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11 *Attorneys for Defendants*

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

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 *ROGER SEVERINO, in his official capacity*
22 *as Director of the United States Department of*
Health and Human Services Office for Civil
Rights, and

23 UNITED STATES DEPARTMENT OF
24 HEALTH AND HUMAN SERVICES,

25 Defendants.

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

**DEFENDANTS' ADMINISTRATIVE
MOTION TO SET A SUMMARY
JUDGMENT BRIEFING SCHEDULE
AND TO HOLD PLAINTIFF'S
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**

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 Defendants Alex M. Azar II, in his official capacity as Secretary of Health and Human Services,
2 and the Department of Health and Human Services (HHS) respectfully file this administrative motion to
3 vacate the current briefing and hearing schedule for Plaintiff City and County of San Francisco's motion
4 for a preliminary injunction, hold that motion in abeyance, and set a briefing schedule for (cross) motion(s)
5 for summary judgment. In the alternative, Defendants respectfully seek to enlarge time to respond to
6 Plaintiff's motion for a preliminary injunction. At present, Defendants' opposition to Plaintiff's motion
7 for a preliminary injunction is due June 26, 2019, Plaintiff's reply is due on July 3, 2019, and a hearing
8 on Plaintiff's motion is set for July 17, 2019 at 8:00 a.m.

9 Defendants' request is warranted for several reasons. First, undersigned counsel is authorized to
10 represent to this Court that HHS will delay enforcement of the HHS rule challenged in this case, Protecting
11 Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23,170 (May 21,
12 2018) [hereinafter Final Rule], until **November 22, 2019**—four months after its July 22, 2019 effective
13 date. Thus, the initial alleged emergency that prompted Plaintiff's preliminary injunction motion no longer
14 exists. Instead, there is now sufficient time to permit the Court's resolution on the merits of Plaintiff's
15 purely legal challenge to the Final Rule, before any of Plaintiff's allegedly irreparable harms could
16 plausibly come to pass. Proceeding to summary judgment briefing would also conserve the resources of
17 the Court and the parties by avoiding the duplication of resolving a motion for preliminary injunction and
18 then, regardless of that result, a later motion for summary judgment.

19 Accordingly, Defendants respectfully request that the Court hold Plaintiff's motion for a
20 preliminary injunction in abeyance and set the following briefing schedule for (cross) motion(s) for
21 summary judgment, which would provide sufficient time for Defendants to prepare the Administrative
22 Record, for Plaintiff to review the Record (more than two months), for the parties to thoroughly brief the
23 merits, and for the Court to resolve this case on the merits before November 22, 2019:

- 24 • July 22, 2019: HHS lodges the administrative record.
- 25 • September 5, 2019: Defendants file their motion for summary judgment.
- 26 • September 27, 2019: Plaintiff files its opposition to Defendants' motion for
27 summary judgment (and cross-motion for summary judgment, if any).
- 28 • 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.

If the Court is not inclined to adopt Defendants' proposed summary judgment briefing schedule, Defendants respectfully request, in the alternative, for an expansion of time, until July 31, 2019, to respond to Plaintiff's motion for preliminary injunction. Again, in light of HHS's commitment not to enforce the Final Rule until November 22, 2019 at the earliest, Plaintiff will not be harmed by the expansion of time. Counsel for Defendants require more time to respond because they have expended a significant amount of time in the past several weeks consulting both within the government concerning the delay in enforcement and with Plaintiff as to the best course forward. A small team of government attorneys, each of whom is also assigned to other matters in active litigation, are handling the multiple cases in various jurisdictions challenging the Final Rule. Defendants' proposed opposition deadline would allow sufficient time to resolve Plaintiff's motion for a preliminary injunction well before November 22, 2019. The longer briefing schedule would also permit Defendants to more thoroughly respond to Plaintiff's claims, including through a motion for summary judgment, which Defendants may file alongside their opposition to Plaintiff's motion for a preliminary injunction.

Counsel for Defendants have conferred with counsel for Plaintiff concerning a substantially similar request to the above requested relief, to which Plaintiff indicated that it does not consent.

Dated: June 25, 2019

Respectfully Submitted,

JOSEPH H. HUNT
Assistant Attorney General

JEAN LIN
Special Counsel
Civil Division

/s/ Benjamin T. Takemoto
REBECCA M. KOPPLIN
(CA Bar # 313970)
BENJAMIN T. TAKEMOTO
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11 *Attorneys for Defendants*

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

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 *ROGER SEVERINO, in his official capacity*
22 *as Director of the United States Department of*
Health and Human Services Office for Civil
23 *Rights, and*
UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

24 Defendants.
25

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

DECLARATION OF BENJAMIN T.
TAKEMOTO IN SUPPORT OF
DEFENDANTS' ADMINISTRATIVE
MOTION

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 I, Benjamin T. Takemoto, declare as follows:

