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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SOUTH BAY UNITED PENTECOSTAL CHURCH, a California non-profit corporation, and BISHOP ARTHUR HODGES III, an individual,

Plaintiffs,

v.

GAVIN NEWSOM, in his official capacity as the Governor of California, *et al.*,

Defendants.

Case No.: 3:20-cv-00865-AJB-MDD

Memorandum of Points & Authorities in Support of Application for a Temporary Restraining Order; and Order to Show Cause re: Preliminary Injunction

Judge: Anthony J. Battaglia
Courtroom: 4A

Oral Argument Requested

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITES

Cases:

TABLE OF AUTHORITES (CONT.)

Cases:

TABLE OF AUTHORITES (CONT.)

Cases:

TABLE OF AUTHORITES (CONT.)

Cases:

Constitutional Amendments:

Federal Rules:

Other Authorities:

INTRODUCTION

This case concerns a series of "Stay-At-Home" Orders issued by the State and the County of San Diego, as most recently amended on May 7 and 10, 2020, as part of an effort to curb the coronavirus pandemic. This case is *not* about whether the government has a compelling interest in curbing pandemics. It does. *Nor* is this case about whether the government may limit some personal liberties. It can. *Nor* is this case about the constitutionality of the prior executive orders issued in March that permitted "life-sustaining" businesses to stay open. Those orders are irrelevant.

No, this case is about California's modifications to its Stay-At-Home order made by Governor Newsom's May 7, 2020, "Resilience Roadmap," and the County of San Diego's May 10, 2020, order implementing it. (generally, the "Orders" or the "Reopening Plan"). (Complaint Ex. 1-3; Ex. 2-1.) Under the Reopening Plan, manufacturing and retail (bookstores, clothing stores, florists, and sporting goods) opened on Friday, May 8 (Stage 2a). Offices, seated dining at restaurants, shopping malls, and schools will open a few weeks after that (Stage 2b). And churches will open a few months after that, alongside movie theaters as well as hair and nail salons, and tattoo parlors (Stage 3). Under the Supreme Court's well-settled Free Exercise jurisprudence, this Reopening Plan is unconstitutional.

The original orders from March 2020 allowed "essential businesses" (as determined by government officials on an *ad hoc* basis) to continue operations subject to strict social distancing guidelines. For example, these orders permitted marijuana dispensaries, fast food restaurants, liquor stores, "the entertainment industries," and movie studios to continue operations. (Complaint Ex. 1-2, at 23.) By contrast, the original orders prohibited religious leaders and churches like Plaintiffs from holding worship services and ceremonies.

Under the original orders, Defendants insisted that all religious worship take place only at home, by live-streaming—apparently assuming that all Californians have access to high-speed internet, computer equipment, a desire to add intrusive, data-

collecting apps to their computer devices, and the willingness to suspend a lifetime of worship practices at the command of the government. And in doing their part to curb their pandemic, Plaintiffs chose to abide by them.

But the Reopening Plan is beyond the pale. Communal worship and ministry are at the heart of Plaintiffs' religious beliefs and practices. But these new stay-at-home orders continue making it a crime for a congregant to even step foot inside a synagogue, while permitting visits to bookstores and clothing stores, and soon offices and dine-in restaurants. (Complaint, Ex. 1-3.)

The hard-fought rights afforded by the U.S. and California Constitutions are not up for debate; these rights belong to the People. "The imperative necessity for safeguarding these rights to procedural due process under the gravest of emergencies has existed throughout our constitutional history, for it is then, under the pressing exigencies of crisis, that there is the greatest temptation to dispense with fundamental constitutional guarantees which, it is feared, will inhibit governmental action." *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 164–65 (1963).

Because the Reopening Plan imposes substantial burdens on their religious beliefs and practices, Plaintiffs are suffering immediate, irreparable harm to their fundamental constitutional rights. Accordingly, Plaintiffs seek a narrow temporary restraining order enjoining Defendants' enforcement of the Reopening Plan as applied against Plaintiffs—and thus moving them from Stage 3 of the Reopening Plan to Stage 2—so they can conduct services on the weekend of May 16–17, 2020. Essentially, they seek an order precluding the enforcement of the Reopening Plan so long as they comply with the general guidelines that permit other businesses to keep their doors open.

Plaintiffs meet the standards for a temporary restraining order. *First*, they are likely to succeed on the merits of their claims. In both purpose and effect, the Reopening Plan targets Plaintiffs for discriminatory treatment merely because of their religious beliefs and practices in violation of the First Amendment's Free Exercise Clause. *Second*, the religiously discriminatory Reopening Plan is irreparably harming Plaintiffs'

fundamental constitutional rights. Without relief, Plaintiffs will continue to suffer irreparable harm, and will remain subject to fines and criminal penalties for exercising their religious beliefs. *Third*, the balance of harms tips sharply in Plaintiffs' favor. As noted, Plaintiffs face the loss of core constitutional rights and the inability to practice their faith. The cost of an injunction to the government, by contrast, is negligible, especially because the orders already allow countless activities and operations that engage in precisely what Plaintiffs seek to do. *Fourth*, a restraining order is warranted because vindicating constitutional rights is always in the public interest.

FACTUAL BACKGROUND

A. The Government "Stay-at-Home" Orders

This case arises from executive orders issued by the State and the County of San Diego to prevent the spread of the novel coronavirus. On March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency as a result of the threat of COVID-19. (Trissell Decl., Ex. A.) Two weeks later, on March 19, 2020, the Governor issued Executive Order N-33-20, which ordered all individuals living in the State of California to stay home or at their place of residence. (Complaint, Ex. 1-1, Ex. 1-2.) On May 7, 2020, the Governor published his Resilience Roadmap which modified the prior order with respect to certain businesses. (Complaint, Ex. 1-3.) For all other entities, Governor Newsom's directives remain in effect, prohibiting all religious leaders from conducting in-person and out-of-home religious services.

