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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)	
16	Plaintiffs,	)	DEFENDANTS' MOTION FOR
17		)	EXTENSION OF TIME TO FILE
18	v.	)	REPLY IN SUPPORT OF MOTION
19		)	FOR SUMMARY JUDGMENT
20	U.S. DEPARTMENT OF HEALTH AND	)	AND REQUEST FOR EXPEDITED
21	HUMAN SERVICES, <i>et al.</i>,	)	DECISION
22)	
23	Defendants.)	

24 Pursuant to Civil L.R. 6-3, Defendants, by and through undersigned counsel, hereby
 25 respectfully request that the Court extend Defendants' deadline for filing their reply in support of
 26 their Cross Motion for Summary Judgment by one week, until June 2, 2020. Per this Court's March
 27 Order adopting the proposed schedule of the parties, Defendants' response is currently due on May
 28 26, 2020. *See* ECF No. 35.

In accordance with Civil L-R 6-3(a), the motion is supported by the Declaration of Bradley

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

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

23 Given that Defendants’ reply is currently due on May 26, 2020, and considering the
24 upcoming Memorial Day holiday, Defendants respectfully ask that the Court issue a ruling on this
25 motion by Friday, May 22 in order to provide meaningful relief.

26 Defendants’ counsel conferred with counsel for Plaintiffs, and Plaintiffs do not consent to
27 Defendants’ request for an extension of time.

1 Dated: May 21, 2020

Respectfully submitted,

2 JOSEPH H. HUNT
Assistant Attorney General

3 DAVID L. ANDERSON
4 United States Attorney

5 ERIC B. BECKENHAUER
6 Assistant Branch Director

7 /s/ Bradley P. Humphreys
8 BRADLEY P. HUMPHREYS
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17 *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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 10 Counsel for Defendants

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

13	STATE OF CALIFORNIA, <i>et al.</i> ,)	
14		)	Case No.: 3:20-cv-00682-LB
15	Plaintiffs,	)	DECLARATION OF BRADLEY P.
16	v.	)	HUMPHREYS
17	U.S. DEPARTMENT OF HEALTH AND)	
18	HUMAN SERVICES, <i>et al.</i> ,)	
19	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) (Final Rule or 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. I conferred with counsel for Plaintiffs regarding this motion, and counsel indicated
27 that Plaintiffs do not consent to the requested relief.

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

3 Signed on May 21, 2020

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5 _____
6 BRADLEY P. HUMPHREYS

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 2 DAVID L. ANDERSON
 United States Attorney
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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,	)	[PROPOSED] ORDER ON
17		)	DEFENDANTS' MOTION FOR
18	v.	)	EXTENSION OF TIME TO FILE
19		)	REPLY IN SUPPORT OF CROSS-
20	U.S. DEPARTMENT OF HEALTH AND	)	MOTION FOR SUMMARY
21	HUMAN SERVICES, <i>et al.</i>,	)	JUDGMENT
22)	
23	Defendants.)	

24 The Court, having considered Defendants' Motion for Extension of Time to File Reply in
 25 Support of Cross Motion for Summary Judgment, hereby orders as follows:

26 IT IS HEREBY ORDERED that Defendants' Motion is GRANTED. Defendants' deadline
 27 to file their reply in support of their cross-motion for summary judgment is EXTENDED until
 28 June 2, 2020.

IT IS SO ORDERED.

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Dated:

Laurel Beeler
United States Magistrate Judge