- 2 1. I am a trial attorney at the Federal Programs Branch of the Civil Division of the United States
3 Department of Justice. I represent Defendants in this case.
- 4 2. The statements made herein are based on my personal knowledge and on information made
5 available to me in the course of my representation of Defendants.
- 6 3. On June 14, 2019, one day after this case was related with two other cases in this district
7 challenging the final rule titled Protecting Statutory Conscience Rights in Health Care; Delegations
8 of Authority, 84 Fed. Reg. 23,170 (May 21, 2019) [hereinafter Final Rule], the Court issued an
9 order setting a briefing schedule in which Defendants' opposition to Plaintiff's motion for a
10 preliminary injunction was due on June 26, 2019.
- 11 4. The Department of Health and Human Services (HHS) has indicated to the undersigned that it will
12 delay enforcement of the Final Rule until November 22, 2019.
- 13 5. In light of this delay, counsel for Defendants have sought to obtain a stipulation to hold Plaintiff's
14 motion for a preliminary injunction in abeyance and to set the following summary judgment
15 briefing schedule:
 - 16 a. HHS will lodge the administrative record on or before July 22, 2019.
 - 17 b. Plaintiff will move for summary judgment on or before September 5, 2019.
 - 18 c. Defendants will file their combined cross-motion for summary judgment and opposition
19 by September 27, 2019.
 - 20 d. Plaintiff will file its combined reply and opposition by October 11, 2019.
 - 21 e. Defendants will file their reply by October 25, 2019.
- 22 6. Counsel for Plaintiff have indicated to the undersigned that Plaintiff does not consent to holding
23 the motion for a preliminary injunction in abeyance or to the above schedule.
- 24 7. In light of Plaintiff's disagreement with the proposed schedule, Defendants request that the Court
25 enter a similar schedule, more fully laid out in the accompanying motion, that reverses the order
26 of the parties' summary judgment motions. Because this is a substantially similar proposal to the
27 one that Plaintiff rejected and because of the impending opposition deadline, Defendants have not
28 obtained Plaintiff's position on reversing the order of the summary judgment motions.

- 1 8. Prejudice would occur if the Court did not hold the preliminary injunction in abeyance and set the
2 above schedule. Counsel for Defendants require more time to respond to Plaintiff's motion for a
3 preliminary injunction because they have expended a significant amount of time in the past several
4 weeks consulting both within the government concerning the delay and with Plaintiff as to the best
5 course forward. A small team of three trial attorneys, each of whom is also assigned to other
6 matters in active litigation, are handling the multiple cases in various jurisdictions challenging the
7 Final Rule and which also have pending preliminary injunction motions. Defendants' proposed
8 schedule would allow sufficient time to resolve this case on the merits before November 22, 2019.
- 9 9. If the Court holds the motion for a preliminary injunction in abeyance, it would render unnecessary
10 the June 26, 2019 deadline for Defendants' opposition brief, the July 3, 2019 deadline for
11 Plaintiff's reply brief, and the July 17, 2019 hearing.
- 12 10. In the alternative, Defendants have sought to obtain a stipulation to enlarge Defendants' time to
13 respond to Plaintiff's motion for a preliminary injunction from June 26, 2019 to July 31, 2019.
- 14 11. Counsel for Plaintiff have indicated to the undersigned that Plaintiff does not consent to
15 Defendants' request for an enlargement of time.
- 16 12. Prejudice would occur if the Court did not enlarge time for the reasons stated above. In addition,
17 the longer briefing schedule would permit Defendants to more thoroughly respond to Plaintiff's
18 claims, including through a motion for summary judgment, which Defendants may file alongside
19 their opposition to Plaintiff's motion for a preliminary injunction.
- 20 13. Enlarging Defendants' response deadline to July 31, 2019 would affect other deadlines in this case.
21 Defendants' current June 26, 2019 deadline to respond would be enlarged. Furthermore, Plaintiff's
22 July 3, 2019 reply deadline and the July 17, 2019 hearing would need to be enlarged as well.
23 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and

24 correct.

25 Executed on June 25, 2019.

/s/ Benjamin T. Takemoto
BENJAMIN T. TAKEMOTO

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CITY AND COUNTY OF SAN FRANCISCO,

Plaintiff,

v.

ALEX M. AZAR II, *in his official capacity as Secretary of Health and Human Services*,
ROGER SEVERINO, *in his official capacity as Director of the United States Department of Health and Human Services Office for Civil Rights*, and
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendants.

No. C 19-02405 WHA

**[PROPOSED] ORDER SETTING
SUMMARY JUDGMENT BRIEFING
SCHEDULE AND HOLDING
PLAINTIFF’S MOTION FOR A
PRELIMINARY INJUNCTION IN
ABEYANCE [OR] ENLARGING TIME**

Defendants’ administrative motion to set a briefing schedule and to hold Plaintiff City and County of San Francisco’s motion for a preliminary injunction in abeyance or, in the alternative, to enlarge time to respond to Plaintiff’s motion for a preliminary injunction is **GRANTED**. The Court’s June 14, 2019 scheduling order is **VACATED**, Plaintiff’s motion for a preliminary injunction is **HELD IN ABEYANCE**, and the Court **SETS** the following schedule:

- **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.

A hearing on the motions for summary judgment is **SET** for **NOVEMBER 7, 2019 AT 8:00 A.M.**

[or]

1 Defendants' consolidated opposition, which was due on June 26, 2019, is now due on July 31,
2 2019.

3 **IT IS SO ORDERED.**

4 Dated: _____

5 WILLIAM ALSUP
6 UNITED STATES DISTRICT JUDGE
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