

**In the  
Supreme Court of the United States**

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WENDY GISH, PATRICK SCALES, JAMES DEAN MOFFATT, AND BRENDA WOOD,  
*Applicants,*

v.

GAVIN NEWSOM, in his official capacity as the Governor of California; XAVIER  
BECERRA, in his official capacity as the Attorney General of California,  
*Respondents.*

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To the Honorable Elena Kagan, Associate Justice of the United States Supreme  
Court and Circuit Justice for the Ninth Circuit

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**Supplemental Appendix to Emergency Application  
for a Writ of Injunction**

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## TABLE OF CONTENTS

Appendix 21: Verified Complaint for Declaratory and Injunctive Relief	App. 170
Appendix 22: Application for Temporary Restraining Order and for Order to Show Cause Why Preliminary Injunction Should Not Issue	App. 224
Appendix 23: Emergency Motion Under Circuit Rule 27-3 and FRAP 8 For Injunction Pending Appeal or Alternatively to Expedite Appeal	App. 323
Appendix 24: Appellants' Opening Brief	App. 715

## APPENDIX 21

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**UNITED STATES DISTRICT COURT FOR  
THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

**WENDY GISH**, an individual;  
**PATRICK SCALES**, an individual,  
**JAMES DEAN MOFFATT**, an  
individual; and **BRENDA WOOD**, an  
individual,

Plaintiffs,  
v.

Case No.: \_\_\_\_\_

**VERIFIED COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

**GAVIN NEWSOM**, in his official  
capacity as the Governor of California;  
**XAVIER BECERRA**, in his official  
capacity as the Attorney General of  
California; **ERIN GUSTAFSON**, in  
her official capacity as the San  
Bernardino County Acting Public  
Health Officer; **JOHN MCMAHON**,  
in his official capacity as the San  
Bernardino County Sheriff; **ROBERT  
A. LOVINGGOOD**, in his official



1 capacity as a San Bernardino County  
2 Supervisor; **JANICE**  
3 **RUTHERFORD**, in her official  
4 capacity as a San Bernardino County  
5 Supervisor; **DAWN ROWE**, in her  
6 official capacity as a San Bernardino  
7 County Supervisor; **CURT HAGMAN**,  
8 in his official capacity as a San  
9 Bernardino County Supervisor; **JOSIE**  
10 **GONZALES**, in his official capacity as  
11 a San Bernardino County Supervisor;  
12 **CAMERON KAISER**, in his official  
13 capacity as the Riverside County Public  
14 Health Officer; **GEORGE JOHNSON**,  
15 in his official capacity as the Riverside  
16 County Executive Officer and Director  
17 of Emergency Services; **CHAD**  
18 **BIANCO**, in his official capacity as a  
19 Riverside County Sheriff; **KEVIN**  
20 **JEFFRIES**, in his official capacity as a  
21 Riverside County Supervisor; **KAREN**  
22 **SPIEGEL**, in her official capacity as a  
23 Riverside County Supervisor; **CHUCK**  
24 **WASHINGTON**, in his official  
25 capacity as a Riverside County  
26 Supervisor; **V. MANUEL PEREZ**, in  
27 his official capacity as a Riverside  
28 County Supervisor; and **JEFF**  
**HEWITT**, in his official capacity as a  
Riverside County Supervisor,  
Defendants.

