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22 UNITED STATES DISTRICT COURT
23 SOUTHERN DISTRICT OF CALIFORNIA

24 SOUTH BAY UNITED
25 PENTECOSTAL CHURCH, a California
26 nonprofit corporation, BISHOP ARTHUR
27 HODGES III, an individual, RABBI
28 MENDEL POLICHENCO, an individual,

Plaintiffs,

v.

GAVIN NEWSOM, in his official capacity
as the Governor of California; XAVIER
BECERRA, in his official capacity as the
Attorney General of California, SONIA
ANGELL, in her official capacity as
California Public Health Officer, WILMA J.

Case No.: '20CV865 AJB MDD

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

1 WOOTEN, in her official capacity as Public
2 Health Officer, County of San Diego,
3 HELEN ROBBINS-MEYER, in her official
4 capacity as Director of Emergency Services,
5 WILLIAM D. GORE, in his official
6 capacity as Sheriff of the County of San
7 Diego, KEVIN FAULCONER, in his
8 official capacity as Mayor of the City of San
9 Diego, and DAVID NISLEIT, in his official
10 capacity as the Chief of Police of the City of
11 San Diego,

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Defendants.

1 narrow tailoring. Every church in the state has been shuttered, and every pastor and
2 congregant placed under house arrest, save for “essential” non-religious activities.
3 This has now gone on for almost a month and a half, with several more months to
4 come, and with no true end in sight. No consideration has been made for church size.
5 No allowance has been made in relation to particular individuals’ risk factors for
6 coronavirus.

7 4. Defendants have thus intentionally denigrated California churches and
8 pastors and people of faith by relegating them to third class citizenship. Defendants
9 have no compelling justification for their discriminatory treatment of churches and
10 pastors and people of faith, nor have they attempted in any way to tailor their
11 regulations to the least restrictive means necessary to meet any arguable compelling
12 interest.

13 5. In light of this denigration, this Action presents facial and as-applied
14 challenges to the Governor of California’s March 19, 2020, Executive Order N-33-
15 20, April 28, 2020, Essential Workforce memorandum, and May 7, 2020, Resilience
16 Roadmap (the “State Orders”);¹ the County of San Diego’s April 30, 2020, Order of
17 the Health Officer and Emergency Regulations (the “County Order”);² and the
18 Mayor of San Diego’s March 16, March 30, and April 30, 2020, Executive Orders
19 Nos. 2020-1, 2020-2, and 2020-3 (the “City Orders”)³—each of which violate the

20 _____
21 ¹ Attached hereto as Exhibits 1-1, 1-2, 1-3, and 1-4:

22 <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>;

23 <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>;

24 <https://covid19.ca.gov/roadmap/>;

25 <https://www.gov.ca.gov/2020/05/07/governor-newsom-releases-updated-industry-guidance/>

26 ² Attached hereto as Exhibits 2-1 and 2-2:

27 <https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/HealthOfficerOrderCOVID19.pdf>;

28 https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/SOCIAL_DISTANCING_AND_SANITATION_PROTOCOL_04022020_V1.pdf

³ Attached hereto as Exhibits 3-1, 3-2, and 3-3:

1 constitutional rights of Plaintiffs and the people of California (collectively, the
2 “Orders” or the “Reopening Plan”).

3 JURISDICTION AND VENUE

4 6. This action arises under 42 U.S.C. § 1983 in relation to Defendants’
5 deprivation of Plaintiffs’ constitutional rights to freedom of religion, speech, and
6 assembly, due process, and equal protection rights under the First and Fourteenth
7 Amendments to the U.S. Constitution. Accordingly, this Court has federal question
8 jurisdiction under 28 U.S.C. §§ 1331 and 1343. This Court has jurisdiction over the
9 claims asserting violations of the California Constitution through supplemental
10 jurisdiction under 28 U.S.C. § 1367(a). This Court has authority to award the
11 requested declaratory relief under 28 U.S.C. § 2201; the requested injunctive relief
12 and damages under 28 U.S.C. § 1343(a); and attorneys’ fees and costs under 42
13 U.S.C. § 1988.

14 7. The Southern District of California is the appropriate venue for this
15 action pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is the District in which
16 Defendants maintain offices, exercise their authority in their official capacities, and
17 will enforce the Orders; and it is the District in which substantially all of the events
18 giving rise to the claims occurred.

19 THE PARTIES

20 8. Founded in 1956, Plaintiff South Bay United Pentecostal Church is a
21 California non-profit corporation, located in Chula Vista, California. The Church
22 sues in its own capacity and on behalf of its congregants. It is a multi-national, multi-
23 cultural congregation. The majority of its members are Hispanic, with the balance
24 consisting of Filipino, Caucasian, African-American, and other ethnic groups. It is an

25 _____
26 https://www.sandiego.gov/sites/default/files/mayoralexecutiveorder_covid19.pdf;
27 https://www.sandiego.gov/sites/default/files/mkf_executive_order_2020-2-30-2020_1.pdf;
28 https://www.sandiego.gov/sites/default/files/mkf_executive_order_2020-04-30-2020_3.pdf

1 open and accepting community that believes all humans are children of God.

2 9. Plaintiff Bishop Arthur Hodges III is a resident of the County of San
3 Diego, California. He has served as the Chief Executive Officer and Senior Pastor of
4 the South Bay United Pentecostal Church for thirty-five years. He also serves as
5 Superintendent for the SoCal District of the United Pentecostal Church International.

6 10. Plaintiff Rabbi Mendel Polichenco is a resident of the County of San
7 Diego, California. He serves as rabbi and director of Chabad of Carmel Valley,
8 located in the City of San Diego, California. He also serves as director of Chabad
9 Without Borders, which operates fifteen Chabad branches in Mexico and three
10 branches in San Diego County.

11 11. Defendant Gavin Newsom is sued in his official capacity as the
12 Governor of California. The California Constitution vests the “supreme executive
13 power of the State” in the Governor, who “shall see that the law is faithfully
14 executed.” Cal. Const. Art. V, § 1. Governor Newsom signed the State Orders.

15 12. Defendant Xavier Becerra is the Attorney General of California. As the
16 State’s chief law enforcement officer, Becerra is responsible for executing the State’s
17 police powers. He is sued in his official capacity.

18 13. Defendant Sonia Angell is California’s Public Health Officer. Under the
19 authority of the State Order, Angell decided which employees in the State are to be
20 “Essential Critical Infrastructure Workers.” She is sued in her official capacity.

21 14. Defendant Wilma J. Wooten is San Diego County’s Public Health
22 Officer. Wooten signed the County Order. She is sued in her official capacity.

23 15. Defendant Helen Robbins-Meyer is made a party to this Action in her
24 official capacity as the Director of Emergency Services, County of San Diego. She
25 signed the County Orders.

26 16. Defendant William D. Gore is made a party to this Action in his official
27 capacity as Sheriff of the County of San Diego. He is responsible for enforcing the
28 State Orders and the County Order.

1 17. Defendant Kevin Faulconer is the Mayor of San Diego, California. As
2 “the chief executive officer of the City,” he is empowered “[t]o execute and enforce
3 all laws, ordinances, and policies of the City.” S.D. Charter Art. XV, § 265. Mayor
4 Faulconer signed the City Orders. He is sued in his official capacity.

5 18. Defendant David Nisleit is sued in his official capacity as the Chief of
6 Police of the City of San Diego. He is responsible for enforcing the State Orders and
7 the City Orders.

8 19. Each and every Defendant acted under color of state law with respect to
9 all acts or omissions herein alleged.

10 FACTUAL ALLEGATIONS

11 INTRODUCTION

12 20. On or about March 13, 2020, President Donald J. Trump proclaimed a
13 National State of Emergency as a result of the threat of the emergence of a novel
14 coronavirus, COVID-19.⁴ Fear of the coronavirus epidemic has gripped California,
15 the nation, and the world. The coronavirus outbreak has turned the world upside-
16 down, causing profound damage to the lives of all Americans and to the national
17 economy.

18 21. In response to the virus, many states imposed “stay-at-home” orders to
19 “flatten the curve” of the spread of the virus. In the vast majority of states, these stay-
20 at-home orders protected the constitutional rights of churches and religious believers
21 during the coronavirus pandemic.⁵ When those orders did not protect their

22 ⁴ [https://www.whitehouse.gov/presidential-actions/proclamation-declaring-](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)
23 [national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/)

24 ⁵ According to a recent article, only nine states did not have religious exemptions
25 from their stay-at-home orders. *See* Chris Field, *9 states still prohibit religious*
26 *gatherings during pandemic. All others have religious exemptions for stay-at-home orders,*
27 *THE BLAZE* (Apr. 28, 2020); [https://www.theblaze.com/news/states-prohibit-](https://www.theblaze.com/news/states-prohibit-religious-gatherings-pandemic)
28 [religious-gatherings-pandemic](https://www.theblaze.com/news/states-prohibit-religious-gatherings-pandemic) (listing states with no religious protections as: Alaska,
California, Idaho, Illinois, Minnesota, New Jersey, New York, Vermont,
Washington.) On May 1, 2020, in response to a lawsuit, Illinois removed itself from
that list. *See* Tina Sfondeles, *Freedom to worship? Pritzker adds ‘free exercise of religion’*

1 constitutional rights, the Courts quickly corrected them. *See, e.g., Maryville Baptist*
2 *Church, Inc. v. Beshear*, --- F.3d ---, 2020 WL 2111316 (6th Cir. 2020) (enjoining order
3 that restricted attendance at religious services); *On Fire Christian Ctr., Inc. v. Fischer*, --
4 - F. Supp. 3d ---, 2020 WL 1820249 (W.D. Ky. 2020) (same); *First Baptist Church v.*
5 *Kelly*, --- F. Supp. 3d ---, 2020 WL 1910021 (D. Kan. 2020) (same).