Governor Newsom's stay-at-home order has exceptions, namely workers "needed to maintain continuity of operations of the federal critical infrastructure sectors." (Complaint, Ex. 1-1.) On March 22, 2020, the State elaborated on the exception by releasing a list of "Essential Critical Infrastructure Workers." (Complaint, Ex. 1-2.) Included on this list are "faith based services that are provided through streaming or other technology." (Complaint, Ex. 1-2, at 16.)

Since Governor Newsom's Executive Order was first signed on March 16, 2020, the COVID-19 pandemic has flattened considerably and, in the Governor's words,

"stabilized." (*See* Trissell Decl., ¶¶ 12–19, Exs. B–D; Delgado Decl., ¶¶ 5–23; Req. for Jud. Ntc., Exs. O–P.) As a result, on April 28, 2020, Governor Newsom held a press conference in which he announced California's current four-stage Reopening Plan. (Trissell Decl., ¶¶ 20–27, Ex. E.)

"Stage 1" of the plan began on March 16, and will continue until the Executive Order is modified. (Trissell Decl., ¶ 20, Ex. E.) "Stage 2" of the Reopening Plan allows retail ("bookstores, clothing stores, florists and sporting goods stores,") as well as offices and manufacturing businesses, to begin reopening on Friday, May 8. (Trissell Decl., ¶¶ 22, 28, Ex. E; Ex. F.) Religious services are relegated to "Stage 3" along with movie theaters and hair and nail salons: "[T]hings like getting your hair cut, uh getting your nails done, doing anything that has very close inherent relationships with other people, where the proximity is very close." (Trissell Decl., ¶¶ 23–27, Ex. E.) "Stage 4" is the end of all COVID-19 related executive orders. (Trissell Decl., ¶ 20.)

On May 8, 2020, California's Reopening Plan became effective, and was published online. (Complaint, Ex. 1-3; Ex. 1-4.) On May 10, 2020, the County of San Diego issued an order that incorporated Governor Newsom's executive orders and further established a "Social Distancing and Sanitation Protocol" for "essential businesses" operating in San Diego County. (Complaint, Ex. 2-2.) The order also established a "Safe Reopening Plan" Protocol for "reopening businesses" that will be resuming business. (Complaint, Ex. 2-3.) The order also banned all gatherings of "more than one person" except at essential businesses, reopening businesses, or transit places. (Complaint, Ex 2-1.)

B. Plaintiffs Bishop Hodges and South Bay Pentecostal Church.

Bishop Arthur Hodges III is Senior Pastor of South Bay Pentecostal Church, a diverse Christian community in Chula Vista, California. Every Sunday, the church holds three to five worship services, where congregants "come together with one accord" to pray and worship. (Bishop Hodges Decl., ¶ 12.) Along with worship services, the church ministers to the faithful by performing baptisms, funerals,

weddings, and other religious ceremonies. (Bishop Hodges Decl. ¶ 15.)

The Orders have upended South Bay Pentecostal Church's ministry, shuttered its sanctuary, and stifled Bishop Hodge's God-given call to shepherd his flock. The Orders prohibit Bishop Hodges from baptizing believers. They shut out the sick from receiving spiritual healing at the altar. And they criminalize the 2,000-year-old tradition of Christians gathering together so that Christ may be in their midst. (Bishop Hodges Decl., ¶ 10.) In short, the Orders have both suppressed and repressed Bishop Hodges and his church's religious beliefs and practices.

Bishop Hodges is prepared to carry on the South Bay Pentecostal Church's religious ministries consistent with federal, state, and county social distancing guidelines and other preventative measures. For example:

- South Bay Pentecostal Church is large enough to ensure the six feet of separation between congregants.
- The Church can provide or allow masks, gloves, and other screening mechanisms to protect congregants and inhibit the spread of COVID-19 during services and ceremonies.
- The Church will require any congregant who is sick or is displaying symptoms to stay at home.

(Bishop Hodges Decl., ¶¶ 24–31.)

Plaintiffs are not seeking special treatment; they deserve equal treatment. If retail, manufacturing, offices, and restaurants can abide by the government's social distancing guidelines, then so can a church.

LEGAL STANDARD

The standards for issuing a temporary restraining order and a preliminary injunction are the same. *See, e.g.*, *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A plaintiff seeking a temporary restraining order must establish (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm without injunctive relief, (3) that the balance of harm tips in

his favor, and (4) that a temporary restraining order is in the public interest. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir.2011) (citing *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 20(2008). The Ninth Circuit evaluates these factors through a "sliding scale approach." *All. for the Wild Rockies*, 632 F.3d at 1131. So, for example, "a stronger showing of irreparable harm to plaintiff might offset a lesser showing of likelihood of success on the merits." *Id.*

ARGUMENT

1. Plaintiffs Will Likely Succeed on the Merits of Their Constitutional Claims

1.1. The Orders violate Plaintiffs' Free Exercise Rights because they impose a penalty on their sincerely held religious practices.

The Free Exercise Clause of the First Amendment provides: "Congress shall make no law respecting an establishment of religion, or *prohibiting the free exercise thereof.*" U.S. Const. amend. I (emphasis added). Under the Free Exercise Clause, a law that "discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons" is subject to strict scrutiny. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). To survive that "stringent standard," the government must prove that the law is narrowly tailored to further a compelling government interest. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2024 (2017). As discussed below, the Reopening Plan cannot survive strict scrutiny.

To be sure, "the right of free exercise does not relieve an individual of the obligation to comply with a 'valid and neutral law of general applicability.'" *Emp't Div. v. Smith*, 494 U.S. 872, 879 (1990). Thus, a law that is "neutral" and "generally applicable" is not subject to strict scrutiny even if it has the incidental effect of burdening a religious belief or practice. *See id.* But this "rule comes with an exception." *Ward v. Polite*, 667 F.3d 727, 738 (6th Cir. 2012). When the policy "appears to be neutral and generally applicable on its face, but in practice is riddled with exemptions," it "must run the gauntlet of strict scrutiny." *Id.* at 740.

