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 ESSENTIAL ACCESS HEALTH, INC. and
 10 MELISSA MARSHALL, M.D.

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

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

16 Plaintiff,

17 v.

18 ALEX M. AZAR, in his OFFICIAL
 CAPACITY as SECRETARY of the U.S.
 19 DEPARTMENT of HELATH & HUMAN
 SERVICES; U.S. DEPARTMENT of
 20 HELATH & HUMAN SERVICES,

21 Defendants.

Case No. 3:19-cv-01184-EMC

**PLAINTIFFS' LOCAL RULE 3-12
 ADMINISTRATIVE MOTION TO
 CONSIDER WHETHER CASES SHOULD
 BE RELATED**

Judge: Hon. Edward M. Chen

Date Filed: March 4, 2019

Trial Date: None Set

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I. INTRODUCTION

On March 4, 2019, Essential Access Health (“Essential Access”) and Dr. Melissa Marshall, M.D. filed suit against the United States Department of Health and Human Services (“HHS”) and Secretary Alex M. Azar II in the Northern District of California to challenge newly released regulations regarding Title X of the Public Health Service Act of 1970. *Essential Access Health & Dr. Melissa Marshall, M.D. v. Secretary Alex M. Azar II & Department of Health and Human Services*, Case No. 19-cv-01195-YGR (N.D. Cal. March 4, 2019) (“*Essential Access*”) (Complaint attached hereto as **Exhibit A** to Declaration of Michelle Ybarra). On the same day, Plaintiff in this case, California Attorney General Xavier Becerra, on behalf of the State of California, filed suit against the same Defendants based on the same Title X regulations. *California v. Secretary Alex M. Azar & Department of Health and Human Services*, Case No. 3:19-cv-01184-EMC (N.D. Cal. March 4, 2018) (“*California*”).

Essential Access and Dr. Marshall seek to relate their case to the *California* case under Local Rule 3-12 to save judicial time and resources.

II. ARGUMENT

A. Legal Standard

Under Rule 3-12, actions are related when:

(1) The actions concern substantially the same parties, property, transaction, or event; and

(2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different judges.

B. The cases involve overlapping parties, factual allegations, and claims.

Essential Access and *California* involve the exact same defendants and substantially the same factual allegations and claims. Both cases name Secretary Alex M. Azar and the Department of Health and Human Services as Defendants.¹ Both cases involve factual allegations relating to HHS’s new regulations governing the use of Title X funds.² Both cases assert claims

¹ *Essential Access* Complaint ¶¶ 17-18; *California* Complaint ¶¶ 18-19.

² *Essential Access* Complaint ¶¶ 72-130; *California* Complaint ¶¶ 78-149.

1 under the Administrative Procedure Act (“APA”) and the U.S. Constitution.³

2 **C. Relation will conserve judicial and party resources and prevent unnecessary**
 3 **duplication of efforts**

4 Relating *Essential Access* and *California* will avoid an unduly burdensome duplication of
 5 labor and expense for all parties. Given the substantially similar factual allegations and claims,
 6 dispositive motions, motions for interim relief, and discovery are likely to overlap significantly.
 7 If the cases are related, only one judge and set of chambers staff will be burdened with the cases’
 8 substantially overlapping records. Relation will also permit the government to coordinate its
 9 defense of substantively similar litigation. Neither Defendants nor their counsel would suffer
 10 prejudice from relating the cases.

11 Relation will also minimize the chance of conflicting results. By managing the cases
 12 together, the Court will minimize the chance that different fact-finders will render inconsistent
 13 findings of fact. Relation will also ensure that the same judge rules on any identical legal issues
 14 that are presented in both cases. Moreover, relation would ease the burden on any member of the
 15 public who attempts to become informed about and/or to participate in the litigation. Relation will
 16 accordingly ensure that the same court (this one) rules on the comparable legal and factual issues
 17 presented in *Essential Access* and *California*.

18 **III. CONCLUSION**

19 For the foregoing reasons, *Essential Access* and Dr. Marshall respectfully request that this
 20 Court relate *Essential Access* and *California*.

21 Dated: March 11, 2019

KEKER, VAN NEST & PETERS LLP

22 By: /s/ Michelle Ybarra

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28 ³ *Essential Access* Complaint ¶¶173-226; *California* Complaint ¶¶ 207-229.