6 22. Those states recognized that, during this pandemic, Americans need the
7 Spirit of Almighty God even more to help them weather these dark times—and that
8 this need is no less “essential” than any other need. They understood that the rules
9 of constitutional interpretation are not as rigidly fixed in a time of national
10 emergency. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). “But[, they understood,]
11 even under *Jacobson*, constitutional rights still exist. Among them is the freedom to
12 worship as we choose.” *On Fire Christian Ctr.*, 2020 WL 1820249, at *8 (citing
13 *Jacobson*, 197 U.S. at 31).

14 23. Those states had it right. *See, e.g.,* Statement of Attorney General
15 William P. Barr on Religious Practice and Social Distancing (Apr. 14, 2020);⁶
16 Memorandum for the Assistant Attorney General for Civil Rights and All United
17 States Attorneys (Apr. 27, 2020).⁷

18 24. “To be sure, individual rights secured by the Constitution do not
19 disappear during a public health crisis.” *In re Abbott*, 954 F.3d 772, 784 (5th Cir.
20 2020). Fundamental and unalienable rights are, by their very nature, “essential”—
21 they are the essential rights which led to the founding of this country and this state.
22 For, “[h]istory reveals that the initial steps in the erosion of individual rights are
23 usually excused on the basis of an ‘emergency’ or threat to the public. But the

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25 as ‘essential’ activity in new order—but not large gatherings, CHICAGO SUN-TIMES (Apr.
26 30, 2020, 9:58 p.m.), <https://chicago.suntimes.com/2020/4/30/21243640/illinois-stay-at-home-order-jb-pritzker-free-exercise-religion>.

27 ⁶ <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-issues-statement-religious-practice-and-social-distancing-0>

28 ⁷ <https://www.justice.gov/opa/page/file/1271456/download>

1 ultimate strength of our constitutional guarantees lies in the unhesitating application
2 in times of crisis and tranquility alike.” *United States v. Bell*, 464 F.2d 667, 676 (2d
3 Cir. 1972) (Mansfield, J., concurring).

4 25. For more than four hundred years, people have come to America in a
5 quest for religious freedom. Like the Puritans, most of these pilgrims were fleeing
6 religious persecution in Europe. They understood that “[n]o place, not even the
7 unknown, is worse than *any* place whose state forbids the exercise of your sincerely
8 held religious beliefs.” *On Fire Christian Ctr.*, 2020 WL 1820249, at *2.

9 26. Stretching back to the formation of colonies like Pennsylvania and
10 Rhode Island, where citizens could practice religion in a way that would not be
11 impeded by the government, this basic freedom that was sought by so many colonists
12 was enshrined in the constitutions of the states and, most importantly, in the First
13 Amendment to the United States Constitution: “Congress shall make no law
14 respecting the establishment of religion or prohibiting the free exercise thereof.”
15 U.S. Const. amend I. This religious heritage is evident even today in the names of
16 California’s cities, and specifically the City of San Diego, whose founding 250 years
17 ago by Fray St. Junípero Serra, the City celebrated just last year.

18 27. Yet in March of this year, the Golden State criminalized all religious
19 assembly and communal religious worship. With the pandemic as justification,
20 Governor Newsom and the County and City of San Diego expanded their authority
21 by extraordinary lengths, depriving all Californians of fundamental rights protected
22 by the U.S. and California Constitutions, including freedom of religion, speech, and
23 assembly, and due process and equal protection under the law.

24 28. Unlike forty-two other states issuing stay-at-home orders, California did
25 not mention religion or churches in its executive order. At the State level, the only
26 reference to religious rights was a single line in a 23-page memorandum that clergy are
27 “essential” for “faith-based services that are provided through streaming or other
28 technologies that support physical distancing and state public health guidelines.” (Ex.

1 1-2, at 16.) At the County level, the orders make no reference to religion. (Ex. 2-1, Ex.
 2 2-2.) And at the City level, the Mayor “prohibited” “any event or convening that
 3 brings together 50 or more people in a single room or a single space at the same time,
 4 such as a[] . . . church.” (Ex. 3-1, at 1.)

5 29. Oddly “mental health workers” could keep their business open for in-
 6 person counseling and services.” (Ex. 1-2, at 2.) Thus, California apparently
 7 recognized the benefit of providing mental health and substance abuse support
 8 services—as long as they are *not* provided by pastors and churches.

9 30. At the same time as criminalizing worship—each of the Orders had a
 10 paragraph threatening criminal enforcement—the State Order (adopted and expanded
 11 upon by the County and City Orders) allowed citizens to gather at liquor stores, pot-
 12 dispensaries, Planned Parenthood, Walmart, CVS, Costco, Home Depot, and many
 13 other locations deemed “essential.” The State Order deemed the entirety of the
 14 “entertainment industries” essential. (Ex. 1-2, at 23.)

15 31. This was not a hypothetical situation from an Orwellian novel describing
 16 a bleak future—this was the current and very real nightmare endured by millions of
 17 religious citizens who maintained the conviction that the faithful practice of regularly
 18 gathering together was absolutely “essential.” But those citizens decided to wait
 19 anyway. Religious Americans are no less patriotic than any other Americans, and are
 20 absolutely willing to do their part to “flatten the curve.” But they are not willing to
 21 have their faith denigrated, demeaned, and compared to attending a movie theater.

22 THE HISTORY OF THE EXECUTIVE ORDERS

23 32. On March 4, 2020, California Governor Gavin Newsom proclaimed a
 24 State of Emergency as a result of the threat of COVID-19.⁸

25 33. On March 19, 2020, California Governor Newsom issued Executive
 26 Order No. N-33-20 in which he ordered that “all residents are directed to

27 ⁸ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE->
 28 [Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-).

1 immediately heed the current State public health directives.” (Ex. 1-1.)

2 34. The state public health directive requires “all individuals living in the
3 State of California to stay home or at their place of residence except as needed to
4 maintain continuity of operations of the federal critical infrastructure sectors. . . .”⁹

5 35. On March 22, 2020, the California Public Health Officer designated a
6 list of “Essential Critical Infrastructure Workers.” (Ex. 1-2.) Included on the list of
7 the “essential workforce” are “faith based services that are provided through
8 streaming or other technology.”

9 36. Accordingly, this list prohibits all religious leaders from conducting in-
10 person and out-of-home religious services, regardless of the measures taken to reduce
11 or eliminate the risk of the virus spreading. Meanwhile, the list deems the continuity
12 of services provided by coffee baristas, burger flippers, and laundromat technicians to
13 be so necessary for society that these activities are permitted to continue under the
14 State Order, despite the existence of the very same risk Defendants rely on to stymie
15 the exercise of fundamental rights.

16 37. On April 30, 2020, the County of San Diego issued an Order of the
17 Health Office and Emergency Regulations. (Ex. 2-1.) That order incorporated
18 Governor Newsom’s Executive Order No. N-33-20, and set further guidelines for
19 essential businesses operating in San Diego County. Specifically, that order
20 promulgated the County of San Diego “Social Distancing and Sanitation Protocol”
21 that all essential businesses were required to fill out and adhere to. (Ex. 2-2.) The
22 order also banned all gatherings of “more than one person” except at essential
23 businesses or transit places. (Ex. 2-1, at 4.)

24 38. On April 30, 2020, the City of San Diego issued Executive Order No.
25 2020-3. (Ex. 3-3.) That order expressly incorporated the State and County orders:
26 “All City residents shall comply with all current direction issued by Executive Order
27 of the Governor of California and by directive of the County Public Health Officer.”

28 ⁹ The State Public Health Directive was included in the text of the State Order.

1 It also extended prior City of San Diego Orders. (Ex. 3-1; Ex. 3-2.)

2 39. The state public health directive, included in Executive Order No. N-33-
3 20, provides that its directives “shall stay in effect until further notice.”

4 40. On April 28, 2020, Governor Newsom held a press conference in which
5 he announced California’s current four stage Reopening Plan, and his intention on
6 how he will modify his Executive Order No. N-33-20. That plan relegates religious
7 services to the bottom of the pile, next to attending the cinema, and prioritizes
8 reopening manufacturing and offices.

9 41. On May 4, 2020, Governor Newsom published a press release in which
10 he announced that Stage 2 of the Reopening Plan—where offices and manufacturing
11 will re-open—will begin, in part, on Friday, May 8, 2020.

12 42. On May 7, 2020, Governor Newsom published his Resilience Roadmap,
13 which provided the means of beginning of Stage 2 of the Reopening Plan on Friday,
14 May 8, 2020. (Ex. 1-3.)

15 **BISHOP ARTHUR HODGES AND**
16 **THE SOUTH BAY UNITED PENTECOSTAL CHURCH**

17 43. South Bay Pentecostal Church is a reflection of the Chula Vista
18 community. It is a multi-national, multi-cultural congregation. The majority of its
19 members are Hispanic, with the balance consisting of Filipino, Caucasian, African-
20 American, and other ethnic groups. The congregation represents a cross-section of
21 society, from rich to poor and encompassing people of all ages. The congregation also
22 includes members and visitors who run the gamut of essential workers. These
23 essential workers and service providers receive spiritual support, comfort, guidance,
24 and shelter from our ministry. The Church is an open and accepting community that
25 believes all humans are children of God.

26 44. Bishop Hodges has served as senior Pastor and Bishop of the South Bay
27 Pentecostal Church for thirty-five years. He also serves as a District Superintendent
28 of the United Pentecostal Church International. He oversees more than two-hundred

1 pastors and ministers, representing more than one-hundred churches across
2 Southern California.

3 45. Bishop Hodges' vocation was settled from an early age. He is the son of
4 a Pentecostal Pastor. His father repeatedly built churches from scratch, establishing
5 the community and moving on to repeat the same process in another town.

6 46. At the age of ten, he felt God calling him to the same ministry. However,
7 sensing the labors of his Father, who was tasked with raising a family, maintaining his
8 electrician business, and serving as a Pastor all at the same time, he understood the
9 tremendous sacrifice that pastors are expected to make. At that age, he was
10 frightened by the burden. As such, he was reluctant to accept God's call.