1.1.1. The Orders are not generally applicable because they are *riddled with exceptions*.

A law is not generally applicable if it targets a particular religious belief or practice for discriminatory treatment "through [its] design, construction, or enforcement." *Lukumi*, 508 U.S. at 557 (Scalia, J., concurring). Here, the Reopening Plan and the Orders fail the generally applicable requirement because they are underinclusive, exempting "nonreligious conduct that endangers [the government's] interests in a similar or greater degree than [the prohibited religious conduct]." *Id.* at 543. For example, the Reopening Plan exempts a laundry list of industries and services purportedly "essential" to the government's various interests, including originally the entire entertainment industry, medical cannabis dispensaries and liquor stores, and now retail stores and manufacturing related to retail stores. (Complaint, Ex. 1-2, Ex. 1-3.) And the Reopening Plan will soon reopen offices and restaurants. (Complaint Ex. 1-3; Ex. 1-4.)

By contrast, the Reopening Plan, "in a selective manner[,] impose[s] burdens only on conduct [because it is] motivated by religious belief." *Lukumi*, 508 U.S. at 543. That religiously motivated conduct is Plaintiffs' holding communal worship services and faith-based ceremonies, both of which the Reopening Plan prohibits. To be sure, that ban has burdened Plaintiffs' religious rights:

> [Despite Bishop Hodges' 600 capacity church] [o]ne congregant's service was held in a funeral home that limited attendees to ten people and imposed social distancing measures, which resulted in much of the decedent's family being denied participation. Funeral personnel filmed the entire proceeding out of concern for liability should one of the participants fall ill. Such a service is a poor substitute to allowing the deceased's extended family of faith gather to offer comfort, support, and verbal statements of faith in the salvation of the departed.

(Bishop Hodges Decl., ¶ 23.)

But the government cannot provide exemptions to secular facilities on the ground that they are "essential" while denying parallel exemptions to churches and synagogues that practice the same or similar degree of preventative measures. That is because favoring non-religiously motivated activities over religiously motivated activities constitutes a forbidden governmental "value judgment." *Fraternal Order of Police Newark Lodge No. 12 v. City of Newark*, 170 F.3d 359, 366 (3d Cir. 1999).

Relatedly, the Orders are not generally applicable because they have been "enforced in a discriminatory manner." *Blackhawk v. Pennsylvania*, 381 F.3d 202, 209 (3d Cir. 2004). "Discriminatory laws come in many forms." *Maryville Baptist Church, Inc. v. Beshear*, --- F.3d ---, 2020 WL 2111316, at *3 (6th Cir. 2020). Although all persons and entities must follow strict social distancing guidelines, the government's enforcement of these measures are negligible. Yet because South Bay Pentecostal Church is an established place of worship, Plaintiffs have a target on their back were they to restart their religious services and ceremonies. In short, the Government's practice has been to enforce its Stay-At-Home Orders against religious persons and churches like Plaintiffs while making little effort to enforce them against widespread and widely known violations of the social distancing guidelines that threaten the public health just as much as, or more than, Plaintiffs' conduct.[1] Thus, the Orders are not generally applicable.

The Reopening Plan as applied also falls "well below the minimum standard" of general applicability because the scheme is substantially "underinclusive" and riddled with categorical and individualized exemptions. *Lukumi*, 508 U.S. at 543. This

[1] In *Abiding Place Ministries* and *Cross Culture Christian Ctr.*, discussed in the next section, the factual record involved actual police enforcement, or threats of police enforcement, levelled against churches trying to reopen. *See* Verified Complaint, *Abiding Place Ministries v. Cty. of San Diego*, No. 20-cv-0683-BAS, 2020 WL 1881323 (S.D. Cal. Apr. 9, 2020); Order, *Cross Culture Christian Ctr. v. Newsom*, No. 2:20-CV-00832-JAM-CKD, 2020 WL 2121111 (E.D. Cal. May 5, 2020). This is despite well-publicized statements by Governor Newsom and San Diego officials that no enforcement would be forthcoming. (Trissell Decl., ¶¶ 9–11.)

includes both the original Stage 1 "essential businesses" of the movie industry, liquor stores and cannabis dispensaries, and the new Stage 2 "essential businesses" of retail, offices, manufacturing, and schools. (Complaint, Ex. 1-3.) "Neutrality and general applicability are interrelated," and "the failure to satisfy one requirement is a likely indication that the other has not been satisfied." *Lukumi*, 508 U.S. at 531.

In sum, the record shows that the Government has not been, and is not, acting in a neutral manner required under the Free Exercise Clause. Thus, strict scrutiny is required. At least four federal courts have held as much, determining that executive orders distinguishing between "essential" and "non-essential" businesses must satisfy the strict scrutiny analysis set forth in *Lukumi*. *See, e.g.*, *Maryville Baptist Church*, 2020 WL 2111316, at *3; *On Fire Christian Ctr., Inc. v. Fischer*, --- F. Supp. 3d ---, 2020 WL 1820249, at *6 (W.D. Ky. 2020); *First Baptist Church v. Kelly*, --- F. Supp. 3d ---, 2020 WL 1910021, at *6 (D. Kan. 2020); *Tabernacle Baptist Church, Inc. of Nicholasville, Kentucky v. Beshear*, No. 3:20-CV-00033-GFVT, 2020 WL 2305307, at *5 (E.D. Ky. May 8, 2020) (Trissell Decl., Exs. G–J).

And this is the position of the Department of Justice, reflected in multiple memoranda published by Attorney General Barr, as well as briefs filed by the DOJ in cases across the country. *See, e.g.,* Statement of Attorney General William P. Barr on Religious Practice and Social Distancing (Apr. 14, 2020); Memorandum for the Assistant Attorney General for Civil Rights and All United States Attorneys (Apr. 27, 2020); U.S. DOJ Statement of Interest, *Temple Baptist Church v. City of Greenville*, No. 4:20-cv-64-DMB-JMV, ECF No. 6 (N.D. Miss. Apr. 14, 2020); U.S. DOJ Statement of Interest, *Lighthouse Fellowship Church v. Northam*, No. 2:20-cv-00204-AWA-RJK, ECF No. 19 (E.D. Va. May 3, 2020) (Trissell Decl., Exs. K–N).

1.1.2. The prior lawsuits the California Attorney General has litigated are distinguishable.

In the past month, three other challenges have been brought against California's suppression of religious rights. Each resulted in a denial of the motion for a temporary

restraining order. *Abiding Place Ministries v. Cty. of San Diego*, No. 20-cv-0683-BAS, ECF No. 10 (S.D. Cal. Apr. 10, 2020);[2] *Gish v. Newsom*, No. EDCV 20-755 JGB (KKx), 2020 WL 1979970 (C.D. Cal. Apr. 23, 2020); *Cross Culture Christian Ctr. v. Newsom*, No. 2:20-CV-00832-JAM-CKD, 2020 WL 2121111 (E.D. Cal. May 5, 2020). All three wrongly asserted that *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905) applied (discussed *infra*), and on that basis, held that Governor Newsom's and the county orders at issue there were permissible. But all three also proceeded to analyze the executive orders under *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993). A careful analysis of these cases, however, shows that they are distinguishable or made serious constitutional errors.

First, as an exemplar, the court in *Gish* stated that there was no "palpable invasion" of the plaintiffs' religious rights because the plaintiffs "remain free to practice their religion in whatever way they see fit so long as they remain within the confines of their own homes. Although physical contact with others is curtailed, a wide swath of religious expression remains untouched by the Orders." *Gish*, 2020 WL 1979970, at *5. But problematically, this reasoning places the court in the untenable position of deciding which aspects of a faith are important and what are peripheral. This is no place for a court to be. *See, e.g., Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevich*, 426 U.S. 696, 714 (1976) (court could not adjudicate "theological controversy" of whether bishop was properly defrocked); *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 451 (1969) (court could not adjudicate question of the "tenets of faith and practice" of a church).

Second, all three cases dealt with the Governor's prior list of "essential businesses" (Complaint, Ex. 1-2), not the current list in the Resilience Roadmap of

[2] The court in *Abiding Place Ministries* did not publish a written opinion, but denied the request for a temporary restraining order on the bases stated at a hearing.

"reopening businesses." (Complaint Ex. 1-3). In that respect, *Gish* focused on how under the prior regime order "schools are closed, restaurants are shuttered" and "citizens cannot visit public recreation spaces" *Gish*, 2020 WL 1979970, at *6.[3] As a result, the court concluded that the Orders were narrowly tailored to only prohibit "activities where people sit together in an enclosed space to share a communal experience." *Id.* But this argument is problematic for multiple reasons. In Stage 2, manufacturing, schools, offices, and childcare facilities will reopen. (Complaint, Ex. 1-3.) These are "activities where people sit together in an enclosed space to share a communal experience." *Gish*, 2020 WL 1979970, at *6. Thus, at least when offices and restaurants reopen within a "few weeks," places of worship that follow the same public health guidelines must also be allowed to reopen. (Trissell Decl., ¶¶ 17, 21.)[4]

But of course, as the three California cases themselves acknowledge, the Orders and Reopening Plan already permitted "essential businesses" such as the "entertainment industries" to stay open even if they have "activities where people sit together in an enclosed space to share a communal experience." *Gish*, 2020 WL 1979970, at *6. Numerous "essential offices" remain open, but "[h]ow are in-person [office] meetings with social distancing any different from . . . church services with social distancing?" *Maryville Baptist Church*, 2020 WL 2111316, at *2.

The courts then incorrectly concluded that the Executive Orders could assert *value judgments* that worship is *not* essential: "[T]hese are all essential services: without

[3] The analysis was the same in *Abiding Place Ministries*, ECF No. 10 at 18 ("To the extent there are secular exemptions like grocery stores, gas stations, banks, the need for these exemptions is clear. There's no way these services could be provided remotely"); and *Cross Culture Christian Ctr.*, 2020 WL 2121111, at *6 ("[T]he type of gathering that occurs at in-person religious services is much more akin to conduct the orders prohibit—attending movies, restaurants, concerts, and sporting events—than that which the orders allow.").

[4] It appears that by a "few weeks," the State means that restaurants and similar establishments can open after individual counties certify to the State that they have satisfied certain metrics on the numbers of cases and deaths. www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-19-County-Variance-Attestation-Memo.aspx.

access to the food and medicines sold at these locations, more citizens would become ill or die." *Gish*, 2020 WL 1979970, at *6. "The State's order expressly states it took other considerations into account, *i.e.*, continuing non-COVID-19 emergency services, providing clean water, protecting the state's supply chains, etc." *Cross Culture Christian Ctr.*, 2020 WL 2121111, at *6. This is the Government's position: that worship is not valuable because it is high risk and "low reward." (Trissell Decl., ¶ 29.)

Of course, protecting life is a commendable value, but the imposition of a value judgment at all is problematic and requires imposition of strict scrutiny. *Fraternal Order of Police*, 170 F.3d at 366 ("[T]he Department has made a value judgment that . . . medical[] motivations . . . are important enough . . . but that religious motivations are not."). Otherwise, which value judgments will be deemed sufficient? On May 8, "bookstores, clothing stores, florists and sporting goods stores" were allowed to open. (Trissell Decl., ¶¶ 28, Ex. F.) None of these stores are needed to save lives. Perhaps "bookstores" are needed to promote California's interest in education, but if so, where does the list stop? Mental health could justify opening up restaurants and all recreation facilities—presumably that is why the entertainment industry was deemed essential wholesale. Under *Lukumi* and its progeny, *any* exceptions require the application of strict scrutiny. As one court recently noted in enjoining an executive order similar to the one at issue here, "If social distancing is good enough for Home Depot and Kroger, it is good enough for in-person religious services which, unlike the foregoing, benefit from constitutional protection." *Tabernacle Baptist Church*, 2020 WL 2305307, at *5.

1.1.3. The Orders are not also neutral because they impose special burdens on Plaintiffs *because of* their religious practices.

Under the First Amendment's Free Exercise Clause, the government may not "discriminate[] against some or all religious beliefs or regulate[] or prohibit[] conduct *because it is undertaken* for religious reasons." *Lukumi*, 508 U.S. at 532 (emphasis added). Nor may the government "target the religious for special disabilities based on their religious status." *Id.* at 533 (quoting *Smith*, 494 U.S. at 877). And it may not

punish an organization's "religiously motivated" conduct. *Trinity Lutheran*, 137 S. Ct. at 2021. Here, the stay-at-home orders are not neutral because they put Plaintiffs to a choice: They must suppress their sincerely held religious beliefs and practices or face fines and criminal penalties. That discrimination impermissibly "imposes a penalty on the free exercise of religion" that either invalidates the orders or, at the very least, "triggers the most exacting scrutiny." *Id.*

The Orders are also not neutral because "the interpretation given to [them] by [the government]" favors secular conduct over comparable religious activities. *Lukumi*, 508 U.S. at 537. Defendants have broad discretion to interpret the Orders on an *ad hoc* basis and similar discretion to punish conduct based on subjective determinations. For example, Defendants have arbitrarily declared what types of gatherings or groupings of people are permissible, as long as social distancing practices are observed. (Complaint, Ex. 1-2; Ex. 1-3.) Since these gatherings may be permitted, Defendants must permit Plaintiffs to engage in equivalent religious activities and services, as long as Plaintiffs also adhere to the same public health measures.

Yet that is not so. The Orders specifically exclude churches and other places of worship from their exceptions. But as asked by the Sixth Circuit:

> How are in-person [office] meetings with social distancing any different from . . . church services with social distancing? . . . Why can someone safely walk down a grocery store aisle but not a pew? And why can someone safely interact with a brave deliverywoman but not with a stoic minister? . . . While the law may take periodic naps during a pandemic, we will not let it sleep through one.

Maryville Baptist Church, 2020 WL 2111316, at *4. And as stated forcefully by Attorney General Barr:

> But even in times of emergency . . .the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. Thus, government may not impose special restrictions on religious activity that do

> not also apply to similar nonreligious activity. For example, if a government allows movie theaters, restaurants, concert halls, and other comparable places of assembly to remain open and unrestricted, it may not order houses of worship to close, limit their congregation size, or otherwise impede religious gatherings. Religious institutions must not be singled out for special burdens.

Statement of Attorney General William P. Barr (Trissell Decl., Ex. K).

In sum, the Supreme Court has held that a "law targeting religious belief as such is never permissible." *Trinity Lutheran*, 137 S. Ct. at 2024 n.4. Any attempt to "punish the expression of religious doctrines" or "impose special disabilities on the basis of religious views" is categorically forbidden. *Smith*, 494 U.S. at 877 (citations omitted). That is what the Government is doing here, and for that reason, the Orders are not neutral toward religion.

1.1.4. The California Constitution mandates strict scrutiny.

Even if the Reopening Plan were generally applicable, the California Constitution—which essentially acts as a state RFRA—already mandates application of strict scrutiny. Under the California Constitution, "the religion clauses of the California Constitution are read more broadly than their counterparts in the federal Constitution." *Carpenter v. City and County of San Francisco*, 93 F.3d 627, 629 (9th Cir. 1996). Courts automatically "therefore review [a] challenge . . . under the free exercise clause of the California Constitution in the same way [they] might have reviewed a similar challenge under the federal Constitution after *Sherbert*, and before *Smith*. In other words, we apply strict scrutiny." *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562 (2004).

1.1.5. The Orders *fail strict scrutiny* because they are not narrowly tailored to curbing the pandemic.

Given that the new Resilience Roadmap violates Plaintiffs' free exercise of religion, it must withstand "the strictest scrutiny." *Trinity Lutheran*, 137 S. Ct. at 2019. The Government thus has the burden to prove that its laws further a compelling

government interest and are narrowly tailored to achieve that end. Strict scrutiny is "the most demanding test known to constitutional law," and government action that imposes special burdens on religious beliefs and practices will survive it "only in rare cases." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997). Governor Newsom's Reopening Plan is not one of those cases.

To satisfy the first prong of strict scrutiny, the Reopening Plan must advance a compelling government interest "of the highest order." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). Plaintiffs do not dispute that the government has a compelling interest in curbing the novel coronavirus. Nor do Plaintiffs dispute that the Stay-At-Home Orders further that interest. But the Orders fail strict scrutiny—and are therefore unconstitutional—because they are not narrowly tailored to achieve the Government's objectives. Specifically, the Orders are overbroad and go "far beyond what was reasonably required for the safety of the public." *Jacobson*, 197 U.S. at 28.

The compelling interest prong requires a "focused inquiry" that does not turn on whether the government has a compelling interest in enforcing the Orders in the abstract. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 726 (2014). In other words, "then everybody will want an exception" is not a compelling interest. Instead, courts should "look[] beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants." *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006). Thus, the Court should determine whether the Government has a compelling interest in not permitting South Bay Pentecostal Church to open.

Here, any compelling interest the Government may have in violating Plaintiffs' free exercise rights are defeated by the Orders' under-inclusivity. As noted above, a law cannot further a compelling interest when it "fail[s] to prohibit nonreligious conduct that endangers [its asserted] interests in a similar or greater degree" than the religious conduct. *See Lukumi,* 508 U.S. at 543.

Because the Orders allow broad exemptions to its stay-at-home mandate, the Government cannot claim that stopping the spread of COVID-19 is a compelling enough interest to shutter South Bay Pentecostal Church. The Government must instead identify a compelling interest actually consistent with its broader powers—*exemptions and all*. Unless it does so, the Government is left with discriminatory decrees that "leave[] appreciable damage to [its] supposedly vital interest unprohibited." which is fatal under the Free Exercise Clause. *Lukumi*, 508 U.S. at 547. But there is no compelling interest that requires the shutting *only* of churches but not other facilities.

In this case, treating Plaintiffs equally and permitting them to hold worship services and other religious ceremonies at South Bay Pentecostal Church would not jeopardize the public health. (Delgado Decl., ¶¶ 14–23.) Bishop Hodges is committed to following the County of San Diego and the Center for Disease Control's public health guidelines, including strict social distancing measures. He is not asking for special treatment; he is only asking for equal treatment. Defendants have "no good reason so far for refusing to trust the congregants who promise to use care in worship in just the same way it trusts accountants, lawyers, and laundromat workers to do the same." *Maryville Baptist Church*, 2020 WL 2111316, at *4.

1.1.6. If *Jacobson* applies, it is only minimally relevant.

Over a hundred years ago, the Supreme Court addressed whether the constitution protected an individual's right to refuse the smallpox vaccine in contravention of a local ordinance. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905). *Jacobson* explained that governments can validly enact liberty infringing restrictions to stop the spread of diseases, but they cannot do so in "an arbitrary, unreasonable manner," or in a way that "go[es] so far beyond what was reasonably required for the safety of the public." *Id.* at 28. Thus, when evaluating challenges to laws "purporting to have been enacted to protect the public health, the public morals, or the public safety," courts must ask whether the law "has no real or *substantial*

relation to those objects, *or* is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law." *Id.* (emphasis added). This is a fact-intensive inquiry looking at the "necessities of the case." *Id.*

Beginning on April 6 with the Western District of Oklahoma, courts have been citing *Jacobson* with respect to restrictions on abortion rights during the current pandemic. *S. Wind Women's Ctr. LLC v. Stitt*, No. CIV-20-277-G, 2020 WL 1677094 (W.D. Okla. Apr. 6, 2020). *Jacobson* was decided before most modern constitutional jurisprudence, and is therefore a bit of an outlier. But because it deals with bodily integrity, autonomy, and medicine, it is a decent fit in the context of abortion rights. To date, the Fifth, Sixth, Eighth, and Eleventh have analyzed *Jacobson* with relation to restrictions on abortion rights during the pandemic.[5]

However, *Jacobson* was decided decades before the First Amendment was held to apply to the States by incorporation, and was not a case specifically about regulations of churches. So it is not plain that it should apply in this case at all.[6] This is implied by the Sixth Circuit's opinions—the only circuit to yet address a Free Exercise challenge to pandemic restrictions. The Sixth Circuit cited *Jacobson* in both its abortion and Free Exercise cases, but only analyzed it in the former. In the latter, it largely ignored it and concluded simply that "restrictions inexplicably applied to one group and exempted from another do little to further these goals and do much to burden religious freedom." *Maryville Baptist Church*, 2020 WL 2111316, at *4; *see also First Baptist Church*, 2020 WL 1910021, at *6 (concluding that *Lukumi*, not *Jacobson*, controlled).

If the Court holds that *Jacobson* does apply, then as indicated above, there are two questions the Court must analyze. Under the second question, "invasion of rights

[5] *In re Abbott*, 954 F.3d 772 (5th Cir. 2020); *Adams & Boyle, P.C. v. Slatery*, No. 20-5408, 2020 WL 1982210 (6th Cir. Apr. 24, 2020); *In re Rutledge*, No. 20-1791, 2020 WL 1933122 (8th Cir. Apr. 22, 2020); *Robinson v. Attorney Gen.*, No. 20-11401-B, 2020 WL 1952370 (11th Cir. Apr. 23, 2020).

[6] *See Gitlow v. New York*, 268 U.S. 652 (1925) (incorporating the Free Speech Clause against the States); *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937) (Free Assembly Clause); *Edwards v. South Carolina*, 372 U.S. 229 (1963) (Right to Petition).

secured by the fundamental law," the courts have generally found for practical purposes that the "fundamental law" is simply the constitutional law readily determinable from precedent. *See, e.g.*, *Adams & Boyle*, 2020 WL 1982210, at *9 ("As of today, a woman's right to a pre-viability abortion is a part of 'the fundamental law.'"); *Robinson*, 2020 WL 1952370, at *6 ("[T]o the extent that the April 3 order effectively operates as a *prohibition* on a woman's right to obtain an abortion before viability, the district court [reasonably] concluded that it is substantially likely to be unconstitutional as applied"). This tracks the language of *Jacobson* itself: "[A]s the laws there involved went beyond the necessity of the case, and, under the guise of exerting a police power, invaded the domain of Federal authority, and *violated rights secured by the Constitution*, this court deemed it to be its duty to hold such laws invalid." *Jacobson*, 197 U.S. at 28 (italics added).

Under the first prong, "no real or substantial relation to th[e] objects [of public health]," the courts have again practically treated this as essentially akin to the heightened scrutiny required under the Supreme Court's much later developed analyses. *See, e.g.*, *Adams & Boyle*, 2020 WL 1982210, at *9 ("[I]t is much harder to discern that relation here, given the paltry amount of PPE saved, and limited amount of in-person contact avoided, by halting procedural abortions"); *Robinson*, 2020 WL 1952370, at *8 ("[T]he state did not present any evidence that applying the April 3 order to proscribe pre-viability abortions would in fact free up hospital space for COVID-19 patients or PPE for medical providers."). This again tracks the language of *Jacobson* itself: "[I]f nothing more could be reasonably affirmed of the statute in question" than "prov[ing] to be distressing, inconvenient, or objectionable to some," only then is it "the duty of the constituted authorities primarily to keep in view the welfare, comfort, and safety of the many." *Jacobson*, 197 U.S. at 28–29.

In other words, *Jacobson* is not separate from Plaintiffs' constitutional claims, but is shot through them. This finally track's *Jacobson's* own emphasis that it should not be relied upon by the courts as a basis to unnecessarily refuse to act: "[I]t might be that an

acknowledged power of a local community to protect itself against an epidemic threatening the safety of all might be exercised in particular circumstances and in reference to particular persons in such an arbitrary, unreasonable manner, or might go so far beyond that was reasonably required for the safety of the public, as to authorize or compel the courts to interfere for the protection of such persons." *Jacobson*, 197 U.S. at 28. Thus, this Court should engage the constitutional arguments in their regular course.

