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 10 *Counsel for Defendants*

11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13)	
14	STATE OF CALIFORNIA, <i>et al.</i> ,)	Case No.: 3:20-cv-00682-LB
15)	
15	Plaintiffs,)	MOTION TO CHANGE TIME
16)	
16	v.)	
17)	
17	U.S. DEPARTMENT OF HEALTH AND)	
18	HUMAN SERVICES, <i>et al.</i> ,)	
19)	
19	Defendants.)	

20

21 Pursuant to Civil L.R. 6-3(a)(4), Defendants, by and through undersigned counsel, hereby

22 respectfully request that the Court shorten the time to hear Defendants’ Motion for an Extension

23 of Time to File Reply Brief in Support of Cross-Motion for Summary Judgment. *See* ECF No. 47

24 (“Extension Motion”). In particular, Defendants request that, if upon reviewing the Extension

25 Motion, the Court believes that Defendants have established good cause for an extension of time,

26 the Court grant the Extension Motion by May 22, 2020. Otherwise, in light of Defendants’

27 impending deadline and the upcoming Memorial Day holiday, Defendants would effectively be

1 deprived of the relief they seek.

2 In accordance with Civil L-R 6-3(a), the motion is supported by the Declaration of Bradley
3 P. Humphreys, counsel for Defendants (“Humphreys Declaration”), and a proposed order, filed
4 herewith. Defendants respectfully submit that the Humphreys Declaration establishes good cause
5 for the requested extension. As with the Extension Motion, Defendants make this request to
6 account for an unexpected press of work and competing deadlines faced by undersigned counsel.
7 In another case challenging the same Rule, *Planned Parenthood of Maryland v. Azar*, No. 1:20-
8 cv-00361 (D. Md.), the plaintiffs recently moved to amend their complaint and moved to certify a
9 class of proposed consumer plaintiffs. Evaluating those arguments has taken time away from
10 undersigned counsel to complete Defendants’ reply brief in this case. Undersigned counsel also
11 has filings due on May 21, 2020 and May 22, 2020 in two unrelated cases. Defendants respectfully
12 submit that these circumstances present good cause for a modest, one-week extension of time.

13 Plaintiffs will not be prejudiced by the requested one-week extension, or by the instant
14 motion to shorten time. The briefing schedule proposed by the parties on March 25, 2020 was
15 premised on the parties’ request for a decision by June 27, 2020, which, at the time, was the date
16 that the challenged portion of the Rule would begin to be implemented. *See* ECF No. 34 at 1.
17 However, in light of the COVID-19 public health emergency, the Department of Health and
18 Human Services (HHS) has issued an Interim Final Rule extending the implementation date of the
19 challenged portion of the Rule by sixty days, until August 26, 2020. *See* 85 Fed. Reg. 27,550,
20 27,599 (May 8, 2020). Accordingly, the basis for the current schedule no longer exists. Further, in
21 light of HHS’s extension of the implementation date, and even accounting for Defendants’
22 requested extension of time, the Court will have considerably more time to hold a hearing and
23 consider the parties’ arguments before the new August 26, 2020 implementation date than was
24 contemplated under the parties’ stipulated briefing schedule—roughly twelve weeks after briefing
25 is completed as opposed to thirty-two days.

26 Given that Defendants’ reply is currently due on May 26, 2020, and considering the
27 upcoming Memorial Day holiday, Defendants respectfully ask that the Court issue a ruling on this
28

1 motion by Friday, May 22 in order to provide meaningful relief.

2 Defendants' counsel conferred with Plaintiffs' counsel regarding the request to shorten
3 time, and Plaintiffs' counsel indicated that Plaintiffs oppose this motion.

4 Dated: May 21, 2020

Respectfully submitted,

5 JOSEPH H. HUNT
Assistant Attorney General

6 DAVID L. ANDERSON
7 United States Attorney

8 ERIC B. BECKENHAUER
Assistant Branch Director

9 /s/ Bradley P. Humphreys
10 BRADLEY P. HUMPHREYS
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15 *Counsel for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that, on May 21, 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

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11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13)	
14	STATE OF CALIFORNIA, <i>et al.</i> ,)	Case No.: 3:20-cv-00682-LB
15)	
16	Plaintiffs,)	DECLARATION OF BRADLEY P.
17)	HUMPHREYS
18	v.)	
19)	
20	U.S. DEPARTMENT OF HEALTH AND)	
21	HUMAN SERVICES, <i>et al.</i> ,)	
22)	
23	Defendants.)	