11 47. When he was twelve, he attended a youth class. The teacher of that
12 particular class was very passionate about the power of prayer. Frequently, he would
13 end those classes in prayer meetings. At one prayer meeting, Bishop Hodges heard
14 God asking him, "Are you willing to be my preacher? Will you be my minister?" In
15 that moment, he said yes, and the fear of his father's burden finally left him.
16 However, it would be a number of years before he would make good on that promise.

17 48. Upon graduating from high school, Bishop Hodges believed he would
18 become an airline pilot. However, his father requested that he honor his sacrifices in
19 raising him and asked him to give Bible College a chance. Out of a sense of filial duty,
20 Bishop Hodges enrolled at the Apostolic Bible Institute in St. Paul, Minnesota. While
21 at the Institute, God's call became too loud to ignore. With a missionary's zeal, he
22 threw himself into full-time ministry. He began preaching at youth camps,
23 conferences, and other venues, traveling from city to city and state to state, sharing
24 God's Word with all who would open their hearts to listen.

25 49. Two years later, Bishop Hodges' father invited him to serve as Assistant
26 Pastor at South Bay Pentecostal Church. Sensing that life on the road was no place to
27 grow a family, and with his wife pregnant with their first child, he agreed to accept
28 the position. The passage of time brought change, and his father once more felt the

1 call to move on to a new church. In his stead, Bishop Hodges was unanimously voted
2 to take his place at South Bay, where he has served ever since.

3 50. Bishop Hodges is a sincere, strong believer that the Bible is the infallible
4 and immutable word of God. This belief is one that he shares with South Bay
5 Pentecostal Church. They believe that there is one God—the creator of all. They
6 practice as best they know how and can according to their abilities and understanding
7 of Scripture. “Not forsaking the assembling of ourselves together, as the manner of
8 some is; but exhorting one another: and so much the more, as ye see the day
9 approaching.” (Hebrews 10:25.)

10 51. The South Bay Pentecostal Church’s model is the New Testament
11 church founded and described in the book of the Acts of the Apostles: “And when
12 the day of Pentecost was fully come, they were *all with one accord in one place.*” (Acts
13 2:1 [emphasis added].) They believe that “all” being gathered in “one place” is
14 fundamental in order to fulfill Christ’s final charge that “you will be my witnesses.”
15 (Acts 1:8.) Thus, at the Church’s very beginning, they believe that the foundational
16 function of the church, all gathering together with one accord, was established.

17 52. The Book of Acts, which chronicles the founding of the Church, uses
18 the word “together” thirty-one times, thus providing thirty-one reasons for the
19 church to come together with one accord. Being “together” spiritually and physically
20 is key in their preaching, teaching, and worship practice. This experience of
21 worshipping together occurs *both* in the home *and* in the communal setting,
22 “continuing daily with one accord *in the temple*, and breaking bread *from house to*
23 *house.*” (Acts 2:46–47 [emphasis added].)

24 53. In observance of this sacred charge and sincerely held religious belief,
25 South Bay Pentecostal Church holds between three and five services each Sunday. The
26 average attendance at some of these services lies between two-hundred and three-
27 hundred congregants. The Church’s sanctuary can hold up to six-hundred people.

28 54. The services focus on the scriptural charge to be “together”—both

1 spiritually and physically. Services begin with Bible classes spread across different
2 ages and groups. Each class may have between ten and one-hundred participants.
3 When these classes conclude, congregants gather together with one accord for praise
4 and worship. Those with special needs or sickness come forward and stand around
5 the altar, where hands are laid upon them and they are then anointed. This sacrament
6 observes the Scriptural charge to “let them pray over him, anointing him with oil in
7 the name of the LORD.” (James 5:14.)

8 55. The Church believes that the act of laying on hands also assists in
9 conferring, in a real sense, the gift of the Holy Ghost: “And when Paul had laid his
10 hands on them, the Holy Ghost came on them.” (Acts 19:6.) The service concludes
11 with preaching followed by a challenge to physical action, where the congregation is
12 challenged to approach the altar to “come believing, come praying.” As mandated by
13 Scripture, the service concludes with fellowship both inside and outside the
14 sanctuary: “And they continued steadfastly in the apostles’ doctrine and fellowship,
15 and in the breaking of bread, and in prayers.” (Acts 2:42.)

16 56. South Bay Pentecostal Church also perform baptisms, funerals,
17 weddings, and other religious ceremonies.

18 57. They believe Scripture exhorts them to “[r]epent, and be baptized every
19 one of you in the name of Jesus Christ for the remission of sins, and ye shall receive
20 the gift of the Holy Ghost.” (Acts 2:38.) They believe this sacrament of “new birth”
21 cannot be performed on one’s own, or by staying at home. One may repent on their
22 own, but they *cannot baptize themselves*. They believe there is no justifiable reason for
23 postponing the sacrament of baptism, as it is a necessary part of salvation.

24 58. Since the Orders prohibiting physical religious assembly were put in
25 place, the Church’s ability to carry out its ministry has been dramatically curtailed.
26 Bishop Hodges has neither experienced symptoms of nor been diagnosed with
27 COVID-19.

28 59. These orders forbid the assembly required to come together with one

1 accord. These orders forbid baptism, gathering around the altar, and any form of
2 “being together” that is *both* physical and spiritual.

3 60. “Zoom Meetings” and other tele-conferencing applications are
4 inadequate substitutes as they curtail a minister’s ability to lay hands upon a
5 congregant or perform a baptism. They also curtail the congregation’s ability to
6 approach the altar, which is central to their experience of faith.

7 61. As a result of the Orders, South Bay Pentecostal Church is prohibited
8 from holding the services mandated by Scripture. These include the important
9 milestone services that mark life events and even the end of a life.

10 62. South Bay Pentecostal Church desires to hold services in a manner that
11 properly protects its congregants so that they may observe the inviolable precepts of
12 Scripture and encourage and comfort one another during these troubling times of the
13 COVID-19 outbreak. The Church’s congregation needs to connect with one another
14 in order to receive the hope and encouragement they need to heal and grow in their
15 faith and in order to observe the Scriptural requirement of gathering together with
16 one accord.

17 63. The Orders’ outright ban on religious services are overbroad and
18 unnecessary because Sunday services, baptisms, and funerals may be held in a
19 manner consistent with the social distancing guidelines. If restaurants, auto
20 mechanics, and marijuana dispensaries are capable of following these guidelines, the
21 congregation of South Bay Pentecostal Church is certainly capable.

22 64. As the below photo demonstrates, South Bay Pentecostal Church
23 possesses a large sanctuary that provides ample room to accommodate the six feet of
24 social distancing required by the County and CDC requirements. Moreover, should
25 the amount of congregants threaten to overwhelm the social distancing guidelines,
26 additional services can be added to accommodate smaller gatherings that would
27 satisfy those guidelines.

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65. In addition, the Church can integrate masks, gloves, screens, veils, and other screening mechanisms in order to protect congregants and inhibit the spread of COVID-19 during all services, including Sunday worship, baptisms, and funerals. Furthermore, the Church will encourage anyone uncomfortable with gathering during the pandemic to stay at home. The Church will also require that anyone who is sick or has symptoms to stay at home.

66. In other words, the Church can and will abide by the County’s Social Distancing and Sanitation Protocol, and any other necessary guidelines, just like any other organization.

67. These services are essential for the spiritual health of the congregation so that the congregants can exhort one another and the will of God during these difficult times.

68. The Church has previously demonstrated its ability to adopt and enforce suitable guidelines for social distancing practices through its work as what may be the largest food distributor to needy people in the South Bay region of San Diego County. Since the closure orders were placed, the Church worked with the Chula Vista Police Department to develop a drive-through food distribution system so that hundreds of cars may drive into and around the Church parking lot. Volunteers are provided masks and gloves and deliver groceries, contact-free, directly into each driver’s trunk or cargo area. During any given week, the Church distributes between three and twelve tons of food. The Church has also been publicly fêted for its efforts by the Mayor of Chula Vista.



69. If the Church is capable of demonstrating and implementing proper social distance protocols for the purposes of food distribution, it is clearly capable of demonstrating and implementing similar protocols when engaging in its Scripturally mandated worship practices.

RABBI MENDEL POLICHENCO

70. Rabbi Mendel Polichenco is a rabbi of the Jewish faith. It is his mission to educate and inspire passion for Judaism in his congregants. He serves as rabbi and director of Chabad of Carmel Valley, located in San Diego, California. He also serves as director of Chabad Without Borders.

71. Rabbi Polichenco’s life’s mission was lovingly formed in the embrace of Argentina’s vibrant Jewish community. From a young age, he knew that it was his vocation to follow in the footsteps of his father. Rabbi Polichenco’s father was a rabbi and prominent leader in their faith community and was responsible for opening a number of Jewish day schools and high schools in their native Buenos Aires.

72. In the coming years, Rabbi Polichenco concluded that he must make an absolute commitment to follow in his father’s footsteps. Therefore, he not only became a rabbi, but he also became a builder of communities. Soon after he was

1 ordained, he became the rabbi for the Jewish Community of Tijuana—the first
2 official representative of the Chabad movement in Mexico. As rabbi, he also founded
3 the first and only Jewish Day School in the state of Baja California, which remained
4 open for seven years. Believing that spiritual sustenance must nourish mind, soul *and*
5 body, he also opened a Kosher restaurant, bakery, and catering service, which
6 operates to this day. Over the coming years, he expanded his activities in Baja
7 California and, ultimately, into the United States.

8 73. Rabbi Polichenco is a sincere, strong believer in the Torah’s mitzvahs.
9 He holds sacred the Torah’s command that “[a]ccording to the law [the rabbinical
10 courts] instruct you and according to the judgment they say to you, you shall do; you
11 shall not divert from the word they tell you, either right or left.” (Deuteronomy
12 17:11.)

13 74. In observance of these precepts and his sincerely held religious beliefs,
14 Rabbi Polichenco holds weekly Shabbat services at Chabad of Carmel Valley in San
15 Diego, California. Approximately three-hundred adults worship at Shabbat.
16 Moreover, he holds midweek Shacharit services. Approximately twenty adult
17 attendees congregate at these weekday services.

18 75. He also performs funerals, Bar Mitzvahs, Bat Mitzvahs, weddings, and
19 other religious ceremonies.