1.2. The Orders also violate the Federal Equal Protection Clause.

The Orders and Reopening Plan also violate Plaintiffs' rights under the Fourteenth Amendment. The Equal Protection Clause provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV. Equal protection requires the state to govern impartially—not draw distinctions between individuals based solely on differences that are irrelevant to a legitimate governmental objection. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985).

Strict scrutiny under the Equal Protection Clause applies when, as here, the classification impinges on a fundamental right, including the right to practice religion freely, the right to free speech and assembly, and the right to travel, among others. *Maynard v. U.S. Dist. Court for the Cent. Dist. of California*, 701 F. Supp. 738, 742 (C.D. Cal. 1988) ("When a law disadvantages a suspect class or impinges upon a 'fundamental right,' the court will examine the law by applying a strict scrutiny standard"), *aff'd sub nom. Maynard v. U.S. Dist. Court for Cent. Dist. of California*, 915 F.2d 1581 (9th Cir. 1990). Under strict scrutiny review, the law can be justified only if it furthers a compelling government purpose, and, even then, only if no less restrictive alternative is available. *See, e.g. Mem'l Hosp. v. Maricopa Cty.*, 415 U.S. 250, 257–58 (1974).

As noted above, Defendants cannot satisfy strict scrutiny. By granting exemptions for any other activity be it highly laudable (medical exemptions) or not (liquor stores and retail generally), Defendants must then explain why an interest of the highest order requires discriminating against Plaintiffs. This they cannot do: any

interests high enough to preclude Plaintiffs from holding worship services and funerals is necessarily also high enough to close the entertainment industry, and liquor and clothing stores. Since these places can open, Defendants must permit Plaintiffs to engage in their constitutionally protected activities as long as they also adhere to the same social distancing guidelines.

1.3. The Orders violate the Fourteenth Amendment's Due Process Clause.

The Due Process Clause of the Fourteenth Amendment "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997). To receive protection under the Due Process Clause, a right must be "deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty such that neither liberty nor justice would exist if it was sacrificed." *Id.* (cleaned up) (quoting *Moore v. City of E. Cleveland*, 431 U.S. 494 (1977), and *Palko v. Connecticut*, 302 U.S. 319 (1937)).

When analyzing a due process claim, the "crucial guideposts for responsible decisionmaking" are the nation's "history, legal traditions, and practices." *Glucksberg*, 521 U.S. at 720–21. (quotation marks and citations omitted). The question is whether the right is "so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Snyder v. Commonwealth*, 291 U.S. 97, 105 (1934). If so, the right may not be infringed "*at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Glucksberg*, 521 U.S. 702, 721 (1997) (quoting *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

Here, the fundamental liberty interest at stake is Plaintiffs' right to freely exercise their religious beliefs. This right is deeply rooted in our nation's "history, legal traditions, and practices." *Id.* at 709. Indeed, the concept of religious liberty stretches back to colonial times, where citizens looked to practice their religion unimpeded by the government. This basic freedom sought by so many colonists was enshrined in the First Amendment. Yet in March of this year, the Golden State

criminalized all religious assembly and communal religious worship. Consequently, the Government has deprived Plaintiffs of their fundamental liberties protected under the Due Process Clause.

The magnitude of this point should not be overlooked. Never before has the Government had the gall to simply shut down all places of worship—doing so flies into the heart of the prohibition against government entanglement with religion. *See Jacobson*, 197 U.S. at 360 ("[T]he spirit of an instrument, especially of a constitution, is to be respected not less than its letter").

The Supreme Court has declined to apply its regular jurisprudence under *Smith* when the government seeks to interfere with church doctrine, teachings, or ministry. In *Emp't Div. v. Smith*, 494 U.S. 872 (1990), the Supreme Court cited with approval several prior decisions protecting a church's right to institutional autonomy—*i.e.*, its ability to decide for itself matters of church government, faith, and doctrine without state interference. *Id.* at 877 (citing *Serbian E. Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976); *Presbyterian Church v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church,* 393 U.S. 440 (1969); *Kedroff v. St. Nichols Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94 (1952)). Thus, the Supreme Court has never questioned its longstanding holdings that "[l]egislation that regulates church administration, the operation of the churches, [or] the appointment of clergy . . . prohibits the free exercise of religion," *Kedroff*, 344 U.S. at 107–08, and federal courts "exercise *no* jurisdiction[] in a matter which concerns theological controversy, church discipline, [or] ecclesiastical government." *Serbian E. Orthodox Diocese,* 426 U.S. at 713–14.

Drawing on that line of cases, the Supreme Court held in *Hosanna-Tabor* that the Free Exercise Clause bars government interference—even through a neutral law of general applicability—with a church's selection of ministers, which is "an internal church decision that *affects the faith and mission of the church itself.*" *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 190 (2012) (italics added). The Executive Orders and Reopening Plan are exactly such orders "regulat[ing] . . .

the operation of churches," *Kedroff*, 344 U.S. at 107–08, and "affect[ing] the faith and mission of the church itself," *Hosanna-Tabor*, 565 U.S. at 190, by dictating what type of worship is permissible, and what is not. The above cases may not be on all fours with the present situation, but—if nothing else—they counsel against the governmental overreach at issue here.

2. Plaintiffs Face Irreparable Harm Absent Immediate Injunctive Relief.

The Supreme Court has made clear that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). In the First Amendment context, a plaintiff establishes irreparable injury "by demonstrating the existence of a colorable First Amendment claim." *Canyon Ridge Baptist Church, Inc. v. City of San Diego*, No. 05CV2313 R (CAB), 2006 WL 8455354, at *9 (S.D. Cal. June 15, 2006) (quoting *Sammartano v. First Judicial District Court*, 303 F.3d 959, 973 (9th Cir. 2002); 11A CHARLES ALAN WRIGHT, ET AL., FED. PRAC. & PROC. CIV. § 2948.1 (3d ed.) ("When an alleged deprivation of a constitutional right is involved, such as the right to free speech or freedom of religion, most courts hold that no further showing of irreparable injury is necessary.") (footnotes omitted).

