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11 *Counsel for Defendants*

12  
 13 **UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
 14 **SAN FRANCISCO DIVISION**

15  
 16 CITY AND COUNTY OF SAN  
 FRANCISCO,

17 Plaintiff,

18 v.

19  
 20 ALEX M. AZAR II, *in his official capacity as*  
*Secretary of Health and Human Services,*  
 21 *et al.,*

22 Defendants.

Case No. 3:19-cv-2405-JCS

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 28 **ADMINISTRATIVE MOTION TO**  
**EXTEND TIME FOR DEFENDANTS**  
**TO RESPOND TO PLAINTIFF'S**  
**MOTION FOR A PRELIMINARY**  
**INJUNCTION**

No Hearing Scheduled

1 Pursuant to Local Rules 6-3 and 7-11, Defendants respectfully request that the Court extend the  
 2 time for Defendants to respond to Plaintiff's Motion for Preliminary Injunction, ECF No. 14.  
 3 Depending on whether Defendants' response deadline runs from the filing of the motion or the date  
 4 service was effected, Defendants' response is currently due on either June 17, 2019 or June 21, 2019.  
 5 Declaration of Rebecca Kopplin ¶ 3 (Kopplin Decl.). Defendants request that the Court extend their  
 6 deadline to respond to June 28, 2019. In support of their request, Defendants aver:

7 1. Plaintiff filed its motion for a preliminary injunction on June 3, 2019. Kopplin Decl. ¶ 3.  
 8 However, Plaintiff did not serve Defendants by delivering a copy of the summons and complaint to the  
 9 U.S. Attorney's Office for the Northern District of California as required by Fed. R. Civ. P. 4(i) until  
 10 June 7, 2019.

11 2. Plaintiff maintains that this Court should decide its motion for a preliminary injunction  
 12 prior to July 22, 2019. ECF No. 14. Without acquiescing in that position, Defendants have attempted to  
 13 negotiate a briefing schedule that would afford Defendants a reasonable opportunity to respond to the  
 14 motion while enabling its resolution prior to July 22, 2019.

15 3. Counsel for Defendants currently represent the United States Department of Health and  
 16 Human Services (HHS) in eight cases involving similar challenges to HHS's final rule entitled  
 17 Protecting Statutory Conscience Rights in Health Care: Delegations of Authority.<sup>1</sup> Kopplin Decl. ¶ 5.  
 18 To date, plaintiffs in three of these cases have filed motions for a preliminary injunction, and plaintiffs  
 19 in three other cases have notified Defendants of their intent to do so in the near future. Kopplin Decl.  
 20 ¶ 7.

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21  
 22 <sup>1</sup> These cases are:

- 23 • *State of New York v. HHS*, 1:19-cv-4676 (S.D.N.Y.)
- 24 • *City and County of San Francisco v. Azar*, 3:19-cv-2405 (N.D. Cal.)
- 25 • *State of California v. Azar*, 3:19-cv-2769 (N.D. Cal.)
- 26 • *Santa Clara v. HHS*, 5:19-cv-2916 (N.D. Cal.)
- 27 • *Washington v. Azar*, 2:19-cv-0183 (E.D. Wash.)
- 28 • *Mayor and City of Baltimore v. Azar*, 1:19-cv-1672 (D. Md.)
- *National Family Planning and Reproductive Health Association v. Azar*, 1:19-cv-5435 (S.D.N.Y.)
- *Planned Parenthood v. Azar*, 1:19-cv-5433 (S.D.N.Y.)

1           4.       Three of the cases challenging the Provider Conscience Rule are currently pending in the  
2 Northern District of California. Kopplin Decl. ¶ 5. Plaintiffs in all three cases have filed motions for a  
3 preliminary injunction. Plaintiff in the *State of California* case filed its preliminary injunction motion on  
4 June 4, 2019, and Plaintiffs in the *Santa Clara* case filed their preliminary injunction motion on June 11,  
5 2019.

6           5.       Plaintiff in the *State of California* case has filed on this docket an administrative motion  
7 to relate the three cases pending in the Northern District of California. ECF No. 13. Defendants have  
8 stated they agree that these cases should be related, ECF No. 32, but the administrative motion remains  
9 pending.