20 76. Jewish services and ceremonies require a quorum of ten men to be
21 present in the same physical space in order for the service or ceremony to commence.
22 This quorum requirement applies to Shabbat, Shacharit, funerals, Bar Mitzvahs, Bat
23 Mitzvahs, and weddings.

24 77. Rabbi Polichenco also teaches weekly classes on the Torah for teenagers
25 and adults. In addition, he offers social services and counseling.

26 78. He serves a congregation that is multi-racial and represents a cross-
27 section of society, from rich to poor and encompassing people of all ages. His
28 congregation also includes members and visitors who run the gamut of essential

1 workers. These essential workers and service providers receive spiritual support,
2 comfort, guidance, and shelter from his ministry.

3 79. He is also the director of Chabad Without Borders, which operates
4 fifteen Chabad branches in Mexico and three branches in San Diego County.

5 80. Since the Orders prohibiting physical religious assembly were put in
6 place, Rabbi Polichenco's ability to carry out his ministry has been dramatically
7 curtailed. He has been forced to curtail his ministry, as well as that of Chabad of
8 Carmel Valley and Chabad Without Borders, despite the fact that he has neither
9 experienced symptoms of nor been diagnosed with COVID-19.

10 81. These orders forbid the assembly required to hold Shabbat, Shacharit,
11 funerals, Bar Mitzvahs, Bat Mitzvahs, and weddings. This is because allowing a
12 quorum of at least ten men to gather in the same physical space is facially prohibited
13 by the Orders.

14 82. "Zoom Meetings" and other tele-conferencing applications are
15 insufficient for amassing the required quorum to commence a Shabbat or Shacharit
16 service because the rabbinical mitzvahs require that at least ten men be *physically*
17 present in the same space. If this minimum threshold is not met, a service cannot
18 occur.

19 83. As a result of the Orders, Rabbi Polichenco is prohibited from holding
20 the services mandated by the Jewish faith. These also include the important
21 milestone services that mark life events and even the end of a life.

22 84. It is particularly heartbreaking and tragic for a congregant to lose a
23 parent or child and not be able to say the special prayers of comfort and healing that a
24 Jewish funeral provides. Because the Orders prohibit religious assembly, the required
25 quorum of ten men cannot be marshalled. As a result, Rabbi Polichenco is unable to
26 hold any funerals, and members of his congregation are left to nurse their heartbreak
27 in silence.

28 85. In addition, the orders have forced Rabbi Polichenco to cancel Bar

1 Mitzvahs. As part of the service, a teenage boy is expected to recite extensive
2 portions of the Torah. This requires a full year's study to memorize these substantial
3 portions for recitation at the Bar Mitzvah service. Such a recitation can only occur on
4 one specific day, depending on the boy's birthday. Because the Orders prohibit
5 religious assembly, the required quorum of ten men cannot be marshalled. As a
6 result, Rabbi Polichenco is unable to hold any Bar Mitzvahs, and the boys' years of
7 hard study are wasted.

8 86. Rabbi Polichenco desires to hold services in a manner that properly
9 protects his congregants so that they may observe the inviolable precepts of the
10 mitzvahs, and encourage and comfort one another during these troubling times of the
11 COVID-19 outbreak. His congregation needs to connect with one another in order to
12 receive the hope and encouragement they need to heal and grow in their Jewish faith.

13 87. The Orders are overbroad and unnecessary because Shabbat, Shacharit,
14 funerals, Bar Mitzvahs, Bat Mitzvahs, and weddings may be held in a manner
15 consistent with the social distancing guidelines. If restaurants, auto mechanics, and
16 marijuana dispensaries are capable of following these guidelines, his congregation is
17 certainly capable.

18 88. Chabad of Carmel Valley possesses a very large sanctuary that can
19 accommodate social distances beyond the six feet required by the County and CDC
20 requirements. Chabad of Carmel Valley can accommodate distances of up to ten feet
21 per person.

22 89. Chabad of Carmel Valley also provides space for open air services in a
23 very large garden. This garden can also accommodate social distance requirements.

24 90. In addition, regardless of whether services are held indoors or outdoors,
25 the Chabad can integrate masks, gloves, screens, veils, and other screening
26 mechanisms in order to protect congregants and inhibit the spread of COVID-19.
27 Rabbi Polichenco will also encourage anyone uncomfortable with gathering during
28 the pandemic to stay at home. He will also require that anyone who is sick to stay at

1 home.

2 91. In other words, Rabbi Polichenco can, and will abide by the County’s
3 Social Distancing and Sanitation Protocol, and any other necessary guidelines, just
4 like any other organization.

5 92. These services are essential for the spiritual health of the congregation
6 so that the congregants can exhort one another and the will of God during these
7 difficult times.

8 **THE CURRENT STATE OF THE PANDEMIC**

9 93. Due to the unified efforts of the American people, efforts to curb the
10 coronavirus have proven successful.

11 94. The flattening of the curve has been well documented by a medical
12 expert, Dr. George Deglado, M.D., who has been providing medical support and
13 direction to a COVID-19 planning group using Monte Carlo simulations to create
14 accurate planning models—models which have been consistently more accurate than
15 the State’s models. According to Dr. Delgado:

16 It is clear that due to mitigation measures carried out
17 throughout California, the trajectory of the COVID-19
18 pandemic has been altered; the “curve has been
19 flattened.” . . .

20 Hospitalizations and deaths are both lagging indicators. In
21 fact, deaths reflect infections that started approximately three
22 weeks prior. Except in certain geographic pockets where flare-
23 ups may occur, level or decreasing hospitalizations and death
24 rates are reassuring that we have reached a plateau or even a
25 decrease in the number of new infections.

26 In California, the statistics support the flattening of the curve.
27 Hospitalizations have remained at a relatively steady level and
28 ICU admissions have trended downward. Deaths have been at
a plateau since early April 6 with the daily death count from
April 6 to May 2 ranging from 31 to 115 per day. Only one of
those days had 100 or more deaths. Eight of those days had

1 counts less than 50. Again, deaths are the last lagging
2 indicator.

3 Los Angeles County has reported about 1,200 deaths (out of
4 California's approximate total of 2,200). The curve of new
5 deaths has flattened, similar to the California curve. The
6 Monte Carlo model predicts that total deaths in Los Angeles
7 County will be approximately 1,900, for this year.

8 The measure R_0 ("R naught") gives an indication of how
9 many additional persons an infected person can infect. When
10 R_0 drops below one, an outbreak loses steam and begins to
11 subside. Our model shows that in Los Angeles County R_0
12 decreased to less than one in early April.

13 95. The flattening is also well documented by Kevin Systrom and Mike
14 Krieger, the founders of Instagram, who have created a website called [Rt.live](#) to track
15 the transmission rate nationwide. Like Dr. Delgado, their website shows that the
16 curve has effectively flattened.¹⁰

17 96. This flattening is also illustrated by a review of the death rates in
18 California. According to publicly available documents, as of July 1, 2019, the
19 population of California is estimated to be 39,512,223 persons.¹¹ As of May 2, 2020,
20 there are a total of only 2,215 deaths in California.¹² Thus, the probability of dying of
21 COVID-19 in California is 5.6 out of 100,000. A comparison of California with other
22 states by the Statista.com shows that California is doing amazingly well.¹³

23 97. The flattening is also well corroborated by reports that California
24 hospitals are laying off their staff because they have very few COVID-19 patients and
25 they are precluded from performing elective procedures (*i.e.*, cancer surgery, heart

26 ¹⁰ [https://www.vox.com/recode/2020/4/21/21227855/coronavirus-spreading-by-
27 state-instagram-effective-reproduction-rate](https://www.vox.com/recode/2020/4/21/21227855/coronavirus-spreading-by-state-instagram-effective-reproduction-rate)

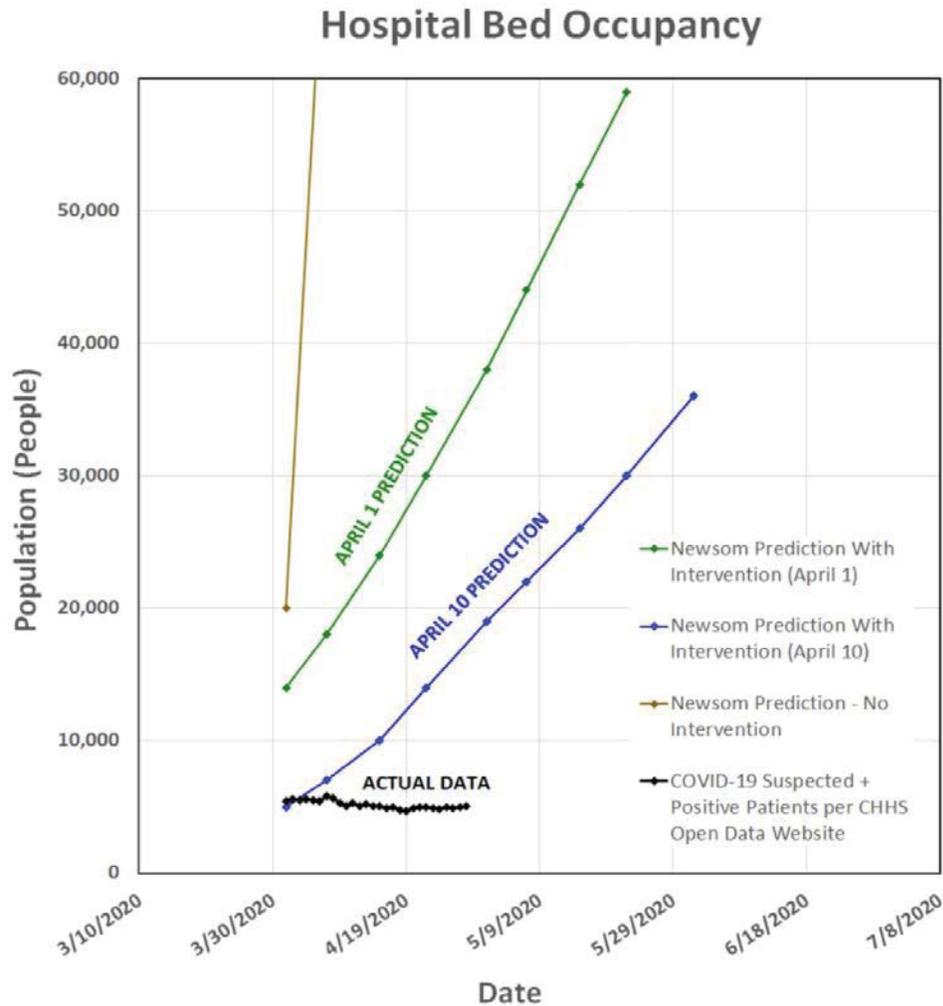
28 ¹¹ <https://www.census.gov/quickfacts/fact/table/CA/PST045219>