Without an injunction preventing Defendants from further enforcing the Orders, Plaintiffs will suffer irreparable harm to their fundamental constitutional rights. And because of the threat of civil and criminal penalties, Plaintiffs cannot engage in core religious worship, a quintessential irreparable injury.

These irreparable injuries cannot adequately be compensated by damages or any other remedy available at law. Thus, Plaintiffs are suffering irreparable injury.

3. The Balance of Hardships Tips Sharply in Plaintiffs' Favor.

The balance of hardships tips overwhelming in favor of Plaintiffs. Here, the threatened injury to Plaintiffs is weighty—the loss of constitutional rights and the inability to practice their faith. Plaintiffs have shown that leaving those Orders in place for even a brief period "would substantially chill the exercise of fragile and

constitutionally fundamental rights," and thereby constitute an intolerable hardship to Plaintiffs. *Coll. Republicans at San Francisco State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1012 (N.D. Cal. 2007).

By contrast, the cost of a temporary restraining order to the Government is negligible. In fact, Defendants have the authority to adopt, at least on an interim basis, a more narrowly crafted set of equally applied provisions that enable the government to achieve any legitimate ends without unjustifiably invading First and Fourteenth Amendment freedoms. In addition, Defendants will suffer no legitimate harm by accommodating Plaintiffs' exercise of fundamental rights in the same manner Defendants are accommodating millions of others engaged in secular activities. The Constitution demands no less.

4. A Temporary Restraining Order is in the Public Interest

A temporary restraining order is in the public interest. As the Ninth Circuit has "consistently recognized," there is a "significant public interest in upholding First Amendment principles." *Doe v. Harris*, 772 F.3d 563, 683 (9th Cir. 2014). As discussed above, Plaintiffs' core constitutional rights to free exercise of religion, equal protection, and due process will remain in jeopardy so long as Defendants remain free to enforce their Orders. Thus, the public interest favors an injunction. *Maryville Baptist Church*, 2020 WL 2111316, at *4 ("As for the public interest, treatment of similarly situated entities in comparable ways serves public health interests at the same time it preserves bedrock free-exercise guarantees."); *First Baptist Church*, 2020 WL 1910021, at *8 ("The public interest is furthered by preventing the violation of a party's constitutional rights."); *On Fire Christian Ctr.*, 2020 WL 1820249, at *10 ("[T]he public has a profound interest in men and women of faith worshiping together this Easter in a manner consistent with their conscience."); *Tabernacle Baptist Church*, 2020 WL 2305307, at *5 ("[T]he public interest favors the enjoinment of a constitutional violation").

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5. The Court Should Dispense with Any Bond Requirement.

Finally, Rule 65(c) of the Federal Rules of Civil Procedure provides that a temporary restraining order or preliminary injunction may be issued "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c). Even so, the Court has discretion over whether any security is required and, if so, the amount . *See, e.g.*, *Jorgensen v. Cassiday*, 320 F.3d 906, 919 (9th Cir. 2003). The Ninth Circuit has "long-standing precedent that requiring nominal bonds is perfectly proper in public interest litigation," especially "where requiring security would effectively deny access to judicial review." *Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005) (citing *People of State of Cal. ex rel. Van De Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1325–26 (9th Cir. 1985); *Friends of the Earth, Inc. v. Brinegar*, 518 F.2d 322, 323 (9th Cir. 1975)).

Plaintiffs request that the Court waive any bond requirement, because enjoining Defendants from unconstitutionally enforcing the orders as to religious activities will not financially affect Defendants, who already categorically exempt specified non-religious activities from compliance. A bond would, however, be burdensome on already burdened Plaintiffs under these circumstances. *See, e.g.*, *Bible Club v. Placentia-Yorba Linda Sch. Dist.*, 573 F. Supp. 2d 1291, 1302 n.6 (C.D. Cal. 2008) (waiving requirement of student group to post a bond where case involved "the probable violation of [the club's] First Amendment rights" and minimal damages to the District of issuing injunction); *Doctor John's, Inc. v. Sioux City*, 305 F. Supp. 2d 1022, 1043-44 (N.D. Iowa 2004) ("requiring a bond to issue before enjoining potentially unconstitutional conduct by a governmental entity simply seems inappropriate, because the rights potentially impinged by the governmental entity's actions are of such gravity that protection of those rights should not be contingent upon an ability to pay.").

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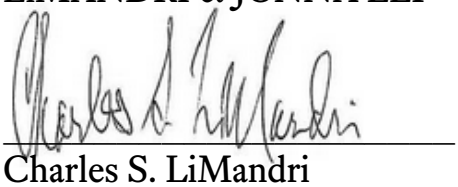
CONCLUSION

As stated by Attorney General Barr, "Many policies that would be unthinkable in regular times have become commonplace in recent weeks, and we do not want to unduly interfere with the important efforts of state and local officials to protect the public. But the Constitution is not suspended in times of crisis. We must therefore be vigilant to ensure its protections are preserved, at the same time that the public is protected." Mem. for the Ass. Att'y Gen. for Civ. Rights (Trissell Decl., Ex. L). Thus, Plaintiffs respectfully request that the Court grant a temporary restraining order before May 16, 2020, and issue an order to show cause re: preliminary injunction, as follows:

- Defendants, their agents, employees, and successors in office, are restrained and enjoined from enforcing, trying to enforce, threatening to enforce, or otherwise requiring compliance with any prohibition on Plaintiffs' engagement in religious services, practices, or activities at which the County of San Diego's Social Distancing and Sanitation Protocol and Safe Reopening Plan is being followed.

Respectfully submitted,

LiMANDRI & JONNA LLP

Dated: May 11, 2020 By: 

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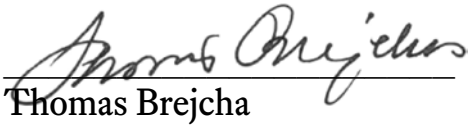
Dated: May 11, 2020 By: 

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