

1 DANIEL H. BLOMBERG (admitted pro hac vice)
 2 ERIC S. BAXTER (admitted pro hac vice)
 3 DIANA M. VERM (admitted pro hac vice)
 4 PETER M. TORSTENSEN, JR. (admitted pro hac vice)
 5 THE BECKET FUND FOR RELIGIOUS LIBERTY
 6 1200 New Hampshire Ave. NW, Suite 700
 7 Washington, DC 20036
 8 Telephone: (202) 955-0095
 9 Fax: (202) 955-0090
 10 dblomberg@becketlaw.com

11 KEVIN S. WATTLES (Cal. State Bar. No. 170274)
 12 kwattles@slfesq.com
 13 SOLTMAN, LEVITT, FLAHERTY & WATTLES LLP
 14 90 E. Thousand Oaks Boulevard, Suite 300
 15 Thousand Oaks, California 91360
 16 Telephone: (805) 497-7706
 17 Fax: (805) 497-1147

18 *Attorneys for Defendants*

19 UNITED STATES DISTRICT COURT
 20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 JOANNA MAXON, *et al.*,

22 Plaintiffs,

23 v.

24 FULLER THEOLOGICAL
25 SEMINARY, *et al.*,

26 Defendants.

No. 2:19-cv-09969-CBM-MRW

**DEFENDANTS’ NOTICE OF
 MOTION AND MOTION TO
 STAY DISCOVERY PENDING
 RESOLUTION OF DEFENDANTS’
 MOTION TO DISMISS PLAIN-
 TIFF’S FIRST AMENDED COM-
 PLAIN**

(Memorandum of Points and Authorities
and [Proposed] Order Filed Concur-
rently)

Date: June 30, 2020

Time: 10:00 a.m.

Dept: Courtroom 8B

Judge: Honorable Consuelo B. Marshall

1
2 TO ALL PLAINTIFFS AND TO THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on June 30, 2020 at 10:00 a.m., or as soon there-
4 after as the matter may be heard in Courtroom 8B of the United States Courthouse
5 for the Central District of California, 350 W. 1st Street, Los Angeles, California,
6 Honorable Consuelo B. Marshall presiding, Defendants will and hereby do move the
7 Court for an order to stay discovery pending resolution of Defendants' Motion To
8 Dismiss Plaintiffs' First Amended Complaint pursuant to its inherent docket-control
9 powers and under Federal Rule of Civil Procedure 26(c).

10 As explained in their accompanying memorandum, Defendants (collectively,
11 "the Seminary") seek a discovery stay for three reasons. First, Rule 12(b)(6) is in-
12 tended to allow parties to resolve cases without need for discovery, and that is pre-
13 cisely what the Seminary's pending motion to dismiss will do. Second, Plaintiffs'
14 claims challenge the Seminary's internal religious decisions about how to conduct
15 religious ministry, and permitting unnecessary discovery before resolving the Sem-
16 inary's threshold defenses will create excessive entanglement in religious affairs.
17 Third, two cases pending before the Supreme Court will likely clarify and narrow
18 the controlling legal issues in this case by the time of this Court's June 30 dismissal
19 hearing.

20 This Motion is made following a conference of counsel pursuant to Local Rule
21 7-3, which took place on April 8, 2020. After the Seminary described the requested
22 stay and the legal basis for the stay, Plaintiffs' counsel indicated their opposition to
23 this Motion. The parties further discussed the stay and their disagreement on April
24 14, at their Rule 26(f) conference. *See* Dkt. 57 at 5.