¹² [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/
ncov2019.aspx#COVID-19%20by%20the%20Numbers.](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers)

¹³ [https://www.statista.com/statistics/1109011/coronavirus-covid19-death-rates-us-
by-state/](https://www.statista.com/statistics/1109011/coronavirus-covid19-death-rates-us-by-state/)

1 surgery).¹⁴

2 98. Finally, the flattening of the curve was impressively illustrated in a
 3 graphic published¹⁵ by Elon Musk:



21 **CALIFORNIA’S FOUR STAGE REOPENING PLAN**

22 99. As a result of their unified efforts, Americans began anticipating the day
 23 when they could reap the benefits of their hard work—their sacrifice. They began
 24 anticipating a lessening of the extreme measures imposed on them by their
 25 Governors, and began pushing for that lessening to come soon.

26 ¹⁴ <https://www.kusi.com/palomar-health-to-lay-off-317-employees-citing-lack-of-revenue/>; <https://calmatters.org/health/coronavirus/2020/05/health-care-workers-layoffs-california-coronavirus-nurses-furloughs-pay-cuts-hospitals/>.

27 ¹⁵ <https://twitter.com/elonmusk/status/1255678979043778560>

1 100. In response to that pressure, on Tuesday, April 27, 2020, Governor
2 Newsom held a press conference in which he outlined how we “have not only bent
3 the curve in the state of California, but stabilized it.”¹⁶ As a result, “[t]he reality is,
4 we are just a few weeks away, not months away, from making measurable and
5 meaningful changes to our stay-at-home order.”¹⁷ This was supported by Governor
6 Newsom’s later recitation of the statistics:

7 The number of hospitalizations, 1.4% increase. Um, again,
8 we’re seeing some stabilization, decrease, modest increase,
9 decrease, modest increase, uh, in the total number of
10 people hospitalized. The number of people in ICU’s
11 basically flat from yesterday, just one individual, uh, more
 than in the last 24 hours in the ICU—so again,
 stabilization.¹⁸

12 Towards the end of the press conference, Governor Newsom announced that during
13 a press conference on the next day, he would outline the forthcoming “measurable
14 and meaningful changes to our stay-at-home order.”

15 101. On Wednesday, Aril 28, 2020, Governor Newsom announced that those
16 “meaningful modifications” would come in the form of a four stage plan—with the
17 present situation representing Stage 1.¹⁹ During the press conference, Governor
18 Newsom stressed that “the foundational point of emphasis we want to advance today
19 is phase 2 . . . is in weeks not months, phase 3 and 4, months not weeks.”²⁰

20 102. During the press conference, Dr. Sonia Angell—the Director of the
21 California Department of Public Health—explained Stage 2 as follows, and showed
22 the following graphic:

23 In stage 2, we’re going to really start focusing on lower risk
24 workplaces, that means gradually opening some of those
25 workplaces with adaptations. These include things like:

26 ¹⁶ <https://www.facebook.com/CAgovernor/videos/239711700434134/> at 6:03.

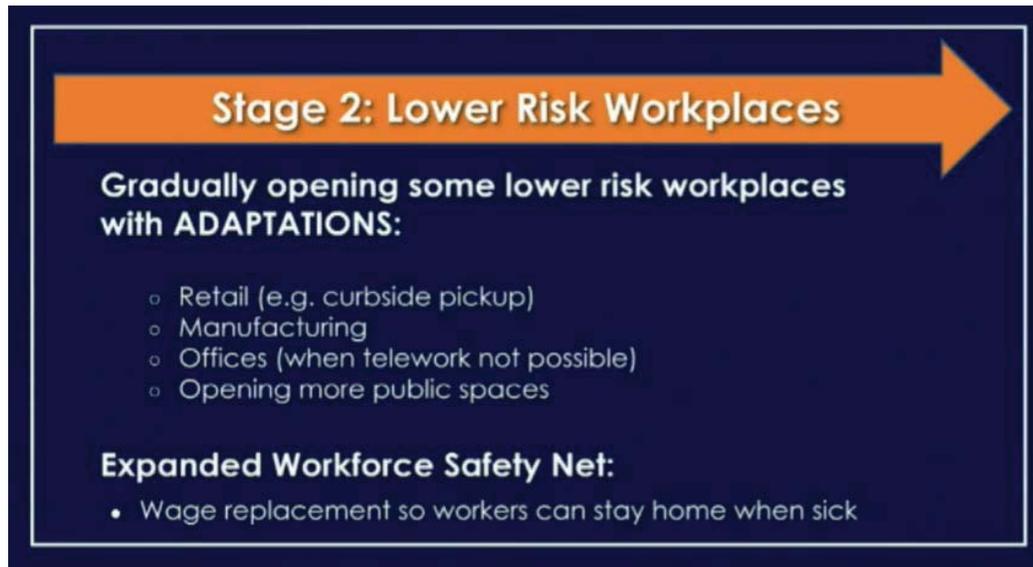
27 ¹⁷ *Id.* at 6:40.

28 ¹⁸ *Id.* at 25:04.

¹⁹ <https://www.facebook.com/CAgovernor/videos/524013811808326/>

²⁰ *Id.* at 48:43.

1 Retail, allowing for curbside pickup; Manufacturing, which
 2 can include things like toys, clothing, other things,
 3 furniture, that was not a part of the essential sector;
 4 Talking about offices, this can include things like PR firms,
 5 and consulting, and other places where telework is not
 6 possible, but by modifying the environment itself, it can
 7 make it lower risk for individuals; and then ultimately
 8 talking about opening more public spaces, things like parks
 9 and trails, that may have historically been limited because
 10 of our concerns, trying to think about how we can modify
 11 that to make them safer for individuals to enjoy the outdoor
 12 spaces because we know physical activity is so important to
 13 our health, and this is also about health, clearly.²¹



20 103. Dr. Angell then described Stage 3 and 4 as follows: “The third stage is
 21 when we get into those areas that may be higher risk, those sectors that we think will
 22 take a lot more modification to adapt in a way that can make them places where people
 23 can move with lower risk.”²² “Those are things like getting your hair cut, uh getting
 24 your nails done, doing anything that has very close inherent relationships with other
 25 people, where the proximity is very close.”²³ “And then ultimately, the space that we

26 _____
 27 ²¹ *Id.* at 37:29.

28 ²² *Id.* at 35:22.

²³ *Id.* at 35:52.

1 all look forward to, someday as we move forward and work diligently together, is Stage
 2 4, which would be the end of the stay-at-home order. And that’s when we’d be
 3 opening all of our highest risk workplaces without modification necessary at that time,
 4 because at that time we will know that we have identified a way that we can keep
 5 people safe from COVID-19.²⁴



16 104. Then, on May 4, 2020, Governor Newsom issued a press release in
 17 which he stated that Stage 2 will begin, in part, on Friday, May 8, 2020. According to
 18 that press release, only some businesses will be allowed to reopen, like “bookstores,
 19 clothing stores, florists and sporting goods stores,” but not yet “offices, seated dining
 20 at restaurants, shopping malls or schools.”²⁵

21 105. On May 7, 2020, Governor Newsom held a press conference to
 22 announce the beginning of Stage 2, and the publication of his Resilience Roadmap
 23 (Ex. 1-3.) During that press conference, Governor Newsom was asked by a journalist
 24 why schools were being prioritized over places of worship. The following exchange
 25 followed:

26 _____
 27 ²⁴ *Id.* at 46:49.

28 ²⁵ <https://www.gov.ca.gov/2020/05/04/governor-newsom-provides-update-on-californias-progress-toward-stage-2-reopening/>

1 Q: Thank you Governor. Can you clarify why churches and
2 salons are in Stage 3 and not Stage 2. Um, what makes
3 them more high risk than schools, for example? Uh, what
4 factors are you weighing here when you decide what goes
into what phase?

5 A: Yeah, we're, we're looking at the science,
6 epidemiology, looking again at frequency, duration, time,
7 uh, and looking at low risk-high reward, low risk-low
8 reward, looking at a series of conditions and criteria, as well
as best practices uh from other states and nations.²⁶

9 In other words, places of worship are being sidelined because they provide a “low
10 reward” in the eyes of California.

11 106. On May 7, 2020, Governor Newsom also published his Resilience
12 Roadmap online. (Ex. 1-3.) That Roadmap identifies the industries that may open
13 immediately (retail for curbside pickup, manufacturing and logistics), those that will
14 open in a few weeks (shopping malls, car washes, schools, restaurants), and those
15 that cannot open for several months, until Stage 3 is announced (salons, tattoo
16 parlors, gyms, bars, movie theaters, and places of worship). (Ex. 1-3, at 9). For each
17 industry that will be allowed to open in Stage 2, the Roadmap also linked to industry-
18 specific Pandemic Guidance that the industry must comply with. The industry must
19 both comply with the guidance, and certify to the state that it is in compliance. The
20 Guidance for two industries opening immediately—manufacturing and logistics—is
21 included in Exhibits 1-3. At the same time, Governor Newsom published a press
22 release announcing the Resilience Roadmap, and explaining the same. (Ex. 1-4.)

