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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SANTA CRUZ COUNTY, et al.,

Plaintiffs,

No. C 07-02888 JSW

v.

KATHLEEN SEBELIUS,

ORDER

Defendant.

Now pending before the Court is a motion to dismiss or, in the alternative, for summary judgment filed by defendant Kathleen Sebelius, in her official capacity as Secretary, Department of Health and Human Services (“Defendant”). In the parties’ joint case management statement, Plaintiffs argue that the administrative record is incomplete. They inform the Court that they intend to file a motion to compel and to augment the administrative record. Plaintiffs contend in a general manner that there are documents that are missing from the administrative record which would be admissible in opposition to Defendant’s motion to dismiss or, in the alternative, for summary judgment. Therefore, Plaintiffs urge the Court to hear their motion to compel and to augment the administrative record before adjudicating Defendant’s motion to dismiss or, in the alternative, for summary judgment. Defendants contend their motion should be decided first.

Plaintiffs do not identify or describe any particular document missing from the administrative record which they would cite to in opposition to Defendant’s motion. Without a description of such document or documents, the Court cannot determine which motion should be addressed first. Therefore, the Court **HEREBY ORDERS** Plaintiffs to file a brief by March

1 23, 2012, no longer than five pages, to address which motion should be heard first. In their
2 brief, Plaintiffs shall identify or otherwise describe what document or documents are missing
3 from the administrative record which they intend to submit in opposition to Defendant's motion
4 to dismiss or, in the alternative, for summary judgment. If Plaintiffs are unable to identify or
5 otherwise describe specific documents, Plaintiffs shall do their best to inform the Court of what
6 documents or types of documents they believe exist that are currently missing from the
7 administrative record and would be helpful in opposing Defendant's motion. Plaintiffs shall
8 also address why their proposed motion should be adjudicated first.

9 Defendant shall file a response to Plaintiffs' brief by no later than April 2, 2012.
10 Defendant's response shall be no longer than five pages. The Court STRIKES Defendant's
11 motion to dismiss or, in the alternative, for summary judgment without prejudice to refile
12 once the Court determines which motion it will adjudicate first. The Court FURTHER
13 ORDERS that the case management conference currently set for March 16, 2012 is
14 CONTINUED to June 29, 2012 at 1:30 p.m.

15 **IT IS SO ORDERED.**

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17 Dated: March 13, 2012

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20 JEFFREY S. WHITE
21 UNITED STATES DISTRICT JUDGE
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