25 This Motion is based on this Notice of Motion and Motion, the accompanying
26 Memorandum of Points and Authorities, and such other arguments as may be pre-
27 sented at the hearing in this matter.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: April 23, 2020

/s/ Kevin S. Wattles
KEVIN S. WATTLES
SOLTMAN, LEVITT, FLAHERTY &
WATTLES LLP
90 E. Thousand Oaks Boulevard, Suite
300
Thousand Oaks, California 91360
Telephone: (805) 497-7706
Fax: (805) 497-1147
kwattles@slfesq.com

Respectfully submitted,

/s/ Daniel H. Blomberg
DANIEL H. BLOMBERG
ERIC S. BAXTER
DIANA M. VERM
PETER M. TORSTENSEN, JR.
JACOB M. COATE
THE BECKET FUND FOR RELIGIOUS
LIBERTY
1200 New Hampshire Ave. NW, Suite 700
Washington, DC 20036
Telephone: (202) 955-0095
Fax: (202) 955-0090
dblomberg@becketlaw.com

Attorneys for Defendants

1 DANIEL H. BLOMBERG (admitted pro hac vice)
 2 ERIC S. BAXTER (admitted pro hac vice)
 3 DIANA M. VERM (admitted pro hac vice)
 4 PETER M. TORSTENSEN, JR. (admitted pro hac vice)
 5 THE BECKET FUND FOR RELIGIOUS LIBERTY
 6 1200 New Hampshire Ave. NW, Suite 700
 7 Washington, DC 20036
 8 Telephone: (202) 955-0095
 9 Fax: (202) 955-0090
 10 dblomberg@becketlaw.com

11 KEVIN S. WATTLES (Cal. State Bar. No. 170274)
 12 SOLTMAN, LEVITT, FLAHERTY & WATTLES LLP
 13 90 E. Thousand Oaks Boulevard, Suite 300
 14 Thousand Oaks, California 91360
 15 Telephone: (805) 497-7706
 16 Fax: (805) 497-1147
 17 kwattles@slfesq.com
 18 *Attorneys for Defendants*

19 UNITED STATES DISTRICT COURT
 20 FOR THE CENTRAL DISTRICT OF CALIFORNIA

21 JOANNA MAXON, *et al.*,

22 Plaintiffs,

23 v.

24 FULLER THEOLOGICAL
 25 SEMINARY, *et al.*,

26 Defendants.

No. 2:19-cv-09969-CBM-MRW

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 MOTION TO STAY DISCOVERY
 PENDING RESOLUTION OF DE-
 FENDANTS’ MOTION TO DIS-
 MISS PLAINTIFFS’ FIRST
 AMENDED COMPLAINT**

(Notice of Motion and Motion, and [Proposed] Order Filed Concurrently)

Date: June 30, 2020

Time: 10:00 a.m.

Dept: Courtroom 8B

Judge: Honorable Consuelo B. Marshall

27

28

1 **INTRODUCTION**

2 Defendants Fuller Theological Seminary, Mari Clements, Marianne Thompson, and
3 Nicole Boymook (collectively, “the Seminary”) seek a stay of discovery pending reso-
4 lution of their motion to dismiss. The motion to dismiss is fully briefed and will be heard
5 June 30. A stay in the meantime is warranted and necessary for three reasons.

6 First, “[t]he purpose of [Rule] 12(b)(6) is to enable defendants to challenge the legal
7 sufficiency of a complaint without subjecting themselves to discovery.” *Quezambra v.*
8 *United Domestic Workers of Am. AFSCME Local 3390*, No. 8:19-cv-0092, 2019 WL
9 8108745, at *2 (C.D. Cal. Nov. 14, 2019). That purpose is particularly well-suited here.
10 The parties agree that the “core factual issues” giving rise to this case are not in dispute
11 and that the case turns primarily on “the legal significance” of those facts. Dkt. 57 at 2.
12 Moreover, the Seminary’s motion to dismiss, which would resolve all Plaintiffs’ claims,
13 raises only threshold legal issues. Thus, not only is there is no pressing need for discov-
14 ery (a task already made difficult by the COVID-19 stay-at-home orders affecting the
15 parties and their counsel), but this case may well be resolved in a few short months.
16 Staying discovery thus squarely fits the purpose of Rule 12(b)(6).