23 CONCLUSION

24 107. In full understanding of the public and private danger posed by the
25 coronavirus, churches and people of faith have conducted themselves, and intend to
26 continue conducting themselves, in a manner that adheres to CDC and California
27 guidelines on social distancing and safe gatherings. There is no generic protocol

28 ²⁶ <https://www.facebook.com/CAgovernor/videos/260976601615609/>, at 50:36.

1 published by the State of California, but the County of San Diego’s Order includes a
2 requirement that essential businesses complete and comply with its Social Distancing
3 and Sanitation Protocol. (Ex. 2-2.) Plaintiffs are fully willing to comply with this
4 Protocol—and any reasonable Guidance mandated by the state—but they cannot
5 abide by an indefinite shut down of their churches.

6 108. To be blunt, California’s present regime, which mandates that
7 Californians who need the Spirit of Almighty God settle for the lesser spirits
8 dispensed out of California’s liquor stores, is demeaning and denigrating to all
9 persons of faith. Plaintiffs contend that, at least for their congregants, their
10 assemblies *are* an “essential service” and should therefore, because of fundamental
11 First Amendment Protections, be treated equal to Stage 2 “essential” businesses.

12 109. California’s targeting of religious adherents and total ban from religious
13 assembly, even in a manner consistent with governmental social distancing
14 guidelines, while permitting similar (and at times even more intimate) social
15 interaction to continue unabated in retail and commercial establishments, flouts the
16 protections of the U.S. and California Constitutions.

17 110. Thus, Plaintiffs bring this case to highlight the troubling erosion of
18 fundamental and cherished liberties wrought by the imposition of the Orders and the
19 Four Stage Reopening Plan, and their unconstitutional enforcement by the California
20 Attorney General and San Diego police.

21 111. Plaintiffs do not seek to discredit or discard the government’s
22 unquestionable interest in doing that task for which it was instituted—protecting the
23 citizenry. But, as is often true in times of crisis and fear, Plaintiffs respectfully submit
24 that to uphold its sworn duties, California has—perhaps unwittingly, perhaps not—
25 stepped over a line the U.S. and California Constitutions do not permit. Plaintiffs
26 thus bring this action to ensure that this Court safeguard the cherished liberties for
27 which millions have fought, bled, and died. For, “[i]f the provisions of the
28 Constitution be not upheld when they pinch as well as when they comfort, they may

1 as well be discarded.” *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 483 (1934)
2 (Sutherland, J., dissenting).

3 **FIRST CLAIM FOR RELIEF**

4 **Free Exercise Clause of First Amendment to U.S. Constitution**

5 *(By all Plaintiffs against All Defendants)*

6 112. Plaintiffs incorporate by reference all allegations contained in the
7 preceding paragraphs as though fully set forth herein.

8 113. The Orders and Defendants’ enforcement thereof violate the First
9 Amendment, both facially and as-applied to Plaintiffs. The First Amendment of the
10 Constitution protects the “free exercise” of religion. Fundamental to this protection
11 is the right to gather and worship. *See W. Va. State Bd. of Educ. v. Barnette*, 319 U.S.
12 624, 638 (1943) (“The very purpose of a Bill of Rights was to withdraw certain
13 subjects from the vicissitudes of political controversy, to place them beyond the reach
14 of majorities and officials and to establish them as legal principles to be applied by the
15 courts . . . [such as the] freedom of worship and assembly.”). The Free Exercise
16 Clause applies to the states through the Due Process Clause of the Fourteenth
17 Amendment. *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

18 114. As the Supreme Court has noted, “a law burdening religious practice
19 that is not neutral or not of general application must undergo the most rigorous of
20 scrutiny.” *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993).
21 “A law is not generally applicable if its prohibitions substantially underinclude non-
22 religiously motivated conduct that might endanger the same governmental interest
23 that the law is designed to protect.” *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1079
24 (9th Cir. 2015) (citing *Lukumi*, 508 U.S. at 542–46). “In other words, if a law pursues
25 the government’s interest ‘only against conduct motivated by religious belief,’ but
26 fails to include in its prohibitions substantial, comparable secular conduct that would
27 similarly threaten the government’s interest, then the law is not generally
28 applicable.” *Id.*

1 115. The Orders and Reopening Plan are neither neutral nor of general
2 application. Defendants’ restrictions have specifically and explicitly targeted religious
3 and “faith-based” services and are thus not neutral on their face. Defendants have
4 prohibited certain public and private gatherings deemed “non-essential,” including
5 out-of-home religious services, while exempting a laundry list of industries and
6 services purportedly “essential” to the government’s various interests, including
7 medical cannabis dispensaries and other medical providers, courts, public utilities,
8 daycare and childcare, and “necessary” shopping.

9 116. In addition to relegating all faith activities to a third-class status (at best),
10 Defendants have threatened criminal penalties for holding in person services, and
11 have thus substantially burdened Plaintiffs’ religious exercise. Defendants have
12 forced Plaintiffs to choose between their sincerely held religious beliefs and their
13 desire to follow secular rules, in many cases imposed by unelected officials.

14 117. Laws and government actions that burden religious practice and are
15 either not neutral or not generally applicable must satisfy a compelling governmental
16 interest and be narrowly tailored to achieve that end.

17 118. Defendants’ mandates are not “narrowly tailored” to further any
18 compelling governmental interest. Defendants have granted numerous special
19 exemptions to their bans on public gatherings and conduct, including for purportedly
20 “essential” businesses and activities, provided that social distancing practices are
21 observed. Since these gatherings may be permitted, there can be no doubt that
22 Defendants must permit Plaintiffs to engage in religious activities and services
23 provided that Plaintiffs also adhere to the social distancing guidelines currently in
24 place.

25 119. Requiring Plaintiffs to abstain from religious gatherings, despite
26 substantial modifications to satisfy the public health interests at stake, violates
27 Plaintiffs’ Constitutional right to free exercise of religion. The state does not have the
28 power under our Constitutional scheme to decree that as to faith activities,

1 “streaming” (for those congregations and parishioners with the wealth and
2 technological acumen to partake of such truncated substitutes) is “good enough”
3 when at the same time the state protects the entertainment industry and media
4 organizations’ First Amendment rights while denying the Plaintiffs their First
5 Amendment rights.

6 120. Plaintiffs have no adequate remedy at law and will suffer serious and
7 irreparable harm to their constitutional rights unless Defendants are enjoined from
8 implementing and enforcing the Orders.

9 121. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
10 declaratory relief and temporary, preliminary, and permanent injunctive relief
11 invalidating and restraining enforcement of the Orders.

12 122. Plaintiffs found it necessary to engage the services of private counsel to
13 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
14 attorneys’ fees and costs pursuant to 42 U.S.C. § 1988.

15 **SECOND CLAIM FOR RELIEF**

16 **Free Exercise of Religion of Article I, Section 4, of the Cal. Constitution**

17 *(By all Plaintiffs against All Defendants)*

18 123. Plaintiffs incorporate by reference all allegations contained in the
19 preceding paragraphs as though fully set forth herein.

20 124. In California “[f]ree exercise and enjoyment of religion without
21 discrimination or preference are guaranteed.” Cal. Const. Art. 1, §4.

22 125. “In general, the religion clauses of the California Constitution are read
23 more broadly than their counterparts in the federal Constitution.” *Carpenter v. City*
24 *and County of San Francisco*, 93 F.3d 627, 629 (9th Cir. 1996). Courts “therefore
25 review [a] challenge. . . under the free exercise clause of the California Constitution
26 in the same way [they] might have reviewed a similar challenge under the federal
27 Constitution after *Sherbert*, and before *Smith*. In other words, we apply strict
28 scrutiny.” *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562

1 (2004) (citations omitted).

2 126. For the reasons stated in Plaintiffs’ First Claim for Relief, requiring
3 Plaintiffs to abstain from its religious gatherings, despite substantial modifications to
4 satisfy the public health interests at stake, violates Plaintiffs’ free exercise rights
5 under the California Constitution as well.

6 127. Plaintiffs have no adequate remedy at law and will suffer serious and
7 irreparable harm to their constitutional rights unless Defendants are enjoined from
8 implementing and enforcing the Orders, or are enjoined from at least finding religious
9 services to be stage-two “essential.”

10 128. Plaintiffs have found it necessary to engage the services of private
11 counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an
12 award of attorney fees and costs pursuant to California Code of Civil Procedure
13 Section 1021.5.

14 **THIRD CLAIM FOR RELIEF**

15 **Establishment Clause of First Amendment to U.S. Constitution**

16 *(By all Plaintiffs against All Defendants)*

17 129. Plaintiffs incorporate by reference all allegations contained in the
18 preceding paragraphs as though fully Set forth herein.

19 130. The Orders and Defendants’ enforcement thereof violate the First
20 Amendment, both facially and as-applied to Plaintiffs. The Establishment Clause of
21 the “First Amendment mandates governmental neutrality between religion and
22 religion, and between religion and nonreligion.” *McCreary Cty., Ky. v. Am. Civil*
23 *Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (*citing Epperson v. Arkansas*, 393 U.S.
24 97, 104 (1968)). The Establishment Clause applies to the states through the Due
25 Process Clause of the Fourteenth Amendment. *Everson v. Board of Ed. of Ewing*, 330
26 U.S. 1 (1947).

27 131. The Orders, as stated, advance no secular purpose. Defendants have
28 made numerous exceptions to their Orders, permitting the same conduct

1 (counseling) if performed by secular practitioners but not religious ministers.
2 Defendants have also distinguished between religions, permitting services that can be
3 performed via livestream to proceed, but banning all Jewish services that require in-
4 person participation. It is not for Defendants to determine which faiths may have
5 their services proceed.

6 132. The Orders and Defendants' *ad hoc* enforcement of them have the
7 primary effect of inhibiting religious activity.

8 133. Defendants have failed to avoid excessive government entanglement
9 with religion. Defendants permit only some forms of religious observance, such as
10 livestreamed, at-home religious activities.

11 134. There is no historical precedent in the United States for inhibiting
12 religious practices on terms more restrictive than those imposed on identical secular
13 activities, as Defendants do now.

