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17 UNITED STATES DISTRICT COURT  
18 SOUTHERN DISTRICT OF CALIFORNIA

19 SOUTH BAY UNITED  
20 PENTECOSTAL CHURCH, a California  
21 nonprofit corporation, and BISHOP  
22 ARTHUR HODGES III, an individual,

22 Plaintiffs,

23 v.

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

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

**FIRST AMENDED  
COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**JURY TRIAL DEMANDED**

1 Health Officer, County of San Diego,  
2 HELEN ROBBINS-MEYER, in her official  
3 capacity as Director of Emergency Services,  
4 and WILLIAM D. GORE, in his official  
5 capacity as Sheriff of the County of San  
6 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”);<sup>1</sup> and the County of San Diego’s May 10, 2020,  
17 Order of the Health Officer and Emergency Regulations and corresponding Protocol  
18 documents (the “County Order”)<sup>2</sup>—each of which violate the constitutional rights  
19

20 <sup>1</sup> Attached hereto as Exhibits 1-1, 1-2, 1-3, and 1-4:

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

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

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

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

25 <sup>2</sup> Attached hereto as Exhibits 2-1, 2-2, and 2-3:

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

27 [https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/SOCIAL\\_DISTANCING\\_AND\\_SANITATION\\_PROTOCOL\\_04022020\\_V1.pdf](https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/SOCIAL_DISTANCING_AND_SANITATION_PROTOCOL_04022020_V1.pdf);

28 [https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/Community\\_Sector\\_Support/BusinessesandEmployers/SafeReopenin](https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/Community_Sector_Support/BusinessesandEmployers/SafeReopenin)

1 of Plaintiffs and the people of California (collectively, the “Orders” or the  
2 “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 open and accepting community that believes all humans are children of God.

26 9. Plaintiff Bishop Arthur Hodges III is a resident of the County of San  
27 Diego, California. He has served as the Chief Executive Officer and Senior Pastor of  
28 [gPlanTemplate.pdf](#).

1 the South Bay United Pentecostal Church for thirty-five years. He also serves as  
2 Superintendent for the SoCal District of the United Pentecostal Church International.

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

7 11. Defendant Xavier Becerra is the Attorney General of California. As the  
8 State’s chief law enforcement officer, Becerra is responsible for executing the State’s  
9 police powers. He is sued in his official capacity.

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

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

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

18 15. Defendant William D. Gore is made a party to this Action in his official  
19 capacity as Sheriff of the County of San Diego. He is responsible for enforcing the  
20 State Orders and the County Order.

21 16. Each and every Defendant acted under color of state law with respect to  
22 all acts or omissions herein alleged.

23 **FACTUAL ALLEGATIONS**

24 **INTRODUCTION**

25 17. On or about March 13, 2020, President Donald J. Trump proclaimed a  
26 National State of Emergency as a result of the threat of the emergence of a novel  
27  
28

1 coronavirus, COVID-19.<sup>3</sup> Fear of the coronavirus epidemic has gripped California,  
2 the nation, and the world. The coronavirus outbreak has turned the world upside-  
3 down, causing profound damage to the lives of all Americans and to the national  
4 economy.

5 18. In response to the virus, many states imposed “stay-at-home” orders to  
6 “flatten the curve” of the spread of the virus. In the vast majority of states, these stay-  
7 at-home orders protected the constitutional rights of churches and religious believers  
8 during the coronavirus pandemic.<sup>4</sup> When those orders did not protect their  
9 constitutional rights, the Courts quickly corrected them. *See, e.g., Maryville Baptist*  
10 *Church, Inc. v. Beshear*, --- F.3d ---, 2020 WL 2111316 (6th Cir. 2020) (enjoining order  
11 that restricted attendance at religious services); *On Fire Christian Ctr., Inc. v. Fischer*, --  
12 - F. Supp. 3d ---, 2020 WL 1820249 (W.D. Ky. 2020) (same); *First Baptist Church v.*  
13 *Kelly*, --- F. Supp. 3d ---, 2020 WL 1910021 (D. Kan. 2020) (same); *Tabernacle Baptist*  
14 *Church, Inc. of Nicholasville, Kentucky v. Beshear*, No. 3:20-CV-00033-GFVT, 2020  
15 WL 2305307 (E.D. Ky. May 8, 2020) (same).

16 19. Those states recognized that, during this pandemic, Americans need the  
17 Spirit of Almighty God even more to help them weather these dark times—and that  
18 this need is no less “essential” than any other need. They understood that the rules  
19 of constitutional interpretation are not as rigidly fixed in a time of national

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20 <sup>3</sup> [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/)  
21 [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/)

22 <sup>4</sup> According to a recent article, only nine states did not have religious exemptions  
23 from their stay-at-home orders. *See* Chris Field, *9 states still prohibit religious*  
24 *gatherings during pandemic. All others have religious exemptions for stay-at-home orders*,  
25 THE BLAZE (Apr. 28, 2020); [https://www.theblaze.com/news/states-prohibit-](https://www.theblaze.com/news/states-prohibit-religious-gatherings-pandemic)  
26 [religious-gatherings-pandemic](https://www.theblaze.com/news/states-prohibit-religious-gatherings-pandemic) (listing states with no religious protections as: Alaska,  
27 California, Idaho, Illinois, Minnesota, New Jersey, New York, Vermont,  
28 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’*  
as ‘essential’ activity in new order—but not large gatherings, CHICAGO SUN-TIMES (Apr.  
30, 2020, 9:58 p.m.), [https://chicago.suntimes.com/2020/4/30/21243640/illinois-](https://chicago.suntimes.com/2020/4/30/21243640/illinois-stay-at-home-order-jb-pritzker-free-exercise-religion)  
[stay-at-home-order-jb-pritzker-free-exercise-religion](https://chicago.suntimes.com/2020/4/30/21243640/illinois-stay-at-home-order-jb-pritzker-free-exercise-religion).

