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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12
 13

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

16 Plaintiff,

17 v.

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

22 Defendants.

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

RELATED TO

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

**PLAINTIFFS' FURTHER RESPONSE
 TO THE COURT'S MAY 14, 2020
 ORDER**

Dept: Courtroom 5, 17th floor
 Judge: Hon. Edward M. Chen
 Trial Date: TBD
 Action Filed: March, 2019

1 Plaintiffs the State of California, by and through Attorney General Xavier Becerra,
2 Essential Access Health, Inc., and Melissa Marshall, M.D. (collectively, Plaintiffs) submit this
3 response to the Court’s May 14, 2020 order directing Plaintiffs to inform the Court: (1) how they
4 plan to proceed; and (2) what issues remain for the Court to decide. Plaintiffs respectfully request
5 a stay of this case until forty-five days after the Ninth Circuit decision in *California v. Azar*, 950
6 F.3d 1067 (9th Cir. 2020) becomes final and non-appealable. S. Ct. R. 13.1.¹ Plaintiffs request to
7 file a status report on November 19, 2020, with an update regarding how they intend to proceed in
8 the instant case.

9 Plaintiffs have conferred with counsel for Defendants Secretary Alex Azar and U.S.
10 Department of Health and Human Services (HHS). Defendants’ counsel states that they consent a
11 proposed stay.

12 The Court has the inherent authority to issue a stay. *Landis v. N. Am. Co.*, 299 U.S. 248,
13 254 (1936) (Courts have the inherent authority to “control the disposition of the causes on its
14 docket with economy of time and effort for itself, for counsel, and for litigants.”). District courts
15 may stay proceedings where resolution of appellate proceedings in other matters may provide
16 guidance to the district court in deciding issues before it. *See id.* at 254; *see, e.g., Stewart v. Azar*,
17 No. 18-cv-152, ECF No. 148 (D.D.C. Mar. 18, 2020) (granting HHS’s motion to stay briefing
18 until 30 days after a related appellate decision becomes final and non-appealable, as the federal
19 government “consider[s] whether to seek further review of the D.C. Circuit’s decision”); *Fed.*
20 *Home Loan Mortg. Corp. v. Kama*, 2016 WL 922780, at *8-9 (D. Haw. Mar. 9, 2016) (granting
21 stay where circuit court’s resolution of related cases “w[ould] likely involve an analysis of” issues
22 that would “provide further guidance” to the district court); *Chelius v. Wright*, No. 17-cv-493,
23 ECF No. 107 (D. Haw. Jan. 23, 2020) (agreeing with HHS to stay the case pending the
24 disposition of *Gee v. June Medical Services*, No. 18-1460 (S. Ct.) because *Gee* “bears upon
25 threshold issue” in the case).

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28 ¹ Supreme Court March 19, 2020 Order,
https://www.supremecourt.gov/orders/courtorders/031920zr_d1o3.pdf.

1 In evaluating whether to approve a stay, the “key interests to consider” are “hardship to
2 the parties and benefits to judicial economy.” *Nat’l Indus. for the Blind v. Dep’t of Veterans*
3 *Affairs*, 296 F. Supp. 3d 131, 137 (D.D.C. 2017).

4 Here, a stay would permit judicial economy while Plaintiffs consider whether to seek
5 further review of the Ninth Circuit’s decision. Further, there are 33 other similarly situated
6 appellees: 22 other states and 11 providers. If *any* appellee successfully seeks review of the Ninth
7 Circuit’s decision, that petition for certiorari may materially impact this action. Indeed, HHS
8 agrees that the filing of a petition for certiorari would be a significant event warranting a stay of
9 these proceedings. *See* ECF No. 188 at 4 (“[I]n the event that Plaintiffs in either case intend to file
10 a petition for certiorari to the Supreme Court, Defendants would not oppose a stay of proceedings
11 to allow Plaintiffs time to seek further review”).

12 Further, the requested stay would not impose any hardship to HHS. The Ninth Circuit has
13 issued a decision in Defendants’ favor and the Final Rule is currently in effect in California; a
14 stay of the proceedings until November 19, 2020 merely maintains the new status quo until that
15 time.

16 Accordingly, Plaintiffs respectfully request that this case be stayed until November 19,
17 2020. Plaintiffs further request that the Court vacate the June 18, 2020 status conference and all
18 related deadlines, to be reset after November 19, 2020.

19 Dated: June 4, 2020

Respectfully Submitted,

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22 KATHLEEN BOERGERS
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24 ANNA RICH
25 KARLI EISENBERG

26 */s/ Ketakee Kane*
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