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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

**NOTICE OF UNOPPOSED
MOTION AND MOTION FOR
LEAVE TO FILE NOTICE OF
SUPPLEMENTAL AUTHORITY**

(Proposed Notice of Supplemental
Authority Filed Concurrently)

Date: August 4, 2020

Time: 10:00 a.m.

Dept: Courtroom 8B

Judge: Honorable Consuelo B. Marshall

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1 Defendants Fuller Theological Seminary, Mari Clements, Marianne Thompson, and
2 Nicole Boymook (together, the “Seminary”) seek leave to file a notice of supplemental
3 authority to their fully briefed motion to dismiss. *See* Judge Marshall Standing Order
4 7(a); *see also* Dkt. 62 (setting oral argument for August 4). Plaintiffs do not oppose this
5 motion.

6 Plaintiffs argue that the Seminary’s multiple overlapping First Amendment defenses
7 to Plaintiffs’ Title IX claims fail because Congress may condition the Seminary’s access
8 to federal funds on relinquishing its First Amendment rights to determine its own reli-
9 gious beliefs, membership, and governance. Dkt. 53 at 13-15, 19. But the Supreme Court
10 recently explained in *Espinoza v. Montana Department of Revenue* that over seventy
11 years of precedent affirm the “basic principle” that “disqualifying otherwise eligible re-
12 cipients from a public benefit solely because of their religious character” imposes an
13 unconstitutional “penalty on the free exercise of religion[.]” No. 18-1195, slip op. at 8,
14 11, 17 (U.S. June 30, 2020) (internal quotation marks and citation omitted).

15 Plaintiffs also argue that Title IX’s religious exemption is not available to the Semi-
16 nary because it does not affiliate with a “separate” controlling religious entity. Dkt. 53
17 at 9. The Seminary warned that Plaintiffs’ novel construction, which has never been
18 adopted by the federal government in all of Title IX’s history, would unconstitutionally
19 discriminate on the basis of internal religious governance and affiliation. Dkt. 55 at 1
20 (citing *Larson v. Valente*, 456 U.S. 228, 244 (1982)). *Espinoza* reaffirmed that adminis-
21 tering public benefits in a manner that discriminates on the basis of how a school is
22 “religiously affiliated” unconstitutionally “discriminates based on religious status.” Slip
23 op. at 10.

24 *Espinoza* rebuts Plaintiffs’ arguments. *See Resnick v. Hyundai Motor Am., Inc.*, No.
25 16-cv-00593, 2017 WL 6549931, at *14 n.7 (C.D. Cal. Aug. 21, 2017) (suggesting sup-
26 plemental authority filings should “summarize” the new authority and “describe how it
27 applies”). Accordingly, the Seminary asks for leave to file the attached notice of supple-
28 mental authority.

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Dated: July 16, 2020

/s/ Kevin S. Wattles
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No. 2:19-cv-09969-CBM-MRW

**PROPOSED NOTICE OF
SUPPLEMENTAL AUTHORITY**

Date: August 4, 2020

Time: 10:00 a.m.

Dept: Courtroom 8B

Judge: Honorable Consuelo B. Marshall

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1 Defendants Fuller Theological Seminary, Mari Clements, Marianne Thompson, and
2 Nicole Boymook (together, the “Seminary”) respectfully notify this Court of new au-
3 thority bearing on the Seminary’s pending motion to dismiss (Dkt. 46).

4 In *Espinoza v. Montana Department of Revenue*, the Supreme Court held that, under
5 the Free Exercise Clause, access to publicly available benefits may not be conditioned
6 on a religious educational institution “divorc[ing] itself” from its “religious character.”
7 No. 18-1195, slip op. at 8, 11, 17 (U.S. June 30, 2020). *C.f.* Plaintiffs’ Opp. to Mot. to
8 Dismiss, Dkt. 53 at 13-15, 19 (arguing that the federal government conditioned the Sem-
9 inary’s access to federal funds on violating core religious beliefs). The Court also reaf-
10 firmed the principle that discrimination on the basis of religious status or affiliation is
11 impermissible. *Espinoza*, slip op. at 10. *C.f.* Plaintiffs’ Opp. to Mot. to Dismiss, Dkt. 53
12 at 7-9 (arguing that an educational institution must be affiliated with a “separate” reli-
13 gious organization to qualify for the Title IX exemption).

14
15 Dated: July 16, 2020

Respectfully submitted,

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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
UNOPPOSED MOTION TO FILE
NOTICE OF SUPPLEMENTAL AU-
THORITY**

Honorable Consuelo B. Marshall

Pursuant to Defendants’ Unopposed Motion for Leave to File a Notice of Supplemental Authority dated July 16, 2020, the Court hereby **GRANTS** the motion and accepts Defendants’ Notice of Supplemental Authority dated July 16, 2020.

IT IS SO ORDERED.

DATED: _____

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE

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