1 emergency. *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). “But[, they understood,]  
2 even under *Jacobson*, constitutional rights still exist. Among them is the freedom to  
3 worship as we choose.” *On Fire Christian Ctr.*, 2020 WL 1820249, at \*8 (citing  
4 *Jacobson*, 197 U.S. at 31).

5 20. Those states had it right. *See, e.g.*, Statement of Attorney General  
6 William P. Barr on Religious Practice and Social Distancing (Apr. 14, 2020);<sup>5</sup>  
7 Memorandum for the Assistant Attorney General for Civil Rights and All United  
8 States Attorneys (Apr. 27, 2020).<sup>6</sup>

9 21. “To be sure, individual rights secured by the Constitution do not  
10 disappear during a public health crisis.” *In re Abbott*, 954 F.3d 772, 784 (5th Cir.  
11 2020). Fundamental and unalienable rights are, by their very nature, “essential” —  
12 they are the essential rights which led to the founding of this country and this state.  
13 For, “[h]istory reveals that the initial steps in the erosion of individual rights are  
14 usually excused on the basis of an ‘emergency’ or threat to the public. But the  
15 ultimate strength of our constitutional guarantees lies in the unhesitating application  
16 in times of crisis and tranquility alike.” *United States v. Bell*, 464 F.2d 667, 676 (2d  
17 Cir. 1972) (Mansfield, J., concurring).

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

23 23. Stretching back to the formation of colonies like Pennsylvania and  
24 Rhode Island, where citizens could practice religion in a way that would not be  
25 impeded by the government, this basic freedom that was sought by so many colonists

26 \_\_\_\_\_  
27 <sup>5</sup> <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-issues-statement-religious-practice-and-social-distancing-0>

28 <sup>6</sup> <https://www.justice.gov/opa/page/file/1271456/download>

1 was enshrined in the constitutions of the states and, most importantly, in the First  
2 Amendment to the United States Constitution: “Congress shall make no law  
3 respecting the establishment of religion or prohibiting the free exercise thereof.”  
4 U.S. Const. amend I. This religious heritage is evident even today in the names of  
5 California’s cities, and specifically San Diego, whose founding 250 years ago by Fray  
6 St. Junípero Serra, the City celebrated just last year.

7         24. Yet in March of this year, the Golden State criminalized all religious  
8 assembly and communal religious worship. With the pandemic as justification,  
9 Governor Newsom and the County of San Diego expanded their authority by  
10 extraordinary lengths, depriving all Californians of fundamental rights protected by  
11 the U.S. and California Constitutions, including freedom of religion, speech, and  
12 assembly, and due process and equal protection under the law.

13         25. Unlike forty-two other states issuing stay-at-home orders, California did  
14 not mention religion or churches in its executive order. At the State level, the only  
15 reference to religious rights was a single line in a 23-page memorandum that clergy are  
16 “essential” for “faith-based services that are provided through streaming or other  
17 technologies that support physical distancing and state public health guidelines.” (Ex.  
18 1-2, at 16.) And at the County level, the orders make no reference to religion. (Ex. 2-1,  
19 Ex. 2-2, Ex. 2-3.)

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

24         27. At the same time as criminalizing worship—each of the Orders had a  
25 paragraph threatening criminal enforcement—the State Order (adopted and expanded  
26 upon by the County Order) allowed citizens to gather at liquor stores, pot-dispensaries,  
27 Planned Parenthood, Walmart, CVS, Costco, Home Depot, and many other locations  
28 deemed “essential.” The State Order deemed the entirety of the “entertainment

1 industries” essential. (Ex. 1-2, at 23.)

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

### 9 THE HISTORY OF THE EXECUTIVE ORDERS

10 29. On March 4, 2020, California Governor Gavin Newsom proclaimed a  
11 State of Emergency as a result of the threat of COVID-19.<sup>7</sup>

12 30. On March 19, 2020, California Governor Newsom issued Executive  
13 Order N-33-20 in which he ordered that “all residents are directed to immediately  
14 heed the current State public health directives.” (Ex. 1-1.)

15 31. The state public health directive requires “all individuals living in the  
16 State of California to stay home or at their place of residence except as needed to  
17 maintain continuity of operations of the federal critical infrastructure sectors. . . .”<sup>8</sup>

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

22 33. Accordingly, this list prohibits all religious leaders from conducting in-  
23 person and out-of-home religious services, regardless of the measures taken to reduce  
24 or eliminate the risk of the virus spreading. Meanwhile, the list deems the continuity  
25 of services provided by coffee baristas, burger flippers, and laundromat technicians to

26 \_\_\_\_\_  
27 <sup>7</sup> <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

28 <sup>8</sup> The State Public Health Directive was included in the text of the State Order.

1 be so necessary for society that these activities are permitted to continue under the  
2 State Order, despite the existence of the very same risk Defendants rely on to stymie  
3 the exercise of fundamental rights.

4 34. The state public health directive, included in Executive Order N-33-20,  
5 provides that its directives “shall stay in effect until further notice.”

