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

16 THE STATE OF CALIFORNIA, *et al.*,

17 Plaintiffs,

18 v.

19 DONALD J. TRUMP, PRESIDENT OF THE  
20 UNITED STATES, *et al.*,

21 Defendants.  
22

No. 3:17-cv-05895 (VC)

**JOINT NOTICE**

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24 Pursuant to this Court’s Order of November 21, 2017, the parties respectfully submit the following  
25 Joint Notice advising the Court of developments in *U.S. House of Representatives v. Hargan*, No. 14-cv-01967  
26 (D.D.C.), *appeal pending*, No. 16-05202 (D.C. Cir.) (together, the “D.C. litigation”).

27 1. On December 15, 2017, the parties to the D.C. litigation — Plaintiffs, Defendants, and the  
28 States that intervened in the D.C. Circuit — executed a conditional settlement agreement. Pursuant to the

1 terms of that agreement, (a) Plaintiffs and Defendants agreed to “submit to the district court a request that  
2 the district court issue an indicative ruling pursuant to Rule 62.1 of the Federal Rules of Civil Procedure stating  
3 that, if the case is remanded by the court of appeals, the district court will vacate the portion of its final order  
4 providing that ‘reimbursements paid to issuers of qualified health plans for the cost-sharing reductions  
5 mandated by Section 1402 of the Affordable Care Act, Pub. L. 111-148, are ENJOINED pending an  
6 appropriation for such payments,’” and (b) Plaintiffs, Defendants, and the States that intervened in the D.C.  
7 Circuit agreed that “[i]f the district court grants that motion,” they would “file a motion that asks the court of  
8 appeals to remand the case to allow the district court to grant the motion as provided in its indicative ruling.”  
9 *See* Conditional Settlement Agreement ¶ 2.<sup>1</sup>

10 2. The conditional settlement agreement reflects the parties’ understanding that the Executive  
11 Branch “continues to disagree with the district court’s non-merits holding” and that the “States continue to  
12 disagree with the district court’s merits holding.” Conditional Settlement Agreement ¶ 3. The conditional  
13 settlement agreement provides that the “district court’s holding on [the non-merits] issues should not in any  
14 way control the resolution of the same or similar issues should they arise in other litigation between the House  
15 and the Executive Branch” and that “the district court’s holding on the merits should not in any way control  
16 the resolution of the same or similar issues should they arise in other litigation, and hereby waive any right to  
17 argue that the judgment of the district court or any of the district court’s orders or opinions in this case have  
18 any preclusive effect in any other litigation.” *Id.* However, “[i]f the district court declines to grant the motion  
19 described in paragraph 2 [of the conditional settlement agreement], or indicates that it would enter other relief  
20 not jointly supported by the Parties, this Agreement shall be of no force and effect and the Parties and the  
21 States shall be returned to their respective positions prior to execution of this Agreement.” *Id.* ¶ 5.

22 3. The parties to this litigation agree that the conditional settlement of the D.C. litigation does  
23 not affect their intention to proceed with litigation in this Court as to the availability of a permanent  
24 appropriation for cost-sharing reduction payments under the Affordable Care Act. Unless the Court orders  
25 otherwise, the parties will advise this Court within seven days of the next significant event in the D.C. litigation,  
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27 <sup>1</sup> The motion for an indicative ruling was filed in the district court on December 15, 2017, and a joint status  
28 report was filed in the D.C. Circuit that same day. The joint status report filed in the D.C. Circuit, which  
attaches the complete district court filing, is attached to this filing as Exhibit 1. The parties’ conditional  
settlement agreement was filed as an exhibit to the joint motion for an indicative ruling.

1 i.e., either (1) the district court vacating its injunction following remand from the D.C. Circuit, or (2) either  
2 the district court or the D.C. Circuit declining to grant one or more of the motions contemplated by the  
3 settlement agreement.

4 Dated: December 21, 2017

Respectfully submitted,

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**LOCAL RULE 5-1(i) ATTESTATION**

I attest that I have obtained Gregory Brown’s concurrence in the filing of this document.

/s/ Steven A. Myers  
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