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11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE EASTERN DISTRICT OF CALIFORNIA

15 THE UNITED STATES OF AMERICA,
 16
 17 Plaintiff,
 18
 19 v.
 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.

Case No. 2:18-cv-00490-JAM-KJN

JOINT STATUS REPORT

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

1 Plaintiff the United States of America (“United States”) and Defendants State of California,
2 Edmund G. Brown Jr., Governor of California in his official capacity, and Xavier Becerra,
3 Attorney General of California, in his official capacity (collectively, “the State of California”),
4 respectfully submit this joint status report pursuant to the Court’s April 24, 2018 Order.

5 The parties have further discussed the remainder of the briefing schedule and the hearing
6 date for the State of California’s motion to dismiss in light of the County of Orange’s motion to
7 intervene, but they have been unable to reach an agreement. Therefore, below the parties set forth
8 their respective positions on the briefing and hearing of the motion to dismiss, and request that the
9 Court issue an order setting an appropriate schedule.

10 DEFENDANTS’ POSITION

11 With respect to the hearing date on the motion to dismiss, defendants’ position is that the
12 hearing should be on the same day as the hearing on the motion for preliminary injunction, which
13 is currently June 20, 2018, at 10:00 a.m. The issues of the two motions substantially overlap and
14 therefore they should be addressed at the same time, which will conserve the resources of the
15 parties and the Court and also ensure a timely resolution of the two motions. Noticing the motion
16 for an earlier date (i.e., noticing the motion to be heard twenty-eight (28) days after service and
17 filing of the motion on May 4, 2018), or for a later date as the United States proposes, would not
18 advance the same interests.

19 With respect to the remainder of the motion to dismiss briefing schedule, and considering
20 that May 4, 2018, is the due date for defendants’ motion to dismiss and their opposition to the
21 preliminary injunction motion, defendants propose the following remaining dates:

22 **June 8, 2018** – Last day for plaintiff’s opposition to the motion to dismiss; this is the same
23 date that plaintiff’s reply on the preliminary injunction motion is currently due; and

24 **June 15, 2018** – Last day for defendants’ reply on the motion to dismiss.

25 These proposed dates accommodate the deadlines already set by the Court, and it provides
26 the United States with more than 30 days to oppose the motion to dismiss.

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1 In light of the number of complex issues in this case, defendants further request that the
2 Court direct that the memoranda of law in support of and in opposition to the motion to dismiss
3 be limited to twenty-five (25) pages, and the reply memorandum be limited to fifteen (15) pages.

4 Finally, defendants see no reason why the above proposed dates should be impacted by the
5 pending motion to intervene, which is currently set to be heard on June 5, 2018, and which the
6 Court has yet to resolve. Defendants note that they intend to oppose that motion.

7 Accordingly, defendants respectfully request that the Court issue an order incorporating the
8 above proposed dates and page limits.

9 **PLAINTIFF'S POSITION**

10 First, with respect to scheduling a hearing date on Defendants' potential motion to dismiss,
11 Plaintiff respectfully submits that Defendant's motion to dismiss, currently due May 4, 2018,
12 should be held in abeyance pending resolution of any motions to intervene pending before the
13 Court. At present, one such motion, filed by Orange County (ECF 59), is pending. Orange
14 County's putative complaint in intervention alleges that California's Senate Bill 54 ("SB 54"),
15 specifically Cal. Gov. Code §§ 7284.6(a)(1)(C) & (D) and 7284.6(a)(4), and Assembly Bill 103
16 ("AB 103), specifically Cal. Gov. Code 12532, are invalid under the Supremacy Clause of the
17 United States Constitution, and seeks a declaration invalidating those provisions. *See* ECF 59-2 at
18 16-17. Although the complaint in intervention challenges these provisions as applied to Orange
19 County, and so potentially raise issues not explicitly raised by the United States, these claims
20 overlap substantially with the same claims raised the United States as to SB 54 and AB 103. *See*
21 ECF 1 at 16-18.

22 Because these claims overlap with two of the three claims raised in the United States'
23 complaint, the United States submits that it would be an inefficient use of the Court's and the
24 parties' time to litigate piecemeal these issues through several motions to dismiss in the event
25 Orange County's motion to intervene—or any other—is granted. Accordingly, the United States
26 respectfully requests that the Court hold all outstanding deadlines, other than pending motion for
27 preliminary injunction, in abeyance pending resolution of the pending motion(s) to intervene.
28 Once it is clear that leave to intervene will or will not be granted, it would be appropriate to lift

1 the abeyance, at which time the parties may meet and confer and propose a briefing schedule for
2 all outstanding issues.

3 Second, even assuming no motions to intervene were pending in the first place, it would be
4 a more efficient use of the Court's and the parties' time and resources to hold in abeyance any
5 filing deadlines with respect to a motion to dismiss the United States' complaint by Defendants
6 until after resolution of the pending motion for preliminary injunction. Defendants themselves
7 have indicated that they believe such a motion to dismiss would raise issues duplicative of the
8 pending motion for preliminary injunction, such that any briefing on the issue while the motion
9 for preliminary injunction is still pending would necessitate multiple overlapping briefs on similar
10 issues. The United States respectfully submit that the simultaneous drafting and consideration of
11 overlapping briefs would not most efficiently serve the Court or the parties. In addition,
12 Defendants' proposed schedule would require the United States to file two substantive briefs on
13 the same day, necessitate the filing of substantive briefs by Defendants mere days prior to the
14 June 20, 2018 hearing currently scheduled. On the other hand, given the overlap, this Court's
15 ruling on a preliminary injunction should significantly inform the parties and the Court in
16 addressing a motion to dismiss. Finally, it is common for a court to consider a preliminary
17 injunction prior to briefing and argument on a motion to dismiss, and that has not happened here
18 because plaintiffs requested early discovery prior to briefing on the preliminary injunction
19 motion, and that early discovery resulted in the answer deadline arriving in the midst of briefing
20 on the preliminary injunction motion. Given that delay in hearing the government's request for
21 injunctive relief, it would also be fair and reduce the burden on the Court and the parties to hold
22 off on further consideration on the motion to dismiss until after the Court has considered the
23 United States' motion for a preliminary injunction.

24 Accordingly, the United States respectfully requests the that Court hold the answer deadline
25 and all briefing on any motions to dismiss its complaint or any putative intervenors complaint—
26 including the due date to file a motion to dismiss—until after the motion(s) to intervene are
27 resolved and/or until after the motion for preliminary injunction.

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1 Third, in the alternative, assuming the Court believes a schedule should be entered now for
2 resolving a motion to dismiss, the United States concurs with the schedule proposed by
3 Defendants—*i.e.* that Defendants’ motion be due May 4, Plaintiff’s response be due June 8, and
4 Defendants’ reply be due July 15.

5 Finally, if the Court orders the parties to brief Defendants’ motion to dismiss at this time,
6 the United States agrees an enlargement of pages would be appropriate, but believes that
7 Defendants receiving 20 pages, the United States 20 pages for their opposition, and Defendants
8 10 pages for any reply would be sufficient. However, the United States does not believe this issue
9 should be resolved until the motions to intervene are resolved, because if any motion to intervene
10 is granted, any pending motion to dismiss may require additional pages to address issues raised
11 by complaints in intervention. Therefore, the United States respectfully requests that the Court
12 resolve the issue of any enlargement of pages only after it has resolved whether any motions to
13 intervene will be granted.

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15 Dated: April 27, 2018

Respectfully Submitted,

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