6 35. The County has issued orders alongside California, but those Orders  
7 have always viewed Executive Order N-33-20 as the floor. As such, the County  
8 Orders have always simply provided guidance on how to follow Executive Order N-  
9 33-20 within the County. For example, the County published a Social Distancing and  
10 Sanitation Protocol for Stage 1 essential business to follow. (Ex. 2-2.)

11 36. On April 28, 2020, Governor Newsom held a press conference in which  
12 he announced California’s current four stage Reopening Plan, and his intention on  
13 how he will modify his Executive Order N-33-20. That plan relegates religious  
14 services to the bottom of the pile, next to attending the cinema, and prioritizes  
15 reopening manufacturing and offices.

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

19 38. On May 7, 2020, Governor Newsom published his Resilience Roadmap,  
20 which provided the means of beginning of Stage 2 of the Reopening Plan on Friday,  
21 May 8, 2020. (Ex. 1-3.)

22 **BISHOP ARTHUR HODGES AND**  
23 **THE SOUTH BAY UNITED PENTECOSTAL CHURCH**

24 39. South Bay Pentecostal Church is a reflection of the Chula Vista  
25 community. It is a multi-national, multi-cultural congregation. The majority of its  
26 members are Hispanic, with the balance consisting of Filipino, Caucasian, African-  
27 American, and other ethnic groups. The congregation represents a cross-section of  
28 society, from rich to poor and encompassing people of all ages. The congregation also

1 includes members and visitors who run the gamut of essential workers. These  
2 essential workers and service providers receive spiritual support, comfort, guidance,  
3 and shelter from our ministry. The Church is an open and accepting community that  
4 believes all humans are children of God.

5 40. Bishop Hodges has served as senior Pastor and Bishop of the South Bay  
6 Pentecostal Church for thirty-five years. He also serves as a District Superintendent  
7 of the United Pentecostal Church International. He oversees more than two-hundred  
8 pastors and ministers, representing more than one-hundred churches across  
9 Southern California.

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

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

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

24 44. Upon graduating from high school, Bishop Hodges believed he would  
25 become an airline pilot. However, his father requested that he honor his sacrifices in  
26 raising him and asked him to give Bible College a chance. Out of a sense of filial duty,  
27 Bishop Hodges enrolled at the Apostolic Bible Institute in St. Paul, Minnesota. While  
28 at the Institute, God's call became too loud to ignore. With a missionary's zeal, he

1 threw himself into full-time ministry. He began preaching at youth camps,  
2 conferences, and other venues, traveling from city to city and state to state, sharing  
3 God’s Word with all who would open their hearts to listen.

4 45. Two years later, Bishop Hodges’ father invited him to serve as Assistant  
5 Pastor at South Bay Pentecostal Church. Sensing that life on the road was no place to  
6 grow a family, and with his wife pregnant with their first child, he agreed to accept  
7 the position. The passage of time brought change, and his father once more felt the  
8 call to move on to a new church. In his stead, Bishop Hodges was unanimously voted  
9 to take his place at South Bay, where he has served ever since.

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

17 47. The South Bay Pentecostal Church’s model is the New Testament  
18 church founded and described in the book of the Acts of the Apostles: “And when  
19 the day of Pentecost was fully come, they were *all with one accord in one place.*” (Acts  
20 2:1 [emphasis added].) They believe that “all” being gathered in “one place” is  
21 fundamental in order to fulfill Christ’s final charge that “you will be my witnesses.”  
22 (Acts 1:8.) Thus, at the Church’s very beginning, they believe that the foundational  
23 function of the church, all gathering together with one accord, was established.

24 48. The Book of Acts, which chronicles the founding of the Church, uses  
25 the word “together” thirty-one times, thus providing thirty-one reasons for the  
26 church to come together with one accord. Being “together” spiritually and physically  
27 is key in their preaching, teaching, and worship practice. This experience of  
28 worshipping together occurs *both* in the home *and* in the communal setting,

1 “continuing daily with one accord *in the temple*, and breaking bread *from house to*  
2 *house*.” (Acts 2:46–47 [emphasis added].)

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

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

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

23 52. South Bay Pentecostal Church also perform baptisms, funerals,  
24 weddings, and other religious ceremonies.

25 53. They believe Scripture exhorts them to “[r]epent, and be baptized every  
26 one of you in the name of Jesus Christ for the remission of sins, and ye shall receive  
27 the gift of the Holy Ghost.” (Acts 2:38.) They believe this sacrament of “new birth”  
28 cannot be performed on one’s own, or by staying at home. One may repent on their

1 own, but they *cannot baptize themselves*. They believe there is no justifiable reason for  
2 postponing the sacrament of baptism, as it is a necessary part of salvation.

3 54. Since the Orders prohibiting physical religious assembly were put in  
4 place, the Church's ability to carry out its ministry has been dramatically curtailed.  
5 Bishop Hodges has neither experienced symptoms of nor been diagnosed with  
6 COVID-19.

7 55. These orders forbid the assembly required to come together with one  
8 accord. These orders forbid baptism, gathering around the altar, and any form of  
9 "being together" that is *both* physical and spiritual.

10 56. "Zoom Meetings" and other tele-conferencing applications are  
11 inadequate substitutes as they curtail a minister's ability to lay hands upon a  
12 congregant or perform a baptism. They also curtail the congregation's ability to  
13 approach the altar, which is central to their experience of faith.

14 57. As a result of the Orders, South Bay Pentecostal Church is prohibited  
15 from holding the services mandated by Scripture. These include the important  
16 milestone services that mark life events and even the end of a life.

