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

**SKYLINE WESLEYAN CHURCH,**  
 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.

3:16-cv-00501-RBM-MSB

**DEFENDANTS' RESPONSE TO  
 PLAINTIFF'S NOTICE OF  
 SUPPLEMENTAL AUTHORITY**

Dept: 5B  
 Judge: Hon. Ruth Bermudez  
 Montenegro  
 Action Filed: February 4, 2016

Plaintiff requests that this Court enter judgment for Plaintiff in light of the February 3, 2023 order in *Foothill v. Watanabe*, No. 2:15-cv-02165-KJM-EFB (E.D. Cal.). See Pl.'s Notice of Suppl. Authority at 1 (ECF No. 138). The Court in the *Foothill* matter rendered a decision on the merits, granting summary judgment for the *Foothill* plaintiffs on their free exercise claim. Order Granting Summary Judgment (ECF No. 129), *Foothill v. Watanabe*, No. 2:15-cv-02165-KJM-EFB. In

1 ruling on the scope of injunctive relief, the Court ordered DMHC to “consider  
 2 requests from the Churches for abortion care coverage comporting with their  
 3 religious beliefs, and to approve or provide feedback on the proposed coverage  
 4 within 30 days.” Order re Scope of Relief at 10 (ECF No. 138), *Foothill v.*  
 5 *Watanabe*, No. 2:15-cv-02165-KJM-EFB. Additionally, the Court required that  
 6 “[i]f and when defendant approves coverage language comporting with the  
 7 Churches’ beliefs, [DMHC] must request the employer’s plan submit an amended  
 8 evidence of coverage document containing the approved language within 30 days.”  
 9 *Id.* The parties have been in communication about the Churches’ “proposed  
 10 coverage” requests. Indeed, on March 3, 2023, one of the three *Foothill* plaintiffs  
 11 provided its proposed plan language to DMHC, which DMHC is reviewing; DMHC  
 12 awaits language from the other two plaintiffs. As these facts demonstrate, the  
 13 *Foothill* case has not been fully resolved and the Plaintiff’s request that this Court  
 14 render a decision based on the *Foothill* order is still premature.

15 Indeed, the *Foothill* remedy—i.e. the approval of the Churches’ proposed  
 16 language—could have significant implications for this case, including rendering  
 17 part of plaintiff’s lawsuit moot. As noted, there are three *Foothill* plaintiffs each  
 18 with potentially separate health plan products that will be submitting proposed  
 19 language.<sup>1</sup> Once DMHC approves coverage language for the three plaintiffs,  
 20 DMHC must—pursuant to the court order—request that the plan(s) submit an  
 21 amended evidence of coverage document. That same plan product containing the  
 22 limiting abortion coverage will then be available on the open market for other  
 23 “religious employers,” including Skyline. *See* Cal. Health & Safety Code §  
 24 1367.25 (defining religious employer for purposes of seeking an exemption from

25 <sup>1</sup> At the time they filed their complaint, the *Foothill* Plaintiffs offered  
 26 coverage through three distinct health plans. *Foothill* Church offered coverage  
 27 through Kaiser Permanente, Calvary Chapel Chino Hills offered Kaiser  
 28 Permanente, Aetna, and Anthem Blue Cross plan products, and Shepherd of the  
 Hills Church offered Anthem Blue Cross and Kaiser Permanente plan products.  
*See* Second Amended Complaint ¶¶ 13-15 (ECF No. 72), *Foothill v. Watanabe*, No.  
 2:15-cv-02165-KJM-EFB.

1 the contraception coverage requirements), § 1367.32 (providing notice  
 2 requirements on health plans that provide coverage for religious employers that  
 3 don't include coverage for abortion and contraception, defining religious employer  
 4 for these purposes by the definition in § 1367.25); *see also* Complaint (ECF No. 1)  
 5 at ¶ 107 (referring to Skyline Church as a "religious employer").

6 Once approved, Plaintiff can purchase any one of these three plan products  
 7 remedying Plaintiff's alleged harm and rendering, at least part of, this case moot.  
 8 *See, e.g., City & Cnty. of San Francisco v. Garland*, 42 F.4th 1078, 1087 (9th Cir.  
 9 2022) ("requests for injunctive relief are only live where 'there is some present  
 10 harm left to enjoin' and 'a plaintiff who can reasonably be expected to benefit from  
 11 prospective relief ordered against the defendant'"); *Bayer v. Neiman Marcus Grp.*,  
 12 861 F.3d 853, 868 (9th Cir. 2017) ("[W]hat makes [a declaratory judgment] a  
 13 proper judicial resolution of a 'case or controversy' rather than an advisory opinion  
 14 is the settling of some dispute *which affects the behavior of the defendant toward*  
 15 *the plaintiff.*").<sup>2</sup> Additionally, in light of the *Foothill* decision, DMHC is willing to  
 16 consider an additional proposal from the *Skyline* plaintiff to the extent that they  
 17 would prefer to submit their own proposal rather than selection one of the available  
 18 plan options with the *Foothill* plaintiffs requested exemptions. Because questions  
 19 remain regarding whether Plaintiff will have a live case or controversy pending the  
 20 submission and approval of plan language for the *Foothill* plaintiffs that would be  
 21 in line with what Plaintiff seeks in this case, Defendants request that the Court

22 <sup>2</sup> Plaintiffs' assertion that its claim for nominal damages "would save [the]  
 23 case from mootness" misunderstands the law on this point. Pl.'s Notice Suppl.  
 24 Authority at 1 n.1 (citations omitted). The cases relied on by Plaintiffs relate to  
 25 whether a claim for nominal damages is sufficient for standing purposes. *See*  
 26 *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 802 (2021) ("This is not to say that a  
 27 request for nominal damages guarantees entry to court. Our holding concerns only  
 28 redressability."); *Skyline Wesleyan Church v. Cal. Dep't of Managed Health Care*,  
 968 F.3d 738, 749 (9th Cir. 2020) (noting that "Skyline requested nominal  
 damages" and that such damages "would redress Skyline's injury" for standing  
 purposes, but nowhere addressing anything regarding mootness considerations). To  
 the extent that it might aid the Court, Defendants would be willing to provide  
 additional briefing regarding whether the existence of these new plan products for  
 Plaintiff would render Plaintiffs' claim moot.

1 delay rendering judgment in this case until the full resolution of the relief ordered in  
2 *Foothill*. Additionally, to the extent there is a question regarding whether the  
3 *Foothill* outcome will moot this proceeding, Defendant requests that the Court  
4 order additional briefing to resolve this question.

5  
6 Dated: March 16, 2023

Respectfully submitted,

7 ROB BONTA  
8 Attorney General of California

9  
10 /s/ Hayley Penan  
11 HAYLEY PENAN  
12 Deputy Attorney General  
13 KARLI EISENBERG  
14 Supervising Deputy Attorney General  
15 *Attorneys for Defendants California*  
16 *Department of Managed Health Care,*  
17 *Mary Watanabe in her official*  
18 *capacity as Director of the California*  
19 *Department of Managed Health Care*

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## CERTIFICATE OF SERVICE

Case Name: **Skyline Wesleyan Church v.  
CA DMHC**

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No. **3:16-cv-00501-RBM-MSB**

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I hereby certify that on March 16, 2023, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DEFENDANTS' RESPONSE TO PLAINTIFF'S NOTICE OF SUPPLEMENTAL  
AUTHORITY**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on March 16, 2023, at Sacramento, California.

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Leticia Aguirre  
Declarant

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*/s/ Leticia Aguirre*  
Signature

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