17 Second, Plaintiffs raise an extremely unusual and constitutionally fraught challenge
18 to the Seminary’s internal decisions about who and how to train for Christian ministry.
19 Discovery into such claims raises the likelihood of “excessive entanglement in church
20 matters.” *Bryce v. Episcopal Church in the Diocese of Colo.*, 289 F.3d 648, 654 & n.1
21 (10th Cir. 2002). Courts avoid that problem by treating church autonomy defenses as a
22 threshold “question of law to be resolved at the earliest possible stage of litigation,” often
23 before discovery, “similar to a government official’s defense of qualified immunity.” *Id.*
24 Following that approach would avoid serious entanglement problems here.

25 Finally, two pending Supreme Court cases are directly applicable to this case and will
26 likely clarify and narrow the legal issues here by this Court’s June 30 motion hearing.

27 The Seminary sought Plaintiffs’ consent for this motion, explained its reasoning, and
28 agreed to produce Rule 26(a)(1) initial disclosures. Plaintiffs oppose the motion.

1 **ARGUMENT**

2 **I. The Court should stay discovery until it resolves the pending motion to dismiss.**

3 The Seminary’s dismissal motion is fully briefed and currently pending before this
4 Court. Dkt. 45. That motion promises to resolve this case in its entirety. There is thus no
5 reason for the parties to undergo expensive and intrusive discovery that may well be
6 entirely unnecessary before the Court decides that motion.

7 “The purpose of [Rule] 12(b)(6) is to enable defendants to challenge the legal suffi-
8 ciency of complaints *without* subjecting themselves to discovery.” *Rutman Wine Co. v.*
9 *E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (emphasis added); *Quezambra*,
10 2019 WL 8108745, at *2 (same). Accordingly, staying discovery pending dispositive
11 motions is standard fare. District courts regularly stay discovery when dispositive mo-
12 tions are pending, and the Ninth Circuit just as regularly affirms them.¹ In fact, one dis-
13 trict court even “dramatically reduced” a party’s sanctions award because it *failed* to
14 move to stay discovery pending a motion to dismiss. *Schwaber v. Hartford Accident*
15 *Indem. Co.*, 936 F.2d 579 (9th Cir. 1991) (table).

16 **A. A stay is warranted because the motion to dismiss will dispose of this case**
17 **and can be resolved without discovery.**

18 Based on their inherent docket-control authority and Rule 26(c), courts often stay
19 discovery pending a motion to dismiss when (i) “the pending motion [is] potentially
20 dispositive of the entire case” and (ii) the motion “can be decided absent additional dis-
21 covery.” *Quezambra*, 2019 WL 8108745, at *2. Both factors are met here.

22 First, and most obviously, the Seminary’s pending motion seeks dismissal of all
23 Plaintiffs’ claims and so is at least “potentially” dispositive of this case in its entirety.
24 *Id.*; *see also* Dkt. 46 (moving for dismissal of all claims).

25 _____
26 ¹ *Lazar v. Kroncke*, 862 F.3d 1186, 1203 (9th Cir. 2017); *Wenger v. Monroe*, 282 F.3d 1068, 1077
27 (9th Cir. 2002); *Alaska Cargo Transp. v. Alaska R.R.*, 5 F.3d 378, 383 (9th Cir. 1993); *Wood v.*
28 *McEwan*, 644 F.2d 797, 801-02 (9th Cir. 1981); *Johnson v. Martinez*, 131 F. App’x 546, 548 (9th
Cir. 2005); *Top Rank, Inc. v. Haymon*, No. CV 15-4961, 2015 WL 9952887 (C.D. Cal. Sept. 17,
2015); *Ameiy v. Cinemark USA*, No. 13-06428, 2013 WL 12143815 (C.D. Cal. Oct. 18, 2013).

1 Second, no discovery is necessary to resolve the motion to dismiss. Indeed, the parties
2 concede that the “core factual issues” giving rise to this case are not in dispute and that
3 the case turns primarily on “the legal significance” of the undisputed facts. Dkt. 57, at 2;
4 *see also* FAC ¶ 4 (conceding Fuller Theological Seminary is “religious in nature”); ¶ 191
5 (acknowledging Fuller Theological Seminary’s “biblically based” belief that “sexual un-
6 ion must be reserved for marriage, which is the covenant union between one man and
7 one woman”); ¶ 1 (conceding Plaintiffs were expelled “for one reason: they married
8 someone of the same sex”). Thus, what remains are “pure question[s] of law” for the
9 Court to decide “for itself.” *Conlon v. InterVarsity Christian Fellowship*, 777 F.3d 829,
10 833 (6th Cir. 2015).