10          6.       Defendants would like to file a consolidated response to the preliminary injunction  
11 motions in all three cases pending in the Northern District of California in order to conserve judicial  
12 resources and facilitate the orderly resolution of these disputes. Kopplin Decl. ¶ 10. Because  
13 Defendants anticipate filing a consolidated response to all three preliminary injunction motions, one of  
14 which was only filed on June 11, 2019, they believe a response deadline of June 28, 2019 is reasonable.

15          7.       As explained in the attached Declaration of Rebecca Kopplin, because of the number and  
16 complexity of the issues to be briefed in this case, the existence of similar litigation around the country  
17 with competing deadlines, and Defendants' desire to file a consolidated response in the three Northern  
18 District of California cases, Defendants need additional time to prepare their response. Moreover, the  
19 response deadline proposed by Defendants will still enable the Court to resolve the motion by July 22,  
20 2019, as requested by Plaintiff.

21          8.       Indeed, Defendants note that a motion for a preliminary injunction has also been filed in  
22 the *State of New York* case, and that court has set a briefing schedule by which Defendants will have  
23 until June 28, 2019 to respond to the motion for a preliminary injunction unless plaintiffs file their  
24 motion early. Kopplin Decl. ¶ 11.

25          9.       Undersigned counsel contacted Plaintiff's counsel regarding this request for an extension,  
26 and Plaintiff's counsel indicated that they did not consent to the requested extension. Kopplin Decl.  
27 ¶ 12.

1 10. No previous requests for extension of time have been made in this case. Granting  
2 Defendants' request would likely require adjusting the date for Plaintiff's reply supporting their motion  
3 for a preliminary injunction. Defendants will rely on the Court's discretion to determine if granting  
4 Defendants' request would require adjusting the currently-noticed date for a hearing on Plaintiff's  
5 motion.

6 11. For all these reasons, Defendants respectfully seek an extension until June 28, 2019 to  
7 respond to Plaintiff's motion for a preliminary injunction.

8 For the foregoing reasons, Defendants respectfully request that the Court grant this  
9 administrative motion.

10 Dated: June 12, 2019

Respectfully Submitted,

11 JOSEPH H. HUNT  
12 Assistant Attorney General

13 MICHELLE R. BENNETT  
14 Assistant Branch Director  
15 Civil Division

16 /s/ Rebecca M. Kopplin  
17 REBECCA KOPPLIN  
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11 *Counsel for Defendants*

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

14  
 15 CITY AND COUNTY OF SAN  
 16 FRANCISCO,

17 Plaintiff,

18 v.

19 ALEX M. AZAR II, *in his official capacity as*  
 20 *Secretary of Health and Human Services,*  
 21 *et al.,*

22 Defendants.

Case No. 3:19-cv-2405-JCS

**DECLARATION OF REBECCA  
 KOPPLIN IN SUPPORT OF  
 DEFENDANTS' ADMINISTRATIVE  
 MOTION TO EXTEND TIME FOR  
 DEFENDANTS TO RESPOND TO  
 PLAINTIFF'S MOTION FOR A  
 PRELIMINARY INJUNCTION**

No Hearing Scheduled

1 I, Rebecca Kopplin, declare as follows:

2 1. I am a Trial Attorney in the United States Department of Justice, Civil Division, Federal  
3 Programs Branch. I am one of the counsel for the Defendants in the above-captioned case.

4 2. The statements made herein are based on my personal knowledge, and on information  
5 made available to me in the course of my duties and responsibilities as counsel for Defendants.

6 3. Plaintiff filed its motion for a preliminary injunction on June 3, 2019. However, Plaintiff  
7 did not serve Defendants by delivering a copy of the summons and complaint to the U.S. Attorney's  
8 Office for the Northern District of California as required by Fed. R. Civ. P. 4(i) until June 7, 2019.  
9 Thus, depending on whether Defendants' response deadline runs from the filing of the motion or the  
10 date service was effected, Defendants' response is currently due on either June 17, 2019, or June 21,  
11 2019.

12 4. Several reasons necessitate Defendants' request for additional time.

