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19 **UNITED STATES DISTRICT COURT**  
 20 **NORTHERN DISTRICT OF CALIFORNIA**

21	STATE OF CALIFORNIA, by and through	)	
22	ATTORNEY GENERAL XAVIER	)	Case No.: 3:19-cv-01184-EMC
23	BECERRA,	)	
24		)	<b>DEFENDANTS' OPPOSITION TO</b>
25	Plaintiff,	)	<b>PLAINTIFF'S ADMINISTRATIVE</b>
26		)	<b>MOTION TO CONSIDER</b>
27	v.	)	<b>WHETHER CASES SHOULD BE</b>
28		)	<b>RELATED</b>
29	ALEX AZAR, in his OFFICIAL CAPACITY	)	
30	as SECRETARY of the U.S. DEPARTMENT	)	<b>[N. D. CAL. CIVIL L.R. 3-12 &amp; 7-11]</b>
31	of HEALTH & HUMAN SERVICES; U.S.	)	
32	DEPARTMENT of HEALTH & HUMAN	)	Judge: Hon. Edward M. Chen
33	SERVICES,	)	Trial: None
34		)	
35	Defendants.	)	

1 On May 24, California filed a motion requesting that this case be related to two other  
2 cases—*City and County of San Francisco v. Azar*, Case No. 3:19-cv-2405 (N.D. Cal. May 2,  
3 2019), and *State of California v. Azar*, Case No. 3:19-cv-02769 (N.D. Cal. May 21, 2019)  
4 (collectively, Conscience Rule Cases). *See* ECF No. 118 (Motion). The Conscience Rule Cases  
5 challenge a new rule—Protecting Statutory Conscience Rights in Health Care; Delegations of  
6 Authority, 84 Fed. Reg. 23170 (May 21, 2019) (Conscience Rule)—issued by the Office of Civil  
7 Rights (OCR) in the Department of Health and Human Services (HHS) concerning federal  
8 conscience-protection statutes.

9 California’s request that the Conscience Rule Cases be related to this one is wholly without  
10 merit and does not satisfy the requirements of Local Rule 3-12. The Conscience Rule does not  
11 amend the Title X regulations. It was issued by a different component of HHS (OCR) than was  
12 the Final Rule at issue in this case (which was issued by the Office of Population Affairs). The  
13 Conscience Rule creates procedures for HHS to enforce 25 federal conscience-protection and anti-  
14 discrimination statutes. As HHS previously explained, the Conscience Rule does not change the  
15 *status quo* of the Title X program as HHS implemented that program prior to publication of the  
16 different Rule that is the subject of this lawsuit. *See* ECF No. 104.

17 California nonetheless insists that the two sets of cases “concern substantially similar  
18 claims and subject matter” because “[t]he cases challenge HHS regulations under the APA and the  
19 Constitution, and in all three cases, plaintiffs assert that the rule impedes access to healthcare in  
20 violation of Section 1554 of the ACA” and because California has challenged both rules under the  
21 non-directive provision. Motion at 3-4. But even a cursory review of California’s Complaint  
22 against the Conscience Rule—which includes five separate claims under the Spending Clause, a  
23 Freedom of Information Act claim with four separate sub-claims, and challenges an *entirely*  
24 *different Rule* from the one at issue in this case—makes clear that it encompasses legal issues  
25 vastly different from those California has raised here. *See* No. 3:19-cv-02769, ECF No. 1. The  
26  
27

1 Conscience Rule Cases, therefore, do not concern the same issues, nor will there be an “unduly  
2 burdensome duplication of labor and expense or conflicting results if the cases are conducted  
3 before different judges,” as required by Local Rule 3-12 for relation.

4 As to the question of abortion referrals specifically, whether the non-directive provision  
5 and the other sources California has relied upon in this lawsuit preclude HHS from *prohibiting*  
6 abortion referrals within the Title X program is distinct from the question whether providers may  
7 be—let alone must be—*required* to provide them under federal conscience laws. Indeed, the Final  
8 Rule this Court has preliminarily enjoined “did not alter HHS’s preexisting policy dating back at  
9 least to 2008 of not enforcing requirements of the 2000 regulations where they may conflict with  
10 the federal conscience statutes as explained in this rule.” 84 Fed. Reg. at 23,191 n.64. And this  
11 Court recognized as much in its ruling on California’s preliminary injunction motion. *See* ECF  
12 No. 103 at 62-63 (“[The conscience laws] mean[] HHS may not require Title X grantees to provide  
13 abortion referrals over their objections. But this does not concern grantees which *do not* have  
14 moral or religious objections to abortion. The conscience laws do not provide a basis for HHS to  
15 bar *all* Title X grantees from providing abortion referrals.”).

17 California also argues that relation is needed because “Defendants may use the  
18 [Conscience] Rule as an end-run around the Court’s April 26 Preliminary Injunction, which  
19 preserved the *status quo*—including longstanding Title X regulations which require Title X grant  
20 recipients to provide neutral, factual counseling to pregnant clients regarding their full range of  
21 options—pending resolution of the merits of California’s cases.” Motion at 4. That is incorrect.  
22 HHS informed California and the Court about the Conscience Rule on May 2 and California has  
23 never argued—and still does not argue—that the Conscience Rule violates this Court’s preliminary  
24 injunction. And as noted above, California’s suggestions about the pre-Rule *status quo* are  
25 incorrect, a point this Court’s preliminary injunction ruling recognized.

26 Defendants respectfully request that California’s motion be denied.

1 Dated: May 28, 2019

Respectfully submitted,

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15  
16 **CERTIFICATE OF SERVICE**

17 I hereby certify that on May 28, 2019, I electronically filed the foregoing document with  
18 the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to  
19 the counsel of record in this matter who are registered on the CM/ECF system.

20  
21 /s/ Bradley P. Humphreys  
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