11 It is no surprise, then, that Plaintiffs raised no significant factual disputes in their
12 opposition to the motion to dismiss. The Seminary asserted eight legal defenses against
13 Plaintiffs’ lead claim under Title IX: three statutory defenses, three under the Religion
14 Clauses, and one apiece under the First Amendment’s free association protections and
15 the Religious Freedom Restoration Act. Plaintiffs raised a factual question for only *one*
16 of these defenses (Title IX’s religious exemption), suggesting that two Seminary em-
17 ployees might have been motivated by animus instead of the Seminary’s community
18 standards. But even if true, that imagined “fact” would be irrelevant to the motion to
19 dismiss, since—as a matter of law—individuals cannot be liable under Title IX, entities
20 cannot be liable under Title IX on a theory of *respondeat superior*, and the Seminary in
21 any case has expressly endorsed Plaintiffs’ dismissal based on its religious community
22 standards—a judgment that neither Plaintiffs nor this Court can second guess. Dkt. 55 at
23 5; *see also Alaska Cargo*, 5 F.3d at 383 (affirming stay where “no suggestion . . . that
24 the discovery sought was relevant”).

25 The same is true for Plaintiffs’ secondary state-law claims. Courts regularly dismiss
26 those kinds of “derivative” claims in church autonomy cases. *Klouda v. Sw. Baptist The-*
27 *ological Seminary*, 543 F. Supp. 2d 594 (N.D. Tex. 2008) (dismissing fraud and contract
28 claims, among others); *see also Ogle v. Church of God*, 153 F. App’x 371, 375-76 (6th

1 Cir. 2005) (dismissing IIED and contract claims because they “all implicate the [reli-
2 gious defendant’s] internal disciplinary proceedings”); *Bell v. Presbyterian Church*,
3 (*U.S.A.*), 126 F.3d 328, 330 (4th Cir. 1997) (IIED, contract claims); Dkt. 46 at 18-19;
4 Dkt. 55 at 6 n.5. Courts also routinely decline supplemental jurisdiction over such claims.
5 *Rweyemamu v. Cote*, 520 F.3d 198, 210 (2d Cir. 2008); *Aparicio v. Christian Union*,
6 *Inc.*, No. 18-CV-0592, 2019 WL 1437618, at *11 (S.D.N.Y. Mar. 29, 2019). So, partic-
7 ularly in the event of dismissal of the Title IX claims, the state-law claims cannot justify
8 discovery.

9 Moreover, Plaintiffs’ passing reference to a few factual questions about the state-law
10 claims does nothing to change the fundamental legal flaws present in those claims. For
11 instance, Brittsan’s claims are time-barred and the Unruh Act does not cover Maxon’s
12 extraterritorial allegations in Texas. Dkt. 46 at 19-24; Dkt. 55 at 9-10; *see also* Dkt. 53
13 at 22 (admitting that “[s]ome of [Brittsan’s] allegations go beyond the [limitations pe-
14 riod]”). Because Plaintiffs’ discovery requests do “not relate to the legal issues raised in
15 the . . . motion to dismiss,” a stay should be granted. *Young v. United States*, 907 F.2d
16 156 (Table), 1990 WL 90381, at *2 (9th Cir. June 25, 1990).

17 The Seminary’s pending motion to dismiss will resolve this case in its entirety and it
18 needs no discovery to do so. Because discovery is not necessary at this stage, it is also
19 not appropriate. *Jarvis v. Regan*, 833 F.2d 149, 155 (9th Cir. 1987) (“Discovery is only
20 appropriate where there are factual issues raised by a Rule 12(b) motion.”); *Quezambra*,
21 2019 WL 8108745, at *2 (same). A stay is warranted.

