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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)
 17 BECERRA,)

18 Plaintiff,)

19 v.)

20 ALEX M. AZAR, *et al.*,)

21 Defendants.)
 22)
 23)

Case No.: 3:19-cv-01184-EMC

RELATED TO

Case No. 3:19-cv-01195-EMC

**NOTICE OF SUPPLEMENTAL
 AUTHORITY**

24 Defendants submit this notice in light of the Ninth Circuit’s February 24, 2020 decision
 25 vacating this Court’s April 26, 2019 preliminary injunction order, as well as preliminary
 26 injunctions entered in similar cases in the Eastern District of Washington and the District of
 27 Oregon. *See California v. Azar*, No. 19-15974, slip op. (9th Cir. Feb. 24, 2020). The Ninth Circuit

1 held that the challenged Rule is a reasonable interpretation of § 1008 of Title X, does not conflict
2 with the 1996 appropriations rider or other aspects of Title X, and does not implicate the
3 restrictions in § 1554 of the Affordable Care Act. *Id.* at 81. The Court of Appeals further held that
4 Plaintiffs will not succeed on their claims that the Rule is arbitrary and capricious “because HHS
5 properly examined the relevant considerations and gave reasonable explanations.” *Id.* at 81; *see*
6 *also id.* at 59-80. It explained that, even though the administrative record was not before this Court
7 and the other district courts that entered preliminary injunctions, the record on appeal was
8 sufficient to resolve Plaintiffs’ claims on the merits and no additional factual development was
9 required. *Id.* at 31-32 & n.11. Invoking its “power ‘to examine the merits of the case’ and resolve
10 the legal issue,” *id.* at 28 (quoting *Munaf v. Geren*, 553 U.S. 674, 691 (2008)), the Ninth Circuit
11 held that “plaintiffs’ claims will not succeed given our resolution of the underlying legal
12 questions,” *id.* at 81 (citing *Munaf*, 553 U.S. at 691); *see also id.* (“Plaintiffs will not prevail on
13 the merits of their legal claims”); *Munaf*, 553 U.S. at 692 (“Because the Government is entitled to
14 judgment as a matter of law, it is appropriate to terminate the litigation now.”).

15 In light of the Ninth Circuit’s decision, Defendants respectfully ask the Court to enter
16 judgment in Defendants’ favor on Plaintiffs’ statutory claims and their claims that the Rule is
17 arbitrary and capricious. Because “it is plain that the plaintiff[s] cannot prevail,” Defendants are
18 “entitled to judgment.” *Munaf*, 553 U.S. at 619. “Review of a preliminary injunction is not
19 confined to the act of granting the injunction, but extends as well to determining whether there is
20 any insuperable objection, in point of jurisdiction or merits, to the maintenance of the bill, and, if
21 so, to directing a final decree dismissing it,” *id.* (cleaned up), and that is what the Ninth Circuit did
22 here, *see California*, slip op. at 28-32, 81-82. Further, although the Ninth Circuit did not address
23 Plaintiffs’ constitutional claims or Essential Access’s claim that HHS violated the procedural
24 requirements of the Administrative Procedure Act, Defendants submit that judgment should also
25 be entered in Defendants’ favor on those claims for the reasons Defendants explained in their
26 summary judgment briefing.

27 Dated: February 25, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2020, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

/s/ Bradley P. Humphreys
BRADLEY P. HUMPRHEYS