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** Admitted pro hac vice*

Attorneys for Defendants

13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**

16 COUNTY OF SANTA CLARA, *et al.*,

17 Plaintiffs,

18 v.

19 U.S. DEPARTMENT OF HEALTH AND
20 HUMAN SERVICES, *et al.*,

21 Defendants.

) Case No. 5:21-cv-01655-BLF

) **JOINT STATUS REPORT AND STIPULATED**
) **REQUEST FOR ORDER CONTINUING STAY**

22 Pursuant to the Court’s Order of March 8, 2022, *see* ECF No. 43, the parties respectfully submit
23 the following joint status report addressing further proceedings, together with a stipulated request for an
24 order continuing the stay of this action through August 2, 2022.

25 1. This is an Administrative Procedure Act (“APA”) case in which Plaintiffs challenge a final
26 rule promulgated by the U.S. Department of Health and Human Services (“HHS”) entitled *Securing*
27 *Updated and Necessary Statutory Evaluations Timely*, 86 Fed. Reg. 5694 (2021) (the “SUNSET Rule”).
28

1 The SUNSET Rule provides, in essential part, that nearly all regulations issued by HHS in Titles 21, 42,
2 and 45 of the Code of Federal Regulations shall expire at the end of (1) five calendar years after the year
3 that the SUNSET Rule first becomes effective, (2) ten calendar years after the year of the regulation's
4 promulgation, or (3) ten calendar years after the last year in which HHS assessed and, if required, reviewed
5 the regulation, whichever is latest.

6 2. Plaintiffs filed their complaint challenging the SUNSET Rule on March 9, 2021. *See* ECF
7 No. 1. Plaintiffs alleged that the SUNSET Rule is *ultra vires*, *see id.* ¶¶ 123-30; arbitrary and capricious,
8 *see id.* ¶¶ 131-33; in violation of the APA's notice-and-comment requirements, *see id.* ¶¶ 134-39; and in
9 violation of HHS's Tribal Consultation Policy, *see id.* ¶¶ 140-44. Plaintiffs further alleged that the
10 SUNSET Rule threatens imminent and irreparable harm to them and the general public, including by
11 creating regulatory confusion and uncertainty that will impede their ongoing operations, budgeting, and
12 planning activities. *See, e.g., id.* ¶¶ 100-02; *see generally id.* ¶¶ 95-122.

13 3. As promulgated, the SUNSET Rule was scheduled to become effective on March 22, 2021.
14 *See* 86 Fed. Reg. at 5694. Shortly before the SUNSET Rule became effective, HHS postponed its effective
15 date for one year, to March 22, 2022, pursuant to 5 U.S.C. § 705. *See* 86 Fed. Reg. 15,404 (2021). On
16 October 28, 2021, HHS issued a Notice of Proposed Rulemaking proposing to withdraw or repeal the
17 SUNSET Rule. *See* 86 Fed. Reg. 59,906 (2021). In March 2022, HHS postponed the effective date of
18 the SUNSET Rule for an additional six months, to September 22, 2022. *See* 87 Fed. Reg. 12,399 (2022).

19 4. On May 27, 2022, HHS issued a Final Rule withdrawing the SUNSET Rule as of the
20 effective date of July 26, 2022. *See* 87 Fed. Reg. 32246 (2022). If the Final Rule takes effect as scheduled,
21 this litigation may be unnecessary.

22 5. The parties therefore jointly request that the Court continue the stay of this action through
23 August 2, 2022, and direct the parties to either stipulate to the dismissal of this action, or file a joint status
24 report proposing a schedule for further proceedings, by that date.

25 Date: June 7, 2022

Respectfully submitted,

26 BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

27 ERIC BECKENHAUER
Assistant Branch Director

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Civil Division

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LOCAL RULE 5-1(i) ATTESTATION

I attest that I have obtained Samara Spence's concurrence in the filing of this document.

/s/ Steven A. Myers
Steven A. Myers

~~PROPOSED~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED. The case shall remain STAYED through August 2, 2022, by which date the parties shall either stipulate to the dismissal of this action or submit a joint status report proposing a schedule for further proceedings.

Dated: June 7, 2022



HON. BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

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