17 58. South Bay Pentecostal Church desires to hold services in a manner that  
18 properly protects its congregants so that they may observe the inviolable precepts of  
19 Scripture and encourage and comfort one another during these troubling times of the  
20 COVID-19 outbreak. The Church's congregation needs to connect with one another  
21 in order to receive the hope and encouragement they need to heal and grow in their  
22 faith and in order to observe the Scriptural requirement of gathering together with  
23 one accord.

24 59. The Orders' outright ban on religious services are overbroad and  
25 unnecessary because Sunday services, baptisms, and funerals may be held in a  
26 manner consistent with the social distancing guidelines. If restaurants, auto  
27 mechanics, and marijuana dispensaries are capable of following these guidelines, the  
28 congregation of South Bay Pentecostal Church is certainly capable.

1           60. As the below photo demonstrates, South Bay Pentecostal Church  
2 possesses a large sanctuary that provides ample room to accommodate the six feet of  
3 social distancing required by the County and CDC requirements. Moreover, should  
4 the amount of congregants threaten to overwhelm the social distancing guidelines,  
5 additional services can be added to accommodate smaller gatherings that would  
6 satisfy those guidelines.



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

19           62. In other words, the Church can and will abide by the County's Social  
20 Distancing and Sanitation Protocol and Safe Reopening Plan, and any other necessary  
21 guidelines, just like any other organization.

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

25           64. The Church has previously demonstrated its ability to adopt and enforce  
26 suitable guidelines for social distancing practices through its work as what may be the  
27 largest food distributor to needy people in the South Bay region of San Diego County.  
28 Since the closure orders were placed, the Church worked with the Chula Vista Police

1 Department to develop a drive-through food distribution system so that hundreds of  
2 cars may drive into and around the Church parking lot. Volunteers are provided  
3 masks and gloves and deliver groceries, contact-free, directly into each driver’s trunk  
4 or cargo area. During any given week, the Church distributes between three and  
5 twelve tons of food. The Church has also been publicly fêted for its efforts by the  
6 Mayor of Chula Vista.



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

22 **THE CURRENT STATE OF THE PANDEMIC**

23 66. Due to the unified efforts of the American people, efforts to curb the  
24 coronavirus have proven successful.

25 67. The flattening of the curve has been well documented by a medical  
26 expert, Dr. George Deglado, M.D., who has been providing medical support and  
27 direction to a COVID-19 planning group using Monte Carlo simulations to create  
28 accurate planning models—models which have been consistently more accurate than

1 the State’s models. According to Dr. Delgado:

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

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

12 In California, the statistics support the flattening of the curve.  
13 Hospitalizations have remained at a relatively steady level and  
14 ICU admissions have trended downward. Deaths have been at  
15 a plateau since early April 6 with the daily death count from  
16 April 6 to May 2 ranging from 31 to 115 per day. Only one of  
17 those days had 100 or more deaths. Eight of those days had  
18 counts less than 50. Again, deaths are the last lagging  
19 indicator.

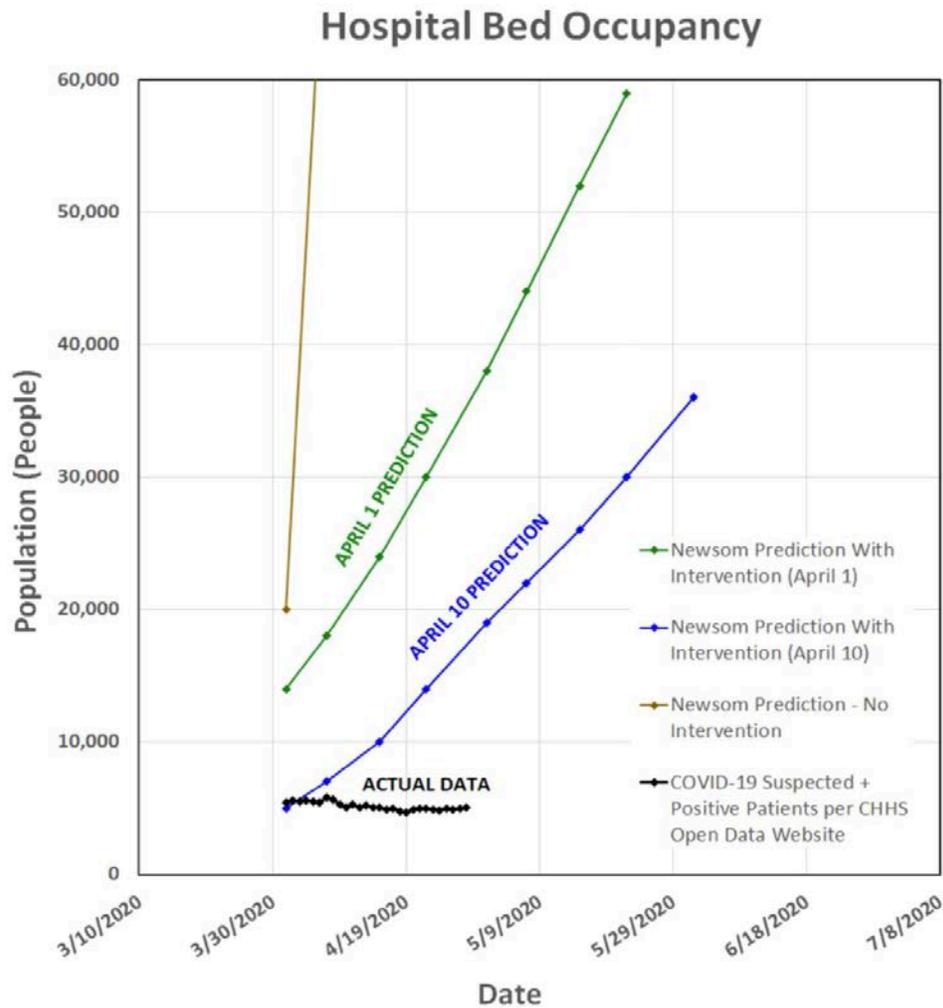
20 Los Angeles County has reported about 1,200 deaths (out of  
21 California’s approximate total of 2,200). The curve of new  
22 deaths has flattened, similar to the California curve. The  
23 Monte Carlo model predicts that total deaths in Los Angeles  
24 County will be approximately 1,900, for this year.

25 The measure  $R_0$  (“R naught”) gives an indication of how  
26 many additional persons an infected person can infect. When  
27  $R_0$  drops below one, an outbreak loses steam and begins to  
28 subside. Our model shows that in Los Angeles County  $R_0$   
decreased to less than one in early April.

68. The flattening is also well documented by Kevin Systrom and Mike  
Krieger, the founders of Instagram, who have created a website called [Rt.live](https://www.rtlive.com) to track  
the transmission rate nationwide. Like Dr. Delgado, their website shows that the  
curve has effectively flattened.<sup>9</sup>

<sup>9</sup> <https://www.vox.com/recode/2020/4/21/21227855/coronavirus-spreading-by->

69. The flattening of the curve was also impressively illustrated in a graphic published<sup>10</sup> by Elon Musk:



70. This flattening is also illustrated by a review of the death rates in California. According to publicly available documents, as of July 1, 2019, the population of California is estimated to be 39,512,223 persons.<sup>11</sup> As of May 2, 2020, there are a total of only 2,215 deaths in California.<sup>12</sup> Thus, the probability of dying of COVID-19 in California is 5.6 out of 100,000. A comparison of California with other

<sup>10</sup> [state-instagram-effective-reproduction-rate](https://twitter.com/elonmusk/status/1255678979043778560)

<sup>11</sup> [https://twitter.com/elonmusk/status/1255678979043778560](https://www.census.gov/quickfacts/fact/table/CA/PST045219)

<sup>12</sup> <https://www.census.gov/quickfacts/fact/table/CA/PST045219>

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx#COVID-19%20by%20the%20Numbers>.

1 states by the Statista.com shows that California is doing amazingly well.<sup>13</sup>

2 71. Finally, the flattening is also well corroborated by reports that California  
3 hospitals are laying off their staff because they have very few COVID-19 patients and  
4 they are precluded from performing elective procedures (*i.e.*, cancer surgery, heart  
5 surgery).<sup>14</sup>

#### 6 CALIFORNIA’S FOUR STAGE REOPENING PLAN

7 72. As a result of their unified efforts, Americans began anticipating the day  
8 when they could reap the benefits of their hard work—their sacrifice. They began  
9 anticipating a lessening of the extreme measures imposed on them by their  
10 Governors, and began pushing for that lessening to come soon.

11 73. In response to that pressure, on Tuesday, April 27, 2020, Governor  
12 Newsom held a press conference in which he outlined how we “have not only bent  
13 the curve in the state of California, but stabilized it.”<sup>15</sup> As a result, “[t]he reality is,  
14 we are just a few weeks away, not months away, from making measurable and  
15 meaningful changes to our stay-at-home order.”<sup>16</sup> This was supported by Governor  
16 Newsom’s later recitation of the statistics:

17 The number of hospitalizations, 1.4% increase. Um, again,  
18 we’re seeing some stabilization, decrease, modest increase,  
19 decrease, modest increase, uh, in the total number of  
20 people hospitalized. The number of people in ICU’s  
21 basically flat from yesterday, just one individual, uh, more  
22 than in the last 24 hours in the ICU—so again,  
23 stabilization.<sup>17</sup>

24 Towards the end of the press conference, Governor Newsom announced that during

25 <sup>13</sup> <https://www.statista.com/statistics/1109011/coronavirus-covid19-death-rates-us-by-state/>

26 <sup>14</sup> <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 <sup>15</sup> <https://www.facebook.com/CAgovernor/videos/239711700434134/> at 6:03.

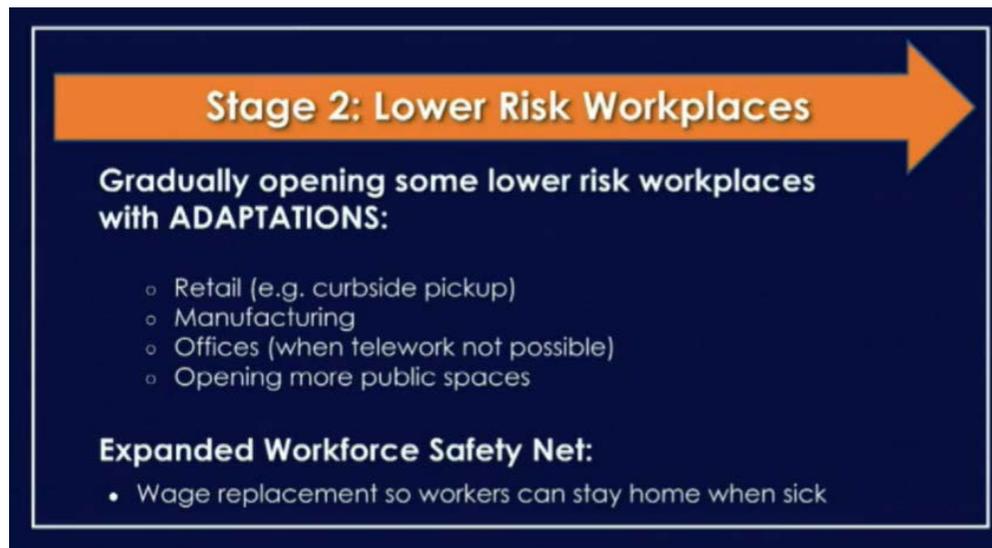
28 <sup>16</sup> *Id.* at 6:40.

