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

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 15 **CITY AND COUNTY OF SAN FRANCISCO,**

16 Plaintiff,

17 v.

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 19 **ALEX AZAR, in his OFFICIAL CAPACITY as SECRETARY of the U.S. DEPARTMENT of HEALTH & HUMAN SERVICES; ROGER SEVERINO, Director, Office for Civil Rights, Department of Health and Human Services; U.S. DEPARTMENT of HEALTH & HUMAN SERVICES; and DOES 1-25,**

20 Defendants.

3:19-cv-2405-JCS

**CALIFORNIA’S ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED**

**[N. D. CAL. CIVIL L.R. 3-12 & 7-11]**

Judge: Chief Magistrate Judge Joseph C. Spero  
 Trial Date: None set.  
 Action Filed: May 2, 2019

1 **I. INTRODUCTION & BACKGROUND**

2 The State of California seeks an order to relate three cases—*City and County of San*  
3 *Francisco v. Azar, et al.*, Case No. 3:19-cv-2405, *State of California v. Azar, et al.*, Case No.  
4 3:19-cv-02769, and *County of Santa Clara et al. v. U.S Dep’t of Health and Human Svcs., et al.*,  
5 Case No. 5:19-cv-2916 (N.D. Cal. May 28, 2019)—under Civil Local Rules 3-12 and 7-11  
6 because all three cases: (1) involve the same parties, property, transactions, or events; (2) call for  
7 determination of the same or substantially related questions of law; and (3) entail substantial  
8 duplication of labor and the risk of inconsistent rulings if heard by different judges. *See* Civil L.R.  
9 3-12.

10 In separate cases, Plaintiffs the State of California, the City and County of San Francisco,  
11 and County of Santa Clara, Trust Women Seattle, Los Angeles LGBT Center, Whitman-Walker  
12 Clinic, Inc. d/b/a Whitman-Walker Health, Bradbury-Sullivan LGBT Community Center, Center  
13 On Halsted, Hartford Gyn Center, Mazzoni Center, Medical Students For Choice, AGLP: The  
14 Association Of LGBTQ+ Psychiatrists, American Association of Physicians for Human Rights  
15 d/b/a Glma: Health Professionals Advancing LGBTQ Equality, Colleen Mcnicholas, Robert  
16 Bolan, Ward Carpenter, Sarah Henn, and Randy Pumphrey, challenge the U.S. Health and Human  
17 Services’ Refusal Rule, which allows healthcare providers and workers to refuse to comply with  
18 program rules and applicable state and federal laws on the basis of religious, ethical, or other  
19 beliefs. 84 Fed. Reg. 23170, 23264 (May 21, 2019) (the Refusal Rule). In May 2019, the City and  
20 County of San Francisco, California, and the County of Santa Clara and co-plaintiffs filed suits  
21 challenging the Rule. *City and County of San Francisco v. Azar, et al.*, Case No. 3:19-cv-2405  
22 (N.D. Cal. May 2, 2019); *State of California v. Azar, et al.*, Case No. 3:19-cv-02769 (N.D. Cal.  
23 May 21, 2019) (Declaration of Kathleen Boergers (“Boergers Decl.”), Ex. A); and *County of*  
24 *Santa Clara et al. v. U.S Dep’t of Health and Human Svcs., et al.*, Case No. 5:19-cv-2916 (N.D.  
25 Cal. May 28, 2019) (Boergers Decl., Ex. B) (collectively, the Refusal Rule cases).

26 Due to the common and overlapping issues, a failure to relate the Refusal Rule cases may  
27 result in inconsistent outcomes and the burdensome duplication of labor and expense addressing  
28 related issues. Therefore, California respectfully requests that the Court relate the cases.

1 **II. ARGUMENT**

2 The State of California moves pursuant to Local Rule 3-12 for a determination that the  
3 Refusal Rule cases are related. Under Rule 3-12, actions are related when:

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

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

7 The Refusal Rule cases should be related because they involve the same defendants, similar  
8 plaintiffs and claims, and relation will promote judicial economy and avoid inconsistent rulings.

9 First, the cases involve the same or similar parties. All three cases have the same or  
10 overlapping defendants: Secretary Azar and HHS (San Francisco also included the HHS Director  
11 of the Office for Civil Rights, Roger Severino). *See* Dkt. No. 1 (Complaint).

