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12 **IN THE UNITED STATES DISTRICT COURT**
 13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 14 **OAKLAND DIVISION**
 15

16 STATE OF CALIFORNIA, *et al.*,

17 Plaintiffs,

18 v.

19 XAVIER BECERRA, Secretary of
 20 Health and Human Services, *et al.*,¹

21 Defendants,

22 and,

23 THE LITTLE SISTERS OF THE POOR,
 24 JEANNE JUGAN RESIDENCE, *et al.*,

25 Defendant-Intervenors

) Case No.: 4:17-cv-5783-HSG

) **JOINT STATUS REPORT**

26 On March 2, 2021, the Court entered an order holding the pending dispositive motions in

27 ¹ Secretary Becerra has been automatically substituted for Acting Secretary Cochran under
 28 Federal Rule of Civil Procedure 25(d). Secretary Becerra is recused from this matter.

1 abeyance and instructing the parties to file a joint status report on or before April 30, 2021. ECF No.
2 454. The parties report as follows:

3 1. This case concerns the validity of two rules which create a moral exemption, and expand a
4 religious exemption, to the rules establishing the contraceptive coverage requirement. *See* Religious
5 Exemptions and Accommodations for Coverage of Certain Preventive Services Under the ACA, 83
6 Fed. Reg. 57,536 (Nov. 15, 2018); Moral Exemptions and Accommodations for Coverage of Certain
7 Preventive Services Under the ACA, 83 Fed. Reg. 57,592 (Nov. 15, 2018).

8 2. The Court has before it fully briefed dispositive motions, *see* ECF Nos. 311, 366, 368, 370,
9 385, 388, 389, 391, 392, as well as supplemental briefs addressing the Supreme Court’s decision in
10 *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367 (2020), *see*
11 ECF Nos. 433, 435, 437, 438, 440.

12 3. On March 1, 2021, Federal Defendants filed a motion to stay the case to afford new leadership
13 at the federal defendant agencies—the U.S. Department of Health and Human Services, the U.S.
14 Department of Labor, and the U.S. Department of the Treasury—and the U.S. Department of Justice
15 additional time to evaluate the issues that this case presents. ECF No. 451.

16 4. The Court entered an order holding the pending dispositive motions in abeyance until April
17 30, 2021, and instructing the parties to file a joint status report on or before April 30, 2021.

18 5. Federal Defendants report that they have been evaluating, and will continue to evaluate, the
19 issues that this litigation presents in light of all relevant facts and circumstances, including the
20 Executive Order on Strengthening Medicaid and the Affordable Care Act, January 28, 2021 (EO),
21 https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/executive-order-on-strengthening-medicare-and-the-affordable-care-act/?_hsmi=117826243&_hsenc=p2ANqtz-9ZGdrSbFhmzpZv1U5tBXA5boILZhCzIZdVpKC3RgZl3d3ZDayiCDM0lrq6CTOqVJsF88ThoYbQQFpNxZbyc7C5jyrg9A. The EO states, among other things, that “it is the policy of my
24 Administration to protect and strengthen Medicaid and the ACA and to make high-quality healthcare
25 accessible and affordable for every American.” *Id.* § 1

26 6. Federal Defendants request that, to conserve resources for the parties and the Court, the Court
27
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1 continue to hold the pending dispositive motions in abeyance until July 30, 2021, to afford the new
2 leadership at the agencies additional time to assess this case and the issues it presents. Federal
3 Defendants propose that the parties file another status report on or before July 30, 2021. Counsel for
4 Federal Defendants have conferred by phone with counsel for the other parties. Plaintiffs and
5 Defendant-Intervenor March for Life have no objection to this request.

6 7. Defendant-Intervenor the Little Sisters of the Poor opposes this request and expresses the
7 following position: The Federal Defendants have not pointed to any actual rulemaking in process but
8 seek an indefinite delay merely to think about whether to *begin* a rulemaking process that *might*
9 change federal law, possibly *years* into the future. The dispute over the contraceptive mandate has
10 now festered across three presidential administrations. A clear holding that the Little Sisters are
11 entitled to a religious exemption will both resolve the instant dispute over existing federal law and
12 provide the Federal Defendants with much needed guidance as they continue to evaluate their
13 options. The pending summary judgment motions have now been fully briefed for more than 20
14 months. As the Ninth Circuit noted more than two years ago, a stay in this case was unwarranted,
15 especially because the litigation “could have well proceeded to a disposition on the merits without
16 the delay.” *California v. Azar*, 911 F.3d 558, 584 (9th Cir. 2018). The Little Sisters respectfully
17 request that now is the time for that disposition to issue.

18
19 Dated: April 30, 2021

Respectfully submitted,

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Dated: April 30, 2021

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