22 **B. Other considerations similarly favor a stay.**

23 While the Ninth Circuit’s analysis generally treats as dispositive the two factors ad-
24 dressed above, other considerations that courts sometime weigh also favor a stay. Those
25 considerations include: whether the pending motion is likely to succeed, whether counter
26 or crossclaims have been asserted, whether all defendants have joined the pending mo-
27 tion, the stage of the litigation, the expected extent of discovery, and the nature and
28 complexity of the action. *Amey*, 2013 WL 12143815, at *2; *Mireskandari v. Daily Mail*

1 & *Gen. Trust PLC*, No. 12-cv-2943, 2013 WL 12129944, at *2 (C.D. Cal. Jan. 14, 2013)
2 (same). Those considerations all point the same way here.

3 Most importantly, the Seminary’s motion to dismiss is likely to succeed. Plaintiffs
4 have failed to identify any cases that accept their novel and far-reaching claims. Mean-
5 while, courts, the EEOC, the Department of Education, and the California Attorney Gen-
6 eral have all long-rejected Plaintiffs’ positions. Dkt. 46 at 16, 19; Dkt. 55 at 2-3, 4-5, 8.
7 And Plaintiffs’ counterarguments to the Seminary’s defenses depend on broad categori-
8 cal arguments—*e.g.*, that religious autonomy only protects “churches”—that are, among
9 other things, foreclosed by controlling precedent. Dkt. 55 at 5-6. Plaintiffs have failed to
10 show why this Court should fundamentally change the federal government’s relation-
11 ships with hundreds of seminaries and schools of theology nationwide. *Id.* at 7 n.6.

12 Thus, even just a “preliminary analysis” of the Title IX religious exemption, Plaintiffs’
13 constitutional defenses, and the flaws in Defendants’ state-law claims (including con-
14 ceded statute of limitations problems) shows “an immediate and clear possibility that
15 [the motion to dismiss] will be granted.” *Mireskandari*, 2013 WL 12129944, at *2. And
16 because Plaintiffs are “unable to state a claim,” a stay is appropriate. *Young*, 1990 WL
17 90381, at *2 (quoting *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981)).

18 The remaining other considerations likewise favor a stay. The Seminary has asserted
19 no counterclaims, nor does it plan to. All Defendants joined the motion to dismiss. Dkt.
20 45. The parties agree that discovery will not be lengthy. Dkt. 57 at 5-6. This litigation is
21 still young: Plaintiffs filed the operative complaint only three months ago, in January
22 2020, Dkt. 20, no discovery has yet commenced, and only one substantive motion has
23 been filed—the pending motion to dismiss. And as discussed below, the religiously and
24 constitutionally sensitive nature of this case emphasizes the uniquely heightened need
25 for a stay. Thus, all the other considerations point to staying discovery.

26 As does another unique consideration: the COVID-19 pandemic. Under several state
27 decrees, the Seminary, its employees, and counsel for both parties are required to protect
28 public health by remaining at home as much as possible. Engaging in discovery at this

1 time would jeopardize that effort by requiring people to leave home to retrieve records,
2 print and mail documents, and fly to and attend depositions. Thus, it will be nearly im-
3 possible to conduct any meaningful discovery in advance of the June 30 hearing. Espe-
4 cially considering that Plaintiffs have not identified an immediate need for discovery,
5 the COVID-19 restrictions further favor a stay.

6 **II. This Court should stay discovery to avoid entanglement in religious affairs.**

7 This case concerns a very unusual challenge to a religious seminary’s theological
8 choices about who it will train for religious ministry and how it will do so. For such a
9 claim, not only the outcome of the case but also the “very process of inquiry” into such
10 sensitive internal matters could “impinge on rights guaranteed by the Religion Clauses.”
11 *NLRB v. Catholic Bishop*, 440 U.S. 490, 502 (1979).