12 Second, the Refusal Rule cases concern substantially the same event, claims, and subject  
13 matter. The cases involve the exact same event, the promulgation of the Refusal Rule by the  
14 defendants. And the cases involve similar claims. The Refusal Rule cases challenge the Rule on  
15 the grounds that the rule is in violation of the APA, the Spending and the Establishment Clause of  
16 the U.S. Constitution. *Id.* at ¶¶ 106-126, 130-132; *see also* Boergers Decl. Exh. A, ¶¶ 127-186,  
17 and Exh. B, ¶¶ 202-225, 253-254. San Francisco and Santa Clara also allege that the Refusal Rule  
18 violates separation of powers. Dkt. No. 1, ¶¶ 127-129; Boergers Decl. Exh. B, at ¶¶ 255-260.

19 The cases also involve similar subject matter. California alleges that the rule impedes  
20 access to basic healthcare, including reproductive and emergency care; threatens billions of  
21 dollars in federal funding for California's public healthcare and other federally funded programs;  
22 and encourages discrimination against vulnerable patients, including women; lesbian, gay,  
23 bisexual, and transgender (LGBT) individuals and other vulnerable populations. Boergers Decl.,  
24 Ex. A, ¶ 1. Similarly, San Francisco alleges that the rule will compromise patient care and put  
25 patients' health at risk; harm vulnerable patients, including LGBT people by harming their access  
26 to care; and that the loss of federal funds would devastate San Francisco's health care system and  
27 its ability to provide critical health care services for diseases like HIV, STDs, TB, Hepatitis C,  
28 and other communicable diseases. Dkt. No. 1, ¶¶ 2-5, 86-105. And the County of Santa Clara *et*

1 *al.* make substantially similar allegations. For example, that the Refusal Rule invites refusals to  
2 provide care to women seeking reproductive healthcare and transgender and gender-  
3 nonconforming patients seeking gender-affirming care, adversely affecting the healthcare entities  
4 that provide reproductive healthcare services and that serve LGBT community, as well as  
5 stigmatizing and shaming these patients, depriving them of their constitutionally protected rights  
6 of access to healthcare and their dignity and autonomy in seeking medically necessary healthcare  
7 central to their self-determination. Boergers Decl., Exh. B, ¶ 4.

8 Third, presenting the overlapping legal questions in the Refusal Rule cases to different  
9 judges of this Court would involve unnecessary duplication of efforts and a waste of judicial  
10 resources, while also creating a risk of inconsistent results. The plaintiffs in these cases ask the  
11 Court to evaluate the procedures, bases, reasoning, and record supporting the Refusal Rule and  
12 whether it comports with the requirements of the law, including whether the challenged agency  
13 action is arbitrary and capricious. Further, the plaintiffs ask the Court to evaluate whether the  
14 agency acted in excess of authority and contrary to numerous laws, including Section 1554 of the  
15 Affordable Care Act (42 U.S.C. § 18114) and the Emergency Medical Treatment and Labor Act,  
16 which requires hospitals to provide emergency care (42 U.S.C. § 1395dd).

17 Without relation, there is a risk of inconsistent rulings that may result in confusion as to the  
18 legality of the Refusal Rule. Relation will ensure that the Court can provide consistent  
19 enforcement of its orders. Finally, if the cases are related, only one judge and chambers staff will  
20 be burdened with reviewing the voluminous administrative record and conducting the required  
21 fact-finding, including details about the specific healthcare programs at issue, sources of funding,  
22 and the extensive harm that will be caused by the Refusal Rule. This will conserve judicial  
23 resources and ensure that the same court is able to enforce any relief afforded.

### 24 **III. CONCLUSION**

25 Plaintiff respectfully requests that this Court relate *City and County of San Francisco v.*  
26 *Azar, et al.*, Case No. 3:19-cv-2405, *State of California v. Azar, et al.*, Case No. 3:19-cv-02769,  
27 and *County of Santa Clara et al. v. U.S Dep't of Health and Human Svcs., et al.*, Case No. 5:19-  
28 cv-2916 (N.D. Cal. May 28, 2019).

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Dated: June 3, 2019

Respectfully Submitted,

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*s/ Kathleen Boergers*

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