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24 **UNITED STATES DISTRICT COURT**
25 **SOUTHERN DISTRICT OF CALIFORNIA**

26 SKYLINE WESLEYAN CHURCH,
27
28 Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
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

**JOINT MOTION TO SET
SUPPLEMENTAL BRIEFING
SCHEDULE**

1 Pursuant to Local Rule 7.2, Plaintiff Skyline Wesleyan Church (“Skyline”) and
2 Defendants California Department of Managed Health Care (“DMHC”) and Mary
3 Watanabe, in her official capacity as Director of the DMHC,¹ hereby stipulate to and
4 jointly move this Court for approval of a briefing schedule for filing supplemental briefs
5 in support of their motions for summary judgment.

6 In support of this joint motion, the parties state:

7 1. Plaintiff previously filed a motion asking this Court to set a special briefing
8 schedule for the parties to file supplemental briefs in support of their motions for
9 summary judgment. (ECF No. 115.)

10 2. Defendants opposed that motion and requested that the Court schedule a
11 status conference instead. (ECF No. 117.) Defendants maintained that they were “in
12 active internal discussions” about potential settlement and that “requiring supplemental
13 briefing at this time would not only waste judicial resources, but would interfere with
14 those efforts.” (ECF No. 117 at 4.)

15 3. In response, this Court scheduled a status conference for November 10,
16 2021. (ECF No. 119.)

17 4. However, since those filings and Court order, Defendants have notified
18 Plaintiff that they will not be making any settlement offer and therefore now agree that
19 setting a supplemental briefing schedule is appropriate.

20 5. Both parties previously moved for summary judgment (ECF Nos. 67, 68),
21 responded in opposition to the other (ECF Nos. 74, 78), and replied to the responses
22 (ECF Nos. 84, 85).

23 6. In March 2018, this Court, Judge Cathy Ann Bencivengo, granted summary
24 judgment in favor of Defendants and dismissed Plaintiff’s claims without prejudice on
25 standing and ripeness grounds (“the Dismissal Order”) (ECF No. 91).

26
27
28 ¹ Director Mary Watanabe replaces former Director Michelle Rouillard as defendant, in
her official capacity, as by operation of Federal Rule of Civil Procedure 25(d).

1 7. Plaintiff appealed the Dismissal Order, and on July 21, 2020, the U.S. Court
2 of Appeals for the Ninth Circuit reversed and remanded, holding that Plaintiff’s Free
3 Exercise Clause claim was justiciable. The Ninth Circuit also vacated and remanded this
4 Court’s ruling that it lacked jurisdiction over Plaintiff’s other claims.

5 8. The Ninth Circuit declined to reach the merits of Plaintiff’s Free Exercise
6 Clause claim in light of the Supreme Court’s grant of certiorari in *Fulton v. City of*
7 *Philadelphia*, No. 19-123 (U.S.), while the appeal was pending.

8 9. The Ninth Circuit issued its Mandate on July 29, 2020.

9 10. On remand, both parties filed status reports. Plaintiff recommended a
10 briefing schedule for filing supplemental summary judgment briefs. (*See* ECF No. 107.)
11 Defendants recommended delaying adjudication of Plaintiff’s Free Exercise Clause claim
12 until the Supreme Court decided *Fulton*. (*See* ECF No. 106.)

13 11. In June 2021, the Supreme Court decided *Fulton*, 141 S. Ct. 1868 (2021). At
14 the time, an appeal in a case similar to this one—*Foothill Church v. Watanabe*, No. 19-
15 15658—was pending in the Ninth Circuit. Following *Fulton*, the Ninth Circuit vacated
16 and remanded the *Foothill* Plaintiffs’ Free Exercise and Equal Protection claims “for
17 further consideration in light of *Fulton*.” *Foothill Church v. Watanabe*, 3 F.4th 1201 (9th
18 Cir. 2021) (Mem.). The Ninth Circuit also affirmed the district court’s dismissal of
19 Plaintiffs’ Establishment Clause claim in a concurrently filed memorandum. *Foothill*
20 *Church v. Watanabe*, 854 F. App’x 174 (9th Cir. 2021) (Mem.). Judge Bress dissented
21 from the court’s vacate-and-remand order because he would have held that the Plaintiffs
22 “clearly stated a claim for relief under the Constitution’s Free Exercise and Equal
23 Protection Clauses.” *Foothill Church*, 3 F.4th at 1204 (Bress, J., dissenting).

24 12. Counsel for the parties have conferred about a briefing schedule in this case
25 and agree that the interests of both the parties and this Court would be served by filing
26 supplemental briefs in support of their motions for summary judgment.

1 WHEREFORE, the parties STIPULATE and jointly move for Court approval of
2 the same that:

3 1. In light of the above, good cause exists to set a briefing schedule for filing
4 supplemental briefs in support of each party’s motion for summary judgment;

5 2. The parties shall comply with the following briefing and hearing schedule:

- 6 • Each party shall file a supplemental brief in support of their motion for
- 7 summary judgment no later than December 17, 2021;
- 8 • Each party may file an opposition to the other party’s supplemental brief in
- 9 support of summary judgment no later than January 19, 2022; and
- 10 • A hearing on the parties’ motions for summary judgment will be heard by
- 11 the Court on February 23, 2022 (or another date selected by the Court);

12 3. The status conference scheduled for November 10, 2021, is vacated; and

13 4. Any trial related dates shall be scheduled, if necessary, after the Court
14 resolves any dispositive motions.

15
16 Dated: November 4, 2021

ALLIANCE DEFENDING FREEDOM

17 s/Jeremiah Galus

18 Jeremiah Galus

19 Attorney for Plaintiff Skyline Wesleyan Church

20
21 Dated: November 4, 2021

ROB BONTA

22 Attorney General of California

23 s/Nicole Ries Fox (as authorized on 11/04/21)

24 Nicole Ries Fox

25 Attorneys for Defendants Department of
26 Managed Health Care, *et al.*

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2021, service of the foregoing Joint 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 November 4, 2021

s/Jeremiah Galus
Jeremiah Galus
Attorney for Plaintiff

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

SKYLINE WESLEYAN CHURCH,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
MANAGED HEALTH CARE, et al.,

Defendants.

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

[PROPOSED] ORDER

Upon joint request of the parties, and good cause appearing, the Court hereby
ORDERS that:

1. The parties shall comply with the following briefing and hearing schedule:
 - Each party shall file a supplemental brief in support of their motion for summary judgment no later than December 17, 2021;
 - Each party may file an opposition to the other party’s supplemental brief in support of summary judgment no later than January 19, 2022; and
 - A hearing on the parties’ motions for summary judgment will be heard by the Court on February 23, 2022.

1 2. The status conference scheduled for November 10, 2021, is vacated.

2 3. Any trial related dates shall be scheduled, if necessary, after the Court resolves any
3 dispositive motions.

4 IT IS SO ORDERED

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6 Date:

7 _____
8 Honorable Todd W. Robinson
9 United States District Judge
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