12 For this reason, courts “avoid excessive entanglement in church matters” by adjudi-
13 cating church autonomy defenses as a threshold matter akin to qualified immunity,
14 which should “be resolved at the earliest possible stage of litigation.” *Bryce*, 289 F.3d at
15 654 & n.1 (comparing to qualified immunity); *see also Petruska v. Gannon Univ.*, 462
16 F.3d 294, 302-03 (3d Cir. 2006) (same); *McCarthy v. Fuller*, 714 F.3d 971, 975-76 (7th
17 Cir. 2013) (same). In many cases—as in this case—the earliest appropriate stage is the
18 motion to dismiss stage. *Alcazar v. Corp. of the Catholic Archbishop of Seattle*, 627 F.3d
19 1288, 1290 (9th Cir. 2010) (affirming district court’s grant of judgment on the plead-
20 ings); *Werft v. Desert Sw. Annual Conference of United Methodist Church*, 377 F.3d
21 1099, 1100 (9th Cir. 2004) (affirming Rule 12(b)(6) dismissal).²

22
23
24 ² *See, e.g., Gaddy v. Corporation of the President of the Church of Jesus Christ of Latter-day Saints*,
25 No. 19-cv-554, 2020 WL 1536565 (D. Utah March 31, 2020); *Garrick v. Moody Bible Inst.*, 412 F.
26 Supp. 3d 859, 871-72 (N.D. Ill. 2019); *Aparicio*, 2019 WL 1437618, at *8-10; *Byrd v. DeVeaux*, No.
27 DKC 17-3251, 2019 WL 1017602, at *5-8 (D. Md. Mar. 4, 2019); *Hubbard v. J Message Grp.*, 325 F.
28 Supp. 3d 1198 (D.N.M. 2018); *Demkovich v. St. Andrew the Apostle Parish*, 343 F. Supp. 3d 772, 786-
87 (N.D. Ill. 2018); *Moreno v. Episcopal Diocese of Long Island*, No. CV-14-7231, 2016 WL 8711448
(E.D.N.Y. Jan. 20, 2016); *see also Hollins v. Methodist Healthcare, Inc.*, 379 F. Supp. 2d 907, 913
(W.D. Tenn. 2005), *aff’d*, 474 F.3d 223 (6th Cir. 2007) (granting defendant’s motion to dismiss, deny-
ing plaintiff’s motion for discovery).

1 It is standard procedure that, while dispositive qualified-immunity motions are pend-
2 ing, stays of discovery are granted to protect the asserted right from irreparable loss. *See*
3 *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988) (affirming discovery stay
4 pending resolution of qualified immunity motion); *Herrick v. Strong*, 745 F. App'x 287,
5 289 (9th Cir. 2018) (A “stay of discovery was appropriate here because qualified im-
6 munity’s determinative impact constitutes more than just a defense to liability—it is im-
7 munity from suit altogether.”). That standard is particularly applicable here. Courts have
8 repeatedly recognized that the Religion Clauses can “grant churches an immunity from
9 civil discovery” in some cases, *United Methodist Church, Baltimore Annual Conference*
10 *v. White*, 571 A.2d 790, 791-93 (D.C. 1990), and accordingly that unnecessary or prem-
11 ature discovery can cause “the very type of intrusion that the [First Amendment] seeks
12 to avoid,” *Sterlinski v. Catholic Bishop of Chicago*, No. 16 C 00596, 2017 WL 1550186,
13 at *5 (N.D. Ill. May 1, 2017). This is because subjecting “[c]hurch personnel and records”
14 to “discovery, . . . [and] the full panoply of legal process designed to probe the mind of
15 the church,” inherently risks entanglement and thus should be permitted only when nec-
16 essary. *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171
17 (4th Cir. 1985); *see also McRaney v. North Am. Mission Bd. of the S. Baptist Convention,*
18 *Inc.*, No. 17-cv-80, 2018 WL 5839678 (N.D. Miss. Nov. 7, 2018) (quashing subpoena
19 under religious autonomy doctrines); *Mireskandari*, 2013 WL 12129944, at *3 (stay
20 warranted to prevent “First Amendment-related harm” caused by discovery).

