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11 *Attorneys for Defendants*

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

14 STATE OF CALIFORNIA, by and through)
 15 ATTORNEY GENERAL XAVIER) Case No.: 3:19-cv-01184-EMC
 16 BECERRA,)
) **MOTION TO CHANGE TIME**
 17 Plaintiff,)
)
 18 v.)
)
 19 ALEX M. AZAR, in his OFFICIAL)
 20 CAPACITY as SECRETARY of the U.S.)
 21 DEPARTMENT of HEALTH & HUMAN)
 SERVICES; U.S. DEPARTMENT of HEALTH)
 22 & HUMAN SERVICES,)
)
 23 Defendants.)
)
 24 _____)

25 Pursuant to Civil L.R. 6-3(a)(4), Defendants, by and through undersigned counsel, hereby
 26 respectfully request that the Court shorten the time to hear Defendants' motion to stay this Court's

1 injunction pending appeal, ECF No. 109 (“Stay Motion”). In particular, Defendants request that
2 if upon reviewing the Stay Motion the Court does not believe Defendants have met the
3 requirements for a stay, the Court summarily deny the motion without awaiting a response from
4 Plaintiff. Otherwise, Defendants respectfully request that the Court rule on the Stay Motion no
5 later than May 10, 2019, at which time Defendants intend to seek relief in the Ninth Circuit. In all
6 events, Defendants respectfully request that the Court decide the Stay Motion on the papers
7 submitted, without oral argument, pursuant to Civil L-R 7-1(b).

8 In accordance with Civil L-R 6-3(a), the motion is supported by the Declaration of R.
9 Charlie Merritt, counsel for Defendants, and a proposed order, filed herewith. Defendants submit
10 that the Declaration of R. Charlie Merritt establishes good cause for the requested shortening. For
11 the reasons explained in the Stay Motion, the supporting declaration submitted by David Johnson,
12 Operations and Management Officer for the Office of Population Affairs (ECF No. 109-1),
13 Defendants’ brief in opposition to the preliminary injunction motions (ECF No. 61), and at oral
14 argument on those motions, Defendants believe that no preliminary injunction should have been
15 issued and that the Stay Motion should be granted. In Defendants’ judgment therefore, every day
16 that these injunctions remain in place taxpayer funds are being spent for programs where abortion
17 is a method of family planning contrary to Congress’s express directive in section 1008—and the
18 agency is stymied from implementing a judgment that the Supreme Court has expressly held is
19 permissible.

20 Given these circumstances, Defendants respectfully request that the Court rule on this
21 motion quickly. If the Court, upon reviewing this motion, concludes that a stay is inappropriate,
22 Defendants respectfully ask that the Court summarily deny the motion without awaiting a response
23 from Plaintiff, so that Defendants can seek relief from the Ninth Circuit without further delay. In
24 any event, Defendants respectfully request a ruling on this motion no later than May 10, 2019, at
25 which time Defendants intend to seek relief in the Ninth Circuit.

26 Defendants’ counsel has conferred with Plaintiff’s counsel, who indicated that Plaintiff

1 intends to oppose the relief requested in this motion.

2

3 Dated: May 6, 2019

Respectfully submitted,

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JOSEPH H. HUNT
Assistant Attorney General

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DAVID L. ANDERSON
United States Attorney

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JAMES M. BURNHAM
Deputy Assistant Attorney General

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MICHELLE R. BENNETT
Assistant Branch Director

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11

/s/ R. Charlie Merritt
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Counsel for Defendants

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NORTHERN DISTRICT OF CALIFORNIA

14	STATE OF CALIFORNIA, by and through)	
15	ATTORNEY GENERAL XAVIER)	Case No.: 3:19-cv-01184-EMC
16	BECERRA,)	
17)	DECLARATION OF R. CHARLIE
17	Plaintiff,)	MERRITT
18)	
18	v.)	
19)	
20	ALEX M. AZAR, in his OFFICIAL)	
20	CAPACITY as SECRETARY of the U.S.)	
21	DEPARTMENT of HEALTH & HUMAN)	
21	SERVICES; U.S. DEPARTMENT of HEALTH)	
22	& HUMAN SERVICES,)	
22)	
23	Defendants.)	
24)	

24
 25 1. I am a Trial Attorney at the Department of Justice, Civil Division, Federal
 26 Programs Branch and counsel for the Defendants.