13 5. First, a total of four trial attorneys at the Federal Programs Branch are handling the group  
14 of lawsuits that challenge the final rule entitled Protecting Statutory Conscious Rights in Health Care:  
15 Delegations of Authority. Each of these attorneys is also staffed on a number of other cases in active  
16 litigation. In addition, one of the attorneys will be leaving the Federal Programs Branch on June 21,  
17 2019, reducing the team to three. The team is currently handling eight cases involving the final rule,  
18 including three in the Northern District of California:

- 19 • *State of New York v. HHS*, 1:19-cv-4676 (S.D.N.Y.)
- 20 • *City and County of San Francisco v. Azar*, 3:19-cv-2405 (N.D. Cal.)
- 21 • *State of California v. Azar*, 3:19-cv-2769 (N.D. Cal.)
- 22 • *Santa Clara v. HHS*, 5:19-cv-2916 (N.D. Cal.)
- 23 • *Washington v. Azar*, 2:19-cv-0183 (E.D. Wash.)
- 24 • *Mayor and City of Baltimore v. Azar*, 1:19-cv-1672 (D. Md.)
- 25 • *Nat. Family Planning and Reprod. Health Ass'n v. Azar*, 1:19-cv-5435 (S.D.N.Y.)
- 26 • *Planned Parenthood v. Azar*, 1:19-cv-5433 (S.D.N.Y.)

27 6. These cases involve a number of complex issues of law and a number of disparate  
28 constitutional claims and claims under the Administrative Procedure Act (APA) that will require time to

1 develop for the Court. For example, Plaintiff's complaint includes seven separate claims, and Plaintiff's  
2 motion for a preliminary injunction includes several claims under the APA and several claims under the  
3 Constitution.

4 7. To date, plaintiffs in three of the cases listed above have filed motions for a preliminary  
5 injunction, and plaintiffs in three other cases have notified Defendants of their intent to do so in the near  
6 future.

7 8. Because of the number of claims to be briefed, other similar litigation around the country  
8 that also involves preliminary injunction motions, and the limited resources of the team, Defendants  
9 require additional time to prepare their response.

10 9. Second, motions for preliminary injunction have been filed in the two other cases in this  
11 district. Plaintiff in the *State of California* case filed its preliminary injunction motion on June 4, 2019,  
12 and Plaintiffs in the *County of Santa Clara* case filed their preliminary injunction motion on June 11,  
13 2019.

14 10. The plaintiff in the *State of California* case has filed an administrative motion seeking to  
15 relate the three cases pending in the Northern District of California. Defendants agree that the cases should  
16 be related, and, if the cases are related, would prefer to file a consolidated response to the pending motions  
17 for preliminary injunction in those three cases to conserve judicial resources and facilitate the orderly  
18 resolution of these disputes. Because Defendants anticipate filing a consolidated response to all three  
19 preliminary injunction motions, one of which was only filed on June 11, 2019, they believe a response  
20 deadline of June 28, 2019 is reasonable.

21 11. Indeed, in the *State of New York* case, the judge recently set a briefing schedule under  
22 which plaintiffs will file their motion for a preliminary injunction on or before June 14, 2019, and  
23 defendants will respond on or before June 28, 2019, or 14 days after plaintiffs' motion, if plaintiffs file  
24 earlier.

25 12. I contacted Plaintiff's counsel regarding Defendants' request for an extension of time.  
26 Plaintiff's counsel indicated that they would not consent to extending Defendants' time to respond to June  
27 28, 2019.

28 \* \* \* \* \*

1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and  
2 correct.

3 Executed this 12th day of June, 2019.

4 /s/ Rebecca Kopplin  
5 REBECCA KOPPLIN  
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11 *Counsel for Defendants*

12 **IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 \_\_\_\_\_ )  
CITY AND COUNTY OF SAN FRANCISCO, ) Case No.: 3:19-cv-2405-JCS  
14 )  
Plaintiff, )  
15 )  
v. ) **ADMINISTRATIVE MOTION TO  
16 ) EXTEND TIME FOR DEFENDANTS  
ALEX M. AZAR, II, Secretary of ) TO RESPOND TO PLAINTIFF'S  
17 ) MOTION FOR A PRELIMINARY  
Health and Human Services, et al., ) INJUNCTION  
18 )  
Defendants. ) **[PROPOSED] ORDER**  
19 \_\_\_\_\_ )**

20 The Court, having considered Defendants' Administrative Motion to Extend Time for  
21 Defendants to Respond to Plaintiff's Motion for a Preliminary Injunction, hereby **ORDERS** that  
22 the Defendants' Motion is **GRANTED. IT IS HEREBY ORDERED** that Defendants shall file  
23 their response to Plaintiff's motion for a preliminary injunction on or before June 28, 2019.  
24

25 **IT IS SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

26  
27 Dated: \_\_\_\_\_

28 \_\_\_\_\_  
HON. JOSEPH C. SPERO  
UNITED STATES MAGISTRATE JUDGE