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11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA
 13 SACRAMENTO DIVISION
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 16 **THE UNITED STATES OF AMERICA,**
 17 Plaintiff,
 18 v.
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 20 **THE STATE OF CALIFORNIA; EDMUND**
GERALD BROWN JR., Governor of
California, in his official capacity; and
 21 **XAVIER BECERRA, Attorney General of**
California, in his official capacity,
 22 Defendants.
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Case No. 2:18-cv-00490-JAM-KJN

JOINT STATUS REPORT

Judge: Honorable John A. Mendez
Action Filed: March 6, 2018

1 As requested by the Court (ECF No. 200), the parties respectfully submit this joint status
2 report to address how the remainder of the case should proceed, although the parties disagree as
3 to whether the court should stay proceedings pending resolution of Plaintiff's appeal of this
4 Court's order granting in part and denying in part Plaintiff's motion for preliminary injunction
5 and whether the Court should determine whether such a stay is appropriate before the parties
6 propose dates for discovery cut-off, expert witness disclosure, filing of dispositive motions,
7 pretrial conference, and trial.

8 **I. PLAINTIFF'S POSITION**

9 The United States proposes that the parties promptly submit briefing regarding a stay of
10 proceedings in this case, with the United States' motion to be filed next week. Appellate
11 proceedings are moving promptly, with briefing scheduled to be completed by November 2018.
12 The United States believes that a stay is appropriate in this case, as it will conserve judicial
13 resources, provide for consistency in rulings between the Ninth Circuit and this Court, and serve
14 the public interest by avoiding the duplication of resources. As it stands, only two discrete
15 portions of AB 450 are currently before this Court. The other portion is before the Ninth Circuit,
16 and the remaining claims were dismissed. Any discovery would thus be limited to a portion of
17 AB 450, has a substantial potential to be piecemeal depending on how the Ninth Circuit resolves
18 the appeal by the United States, and would be subject to revision in consideration of the Ninth
19 Circuit's decision. There is good reason to believe that discovery concerning the two AB 450
20 provisions currently enjoined—Cal. Gov't Code §§ 7285.1 & 7285.2 and Cal. Lab. Code
21 § 1019.2(a) & (b)—would interrelate with discovery concerning AB 450's other provision, Cal.
22 Lab. Code § 90.2, as AB 450 is a unified whole. Furthermore, this Court would benefit from the
23 Ninth Circuit's guidance on the purely legal issues that are before it, and the Ninth Circuit
24 decision will greatly shape the breadth and scope of litigation going forward, including the scope
25 of discovery, if any. Indeed, Defendants request burdensome discovery that may be rendered
26 unnecessary or require substantial modification in light of the Ninth Circuit's decision. As such,
27 this Court should not set a schedule in this case until it has ruled on a motion to stay proceedings.
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1 Defendants will not be harmed by a stay because all the laws at issue in this case remain in
2 force pending the resolution of Plaintiff's appeal except for the two provisions of AB 450 for
3 which this Court granted a preliminary injunction. The Defendants did not appeal that portion of
4 the Court's decision, demonstrating their accession to that injunction until the completion of trial.
5 The lengthy discovery windows that Defendants propose also demonstrate that Defendants will
6 not be prejudiced by a stay.

7 Accordingly, the United States respectfully proposes that this Court permit briefing on a
8 motion for a stay and not set case management deadlines in this case until after the Court has
9 ruled on that motion. Once the Court has ruled on that motion, parties should confer to set a
10 schedule for all case deadlines going forward. The United States proposes a briefing schedule on
11 a motion to stay as follows:

- 12 • Plaintiff's motion to stay proceedings: 9/11/18
- 13 • Defendants' opposition, if any: 9/18/18
- 14 • Plaintiff's reply, if any: 9/25/18

15 **II. DEFENDANTS' POSITION**

16 Pursuant to the Court's Order Re: State of California's Motion to Dismiss dated July 9,
17 2018 (ECF No. 197), the remaining claims in this lawsuit relate to California Government Code
18 Sections 7285.1 and 7285.2, and California Labor Code Section 1019.2, added by Assembly Bill
19 (AB) 450. The parties met and conferred and do not agree on how the case should proceed.

20 The State of California does not agree a stay of proceedings is appropriate. As a result of
21 this action brought by the United States, California is suffering harm while part of AB 450 is
22 preliminarily enjoined. California believes that a more developed record will demonstrate that
23 those provisions are neither preempted nor invalid under the doctrine of intergovernmental
24 immunity. In addition, the issues on appeal do not involve the provisions of AB 450 that remain
25 at issue in this case and there is virtually no overlap anticipated with respect to discovery relating
26 to the AB 450 provisions that are preliminarily enjoined and the provision of AB 450 that is the
27 subject of the United States' appeal. Thus, California is prepared to litigate the merits of the case
28 and would like to set a schedule for initial disclosures, discovery cut-off, expert witness

1 disclosures, filing of dispositive motions, pretrial conference, and trial without further delay. To
2 the extent the United States intends to move for a stay of proceedings pending final resolution of
3 its appeal, California is willing to accommodate a briefing schedule for such a motion and
4 provide time for the Court to consider the United States' request.¹ California does not believe,
5 however, that the United States' motion should impact the setting of case management deadlines
6 at this juncture and requests that the Court also set the following schedule for the litigation, which
7 provides ample time for briefing and disposition of the United States' motion, such that if the
8 United States' motion for a stay is denied, the parties can continue to move forward to a
9 determination on the merits of this case without delay:

- 10 • **November 2, 2018:** Deadline for initial disclosures
- 11 • **March 29, 2019:** Deadline for expert witness disclosures
- 12 • **April 26, 2019:** Deadline for supplemental and rebuttal expert disclosures
- 13 • **June 7, 2019:** Discovery completion date
- 14 • **June 28, 2019:** Plaintiff files dispositive motion
- 15 • **July 26, 2019:** Defendants file cross-motion and opposition to motion
- 16 • **August 6, 2019:** Plaintiff files opposition to cross-motion and reply in support of motion
- 17 • **August 13, 2019:** Defendants file reply in support of cross-motion
- 18 • **August 20, 2019 or another date convenient to the Court:** Hearing on both
19 motions
- 20 • **October 7, 2019:** Pretrial Conference
- 21 • **November 18, 2019 or another date convenient to the Court:** Court trial

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27 ¹ To the extent that the United States advances arguments relating to the merits of its stay
28 motion in this report, California will present further responsive arguments in its briefing of the
motion.

1 Dated: September 4, 2018

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Respectfully Submitted,

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