*Liberty must at all hazards be supported. We have a right to it, derived from our  
Maker. But if we had not, our fathers have earned and bought it for us, at the expense of  
their ease, their estates, their pleasure, and their blood.*

– John Adams, 1765

1 NOW COME the above-named Plaintiffs Wendy Gish, Patrick Scales, James  
2 Dean Moffatt, and Brenda Wood, by and through their attorneys, Dhillon Law Group,  
3 Inc., as and for claims against the above-named Defendants Gavin Newsom, in his  
4 official capacity as Governor of California; Xavier Becerra, in his official capacity as  
5 Attorney General of California; Erin Gustafson, in her official capacity as the San  
6 Bernardino County Acting Public Health Officer; John McMahon, in his official  
7 capacity as the San Bernardino County Sheriff; Robert A. Lovinggood, in his official  
8 capacity as a San Bernardino County Supervisor; Janice Rutherford, in her official  
9 capacity as a San Bernardino County Supervisor; Dawn Rowe, in her official capacity  
10 as a San Bernardino County Supervisor; Curt Hagman, in his official capacity as a San  
11 Bernardino County Supervisor; Josie Gonzales, in his official capacity as a San  
12 Bernardino County Supervisor; Cameron Kaiser, in his official capacity as the  
13 Riverside County Public Health Officer; George Johnson, in his official capacity as the  
14 Riverside County Executive Officer and Director of Emergency Services; Chad Bianco,  
15 in his official capacity as the Riverside County Sheriff; Kevin Jeffries, in his official  
16 capacity as a Riverside County Supervisor; Karen Spiegel, in her official capacity as a  
17 Riverside County Supervisor; Chuck Washington, in his official capacity as a Riverside  
18 County Supervisor; V. Manuel Perez, in his official capacity as a Riverside County  
19 Supervisor; and Jeff Hewitt, in his official capacity as a Riverside County Supervisor,  
20 allege and show the Court as follows (this “Complaint”).

### 21 NATURE OF ACTION

22 1. Defendants, in a gross abuse of their power, have seized the Coronavirus  
23 pandemic to expand their authority by unprecedented lengths, depriving Plaintiffs and  
24 all other residents of California of fundamental rights protected by the U.S. and  
25 California Constitutions, including freedom of religion, speech, and assembly, and due  
26 process and equal protection under the law. It is this Court’s duty to defend these  
27 constitutional principles, by safeguarding the many rights and liberties of Californians  
28 that Defendants so brazenly violate.

1           2.     This Action presents facial and as-applied challenges to the Governor of  
2 California's March 19, 2020 Executive Order N-33-20 (the "State Order") attached here  
3 as Exhibit 1; the April 7, 2020 "Order of the Health Officer of the County of San  
4 Bernardino for the Control of COVID-19" (the "San Bernardino Order") attached here  
5 as Exhibit 2; and the April 6, 2020 "Amended Order of the Health Officer for the  
6 County of Riverside and of the County Executive Officer as Director of Emergency  
7 Services" (the "Riverside Order") attached here as Exhibit 3, which violate the  
8 constitutional rights of Plaintiffs and the people of California. The State Order, San  
9 Bernardino Order, and Riverside Order may at times be referred to collectively as the  
10 "Orders" in this Complaint.<sup>1</sup>

11           3.     The Orders and Defendants' enforcement thereof violate (I) the Free  
12 Exercise Clause of the First Amendment; (II) the Establishment Clause of the First  
13 Amendment; (III) the Free Speech Clause of the First Amendment; (IV) the Freedom of  
14 Assembly Clause of the First Amendment; (V) the Vagueness Doctrine enshrined by  
15 Due Process of Clause of the Fourteenth Amendment; (VI) substantive rights protected  
16 by Due Process of Clause of the Fourteenth Amendment; (VII) the Equal Protection  
17 Clause of the Fourteenth Amendment; (VIII) California Constitution Article 1, Section  
18 1's right to liberty; (IX) California Constitution Article 1, Section 2's right to free  
19

20 \_\_\_\_\_  
21 <sup>1</sup> As of the date of this filing, the State Order, San Bernardino Order, and Riverside  
22 Order, respectively, may be accessed online at the following URLs:

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

24 San Bernardino Order: [http://wp.sbcounty.gov/dph/wp-](http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM_C45820040714190.pdf)  
25 [content/uploads/sites/7/2020/04/SKM\\_C45820040714190.pdf](http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM_C45820040714190.pdf);

26 Riverside Order:  
27 [https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC_20200406_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186)  
28 [EOC\\_20200406\\_090004.pdf?ver=2020-04-06-102528-](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC_20200406_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186)  
[423&timestamp=1586193935186](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC_20200406_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186).

