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10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF WASHINGTON**

12 STATE OF WASHINGTON, et al.,

13 Plaintiffs,

14 v.

15 UNITED STATES FOOD AND
DRUG ADMINISTRATION, et al.,

16 Defendants.

NO. 1:23-cv-03026-TOR

PLAINTIFF STATES'
OPPOSITION TO MOTION
TO EXPEDITE

1 The Plaintiff States oppose Defendants’ motion to expedite because
2 Defendants have not demonstrated good cause for expedited consideration of
3 their motion for clarification. *See* ECF No. 81. Local Civil Rule 7(i)(2)(C)
4 requires a party seeking to expedite consideration of a motion to demonstrate
5 good cause. *See Jensen v. Biden*, No. 4:21-cv-5119-TOR, 2021 WL 10280381,
6 at *1 (E.D. Wash. Oct. 19, 2021) (denying motion to expedite where Plaintiffs
7 “provide[d] no explanation” for why emergency consideration of preliminary
8 injunction motion was necessary); *see also Yakima Valley Mem. Hosp. v. Wash.*
9 *State Dep’t of Health*, No. 2:09-cv-03032-EFS, 2012 WL 12951705, at *1–2
10 (cautioning counsel that predecessor to LCR 7(i)(2)(C) should be limited to
11 “emergency matters” and that general statements that expedited consideration is
12 “necessary” would not be sufficient in the future). Defendants have not
13 demonstrated good cause here.

14 Defendants argue that good cause exists due to “tension” between this
15 Court’s preliminary injunction order and the currently-stayed Texas district court
16 order in *Alliance for Hippocratic Medicine v. FDA* staying the FDA’s approval
17 of mifepristone. FDA Mot. for Clarification, ECF No. 81 at 2; *see Alliance for*
18 *Hippocratic Medicine v. FDA*, No. 2:22-cv-00223-Z, (N.D. Tex. Apr. 7, 2023),
19 ECF No. 137. But Defendants have already filed an emergency motion in the
20 Fifth Circuit to continue the stay of the district court’s order in that case, and at
21 this point it is wholly speculative whether (and on what terms) that order will go
22

1 into effect. *See* [FDA’s] Emergency Motion Under Circuit Rule 27.3 for a Stay
2 Pending Appeal, *Alliance for Hippocratic Medicine v. FDA*, No. 23-10362 (5th
3 Cir. Apr. 10, 2023), ECF No. 20. For this reason alone, FDA’s motion is
4 premature.

5 But even if the Texas order is permitted to go into effect, Defendants do
6 not demonstrate what warrants emergency relief here. Defendants’ motion does
7 not identify how this Court’s order is unclear in its mandate that FDA maintain
8 “the status quo and rights as it relates to the availability of Mifepristone” in the
9 Plaintiff States, nor do Defendants assert that FDA lacks authority to preserve
10 that status quo. ECF No. 80 at 30. This Court’s order was crystal clear. And given
11 how much remains to be determined in the Texas case, Defendants identify no
12 concrete need for an expedited order of this Court this week. Allowing Plaintiff
13 States a meaningful opportunity to respond will better serve the interests of this
14 Court, the parties, and the public, including by providing the Plaintiff States
15 sufficient time to meet and confer with Defendants to understand and potentially
16 resolve their concerns.

17 Simply put, Defendants’ motion gives the Court little to consider and
18 nothing to rule on. Defendants fail to demonstrate good cause for their motion to
19 expedite and the motion should be denied.

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DATED this 10th day of April 2023.

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**Applications for pro hac vice admission
forthcoming*

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CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

DATED this 10th day of April 2023, at Seattle, Washington.

/s/ Kristin Beneski

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