21 Thus, if Plaintiffs proceed with discovery now and the Court later decides the Reli-
22 gion Clauses bar Plaintiffs’ claims, the Seminary’s right to church autonomy will *al-*
23 *ready* have been “irreparably” violated by unnecessary intrusion into its internal reli-
24 gious affairs. *See McCarthy*, 714 F.3d at 974-76; *Kirby v. Lexington Theological Semi-*
25 *nary*, 426 S.W.3d 597, 608-09 (Ky. 2014) (religious autonomy defense is a “threshold
26 matter” that must be decided before merits-related discovery to avoid irreparable “con-
27 stitutional injury”).

28

1 Moreover, allowing Plaintiffs to use this Court’s authority to compel unnecessary
2 discovery would also threaten this Court’s own interests in avoiding religious entangle-
3 ment. *See, e.g., Lee v. Sixth Mount Zion Missionary Baptist Church*, 903 F.3d 113, 118
4 n.4 (3d Cir. 2018) (citing *Conlon*, 777 F.3d at 836) (recognizing that the Religion
5 Clauses set “constitutional limits on judicial authority” which, as a “structural” matter,
6 “categorically prohibit[.]” any interference in disputes over internal religious disputes;
7 upholding district court’s decision to raise the ministerial exception *sua sponte* to avoid
8 entanglement in church affairs); *accord Tomic v. Catholic Diocese of Peoria*, 442 F.3d
9 1036, 1042 (7th Cir. 2006) (a “federal court [should] not allow itself to get dragged into
10 a religious controversy”).

11 A stay is thus required to avoid unnecessary entanglement in religious affairs.

12 **II. A stay is also warranted given pending relevant Supreme Court decisions.**

13 Efficiency and fairness favor a stay “pending resolution of independent proceedings
14 which,” although not “necessarily controlling of the action before the Court,” will “bear
15 upon the case.” *Chattanond v. Discover Fin. Servs., LLC*, No. 15-cv-08549, 2016 WL
16 8202736, at *1 (C.D. Cal. Feb. 26, 2016) (quoting *Leyva v. Certified Grocers of Cal.*,
17 593 F.2d 857, 863-64 (9th Cir. 1979)). Courts in this district thus regularly enter such
18 stays for a pending relevant Supreme Court case. *Abu-Hajar v. AutoNation, Inc.*, No. 17-
19 cv-3505, 2017 WL 10591886, at *3 (C.D. Cal. Aug. 17, 2017) (stay entered to avoid
20 “unnecessarily expend[ing] substantial time and resources”). Here, the existence of *two*
21 pending relevant cases favor a stay: *Bostock v. Clayton County, Georgia*, No. 17-1618
22 (U.S. filed May 25, 2018), and *Our Lady of Guadalupe School v. Morrissey-Berru*, No.
23 19-267 (U.S. filed Aug. 28, 2019).³

24
25
26 ³ The Supreme Court has consolidated *Bostock* with *R.G. & G.R. Harris Funeral Homes Inc. v. EEOC*,
27 No. 18-107 (U.S. filed July 20, 2018), and *Altitude Express Inc. v. Zarda*, No. 17-1623 (U.S. filed
28 May 29, 2018). It has also consolidated *Our Lady* with *St. James School v. Biel*, No. 19-348 (U.S. filed
Sept. 16, 2019).

1 In *Bostock*, the Supreme Court will consider whether Title VII prohibits sexual ori-
2 entation discrimination, which is relevant to Plaintiffs’ claim that Title IX prohibits sex-
3 ual orientation discrimination. *See Emeldi v. Univ. of Or.*, 698 F.3d 715, 724 (9th Cir.
4 2012) (noting that Congress likely intended Title IX be governed by similar standards
5 as Title VII). And in *Our Lady*, the Supreme Court will consider the scope of the Reli-
6 gion Clauses’ protection for a religious school’s internal religious affairs as against fed-
7 eral nondiscrimination laws, a ruling that will be relevant to this Court’s review of both
8 Plaintiffs’ Title IX claims and their state-law claims. *Werft*, 377 F.3d at 1100 n.1 (Reli-
9 gion Clauses apply equally to “federal and state law claims”); *Schmoll v. Chapman Univ.*,
10 70 Cal. App. 4th 1434, 1438 n.3, 1444 (Ct. App. 1999) (rejecting state-law claims against
11 a religious school under “constitutional concepts of religious autonomy,” which “apply
12 to state as well as federal action”). *Bostock* was argued on October 8, 2019, and *Our*
13 *Lady* will be argued on May 11, 2020. Both would normally be expected to be resolved
14 by the time of the motion to dismiss hearing on June 30, just over two months from now.
15 That is well within the time courts in this district have been willing to stay whole *pro-*
16 *ceedings*. *Abu-Hajar*, 2017 WL 10591886, at *4 (listing cases granting stays more than
17 four months before oral argument).