1 speech; (X) California Constitution Article 1, Section 3's right to assemble freely; (XI)  
2 California Constitution Article 1, Section 4's right free exercise and enjoyment of  
3 religion.

#### 4 **JURISDICTION AND VENUE**

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

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

#### 18 **PARTIES**

19 6. Plaintiff Wendy Gish is a resident of San Bernardino County, California.  
20 She attends Shield of Faith Family Church located in Fontana, California. Gish is a  
21 strong believer in the scriptural command found in Hebrew 10:25: "Let us not neglect  
22 meeting together, as some have made a habit, but let us encourage one another, and all  
23 the more as you see the Day approaching." In fulfillment of her sincerely held religious  
24 belief, Gish attends church twice a week, Sundays and Wednesday.

25 7. Plaintiff Patrick Scales is a resident of San Bernardino County, California.  
26 He is the head pastor of Shield of Faith Family Church located in Fontana, California.  
27 Scales believes that he must serve the needs of his church's parishioners, especially  
28 right now in the midst of the COVID-19 crisis. James 5:14 commands believers that "Is

1 any sick among you? Let him call for the elders of the church; and let them pray over  
2 him, anointing him with oil in the name of the Lord ... .” Scales desires to keep Shield  
3 of Faith Family Church open to help deal with the spiritual and physical needs of its  
4 congregants. Scales believes that he can have in-person church services while making  
5 every effort to prevent contact between congregants by adhering to social distancing  
6 guidance, just as grocery stores, laundromats, and marijuana dispensaries are  
7 implementing to keep their customers safe. Congregants in the Shield of Faith Family  
8 Church are seated with family units at least six feet apart, and all worshippers wearing  
9 masks in the church.

10 8. Plaintiff James Dean Moffatt is a resident of Riverside County. Moffatt is  
11 the senior pastor at Church Unlimited located in Indio, California. Moffatt believes that  
12 scripture commands him as a pastor to lay hands on people and pray for them, this  
13 includes the sick. Moffatt also believes that he is required by scripture to baptize  
14 individuals, something that cannot be done at an online service.

15 9. Plaintiff Brenda Wood is a resident of Riverside County. Wood is the  
16 senior pastor at Word of Life Ministries International, Inc. located in Riverside,  
17 California. Wood desires to hold services in a manner that properly protects her  
18 parishioners so that its parishioners may follow Hebrews 10:25 and encourage one  
19 another during these troubling times of COVID-19. Wood believes that her parishioners  
20 need to connect with other people so as to give them hope and encouragement. Wood  
21 believes she can implement proper social distancing measures similar to those practiced  
22 by restaurants, auto mechanics, and abortion clinics. Wood also would like to offer  
23 drive-in services for parishioners.

24 10. Defendant Gavin Newsom is made a party to this Action in his official  
25 capacity as the Governor of California. The California Constitution vests the “supreme  
26 executive power of the State” in the Governor, who “shall see that the law is faithfully  
27 executed.” Cal. Const. Art. V, § 1. Governor Newsom signed the State Order.  
28

1           11. Defendant Xavier Becerra is made a party to this Action in his official  
2 capacity as the Attorney General of California. Under California law he is the chief law  
3 enforcement officer with supervision over all sheriffs in the state. Cal. Const. Art. V, §  
4 13.

5           12. Defendant Erin Gustafson is made a party to this Action in her official  
6 capacity as the San Bernardino County Acting Public Health Officer. She signed the  
7 San Bernardino Order.

8           13. Defendant John Mahon is made a party to this Action in his official  
9 capacity as the San Bernardino County Sheriff. Under California law he has the  
10 responsibility to enforce the San Bernardino Order in San Bernardino County. *See* Cal.  
11 Gov't. Code § 26601.

