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 8 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON
 9 **AT YAKIMA**

10 STATE OF WASHINGTON,

NO. 2:19-cv-00183-SAB

11 Plaintiff,

JOINT STATUS REPORT
 ADDRESSING CASE
 SCHEDULING

12 v.

13 ALEX M. AZAR II, in his official
 capacity as Secretary of the United
 States Department of Health and
 14 Human Services; and UNITED
 STATES DEPARTMENT OF
 15 HEALTH AND HUMAN
 SERVICES,

16 Defendants.
 17

18 As directed by the Court, Dkt. 28, the parties have met and conferred with
 19 the goals of (1) exploring whether a viable schedule can be agreed to that would
 20 permit the legality of the U.S. Department of Health and Human Services’ (HHS)
 21 Final Rule to be resolved on cross-motions for summary judgment, and (2)
 22 alternatively, proposing a briefing schedule on Washington’s preliminary

1 injunction motion. The parties present the following schedules for the Court's
2 consideration.

3 1. Washington filed its motion for preliminary injunction on June 24,
4 2019, *see* Dkt. 8. On July 8, 2019, the Court entered an Order stipulated to by the
5 parties that postponed the effective date of the Final Rule pursuant to 5 U.S.C.
6 § 705 until November 22, 2019, noon PST, vacated the deadlines for briefing and
7 argument on Washington's motion for preliminary injunction, and held
8 Washington's motion in abeyance pending further order. Dkt. 28.

9 2. Washington believes that a ruling is necessary either on
10 Washington's motion for preliminary injunction or the parties' cross-motions for
11 summary judgment by the effective date of the Final Rule. Washington observes
12 that the new November 22, 2019 effective date was established unilaterally by
13 the Defendants, with no input from Washington. If the Court does not have
14 sufficient time to rule on cross-motions for summary judgment, Washington
15 desires that its motion for preliminary injunction be reinstated, and it has
16 proposed a schedule below to achieve this.

17 3. If the Court is amenable to resolving these matters on summary
18 judgment before the November 22, 2019 effective date of the Final Rule, the
19 parties propose the following schedule for summary judgment motions and for
20 Defendants to respond to the complaint:

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1	July 22, 2019	Defendants produce the administrative record (AR) to Plaintiff and file a certified list of the contents of the AR with the Court.
2		
3	August 19, 2019	Defendants file their motion for summary judgment and file their response to the complaint.
4		
5	September 20, 2019	Plaintiff files a consolidated opposition and cross-motion for summary judgment.
6	October 4, 2019	Defendants file a consolidated opposition and reply.
7		
8	October 18, 2019	Plaintiff files its reply.

9 The parties will thereafter be available for argument on their summary judgment
10 motions at the Court’s convenience.

11 4. This summary judgment briefing schedule assumes that there are no
12 disputes about the completeness of the AR that Defendants produce on July 22.
13 If Washington believes the AR is deficient or incomplete, it will promptly meet
14 and confer with Defendants to determine whether any adjustments to the
15 summary judgment briefing schedule will be necessary.

16 5. If the Court determines that the foregoing schedule does not provide
17 the Court sufficient time to rule on cross-motions for summary judgment,
18 Washington requests that briefing of its preliminary injunction motion proceed
19 on the following schedule: Defendants will file their opposition by August 2,
20 2019; Washington will file its reply by August 30, 2019; and the parties will be
21 available for argument on the motions at the Court’s convenience. In Defendants’
22

1 view, a preliminary injunction briefing schedule is unnecessary, but if the Court
2 elects to enter a preliminary injunction briefing schedule, Defendants propose
3 that they file their preliminary injunction opposition and dispositive motion by
4 August 19, 2019, and Washington file its preliminary injunction reply and
5 opposition to Defendants' dispositive motion by September 20, 2019.

6 6. If the Court is amenable to deciding these cases on summary
7 judgment prior to November 22, the parties propose that the motion for
8 preliminary injunction continue to be held in abeyance during the Court's
9 consideration of the summary judgment motions, in the event Washington
10 believes immediate provisional relief becomes necessary before the
11 November 22, 2019 effective date of the Final Rule.

12 RESPECTFULLY SUBMITTED this 12th day of July, 2019.

13 ROBERT W. FERGUSON
14 Attorney General

15 s/ Jeffrey T. Sprung

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 12th day of July, 2019, at Seattle, Washington.

s/ Jeffrey T. Sprung
JEFFREY T. SPRUNG, WSBA #23607
Assistant Attorney General