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13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15	STATE OF CALIFORNIA, by and through)	
16	ATTORNEY GENERAL XAVIER)	Case No.: 3:19-cv-01184-EMC
17	BECERRA,)	
18)	RELATED TO
19	Plaintiff,)	
20)	Case No.: 3:19-cv-01195-EMC
21	v.)	
22)	DEFENDANTS' RESPONSE TO
23	ALEX M. AZAR, in his OFFICIAL)	ORDER RE SUPPLEMENTAL
24	CAPACITY as SECRETARY of the U.S.)	SUBMISSIONS
25	DEPARTMENT of HEALTH & HUMAN)	
26	SERVICES; U.S. DEPARTMENT of HEALTH)	
27	& HUMAN SERVICES,)	
28)	
	Defendants.)	
)	

1 ESSENTIAL ACCESS HEALTH, INC.;)
 MELISSA MARSHALL, M.D.,)
 2)
 Plaintiffs,)
 3)
 v.)
 4)
 ALEX AZAR II, Secretary of U.S.)
 Department of Health and Human Services;)
 5 U.S. DEPARTMENT OF HEALTH AND)
 6 HUMAN SERVICES; DOES 1-25,)
 7)
 Defendants.)
 8)
 9)

10 Defendants submit this response to the Court’s April 15, 2019 Order directing each party
 11 to file a submission identifying the portions of the administrative record that would inform
 12 whether Plaintiffs have waived their Administrative Procedures Act challenge to the Final Rule
 13 based on Section 1554 of the Affordable Care Act (“ACA”). Defendants have not yet completed
 14 compiling the administrative record in this case; however, all comments submitted in response to
 15 the Proposed Rule that led to the Final Rule are publicly available on the Regulations.gov
 16 website at the following location: [https://www.regulations.gov/docketBrowser?](https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=HHS-OS-2018-0008)
 17 [rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=HHS-OS-2018-0008](https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=PS&D=HHS-OS-2018-0008). That
 18 database is text-searchable, and conducting searches using language from Section 1554 as well
 19 as other terms that one would expect to capture any comments invoking this provision (*e.g.*,
 20 1554, 18114) do not appear to lead to any comments discussing the provision. Defendants also
 21 note that California acknowledges that none of the commenters “cited Section 1554 specifically”
 22 in their comments on the proposed rule, *see* California Reply Br. at 6, No. 3:19-cv-01184-EMC,
 23 ECF No. 84, and the Essential Access Plaintiffs do not identify any instance in which a
 24 commenter raised a potential conflict between Section 1554 and the proposed rule, *see generally*
 25 Essential Access Reply Br., No. 3:19-cv-01195-EMC, ECF No. 63.

26 In addition, as explained in the attached declaration of David Johnson, Operations and
 27 Management Officer for the Office of Populations Affairs, U.S. Department of Health and
 28

1 Human Services, Defendants' contractors searched the over 500,000 comments submitted on the
2 proposed rule and were unable to locate any that reference Section 1554 of the ACA. *See*
3 Exhibit A ¶ 3. This review included comments submitted electronically and in hard copy. *Id.*
4 ¶ 4. Defendants' contractors did locate some comments that made general reference to the ACA.
5 ¶ 3. Mr. Johnson discussed those comments with the contractors and, based on those discussions
6 and to the best of his knowledge, none raised the possibility of a conflict between Section 1554
7 and the proposed rule. *Id.*

8
9 Dated: April 17, 2019

Respectfully submitted,

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