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

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

25 3. On December 27, 2019, the Department of Health and Human Services (“HHS”)
 26 issued the Rule that Plaintiffs challenge in this litigation. *See* Patient Protection and Affordable
 27 Care Act; Exchange Program Integrity, 84 Fed. Reg. 71,674 (Dec. 27, 2019) (Rule).

1 4. On March 25, 2020, the parties entered into a stipulation proposing a briefing
2 schedule for cross-motions for summary judgment. *See* ECF No. 34. In their stipulation, the
3 parties explained that “[t]he relevant provisions of the Rule, 45 C.F.R. § 156.280, have an
4 implementation deadline of June 27, 2020,” and the parties asked the Court to enter their proposed
5 schedule “[t]o facilitate an expedited review of this case before the June 27, 2020 implementation
6 deadline and to promote efficiency among the parties and this Court.” ECF No. 34.

7 5. On March 25, 2020, the Court adopted the parties’ proposed briefing schedule, with
8 a modification to the parties’ proposed hearing date. *See* ECF No. 35.

9 6. Under the current schedule, Defendants reply brief in support of their cross-motion
10 for summary judgment is due on May 26, 2020. *See id.*

11 7. In light of the COVID-19 public health emergency, the Department of Health and
12 Human Services (HHS) issued an Interim Final Rule extending the implementation date of the
13 challenged portion of the Rule by sixty days, until August 26, 2020. *See* 85 Fed. Reg. 27,550,
14 27,599 (May 8, 2020).

15 8. Given HHS’s extension of the implementation date, and even accounting for
16 Defendants’ requested extension of time, the Court will have considerably more time to hold a
17 hearing and consider the parties’ arguments before the new August 26, 2020 implementation date
18 than was contemplated under the parties’ stipulated briefing schedule—roughly twelve weeks after
19 briefing is completed as opposed to thirty-two days.

20 9. I am currently facing an unexpected press of work and competing deadlines in other
21 cases. In another case challenging the same Rule, *Planned Parenthood of Maryland v. Azar*, No.
22 1:20-cv-00361 (D. Md.), the plaintiffs recently moved to amend their complaint and moved to
23 certify a class of proposed consumer plaintiffs. Evaluating those arguments has taken time away
24 that I would otherwise have used on Defendants’ reply brief in this case. I also have filings due on
25 May 21, 2020 and May 22, 2020 in two unrelated cases.

26 10. If Defendants’ motion for extension of time is not granted by Friday, May 22, 2020,
27 Defendants will effectively be denied relief because counsel for Defendants will need to continue
28

1 to work on their upcoming reply, which is currently due May 26, 2020.

2 11. I conferred with counsel for Plaintiffs regarding this motion, and counsel indicated
3 that Plaintiffs oppose the requested relief.

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

6 Signed on May 21, 2020

7 
8 BRADLEY P. HUMPHREYS

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 2 DAVID L. ANDERSON
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13)	
14	STATE OF CALIFORNIA, <i>et al.</i> ,)	Case No.: 3:20-cv-00682-LB
15)	
15	Plaintiffs,)	[PROPOSED] ORDER ON
16)	DEFENDANTS' MOTION TO
16	v.)	CHANGE TIME
17)	
17	U.S. DEPARTMENT OF HEALTH AND)	
18	HUMAN SERVICES, <i>et al.</i> ,)	
19)	
19	Defendants.)	

20
 21 The Court, having considered Defendants' Motion to Change Time, orders as follows:

22 IT IS HEREBY ORDERED that Defendants' motion is GRANTED. The Court will issue
 23 a decision on Defendants' Extension Motion no later than May 22, 2020.

24 **IT IS SO ORDERED.**

25 Dated:

26 _____
 27 Laurel Beeler
 28 United States Magistrate Judge