1 2. I have personal knowledge of the contents of this declaration, and I could and would
2 testify competently thereto if called upon to do so.

3 3. On March 4, 2019, the Department of Health and Human Services (“HHS”) issued
4 a Final Rule. *See* Compliance with Statutory Program Integrity Requirements, 84 Fed. Reg. 7714
5 (Mar. 4, 2019) (Final Rule or Rule).

6 4. On March 21, 2019, Plaintiff moved for a preliminary injunction to block
7 implementation of the Rule. ECF No. 26. Defendants filed a memorandum in opposition on April
8 8, 2019 (ECF No. 61), and the Court heard oral argument on the motion on April 18, 2019.

9 5. On April 26, 2019, this Court entered an Order Granting in Part and Denying in
10 Part Plaintiffs’ Motions for Preliminary Injunction (PI Order). ECF No. 103.

11 6. On May 6, 2019, Defendants filed a motion to stay the PI Order pending appeal to
12 the Ninth Circuit Court of Appeals (Stay Motion). ECF No. 109. In support of that motion,
13 Defendants submitted a declaration by David Johnson, Operations and Management Officer for
14 the Office of Population Affairs (Johnson Declaration). ECF No. 109-1.

15 7. For the reasons stated in the Stay Motion, in the Johnson Declaration, in
16 Defendants’ memorandum in opposition to Plaintiffs’ preliminary injunction motions, and at oral
17 argument on those motions, Defendants believe that no preliminary injunction should have been
18 issued and that their Stay Motion should be granted. Given the Court’s PI Order, however,
19 Defendants recognize that the Court may disagree

20 8. The Final Rule enjoined by the PI Order, moreover, would have gone into effect on
21 Friday, May 3 absent the injunctions from this Court and two others. In Defendants’ judgment
22 therefore, every day that these injunctions remain in place taxpayer funds are being spent for
23 programs where abortion is a method of family planning contrary to Congress’s express directive
24 in section 1008—and the agency is stymied from implementing a judgment that the Supreme Court
25 has expressly held is permissible.

26 9. Given these circumstances, Defendants believe that expedited consideration is
27

1 appropriate. If the Court, upon reviewing the Stay Motion, concludes that a stay is inappropriate,
2 Defendants respectfully ask that the Court summarily deny the motion without awaiting a response
3 from Plaintiffs, so that Defendants can seek relief from the Ninth Circuit without further delay. In
4 any event, Defendants respectfully request a ruling on this motion no later than May 10, 2019, at
5 which time Defendants intend to seek relief in the Ninth Circuit.

6 10. On May 5, 2019, the Court granted the parties' stipulation to extend Defendants'
7 time for responding to Plaintiffs' Complaints from May 7, 2019 until June 21, 2019. ECF No.
8 107. Defendants have not requested any other time modifications in this case.

9 11. Undersigned counsel for Defendants emailed counsel for Plaintiff requesting its
10 position on the Defendants' motion to shorten the Court's time to hear Defendants' stay motion.
11 Plaintiff's counsel responded that Plaintiff intends to oppose the relief requested in this motion.

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

15 Signed on May 6, 2019 in Charlottesville, VA.

16
17 /s/ R. Charlie Merritt
18 R. CHARLIE MERRITT

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15	ATTORNEY GENERAL XAVIER)	Case No.: 3:19-cv-01184-EMC
16	BECERRA,)	
17)	[PROPOSED] ORDER ON
	Plaintiff,)	DEFENDANTS' MOTION TO
18)	CHANGE TIME
	v.)	
19)	
20	ALEX M. AZAR, in his OFFICIAL)	
	CAPACITY as SECRETARY of the U.S.)	
21	DEPARTMENT of HEALTH & HUMAN)	
	SERVICES; U.S. DEPARTMENT of HEALTH)	
22	& HUMAN SERVICES,)	
)	
23	Defendants.)	
24)	

25 The Court, having considered Defendants' Motion to Change Time, hereby orders as
 26 follows:

1 IT IS HEREBY ORDERED that Defendants' Motion is GRANTED. The Court
2 ORDERS that Defendants' Stay Motion shall be decided on the papers submitted, without oral
3 argument. The Court will issue a decision on Defendants' Stay Motion no later than May 10,
4 2019.

5 **IT IS SO ORDERED.**

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7 DATED:

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The Honorable Edward M. Chen
11 United States District Judge
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