14 135. Plaintiffs have no adequate remedy at law and will suffer serious and
15 irreparable harm to their constitutional rights unless Defendants are enjoined from
16 implementing and enforcing the Orders.

17 136. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
18 declaratory relief and temporary, preliminary, and permanent injunctive relief
19 invalidating and restraining enforcement of the Orders.

20 137. Plaintiffs found it necessary to engage the services of private counsel to
21 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
22 attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

23 **FOURTH CLAIM FOR RELIEF**

24 **Free Speech Clause of First Amendment to U.S. Constitution**

25 *(By all Plaintiffs against All Defendants)*

26 138. Plaintiffs incorporate by reference all allegations contained in the
27 preceding paragraphs as though fully Set forth herein.

28 139. The Orders and Defendants' enforcement thereof violate the First

1 Amendment, both facially and as-applied to Plaintiffs.

2 140. Under Defendants' Orders, public gatherings and church services are
3 prohibited.

4 141. Plaintiffs engage in protected speech through worship, religious
5 discussions, singing hymns, and praying with their congregation.

6 142. Defendants' imposition of the Orders is unreasonable and has a chilling
7 effect on protected speech by outright banning in-person church services at the pain
8 of criminal penalty. Additionally, the City Orders state that "[e]ach individual officer
9 should use their discretion in enforcing this order and always keep the intent of the
10 order in mind." But the City Orders fail to provide any guidance as to what violations
11 would be prioritized, leaving it up to the officers' unfettered discretion to decide
12 which violations to enforce. Such a lack of standards along with a grant of such
13 discretion renders the Orders unconstitutional both facially and as they are applied.

14 143. The Orders are unconstitutionally overbroad, and therefore void as a
15 matter of law, both on their faces, and as it is applied.

16 144. Plaintiffs have no adequate remedy at law and will suffer serious and
17 irreparable harm to their constitutional rights unless Defendants are enjoined from
18 implementing and enforcing the Orders.

19 145. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
20 declaratory relief and temporary, preliminary, and permanent injunctive relief
21 invalidating and restraining enforcement of the Orders.

22 146. Plaintiffs found it necessary to engage the services of private counsel to
23 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
24 attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

25 **FIFTH CLAIM FOR RELIEF**

26 **Freedom of Speech of Article I, Section 2, of the Cal. Constitution**

27 *(By all Plaintiffs against All Defendants)*

28 147. Plaintiffs incorporate by reference all allegations contained in the

1 preceding paragraphs as though fully set forth herein.

2 148. In California, “[e]very person may freely speak, write and publish his or
3 her sentiments on all subjects, being responsible for the abuse of this right. A law may
4 not restrain or abridge liberty of speech or press.” Cal. Const. Art. 1, §2.

5 149. “The California Supreme Court has recognized that the California
6 Constitution is ‘more protective, definitive and inclusive of rights to expression and
7 speech’ than the First Amendment to the United States Constitution.” *Rosenbaum v.*
8 *City and County of San Francisco*, 484 F.3d 1142, 1167 (9th Cir. 2007).

9 150. For the reasons stated in Plaintiffs’ Fourth Claim for Relief, requiring
10 Plaintiffs to abstain from their religious gatherings, despite substantial modifications
11 to satisfy the public health interests at stake, violates Plaintiffs’ liberty of speech
12 rights under the California Constitution as well.

13 151. Plaintiffs have no adequate remedy at law and will suffer serious and
14 irreparable harm to their constitutional rights unless Defendants are enjoined from
15 implementing and enforcing the Orders.

16 152. Plaintiffs have found it necessary to engage the services of private
17 counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an
18 award of attorneys’ fees and costs pursuant to California Code of Civil Procedure
19 Section 1021.5.

20 **SIXTH CLAIM FOR RELIEF**

21 **Violation of First Amendment Freedom of Assembly Clause**

22 *(By all Plaintiffs against All Defendants)*

23 153. Plaintiffs incorporate by reference all allegations contained in the
24 preceding paragraphs as though fully set forth herein.

25 154. The Orders and Defendants’ enforcement thereof violate the First
26 Amendment, both facially and as-applied to Plaintiffs. The First Amendment of the
27 Constitution protects the “right of the people peaceably to assemble.” The Freedom
28 of Assembly Clause was incorporated against the states in *De Jonge v. Oregon*, 299

1 U.S. 353 (1937).

2 155. “The right of free speech, the right to teach, and the right of assembly
3 are, of course, fundamental rights.” *Whitney v. California*, 274 U.S. 357, 373 (1927).
4 When a government practice restricts fundamental rights, it is subject to “strict
5 scrutiny” and can be justified only if it furthers a compelling government purpose
6 and, even then, only if no less restrictive alternative is available. *See, e.g., San Antonio*
7 *Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973); *Dunn v. Blumstein*, 405 U.S.
8 330 (1972).

9 156. By denying Plaintiffs the ability to conduct services, Defendants are in
10 violation of the Freedom of Assembly Clause. Defendants cannot meet the no-less-
11 restrictive-alternative test. The CDC’s and the County’s social distancing guidelines
12 are appropriate to limit the spread of COVID-19. Imposing more restrictive
13 requirements that target churches while at the same time allowing manufacturing,
14 logistics, offices, retail, and restaurants to open is not the least restrictive means of
15 achieving Defendants’ public safety goals.

16 157. Requiring Plaintiffs to abstain from religious gatherings, despite
17 substantial modifications to satisfy the public health interests at stake, violates
18 Plaintiffs’ Constitutional right to peaceably assemble.

19 158. Plaintiffs have no adequate remedy at law and will suffer serious and
20 irreparable harm to their constitutional rights unless Defendants are enjoined from
21 implementing and enforcing the Orders.

22 159. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
23 declaratory relief and temporary, preliminary, and permanent injunctive relief
24 invalidating and restraining enforcement of the Orders.

25 160. Plaintiffs found it necessary to engage the services of private counsel to
26 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
27 attorneys’ fees and costs pursuant to 42 U.S.C. § 1988.

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SEVENTH CLAIM FOR RELIEF

Freedom of Assembly of Article I, Section 3, of the California Constitution

(By all Plaintiffs against All Defendants)

161. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

162. In California “[t]he people have the right to . . . assemble freely to consult for the common good.” Cal. Const. Art. 1, §3.

163. For the reasons stated in Plaintiffs’ Sixth Claim for Relief, requiring Plaintiffs to abstain from their religious gatherings, despite substantial modifications to satisfy the public health interests at stake, violates Plaintiffs’ right to assemble freely under the California Constitution as well.

164. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the Orders.

165. Plaintiffs have found it necessary to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorneys’ fees and costs pursuant to California Code of Civil Procedure Section 1021.5.

EIGHTH CLAIM FOR RELIEF

Right to Liberty of Article I, Section 1, of the California Constitution

(By all Plaintiffs against All Defendants)

166. Plaintiffs incorporate by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

167. In California, “[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.” Cal. Const. Art. 1, §1.

168. California courts have found that Public Health Officials could not

1 quarantine 12 blocks of San Francisco Chinatown because of nine deaths due to
2 bubonic plague. *See Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900); *Wong Wai v.*
3 *Williamson*, 103 F. 1 (C.C. Cal. 1900).

4 169. In *Jew Ho* and *Wong Wai*, the California courts found that there were
5 more than 15,000 people living in the twelve blocks of San Francisco Chinatown who
6 were to be quarantined. The courts found it unreasonable to shut down the ability of
7 over 15,000 people to make a living because of nine deaths. This was one death for
8 every 1,666 inhabitants of Chinatown.

9 170. In *Jew Ho*, the court stated that it was “purely arbitrary, unreasonable,
10 unwarranted, wrongful, and oppressive interference with the personal liberty of
11 complainant” who had “never had or contracted said bubonic plague; that he has
12 never been at any time exposed to the danger of contracting it, and has never been in
13 any locality where said bubonic plague, or any germs of bacteria thereof, has or have
14 existed.” *Jew Ho*, 103 F. 10.

15 171. California courts have instead focused on the necessity of there being
16 “reasonable grounds [] to support the belief that the person so held [quarantined] is
17 infected.” *Ex parte Martin*, 83 Cal. App. 2d 164 (1948). Public Health Officials must
18 be able to show “probable cause to believe the person so held has an infectious
19 disease. . . .” *Id.* “[A] mere suspicion [of a contagious disease], unsupported by facts
20 giving rise to reasonable or probable cause, will afford no justification at all *for*
21 *depriving persons of their liberty* and subjecting them to virtual imprisonment under a
22 purported order of quarantine.” *Ex parte Arta*, 52 Cal. App. 380, 383 (1921)
23 (emphasis added).

24 172. As stated above, as of May 2, 2020, COVID-19 is responsible for 2,215
25 deaths in California. As of July 1, 2019, the population of California is estimated to be
26 39,512,223 persons. Thus, the probability of dying of COVID-19 in California is 5.6
27 out of 100,000.

28 173. Plaintiffs have never had or contracted said coronavirus, and have not

1 had any contact with individuals who have tested positive.

2 174. Requiring Plaintiffs to abstain from all religious gatherings, despite
3 substantial modifications to satisfy the public health interests at stake, violates their
4 California Constitutional liberty rights.

5 175. Plaintiffs have no adequate remedy at law and will suffer serious and
6 irreparable harm to their constitutional rights unless Defendants are enjoined from
7 implementing and enforcing the Orders.

8 176. Plaintiffs have found it necessary to engage the services of private
9 counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to an
10 award of attorneys' fees and costs pursuant to California Code of Civil Procedure
11 Section 1021.5.

12 **NINTH CLAIM FOR RELIEF**

13 **Violation of Substantive Rights in the Due Process Clause of**
14 **Fourteenth Amendment to U.S. Constitution**

15 *(By all Plaintiffs against All Defendants)*

16 177. Plaintiffs incorporate by reference all allegations contained in the
17 preceding paragraphs as though fully set forth herein.

