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10 *Attorneys for Defendants*

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

13 CITY AND COUNTY OF SAN
14 FRANCISCO,

15 Plaintiff,

16 vs.

17 ALEX M. AZAR II, et al.,

Defendants.

18 STATE OF CALIFORNIA, by and through
19 ATTORNEY GENERAL XAVIER
BECERRA,

20 Plaintiff,

21 vs.

22 ALEX M. AZAR II, et al.,

23 Defendants.

24 COUNTY OF SANTA CLARA et al.,
Plaintiffs,

25 vs.

26 U.S. DEPARTMENT OF HEALTH AND
27 HUMAN SERVICES, et al.,

28 Defendants.

No. C 19-02405 WHA
Related to
No. C 19-02769 WHA
No. C 19-02916 WHA

**STIPULATED REQUEST FOR AN
ORDER TO POSTPONE RULE'S
EFFECTIVE DATE; HOLD
PLAINTIFFS' MOTIONS FOR A
PRELIMINARY INJUNCTION IN
ABEYANCE; AND SET SUMMARY
JUDGMENT BRIEFING SCHEDULE
[5 U.S.C. § 705]**

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 Subject to the Court’s approval and pursuant to Local Civil Rules 6-2 and 7-12, the parties through
2 their undersigned counsel of record HEREBY STIPULATE as follows:

- 3 1. At present, Defendants’ opposition to Plaintiffs’ motions for a preliminary injunction is due on
4 July 1, 2019, Plaintiffs’ reply is due on July 8, 2019, and a hearing is scheduled on July 17, 2019.
- 5 2. The U.S. Department of Health and Human Services (HHS) stipulates to the requested
6 postponement of the effective date of the rule titled Protecting Statutory Conscience Rights in
7 Health Care; Delegations of Authority, 84 Fed. Reg. 23,170 (May 21, 2019) [hereinafter Final
8 Rule], until November 22, 2019. HHS stipulates to this delay because it is the most efficient way
9 to adjudicate the Final Rule on the merits. HHS does not concede that Plaintiffs are “likely to
10 succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary
11 relief, that the balance of equities tips in [their] favor, [or] that an injunction is in the public
12 interest.” *See Winter v. NRDC*, 555 U.S. 7, 20 (2008).
- 13 3. Plaintiffs maintain that—for the reasons expressed in their motions for a preliminary injunction
14 and their opposition to Defendants’ motion to hold their motions for preliminary injunction in
15 abeyance—they would suffer various irreparable injuries were the Rule’s effective date not
16 postponed.
- 17 4. The parties request that the Court issue an order, pursuant to 5 U.S.C. § 705, that the effective date
18 of the Final Rule is postponed until November 22, 2019.
- 19 5. The parties further request, in light of this postponement, that the Court hold Plaintiffs’ motions
20 for a preliminary injunction in abeyance, vacate the preliminary injunction briefing schedule and
21 hearing date set forth in its June 27, 2019 order, and enter the following schedule:
 - 22 a. July 22, 2019: HHS lodges the administrative record.
 - 23 b. September 5, 2019: Defendants file their motion for summary judgment.
 - 24 c. September 27, 2019: Plaintiffs file their opposition and cross-motion for summary
25 judgment.
 - 26 d. October 11, 2019: Defendants file their reply and opposition.
 - 27 e. October 25, 2019: Plaintiffs file their reply.

f. November 7, 2019 (or another date that is convenient for the Court and that will permit a decision before November 22, 2019): The Court holds a hearing on the cross-motions.

Dated: June 28, 2019

Respectfully Submitted,

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** Admitted pro hac vice*

*** Licensed in Oklahoma and Texas only.*

Supervised by Richard B. Katskee, a member

of the D.C. Bar. To be admitted pro hac vice

****Application for admission pro hac vice in
process.*

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED. Pursuant to 5 U.S.C. § 705, the effective date of the Final Rule is postponed until November 22, 2019. Plaintiffs’ motions for a preliminary injunction are held in abeyance, the preliminary injunction briefing schedule and hearing date set forth in the Court’s June 27, 2019 order is vacated, and the schedule set forth in the above stipulation is entered. This order is without prejudice to the merits, which will be adjudicated following briefing on the parties’ cross-motions for summary judgment.

Dated: _____

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

RULE 5-1(i)(3) ATTESTATION

I, Benjamin T. Takemoto, attest pursuant to Rule 5-1(i)(3) of the Local Rules of Practice in Civil Proceedings before the United States District Court for the Northern District of California that I have obtained the concurrence in the filing of the above joint case management statement from Sara J. Eisenberg, counsel for the City and County of San Francisco, Neli N. Palma, counsel for the State of California, and Miriam R. Nemetz, counsel for the plaintiffs in *County of Santa Clara v. HHS*.

/s/ Benjamin T. Takemoto
Benjamin T. Takemoto

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2 MICHELLE BENNETT
3 Assistant Branch Director
4 Civil Division

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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

No. C 19-02405 WHA
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No. C 19-02769 WHA
No. C 19-02916 WHA

26 **DECLARATION OF BENJAMIN T.**
27 **TAKEMOTO IN SUPPORT OF THE**
28 **PARTIES' STIPULATION**

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. The requested schedule is warranted in light of the delayed effective date of the Final Rule. There
7 is no longer an imminent need to resolve Plaintiffs' motions for a preliminary injunction.
8 Furthermore, the parties and the Court will benefit from a more deliberate briefing schedule that
9 addresses the merits of this case.
- 10 4. There has been one previous time modification in this case: the Court extended the deadline for
11 Defendants' opposition to Plaintiffs' motions for a preliminary injunction from June 26, 2019 to
12 July 1, 2019.
- 13 5. The requested schedule would obviate the need for the preliminary injunction briefing schedule
14 and hearing date set forth in the Court's June 27, 2019 order.

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

17 Executed on June 28, 2019.

/s/ Benjamin T. Takemoto
BENJAMIN T. TAKEMOTO