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11 IN THE UNITED STATES DISTRICT COURT  
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 **STATE OF CALIFORNIA, by and through**  
 16 **ATTORNEY GENERAL XAVIER**  
 17 **BECERRA,**

3:19-cv-01184-EMC

18 Plaintiff,

**PLAINTIFF’S OPPOSITION TO  
 MOTION TO STAY PROCEEDINGS  
 PENDING APPEAL**

19 v.

20 **ALEX AZAR, in his OFFICIAL**  
 21 **CAPACITY as SECRETARY of the U.S.**  
 22 **DEPARTMENT of HEALTH & HUMAN**  
**SERVICES; U.S. DEPARTMENT of**  
**HEALTH & HUMAN SERVICES,**

Date: July 11, 2019  
 Time: 1:30 p.m.  
 Dept: Courtroom 5, 17<sup>th</sup> Floor  
 Judge: Honorable Edward M. Chen  
 Trial Date: None Set  
 Action Filed: March 4, 2019

23 Defendants.

## INTRODUCTION

1  
2 Plaintiff the State of California respectfully submits this Opposition to Defendants Alex  
3 Azar and the U.S. Department of Health and Human Services's motion (ECF No. 117) to stay all  
4 district court proceedings pending an appeal of this Court's order of a preliminary injunction. *See*  
5 ECF No. 103, Order Granting in Part and Denying in Part Pls.' Mot. for Prelim. Inj. (Apr. 26,  
6 2019) (hereinafter "Order"). The requested stay would be contrary to the Ninth Circuit's recent  
7 admonishment to "district courts not to delay trial preparation to await an interim ruling on a  
8 preliminary injunction." *California v. Azar*, 911 F.3d 558, 583-84 (9th Cir. 2018) (citing  
9 *Melendres v. Arpaio*, 695 F.3d 990, 1002-03 (9th Cir. 2012) and *Global Horizons, Inc. v. U.S.*  
10 *Dep't of Labor*, 510 F.3d 1054, 1058 (9th Cir. 2007)). Such a stay will harm Plaintiff and  
11 California residents by delaying efforts to proceed toward final resolution of this case and thereby  
12 extending a period of uncertainty among California's Title X service providers. A district court  
13 stay could be particularly detrimental to Plaintiff if the Ninth Circuit were to stay or dissolve the  
14 Order, as Defendants have requested. These concerns outweigh Defendants' asserted interest in  
15 conserving judicial resources while the appeal is pending.

## ARGUMENT

### I. Requirements for a Motion to Stay

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17  
18 This Court may proceed on the merits because an appeal under 28 U.S.C. § 1292(a)(1) from  
19 an interlocutory order involving a preliminary injunction does not divest the district court with  
20 jurisdiction to proceed with a decision on the merits, absent a stay order issued by the Court of  
21 Appeal. *See Ex parte Natl. Enamling & Stamping Co.*, 201 U.S. 156, 162 (1906) ("The case,  
22 except for the hearing on the appeal from the interlocutory order, is to proceed in the lower court  
23 as though no such appeal had been taken, unless otherwise specifically ordered."); *Plotkin v. Pac.*  
24 *Tel. & Tel. Co.*, 688 F.2d 1291, 1293 (9th Cir. 1982) ("[I]t is firmly established that an appeal  
25 from an interlocutory order does not divest the trial court of jurisdiction to continue with other  
26 phases of the case"); *ACF Industries, Inc. v. Calif. State Bd. of Ed.*, 42 F.3d 1286, 1291 n.4 (9th  
27 Cir. 1994); *Apple, Inc. v. Samsung Elec. Co., Ltd.*, 2014 WL 6687122, at \*6 (N.D. Cal. Nov. 25,  
28 2014).

1 The Court also has the inherent authority to stay the case. “[T]he power to stay proceedings  
 2 is incidental to the power inherent in every court to control the disposition of the causes on its  
 3 docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. North*  
 4 *American Co.*, 299 U.S. 248, 254 (1936); *Dietz v. Bouldin*, 136 S. Ct. 1885, 1888-89 (2016)  
 5 (district court has inherent power to “manage its docket and courtroom with a view toward the  
 6 efficient and expedient resolution of cases”). But when deciding whether to stay trial-level  
 7 proceedings pending the outcome of an interlocutory appeal, the Court must weigh “competing  
 8 interests,” including:

9 [T]he possible damage which may result from the granting of a stay, the hardship or  
 10 inequity which a party may suffer in being required to go forward, and the orderly  
 11 course of justice measured in terms of the simplifying or complicating of issues,  
 proof, and questions of law which could be expected to result from a stay.

12 *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inv. v. Hall*, 300  
 13 F.2d 265, 268 (9th Cir. 1962)). The “proponent of a stay bears the burden of establishing its  
 14 need.” *Clinton v. Jones*, 520 U.S. 681, 708 (1997) (citing *Landis*, 299 U.S. at 255).