18 178. The Orders and Defendants' enforcement thereof violate Plaintiffs'
19 substantive due process rights secured by the Fourteenth Amendment to the U.S.
20 Constitution. Under the Due Process Clause of the Fourteenth Amendment, no State
21 shall "deprive any person of life, liberty, or property, without due process of law."
22 The fundamental liberties protected by this Clause include most of the rights
23 enumerated in the Bill of Rights. *See Duncan v. Louisiana*, 391 U.S. 145, 147-149
24 (1968). In addition, these liberties extend to certain personal choices central to
25 individual dignity and autonomy, including intimate choices that define personal
26 identity and beliefs. *See, e.g., Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v.*
27 *Connecticut*, 381 U.S. 479, 484-486 (1965).

28 179. Plaintiffs' rights to freedom of religion, assembly, speech, and travel are

1 fundamental rights protected by the U.S. Constitution. *See, e.g., Aptheke v. Secretary*
2 *of State*, 378 U.S. 500, 520 (1964); *Kent v. Dulles*, 357 U.S. 116, 127 (1958).

3 180. When a government practice restricts fundamental rights such as the
4 right to practice religion freely, assemble peacefully, speak, and travel, it is subject to
5 “strict scrutiny” and can be justified only if it furthers a compelling government
6 purpose, and, even then, only if no less restrictive alternative is available. *See, e.g.*
7 *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 257–58 (1974); *Dunn v.*
8 *Blumstein*, 405 U.S. 330, 339–341 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 89
9 (1969), *Maher v. Roe*, 432 U.S. 464, 488 (1977).

10 181. Strict scrutiny applies to Plaintiffs’ claims because the Orders mandate
11 that Plaintiffs stay at home, impinging on their fundamental rights to freedom of
12 religion, assembly, speech, and travel. These Orders do not permit Plaintiffs to
13 exercise these rights, even while conforming to the CDC and County guidelines for
14 social distancing, unless Defendants deem them “essential” or as participating in
15 “essential” activities.

16 182. Defendants’ mandates are not “narrowly tailored” to further any
17 compelling governmental interest. Defendants have granted numerous special
18 exemptions to their bans on public gatherings, including for purportedly “essential”
19 businesses and activities, provided that social distancing practices are observed; and
20 even for out-of-home religious services during Easter, an important day of religious
21 significance for Christians. Since these gatherings can be permitted, there can be no
22 doubt that Defendants may, and therefore must, permit Plaintiffs to engage in
23 equivalent constitutionally-protected activities provided that Plaintiffs also adhere to
24 the social distancing guidelines.

25 183. Plaintiffs have no adequate remedy at law and will suffer serious and
26 irreparable harm to their constitutional rights unless Defendants are enjoined from
27 implementing and enforcing the Orders.

28 184. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to

1 declaratory relief and temporary, preliminary, and permanent injunctive relief
2 invalidating and restraining enforcement of the Orders.

3 185. Plaintiffs found it necessary to engage the services of private counsel to
4 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
5 attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

6 **TENTH CLAIM FOR RELIEF**

7 **Equal Protection Clause of Fourteenth Amendment to U.S. Constitution**

8 *(By all Plaintiffs against All Defendants)*

9 186. Plaintiffs incorporate by reference all allegations contained in the
10 preceding paragraphs as though fully set forth herein.

11 187. The Orders and Defendants' enforcement thereof violate the
12 Fourteenth Amendment, both facially and as-applied to Plaintiffs. The Fourteenth
13 Amendment of the Constitution provides that "[n]o State shall . . . deny to any
14 person within its jurisdiction the equal protection of the laws." Equal protection
15 requires the state to govern impartially—not draw arbitrary distinctions between
16 individuals based solely on differences that are irrelevant to a legitimate
17 governmental objection.

18 188. Defendants intentionally and arbitrarily categorize individuals and
19 conduct as either "essential" or "non-essential." Those persons classified as
20 "essential," or as participating in essential services, are permitted to go about their
21 business and activities provided certain social distancing practices are employed.
22 Those classified as "nonessential," or as engaging in non-essential activities, are
23 required to stay in their residence, unless it becomes necessary for them to leave for
24 one of the enumerated "essential" activities.

25 189. Strict scrutiny under the Equal Protection Clause applies where, as here,
26 the classification impinges on a fundamental right, including the right to practice
27 religion freely, the right to free speech and assembly, and the right to travel, among
28 others.

1 190. Defendants cannot satisfy strict scrutiny, because their arbitrary
2 classifications are not narrowly tailored measures that further compelling government
3 interests, for the reasons stated above.

4 191. Plaintiffs have no adequate remedy at law and will suffer serious and
5 irreparable harm to their constitutional rights unless Defendants are enjoined from
6 implementing and enforcing the Orders.

7 192. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
8 declaratory relief and temporary, preliminary, and permanent injunctive relief
9 invalidating and restraining enforcement of the Orders.

10 193. Plaintiffs found it necessary to engage the services of private counsel to
11 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
12 attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

13 **ELEVENTH CLAIM FOR RELIEF**

14 **Vagueness in Violation of the Due Process Clause of** 15 **Fourteenth Amendment to U.S. Constitution**

16 *(By all Plaintiffs against All Defendants)*

17 194. Plaintiffs incorporate by reference all allegations contained in the
18 preceding paragraphs as though fully set forth herein.

19 195. The Orders and Defendants' enforcement thereof violate the Due
20 Process Clause of the Fourteenth Amendment, both facially and as-applied to
21 Plaintiffs.

22 196. A regulation is constitutionally void on its face when, as matter of due
23 process, it is so vague that persons "of common intelligence must necessarily guess at
24 its meaning and differ as to its application" *Connally v. General Const. Co.*, 269 U.S.
25 385, 391 (1926); *People ex rel. Gallo v. Acuna*, 14 Cal.4th 1090, 1115 (1997). The void
26 for vagueness doctrine is designed to prevent arbitrary and discriminatory
27 enforcement. The problem with a vague regulation is that it "impermissibly delegates
28 basic policy matters to policemen, judges, and juries for resolution on an ad hoc and

1 subjective basis. . . .” *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

2 197. Defendants’ Orders are void for vagueness for the following reasons:

3 a. The State Order provides that individuals are ordered to “heed”
4 State public health directives. The word “heed” is defined by
5 Webster’s Dictionary to mean “to give consideration or attention
6 to”—not specifically to adhere to those directives. Yet, the State
7 Order is widely reported in the media and cited by local and state
8 officials, including the County and City Orders, as compelling
9 compliance with State public health directives to shelter in place
10 unless conducting essential business. The State Order also includes
11 the text of the public health directive, which includes language that
12 ostensibly “order[s]” compliance, creating further ambiguity as to
13 whether Plaintiffs must comply with, or merely heed, the public
14 health directive. Accordingly, the State Order is vague as to what
15 precisely is being ordered, and what actions may result in criminal
16 penalties, fines, or imprisonment.

17 b. The City Orders both prohibit all gatherings, including at churches,
18 while also stating the following: “I hereby issue a strong
19 recommendation, consistent with Centers of Disease Control
20 guidance from March 16, 2020 to avoid non-essential gatherings to
21 the extent possible, to the leaders of the City’s houses of worship and
22 urge them, in the strongest possible terms, to limit gatherings on
23 their premises and to explore and implement ways to practice their
24 respective faiths while observing social distancing practices.” It is
25 ambiguous whether ignoring this “recommendation” will result in
26 prosecution.

27 c. All of the Orders, when issued, were surrounded by statements in
28 press conferences or press releases stating that they can be enforced,

1 but will not always be enforced. And that citizens should police
2 themselves, and that officers should exercise good faith judgment.
3 Thus, without guidance, no reasonable person would know whether
4 his conduct is going to subject him to prosecution. In a March 19,
5 2020, press conference, Governor Newsom stressed that there will
6 be *no* police enforcement of the State Orders.²⁷ In March 18, 2020,
7 press conference, the County’s Dr. Wilma Wooten stressed that she
8 was only expecting 80%-90% compliance—which would be
9 sufficient.²⁸ And in a March 20, 2020 press conference, the City’s
10 Police Chief Nisleit stated that “the approach that we are taking” is
11 simply “asking for compliance.”²⁹

12 198. As a result of these ambiguities, no reasonable person could understand
13 what conduct violates the Orders and might subject that person to criminal penalties.

14 199. Plaintiffs have no adequate remedy at law and will suffer serious and
15 irreparable harm to their constitutional rights unless Defendants are enjoined from
16 implementing and enforcing the Orders.

17 200. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
18 declaratory relief and temporary, preliminary, and permanent injunctive relief
19 invalidating and restraining enforcement of the Orders.

20 201. Plaintiffs found it necessary to engage the services of private counsel to
21 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
22 attorneys’ fees and costs pursuant to 42 U.S.C. § 1988.

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26 ²⁷ <https://www.facebook.com/CAgovernor/videos/494465634769746/>, at 4:00 and
27 34:00.

28 ²⁸ <https://youtu.be/sogiroTCSw>, at 1:10:15.

28 ²⁹ <https://youtu.be/zIXUA3lrJYk>, at 9:33, 14:45.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants and request the following relief:

- A. An order and judgment declaring that the Orders, facially and as-applied to Plaintiffs, violate the First and Fourteenth Amendments to the U.S. Constitution and Article 1, Sections 1, 2, and 4 of the California Constitution;
- B. An order temporarily, preliminarily, and permanently enjoining and prohibiting Defendants from enforcing the Orders except as to requiring Plaintiffs to comply with the County of San Diego’s Social Distancing and Sanitation Protocol, and any other reasonable protocol;
- C. For attorneys’ fees and costs; and
- D. Such other and further relief as the Court deems appropriate and just.

Respectfully submitted,

LiMANDRI & JONNA LLP

Dated: May 8, 2020

By:

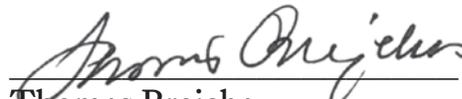


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THOMAS MORE SOCIETY

Dated: May 8, 2020

By:



Thomas Brejcha
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DHILLON LAW GROUP INC.

Dated: May 8, 2020

By: 

Harmeet K. Dhillon
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