedule and to Hold Plaintiffs’ Motion for A preliminary Injunction in Abeyance or, in the Alternative, to Enlarge Time to File their Opposition to Plaintiff’s Motion for a Preliminary Injunction, and the responses thereto, it is hereby ORDERED that the Motion is DENIED.

IT IS SO ORDERED.

Dated: _____

WILLIAM H. ALSUP
United States District Judge

SA2018100335