## 15 **II. The Balance of Hardships and Public Interest Tip in Plaintiff’s Favor**

16 Defendants argue that a complete stay of all district court proceedings is needed to allow  
 17 for the “orderly course of justice” because “the Ninth Circuit’s disposition of the appeal is likely  
 18 to be controlling with respect to the central merits issues presented in this case.” Mot. at 4. But  
 19 the same can be said of any appeal of a preliminary injunction order, as appellate review of the  
 20 district court’s factual findings and legal conclusions regarding the plaintiffs’ likelihood of  
 21 success may shape the outcome of a case. The Ninth Circuit has made clear that district courts  
 22 should not delay trial preparation pending the outcome of an interlocutory review of a preliminary  
 23 injunction. As explained in *California*, a case that also involved an appeal of a preliminary  
 24 injunction based on Plaintiff’s Administrative Procedure Act claims challenging federal  
 25 regulations limiting access to reproductive healthcare, “[b]ecause of the limited scope of  
 26 [appellate] review of the law applied by the district court and because the fully developed factual  
 27 record may be materially different from that initially before the district court, [the] disposition of  
 28 appeals from most preliminary injunctions may provide little guidance as to the appropriate

1 disposition on the merits.” 911 F.3d at 584 (quoting *Melendres*, 695 F.3d at 1003). Heeding the  
2 Ninth Circuit’s directives, the parties in *California* are now simultaneously litigating the appeal of  
3 a second preliminary injunction and cross-motions for summary adjudication of the merits. Other  
4 cases cited by Defendants, *Washington v. Trump*, 2017 WL 1050354, at \*5 (W.D. Wash. Mar. 17,  
5 2017) and *Hawai‘i v. Trump*, 233 F.Supp.3d 850, 856 (D. Haw. 2017), are inapposite. Those  
6 cases involved a district court’s decision to stay adjudication of a motion for a temporary  
7 restraining order pending the Ninth Circuit’s review of an identical temporary restraining order,  
8 in which a decision was “expected shortly.” 233 F.Supp.3d at 852; *see also Leyva v. Certified*  
9 *Grocers of Cal., Ltd.*, 593 F.2d 857, 864 (9th Cir. 1979) (noting propriety of a stay in the  
10 circumstance of two “substantially parallel” proceedings, trial preparation and arbitration).

11 In contrast, Plaintiff will be significantly disadvantaged if it is not allowed to proceed with  
12 litigation of the merits of its claims while the appeal of the Order is pending.<sup>1</sup> As the Court has  
13 found, the Final Rule, if implemented, “will irreparably harm individual patients and public  
14 health in California as a whole” and is “likely to inflict significant public health consequences and  
15 costs on the State and frustrate Essential Access’s organizational mission.” Order at 2:9-18. The  
16 Court also held that the Final Rule would also harm California’s efforts to advance its public  
17 health objectives in at least two ways: it would (1) “directly compromise providers’ ability to  
18 deliver effective care and force them to obstruct and delay patients with pressing medical needs”;  
19 and (2) “drastically reduce access to the wide array of services provided by Title X projects by  
20 driving large numbers of providers out of the program.” *Id.* at 15:2-23. These harms will take  
21 place if the Ninth Circuit grants a stay or dissolves the Order. In that circumstance, a stay will  
22 have inhibited Plaintiff’s efforts to proceed expeditiously toward full adjudication of the merits of  
23 its case.

24 A stay would also impede Plaintiff from addressing outstanding substantive issues that  
25 may arise that were not at issue in the Order, such as its claim for violation of the Equal  
26 Protection Clause. Contrary to Defendants’ suggestion, Mot. at 5 n.1, there is no reason to think

27 <sup>1</sup> Plaintiff is willing to extend Defendants’ deadline for responding to the complaint by four  
28 weeks, until July 19, 2019, and to consider further adjustments to the briefing schedule after  
Plaintiff has had an opportunity to review the administrative record.

1 that adjudication of the equal protection claim, which involves different legal theories and facts  
2 that may lie outside the administrative record, will be simplified by a Ninth Circuit ruling on the  
3 Order. Moreover, final adjudication of Plaintiff's arbitrary and capricious claim will depend upon  
4 full consideration of the administrative record, a much more extensive undertaking than the  
5 limited review of the record that occurred in the context of Plaintiff's motion for a preliminary  
6 injunction. Waiting until after the appeal is finally resolved and a stay is lifted would result in an  
7 unnecessary delay in the ultimate resolution of this lawsuit.

8 Finally, a stay could prevent Plaintiff from timely amending the complaint, if needed, in  
9 order to address any new substantive issues that may arise. For example, as Defendants note in  
10 their Opening Brief, Appeal No. 19-15974, ECF No. 16 at 36, a new Title X grantee recently filed  
11 a lawsuit challenging the 2000 Title X regulations in certain respects. *See Obria Group, Inc., v.*  
12 *U.S. Dept. of Health & Human Servs.*, No. 19-cv-00905 (C.D. Cal.) (filed May 14, 2019).

### 13 CONCLUSION

14 For the reasons described above, in addition to all evidence and argument previously set  
15 forth in Plaintiff's motion for a preliminary injunction and accepted in this Court's Order,  
16 Plaintiff requests that the Court deny Defendants' motion for a stay of proceedings pending  
17 appeal of the preliminary injunction.

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Dated: June 7, 2019

Respectfully Submitted,

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