<sup>17</sup> *Id.* at 25:04.

1 a press conference on the next day, he would outline the forthcoming “measurable  
2 and meaningful changes to our stay-at-home order.”

3 74. On Wednesday, April 28, 2020, Governor Newsom announced that those  
4 “meaningful modifications” would come in the form of a four stage plan—with the  
5 present situation representing Stage 1.<sup>18</sup> During the press conference, Governor  
6 Newsom stressed that “the foundational point of emphasis we want to advance today  
7 is phase 2 . . . is in weeks not months, phase 3 and 4, months not weeks.”<sup>19</sup>

8 75. During the press conference, Dr. Sonia Angell—the Director of the  
9 California Department of Public Health—explained Stage 2 as follows, and showed  
10 the following graphic:



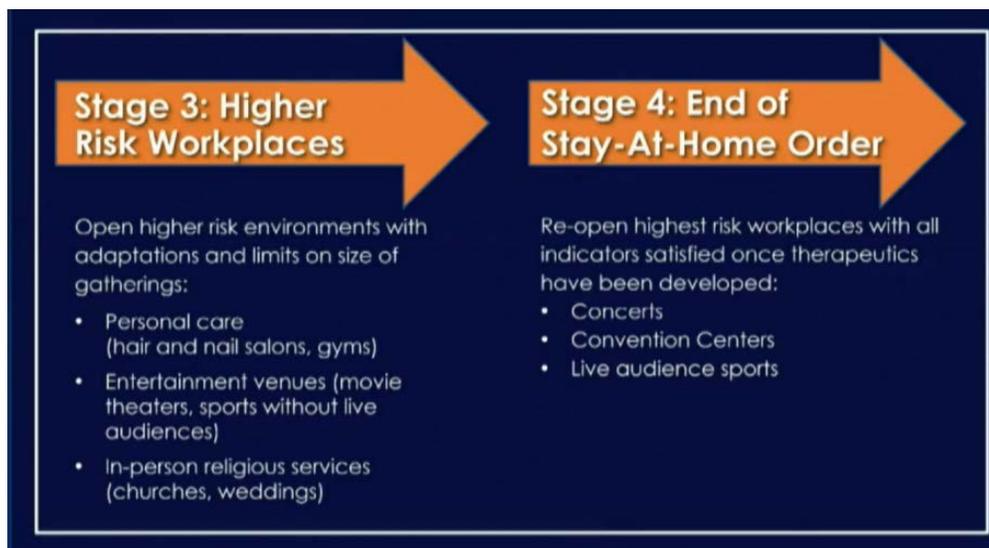
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20 In stage 2, we’re going to really start focusing on lower risk  
21 workplaces, that means gradually opening some of those  
22 workplaces with adaptations. These include things like:  
23 Retail, allowing for curbside pickup; Manufacturing, which  
24 can include things like toys, clothing, other things,  
25 furniture, that was not a part of the essential sector;  
26 Talking about offices, this can include things like PR firms,  
27 and consulting, and other places where telework is not  
28 possible, but by modifying the environment itself, it can  
make it lower risk for individuals; and then ultimately

<sup>18</sup> <https://www.facebook.com/CAgovernor/videos/524013811808326/>

<sup>19</sup> *Id.* at 48:43.

1 talking about opening more public spaces, things like parks  
2 and trails, that may have historically been limited because  
3 of our concerns, trying to think about how we can modify  
4 that to make them safer for individuals to enjoy the outdoor  
5 spaces because we know physical activity is so important to  
6 our health, and this is also about health, clearly.<sup>20</sup>

7 76. Dr. Angell then described Stage 3 and 4 as follows: “The third stage is  
8 when we get into those areas that may be higher risk, those sectors that we think will  
9 take a lot more modification to adapt in a way that can make them places where people  
10 can move with lower risk.”<sup>21</sup> “Those are things like getting your hair cut, uh getting  
11 your nails done, doing anything that has very close inherent relationships with other  
12 people, where the proximity is very close.”<sup>22</sup> “And then ultimately, the space that we  
13 all look forward to, someday as we move forward and work diligently together, is Stage  
14 4, which would be the end of the stay-at-home order. And that’s when we’d be  
15 opening all of our highest risk workplaces without modification necessary at that time,  
16 because at that time we will know that we have identified a way that we can keep  
17 people safe from COVID-19.<sup>23</sup>



26 <sup>20</sup> *Id.* at 37:29.

27 <sup>21</sup> *Id.* at 35:22.

28 <sup>22</sup> *Id.* at 35:52.

<sup>23</sup> *Id.* at 46:49.

1 77. Then, on May 4, 2020, Governor Newsom issued a press release in  
2 which he stated that Stage 2 will begin, in part, on Friday, May 8, 2020. According to  
3 that press release, only some businesses will be allowed to reopen, like “bookstores,  
4 clothing stores, florists and sporting goods stores,” but not yet “offices, seated dining  
5 at restaurants, shopping malls or schools.”<sup>24</sup>

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

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

16 A: Yeah, we’re, we’re looking at the science,  
17 epidemiology, looking again at frequency, duration, time,  
18 uh, and looking at low risk-high reward, low risk-low  
19 reward, looking at a series of conditions and criteria, as well  
20 as best practices uh from other states and nations.<sup>25</sup>

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

23 79. On May 7, 2020, Governor Newsom also published his Resilience  
24 Roadmap online. (Ex. 1-3.) That Roadmap identifies the industries that may open  
25 immediately (retail for curbside pickup, manufacturing and logistics), those that will  
26 open in a few weeks (shopping malls, car washes, schools, restaurants), and those  
27 that cannot open for several months, until Stage 3 is announced (salons, tattoo

28 <sup>24</sup> <https://www.gov.ca.gov/2020/05/04/governor-newsom-provides-update-on-californias-progress-toward-stage-2-reopening/>

<sup>25</sup> <https://www.facebook.com/CAGovernor/videos/260976601615609/>, at 50:36.



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

7           83. California’s targeting of religious adherents and total ban from religious  
8 assembly, even in a manner consistent with governmental social distancing  
9 guidelines, while permitting similar (and at times even more intimate) social  
10 interaction to continue unabated in retail and commercial establishments, flouts the  
11 protections of the U.S. and California Constitutions.

12           84. Thus, Plaintiffs bring this case to highlight the troubling erosion of  
13 fundamental and cherished liberties wrought by the imposition of the Orders and the  
14 Four Stage Reopening Plan, and their unconstitutional enforcement by the California  
15 Attorney General and San Diego police.

16           85. Plaintiffs do not seek to discredit or discard the government’s  
17 unquestionable interest in doing that task for which it was instituted—protecting the  
18 citizenry. But, as is often true in times of crisis and fear, Plaintiffs respectfully submit  
19 that to uphold its sworn duties, California has—perhaps unwittingly, perhaps not—  
20 stepped over a line the U.S. and California Constitutions do not permit. Plaintiffs  
21 thus bring this action to ensure that this Court safeguard the cherished liberties for  
22 which millions have fought, bled, and died. For, “[i]f the provisions of the  
23 Constitution be not upheld when they pinch as well as when they comfort, they may  
24 as well be discarded.” *Home Bldg. & Loan Ass’n v. Blaisdell*, 290 U.S. 398, 483 (1934)  
25 (Sutherland, J., dissenting).

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1 **FIRST CLAIM FOR RELIEF**

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

3 *(By all Plaintiffs against All Defendants)*

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

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

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

27 89. The Orders and Reopening Plan are neither neutral nor of general  
28 application. Defendants’ restrictions have specifically and explicitly targeted religious

1 and “faith-based” services and are thus not neutral on their face. Defendants have  
2 prohibited certain public and private gatherings deemed “non-essential,” including  
3 out-of-home religious services, while exempting a laundry list of industries and  
4 services purportedly “essential” to the government’s various interests, including  
5 medical cannabis dispensaries and other medical providers, courts, public utilities,  
6 daycare and childcare, and “necessary” shopping.

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

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

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

23 93. Requiring Plaintiffs to abstain from religious gatherings, despite  
24 substantial modifications to satisfy the public health interests at stake, violates  
25 Plaintiffs’ Constitutional right to free exercise of religion. The state does not have the  
26 power under our Constitutional scheme to decree that as to faith activities,  
27 “streaming” (for those congregations and parishioners with the wealth and  
28 technological acumen to partake of such truncated substitutes) is “good enough”

1 when at the same time the state protects the entertainment industry and media  
2 organizations’ First Amendment rights while denying the Plaintiffs their First  
3 Amendment rights.

4 94. 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 95. 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 96. 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 **SECOND CLAIM FOR RELIEF**

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

15 *(By all Plaintiffs against All Defendants)*

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

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

20 99. “In general, the religion clauses of the California Constitution are read  
21 more broadly than their counterparts in the federal Constitution.” *Carpenter v. City*  
22 *and County of San Francisco*, 93 F.3d 627, 629 (9th Cir. 1996). Courts “therefore  
23 review [a] challenge. . . under the free exercise clause of the California Constitution  
24 in the same way [they] might have reviewed a similar challenge under the federal  
25 Constitution after *Sherbert*, and before *Smith*. In other words, we apply strict  
26 scrutiny.” *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562  
27 (2004) (citations omitted).

28 100. For the reasons stated in Plaintiffs’ First Claim for Relief, requiring

1 Plaintiffs to abstain from its religious gatherings, despite substantial modifications to  
2 satisfy the public health interests at stake, violates Plaintiffs’ free exercise rights  
3 under the California Constitution as well.

4 101. 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, or are enjoined from at least finding religious  
7 services to be stage-two “essential.”

8 102. 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 attorney fees and costs pursuant to California Code of Civil Procedure  
11 Section 1021.5.

12 **THIRD CLAIM FOR RELIEF**

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

14 *(By all Plaintiffs against All Defendants)*

15 103. Plaintiffs incorporate by reference all allegations contained in the  
16 preceding paragraphs as though fully Set forth herein.