12           14. Defendant Robert A. Lovinggood is made a party to this Action in his  
13 official capacity as a member of the San Bernardino County Board of Supervisors,  
14 which exercises broad legislative, executive, and quasi-judicial authority under  
15 California law, including the supervision of the county sheriff and public health  
16 officials. *See, e.g.,* Cal. Gov't. Code § 25000, *et seq.*; Cal. Health & Safety Code §  
17 101000.

18           15. Defendant Janice Rutherford is made a party to this Action in her official  
19 capacity as a member of the San Bernardino County Board of Supervisors, which  
20 exercises broad legislative, executive, and quasi-judicial authority under California law,  
21 including the supervision of the county sheriff and public health officials. *See, e.g.,* Cal.  
22 Gov't. Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

23           16. Defendant Dawn Rowe is made a party to this Action in her official  
24 capacity as a member of the San Bernardino County Board of Supervisors, which  
25 exercises broad legislative, executive, and quasi-judicial authority under California law,  
26 including the supervision of the county sheriff and public health officials. *See, e.g.,* Cal.  
27 Gov't. Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.



1           17. Defendant Curt Hagman is made a party to this Action in his official  
2 capacity as a member of the San Bernardino County Board of Supervisors, which  
3 exercises broad legislative, executive, and quasi-judicial authority under California law,  
4 including the supervision of the county sheriff and public health officials. *See, e.g.*, Cal.  
5 Gov't. Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

6           18. Defendant Josie Gonzales is made a party to this Action in his official  
7 capacity as a member of the San Bernardino County Board of Supervisors, which  
8 exercises broad legislative, executive, and quasi-judicial authority under California law,  
9 including the supervision of the county sheriff and public health officials. *See, e.g.*, Cal.  
10 Gov't. Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

11           19. Defendant Cameron Kaiser is made a party to this Action in his official  
12 capacity as the Riverside County Public Health Officer. He signed the Riverside Order  
13 on April 6, 2020.

14           20. Defendant George Johnson is made a party to this Action in his official  
15 capacity as the Riverside County Executive Officer and Director of Emergency  
16 Services. He also signed the Riverside Order on April 6, 2020.

17           21. Defendant Chad Bianco is made a party to this Action in his official  
18 capacity as the Riverside County Sheriff. Under California law he has the responsibility  
19 to enforce the Riverside Amend Order in Riverside County. *See* Cal. Gov't. Code §  
20 26601.

21           22. Defendant Kevin Jeffries is made a party to this Action in his official  
22 capacity as a member of the Riverside County Board of Supervisors, which exercises  
23 broad legislative, executive, and quasi-judicial authority under California law, including  
24 the supervision of the county sheriff and public health officials. *See, e.g.*, Cal. Gov't.  
25 Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

26           23. Defendant Karen Spiegel is made a party to this Action in her official  
27 capacity as a member of the Riverside County Board of Supervisors, which exercises  
28 broad legislative, executive, and quasi-judicial authority under California law, including

1 the supervision of the county sheriff and public health officials. *See, e.g.,* Cal. Gov't.  
2 Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

3 24. Defendant Chuck Washington is made a party to this Action in his official  
4 capacity as a member of the Riverside County Board of Supervisors, which exercises  
5 broad legislative, executive, and quasi-judicial authority under California law, including  
6 the supervision of the county sheriff and public health officials. *See, e.g.,* Cal. Gov't.  
7 Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

8 25. Defendant V. Manuel Perez is made a party to this Action in his official  
9 capacity as a member of the Riverside County Board of Supervisors, which exercises  
10 broad legislative, executive, and quasi-judicial authority under California law, including  
11 the supervision of the county sheriff and public health officials. *See, e.g.,* Cal. Gov't.  
12 Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

