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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

COUNTY OF SANTA CLARA, *et al.*,

Plaintiffs,

v.

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

Defendants.

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

) **STIPULATED REQUEST FOR ORDER**
) **STAYING CASE**

Subject to the Court's approval and pursuant to Local Rule 7-12, the parties, by and through their undersigned counsel of record, hereby STIPULATE as follows:

1. This is an Administrative Procedure Act ("APA") case in which Plaintiffs challenge a final rule promulgated by the U.S. Department of Health and Human Services ("HHS") entitled *Securing Updated and Necessary Statutory Evaluations Timely*, 86 Fed. Reg. 5694 (Jan. 19, 2021) (the "SUNSET Rule"). The SUNSET Rule provides, in essential part, that nearly all regulations issued by HHS in Titles

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

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

3. As promulgated, the SUNSET Rule was scheduled to become effective on March 22, 2021. *See* 86 Fed. Reg. at 5694. Shortly before the SUNSET Rule became effective, HHS postponed its effective date for one year, to March 22, 2022, pursuant to 5 U.S.C. § 705. *See* 86 Fed. Reg. 15404 (2021). While HHS did not concede liability, HHS stated that it "believes that the Court could find merit in some of Plaintiffs' claims." *Id.* at 15,405. In particular, HHS stated that, in contrast to its prior findings, it "now believes it is likely some regulations would expire without any additional process" and that this outcome raises legal questions about whether "regulations promulgated through notice and comment rulemaking can be terminated through an umbrella rule without individual consideration of the expiring regulations, including any reliance interests." *Id.* at 15,406. HHS further stated that it "may have significantly underestimated the burden" of the rule and that the rule's magnitude and timing "may have impeded the full and deliberate consideration of all the potential issues related to the SUNSET rule." *Id.* HHS currently anticipates issuing, in the coming months, a notice of proposed rulemaking repealing the SUNSET Rule.

4. HHS is currently reviewing the Rule in light of Plaintiffs' claims raised in this litigation, and needs additional time to evaluate the claims and its position before taking further steps in this litigation. The parties therefore jointly request a temporary stay of this action. Specifically, the parties jointly request that the Court (1) stay this case through July 30, 2021, including Defendants' answer

1 deadline and all deadlines set out in the Scheduling Order entered on March 9, 2021, as amended by the
2 Clerk's Notice of March 12, 2021; (2) cancel the Initial Case Management Conference currently set for
3 July 15, 2021; and (3) direct the parties to file a joint status report proposing a schedule for further
4 proceedings by July 30, 2021.

5 Date: April 21, 2021

Respectfully submitted,

6 BRIAN M. BOYNTON
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7 ERIC BECKENHAUER
8 Assistant Branch Director
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10 /s/ Steven A. Myers
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** *Supervision by Aaron Colangelo, a member of the D.C. Bar*

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 is STAYED through July 30, 2021, including Defendants' answer deadline and all deadlines set out in the Scheduling Order entered on March 9, 2021, as amended by the Clerk's Notice of March 12, 2021. The initial case management conference currently set for July 15, 2021, is cancelled. The parties shall submit a joint status report proposing a schedule for further proceedings by July 30, 2021.

Dated: _____

HON. BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE