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10 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

11 Howard Jarvis Taxpayers Association *et al.*,

Case No. 2:18-cv-01584-MCE-KJN

12 Plaintiffs,

13 v.

14 **NOTICE BY THE UNITED STATES
CONCERNING POTENTIAL
PARTICIPATION**

15 California Secure Choice Retirement
Savings Program *et al.*
16 Defendants.

17
18 The United States hereby advises the Court that it is considering participating in this
19 litigation as allowed by 28 U.S.C. § 517. That statute authorizes the Attorney General of the
20 United States to send any officer of the Department of Justice to “attend to the interests of the
21 United States in a suit pending in a court of the United States, or in the courts of a State, or to
22 attend to any other interest of the United States.”

23 In this case, Plaintiffs seek to invalidate a California law, the “California Secure Choice
24 Act,” which establishes a trust and governing board (together known as “CalSavers”), to be funded
25 by payroll deductions from certain California employees who do not have access to other
26 retirement plans. The law requires employers with at least five employees who do not otherwise
27

1 offer a retirement plan or automatic enrollment individual retirement account (IRA) to “have a
2 payroll deposit retirement savings arrangement” in order for their employees to participate in
3 CalSavers. Plaintiffs argue that the state law is preempted by section 514(a) of the Employee
4 Retirement Income Security Act (ERISA), 29 U.S.C. § 1144(a). The United States may have an
5 interest in providing its views with respect to that issue and is actively considering whether to
6 participate under 28 U.S.C. § 517. The process for deciding whether to participate involves
7 coordination among multiple government agencies and the approval of the U.S. Department of
8 Justice through the Assistant Attorney General for the Civil Division. This approval process
9 generally takes several weeks, but it can vary depending upon the Assistant Attorney General’s
10 workload and availability. The United States is aware that Defendants’ motion to dismiss is fully
11 briefed, and it intends to work expeditiously to complete the process of determining whether to
12 participate in this lawsuit.

13 Accordingly, the United States respectfully requests that the Court defer ruling on the
14 pending motion to dismiss in order to afford the United States an opportunity to complete the
15 authorization process and determine whether to participate in this litigation. The United States
16 will update the court on the status of its consideration by August 30, 2019. The United States
17 appreciates the Court’s consideration of its potential interest in this case, and regrets any
18 inconvenience to the parties or the Court from the delay.

19
20 Date: August 2, 2019

Respectfully submitted:

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