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

25 105. The Orders, as stated, advance no secular purpose. Defendants have  
26 made numerous exceptions to their Orders, permitting the same conduct  
27 (counseling) if performed by secular practitioners but not religious ministers.  
28 Defendants have also distinguished between religions, permitting services that can be

1 performed via livestream to proceed, but banning all services that require in-person  
2 participation. It is not for Defendants to determine which faiths may have their  
3 services proceed.

4 106. The Orders and Defendants' *ad hoc* enforcement of them have the  
5 primary effect of inhibiting religious activity.

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

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

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

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

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

21 **FOURTH CLAIM FOR RELIEF**

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

23 *(By all Plaintiffs against All Defendants)*

24 112. Plaintiffs incorporate by reference all allegations contained in the  
25 preceding paragraphs as though fully Set forth herein.

26 113. The Orders and Defendants' enforcement thereof violate the First  
27 Amendment, both facially and as-applied to Plaintiffs.

28 114. Under Defendants' Orders, public gatherings and church services are

1 prohibited.

2 115. Plaintiffs engage in protected speech through worship, religious  
3 discussions, singing hymns, and praying with their congregation.

4 116. Defendants' imposition of the Orders is unreasonable and has a chilling  
5 effect on protected speech by outright banning in-person church services at the pain  
6 of criminal penalty. Additionally, the State Orders were accompanied by statements  
7 that they would generally not be enforced by police, and that officers should exercise  
8 discretion before considering doing so. But the Orders fail to provide any guidance as  
9 to what violations would be prioritized, leaving it up to the officers' unfettered  
10 discretion to decide which violations to enforce. Such a lack of standards along with a  
11 grant of such discretion renders the Orders unconstitutional both facially and as they  
12 are applied.

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

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

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

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

24 **FIFTH CLAIM FOR RELIEF**

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

26 *(By all Plaintiffs against All Defendants)*

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

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

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

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

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

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

19 **SIXTH CLAIM FOR RELIEF**

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

21 *(By all Plaintiffs against All Defendants)*

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

24 128. The Orders and Defendants’ enforcement thereof violate the First  
25 Amendment, both facially and as-applied to Plaintiffs. The First Amendment of the  
26 Constitution protects the “right of the people peaceably to assemble.” The Freedom  
27 of Assembly Clause was incorporated against the states in *De Jonge v. Oregon*, 299  
28 U.S. 353 (1937).

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

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

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

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

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

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

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1 **SEVENTH CLAIM FOR RELIEF**

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

3 *(By all Plaintiffs against All Defendants)*

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

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

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

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

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

19 **EIGHTH CLAIM FOR RELIEF**

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

21 *(By all Plaintiffs against All Defendants)*

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

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

28 142. 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).

4 143. 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.

9 144. 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.

15 145. 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).

24 146. 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.

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

1 had any contact with individuals who have tested positive.

2 148. 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.

5 149. 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.

8 150. 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)*

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

18 152. 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).

28 153. 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).

3 154. 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).

10 155. 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.

16 156. 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.

25 157. 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.

28 158. 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.

3 159. 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)*

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

11 161. 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.

18 162. 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.

25 163. 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.

1 164. 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.

4 165. 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.

7 166. 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.

10 167. 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)*

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

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

22 170. 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).

2 171. 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 Orders, as compelling compliance  
9 with State public health directives to shelter in place unless  
10 conducting essential business. The State Order also includes the text  
11 of the public health directive, which includes language that ostensibly  
12 “order[s]” compliance, creating further ambiguity as to whether  
13 Plaintiffs must comply with, or merely heed, the public health  
14 directive. Accordingly, the State Order is vague as to what precisely  
15 is being ordered, and what actions may result in criminal penalties,  
16 fines, or imprisonment.

17 b. All of the Orders, when issued, were surrounded by statements in  
18 press conferences or press releases stating that they can be enforced,  
19 but will not always be enforced. And that citizens should police  
20 themselves, and that officers should exercise good faith judgment.  
21 Thus, without guidance, no reasonable person would know whether  
22 his conduct is going to subject him to prosecution. In a March 19,  
23 2020, press conference, Governor Newsom stressed that there will  
24 be *no* police enforcement of the State Orders.<sup>26</sup> And in March 18,  
25 2020, press conference, the County’s Dr. Wilma Wooten stressed  
26 that she was only expecting 80%-90% compliance—which would be

27 <sup>26</sup> <https://www.facebook.com/CAgovernor/videos/494465634769746/>, at 4:00 and  
28 34:00.

1 sufficient.<sup>27</sup>

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

4 173. 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.

7 174. 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.

10 175. 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 **PRAYER FOR RELIEF**

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

16 A. An order and judgment declaring that the Orders, facially and as-applied to  
17 Plaintiffs, violate the First and Fourteenth Amendments to the U.S.  
18 Constitution and Article 1, Sections 1, 2, and 4 of the California  
19 Constitution;

20 B. An order temporarily, preliminarily, and permanently enjoining and  
21 prohibiting Defendants from enforcing the Orders except as to requiring  
22 Plaintiffs to comply with the County of San Diego's Social Distancing and  
23 Sanitation Protocol and Safe Reopening Plan, and any other reasonable  
24 protocol;

25 C. For attorneys' fees and costs; and

26 D. Such other and further relief as the Court deems appropriate and just.

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28 <sup>27</sup> <https://youtu.be/sogjrotTCSw>, at 1:10:15.

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Respectfully submitted,

LiMANDRI & JONNA LLP

Dated: May 11, 2020

By:



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