

1 Jeremiah Galus (Arizona Bar No. 030469)*
2 Alliance Defending Freedom
3 15100 N. 90th Street
4 Scottsdale, AZ 85260
5 (480) 444-0020
6 jgalus@ADFlegal.org

7 Jacob E. Reed (Ohio Bar No. 99020)*
8 Alliance Defending Freedom
9 20116 Ashbrook Place, Suite 250
10 Ashburn, VA 20147
11 (571) 707-4655
12 jreed@ADFlegal.org

13 Charles S. LiMandri (California Bar No. 110841)
14 Paul M. Jonna (California Bar No. 265389)
15 Jeffrey M. Trissell (California Bar No. 292480)
16 Freedom of Conscience Defense Fund
17 P.O. Box 9520
18 Rancho Santa Fe, CA 92067
19 (858) 759-9948
20 cslimandri@limandri.com

21 *Attorneys for Plaintiff*

22 **UNITED STATES DISTRICT COURT**
23 **SOUTHERN DISTRICT OF CALIFORNIA**

24 SKYLINE WESLEYAN CHURCH,
25 Plaintiff,

26 v.

27 CALIFORNIA DEPARTMENT OF
28 MANAGED HEALTH CARE;
MARY WATANABE, in her official
capacity as Director of the California
Department of Managed Health Care,
Defendants.

Case No.: 3:16-cv-00501-TWR-MSB

**PLAINTIFF’S REPLY IN SUPPORT
OF EX PARTE MOTION TO SET
SUPPLEMENTAL BRIEFING
SCHEDULE**

ARGUMENT

1
2 Defendants ask this Court to prolong this case—and their ongoing violation of
3 Skyline’s constitutional rights—because they *might* send Skyline a settlement offer. But
4 the possibility of a “potential settlement or resolution,” Defs.’ Resp. to Pl.’s Ex Parte
5 Mot. to Set Suppl. Briefing Schedule 4, ECF No. 117, is no reason to ignore ongoing
6 constitutional injuries and keep the church in legal limbo. “[T]he mere possibility of
7 settlement of this or any other lawsuit is not a sufficient basis to stay briefing and a
8 decision on a pending motion for summary judgment.” *Gidarisingh v. Bittelman*, No. 12-
9 cv-916-wmc, 2014 WL 5106627, at *1 (W.D. Wis. Oct. 10, 2014); *accord Brown v.*
10 *United Parcel Serv.*, No. C05-0237L, 2005 WL 8172560, at *2 (W.D. Wash. Mar. 16,
11 2005) (“The possibility of settlement . . . is present in all cases and is not an exceptional
12 circumstance justifying a stay.”).

13 Skyline filed this lawsuit almost six years ago and requested summary judgment
14 about four years ago. While Judge Bencivengo dismissed the church’s free-exercise claim
15 on standing and ripeness grounds, the Ninth Circuit ultimately reversed, holding that
16 Defendants’ abortion-coverage mandate caused a redressable injury. *Skyline Wesleyan*
17 *Church v. Cal. Dep’t of Managed Health Care*, 968 F.3d 738, 747–51 (9th Cir. 2020).
18 The Ninth Circuit also explained that, given the case’s procedural posture, it “may have
19 [been] persuaded” to reach the merits of the free-exercise claim had the Supreme Court
20 not granted certiorari in *Fulton v. City of Philadelphia*. *Id.* at 754. The Ninth Circuit thus
21 remanded the case for this Court to resolve the merits in the first instance.

22 That was over a year ago. After remand, Defendants asked this Court to delay
23 further briefing on Skyline’s free-exercise claim until after *Fulton* was decided. *See*
24 Defs.’ Status Report, ECF No. 106. The Supreme Court has since issued its ruling. Yet
25 Defendants continue to argue that this Court should postpone briefing. They claim that
26 *Fulton* “changed the landscape,” finally inspiring them to try to “resolve the case.”
27 Eisenberg Decl. ¶ 5, ECF No. 117-1. But *Fulton* was decided *three months ago*. And still,
28 Skyline has seen no settlement offer. In fact, it wasn’t until Skyline proposed a joint

1 briefing schedule that Defendants even mentioned mutually resolving the case. They
2 were, in other words, perfectly content to let their constitutional violations continue until
3 the threat of an adverse ruling inched closer. Even now, they do not commit to making
4 any settlement offer to Skyline. They say only that they are having “active internal
5 discussions” about resolving this “high profile case[.]” Defs.’ Resp. 4. In exchange for
6 more delay and continued violations of Skyline’s constitutional rights, Defendants
7 promise nothing.

8 CONCLUSION

9 There is no guarantee that an offer of settlement is forthcoming, let alone one that
10 will be acceptable to Skyline. Scheduling supplemental summary judgment briefing, on
11 the other hand, promises to move this case towards final resolution. And contrary to
12 Defendants’ assertion, merely setting a schedule should not “interfere” with any
13 settlement “efforts.” Defs.’ Resp. 4. Nor will a briefing schedule prevent the parties from
14 apprising the Court of any settlement progress. In fact, if settlement appears likely, the
15 parties can always seek a modification of the briefing schedule if doing so would benefit
16 the parties and the Court. That is a reasonable and fair path forward. Defendants’
17 alternative proposal—where they indefinitely violate Skyline’s constitutional rights while
18 they have “internal discussions” and contemplate making “potential” settlement offers—
19 is not. The Court should grant the motion.¹

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27 ¹ The Court should also reject Defendants’ attempt to tie this case to the current schedule set in *Foothill*
28 *Church v. Watanabe*, No. 2:15-cv-02165 (E.D. Cal.). *See* Defs.’ Resp. 5. The procedural posture of
Foothill differs from this case. Unlike here, that case was recently remanded and has not proceeded past
the motion-to-dismiss stage.

1 Dated: September 15, 2021

Respectfully submitted,

2 s/ Jeremiah Galus

3 Jeremiah Galus (AZ Bar No. 030469)*
4 Alliance Defending Freedom
5 15100 N. 90th Street
6 Scottsdale, AZ 85260
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8 jgalus@ADFlegal.org

9 Jacob E. Reed (Ohio Bar No. 99020)*
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12 Ashburn, VA 20147
13 (571) 707-4655
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21 (858) 759-9948
22 cslimandri@limandri.com
23 pjonna@limandri.com
24 jtrissell@limandri.com

25 *Admitted *pro hac vice*

26 *ATTORNEYS FOR PLAINTIFF*

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2021, service of the foregoing Plaintiff’s Reply in Support of Ex Parte Motion to Set Supplemental Briefing Schedule was made by way of the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated September 15, 2021

s/Jeremiah Galus
Jeremiah Galus
Attorney for Plaintiff

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