18 And courts are particularly willing to grant stays when the pending Supreme Court
19 decisions will help resolve *threshold* issues. *In re DirectTV Early Cancellation Fee Mar-*
20 *keting & Sales Practices Litig.*, No. 09-MDL-2093, 2010 WL 11469932 (C.D. Cal. Nov.
21 15, 2010) (arbitration); *Flores v. Collection Consultants of Cal.*, No. 14-cv-0771, 2015
22 WL 12791371 (C.D. Cal. July 27, 2015) (Art. III standing). Here, the Seminary is also
23 raising threshold defenses, and its request is more modest: a temporary stay of discovery
24 only, not of all proceedings.

25 CONCLUSION

26 This Court should stay discovery until it resolves the Seminary’s motion to dismiss.
27
28

1 Dated: April 23, 2020

Respectfully submitted,

2 /s/ Kevin S. Wattles

/s/ Daniel H. Blomberg

3 KEVIN S. WATTLES

DANIEL H. BLOMBERG

4 SOLTMAN, LEVITT, FLAHERTY &
WATTLES LLP

ERIC S. BAXTER

DIANA M. VERM

5 90 E. Thousand Oaks Boulevard, Suite
300

PETER M. TORSTENSEN, JR.

JACOB M. COATE

6 Thousand Oaks, California 91360

THE BECKET FUND FOR RELIGIOUS
LIBERTY

7 Telephone: (805) 497-7706

1200 New Hampshire Ave. NW, Suite 700
Washington, DC 20036

8 Fax: (805) 497-1147

Telephone: (202) 955-0095

9 kwattles@slfesq.com

Fax: (202) 955-0090

dblomberg@becketlaw.com

Attorneys for Defendants

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

JOANNA MAXON, et al.,

Plaintiffs,

v.

FULLER THEOLOGICAL
SEMINARY, et al.,

Defendants.

No. 2:19-cv-09969-CBM-MRW

**[PROPOSED] ORDER GRANTING
MOTION TO STAY DISCOVERY
PENDING RESOLUTION OF
DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS' FIRST
AMENDED COMPLAINT**

Date: June 30, 2020

Time: 10:00 a.m.

Dept: Courtroom 8B

Judge: Honorable Consuelo B. Marshall

1 On June 30, 2020, at 10:00 a.m., the Court heard Defendants Fuller Theological
2 Seminary, Marianne Thompson, Mari Clements, and Nicole Boymook’s
3 (collectively, “the Seminary”) Motion to Stay Discovery. Having considered all
4 papers filed in support of and in opposition to the Motion, oral arguments of counsel,
5 and all other pleadings and papers on file herein, the Court finds that:

- 6 1. The Seminary’s pending motion to dismiss will likely resolve the entire
7 case. Accordingly, discovery at this stage will likely prove unnecessary
8 and burdensome to the parties.
- 9 2. The parties agree that the core factual issues in this case are undisputed;
10 thus, discovery is unnecessary to resolve the Seminary’s motion to dismiss.
- 11 3. Further, permitting merits discovery before resolving the Seminary’s
12 threshold defenses would unconstitutionally entangle the Court with the
13 Seminary’s religious affairs.

14 Therefore, the Court GRANTS the Seminary’s Motion to Stay Discovery and
15 STAYS discovery pending resolution of the Seminary’s Motion to Dismiss.

16
17
18 DATED: _____
19 CONSUELO B. MARSHALL
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28