

1 BRIAN M. BOYNTON
 Acting Assistant Attorney General

2

3 ERIC BECKENHAUER
 Assistant Branch Director
 Civil Division

4

5 STEVEN A. MYERS (NY Bar # 4823043)
 Senior Trial Counsel
 United States Department of Justice
 Civil Division, Federal Programs Branch
 1100 L St. NW
 Washington, DC 20005
 Tel: (202) 305-8648
 Fax: (202) 616-8470
 E-mail: steven.a.myers@usdoj.gov

Samara Spence* (DC Bar No. 1031191)
 Jeffrey B. Dubner* (DC Bar No. 1013399)
 Sean A. Lev* (DC Bar. No. 449936)
 Democracy Forward Foundation
 P.O. Box 34553
 Washington, DC 20043
 sspence@democracyforward.org
 jdubner@democracyforward.org
 slew@democracyforward.org
 (202) 701-1785
 (202) 448-9090

Counsel for Plaintiffs

Additional counsel listed on signature block
 * *Admitted pro hac vice*

11 *Attorneys for Defendants*

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

14

15 COUNTY OF SANTA CLARA, *et al.*,) Case No. 5:21-cv-01655-BLF
 16)
 Plaintiffs,) **STIPULATED REQUEST FOR ORDER**
 17) **STAYING CASE**
 v.)
 18)
 U.S. DEPARTMENT OF HEALTH AND)
 19 HUMAN SERVICES, *et al.*,)
 20)
 Defendants.)

21

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

24 1. This is an Administrative Procedure Act (“APA”) case in which Plaintiffs challenge a final
 25 rule promulgated by the U.S. Department of Health and Human Services (“HHS”) entitled *Securing*
 26 *Updated and Necessary Statutory Evaluations Timely*, 86 Fed. Reg. 5694 (Jan. 19, 2021) (the “SUNSET
 27 Rule”). The SUNSET Rule provides, in essential part, that nearly all regulations issued by HHS in Titles
 28

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

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

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

24 4. HHS is currently reviewing the Rule in light of Plaintiffs’ claims raised in this litigation,
25 and needs additional time to evaluate the claims and its position before taking further steps in this
26 litigation. The parties therefore jointly request a temporary stay of this action. Specifically, the parties
27 jointly request that the Court (1) stay this case through July 30, 2021, including Defendants’ answer
28

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
Acting Assistant Attorney General

7 ERIC BECKENHAUER
8 Assistant Branch Director
9 Civil Division

10 /s/ Steven A. Myers
STEVEN A. MYERS (NY Bar # 4823043)
11 Senior Trial Counsel
United States Department of Justice
12 Civil Division, Federal Programs Branch
1100 L St. NW
13 Washington, DC 20005
Tel: (202) 305-8648
14 Fax: (202) 616-8470
E-mail: steven.a.myers@usdoj.gov

15 *Attorneys for Defendants*

16
17 /s/ Samara Spence
Samara Spence* (DC Bar No. 1031191)
18 Jeffrey B. Dubner* (DC Bar No. 1013399)
Sean A. Lev* (DC Bar. No. 449936)
19 Democracy Forward Foundation
P.O. Box 34553
20 Washington, DC 20043
sspence@democracyforward.org
21 jdubner@democracyforward.org
22 slev@democracyforward.org
Telephone: (202) 448-9090

23 *Counsel for All Plaintiffs*

24 James R. Williams (CA Bar No. 271253)
County Counsel
25 Greta S. Hansen (CA Bar No. 251471)
26 Douglas M. Press (CA Bar No. 168740)
27 Lorraine Van Kirk (CA Bar No. 287194)
Office of the County Counsel
28 County of Santa Clara

1 70 West Hedding Street, East Wing, 9th Fl.
2 San José, CA 95110-1770
3 lorraine.van_kirk@cco.sccgov.org
4 Telephone: (408) 299-5900

5 *Counsel for the County of Santa Clara*

6 Lisa S. Mankofsky* (DC Bar No. 411931)
7 Matthew Simon* (DC Bar No. 144727)
8 Center for Science in the Public Interest
9 1220 L Street, NW, Ste. 300
10 Washington, DC 20005
11 lmankofsky@cspinet.org
12 msimon@cspinet.org
13 Telephone: (202) 777-8381

14 *Counsel for Center for Science in the Public
15 Interest*

16 Aaron Colangelo*
17 Adeline S. Rolnick* **
18 Natural Resources Defense Council
19 1152 15th Street NW, Ste. 300
20 Washington, DC 20005
21 acolangelo@nrdc.org
22 Telephone: (202) 289-2376

23 *Counsel for Natural Resources Defense Council*

24 * *Admitted pro hac vice*
25 ** *Supervision by Aaron Colangelo, a member of*
26 *the D.C. Bar*

27 **LOCAL RULE 5-1(i) ATTESTATION**

28 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