13 26. Defendant Jeff Hewitt is made a party to this Action in his official capacity  
14 as a member of the Riverside County Board of Supervisors, which exercises broad  
15 legislative, executive, and quasi-judicial authority under California law, including the  
16 supervision of the county sheriff and public health officials. *See, e.g.,* Cal. Gov't. Code  
17 § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

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

## 20 FACTUAL ALLEGATIONS

21 28. On or about March 13, 2020, President Donald J. Trump proclaimed a  
22 National State of Emergency as a result of the threat of the emergence of a novel  
23 coronavirus, COVID-19.<sup>2</sup>

24 29. Since the initial outbreak of COVID-19 in the United States in February  
25 and March 2020, the federal government's projections of the anticipated national death  
26

27 <sup>2</sup> As of the date of this filing, the Proclamation of a National Emergency can be found  
28 online at: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.



1 toll related to the virus has decreased substantially, by an order of magnitude. Despite  
2 such revisions, Defendants have increasingly restricted—where not outright banned—  
3 Plaintiffs’ engagement in constitutionally-protected activities.<sup>3</sup>

4 **FACTUAL ALLEGATIONS AS TO THE STATE OF CALIFORNIA**

5 30. On or about March 4, 2020, California Governor Gavin Newsom  
6 proclaimed a State of Emergency as a result of the threat of COVID-19.<sup>4</sup>

7 31. On or about March 19, 2020, California Governor Newsom issued  
8 Executive Order N-33-20 in which he ordered “all residents are directed to immediately  
9 heed the current State public health directives.”

10 32. The state public health directive requires “all individuals living in the State  
11 of California to stay home or at their place of residence except as needed to maintain  
12 continuity of operations of the federal critical infrastructure sectors ...”.<sup>5</sup>

13 33. On or about March 22, 2020, the California Public Health Officer  
14 designated a list of “Essential Critical Infrastructure Workers.”<sup>6</sup> Included on the list of  
15 the “essential workforce” are “faith based services that are provided through streaming  
16 or other technology.”

17  
18  
19  
20 <sup>3</sup> See, e.g.,

21 [https://www.usatoday.com/story/news/investigations/2020/04/09/coronavirus-deaths-u-](https://www.usatoday.com/story/news/investigations/2020/04/09/coronavirus-deaths-u-s-could-closer-60-k-new-model-shows/5122467002/)  
22 [s-could-closer-60-k-new-model-shows/5122467002/](https://www.usatoday.com/story/news/investigations/2020/04/09/coronavirus-deaths-u-s-could-closer-60-k-new-model-shows/5122467002/)

23 <sup>4</sup> As of the date of this filing, the Proclamation of a State of Emergency can be found  
24 online at: [https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)  
25 [SOE-Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf).

26 <sup>5</sup>The State Public Health Directive was included in the text of Executive Order N-33-  
27 20.

28 <sup>6</sup> As of the date of this filing, the list of Essential Critical Infrastructure Workers can be  
found online at: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>.

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

8           35. The public health directive provides that its directives “shall stay in effect  
9 until further notice.” Ex. 1.

10           **FACTUAL ALLEGATIONS AS TO SAN BERNADINO COUNTY**

11           36. On or about April 7, 2020, defendant Dr. Erin Gustafson signed the San  
12 Bernardino Order.<sup>7</sup>

13           37. The San Bernardino Order “allow[s] faith based services that are provided  
14 through streaming or other technology, while individuals remain in their homes, but  
15 does not allow individuals to leave their home for driving parades or drive-up services,  
16 or for picking up non-essential items.” Ex. 2, § 2.

17           38. The San Bernardino Order requires all residents to “wear face coverings,  
18 such as scarves (dense fabric, without holes), bandanas, neck gaiters, or other fabric  
19 face coverings when they leave their homes or places of residence for essential  
20 activities.” Ex. 2, § 4.

21           39. The San Bernardino Order states that any violation “is a crime punishable  
22 by fine, imprisonment, or both.” Ex. 2.

23           40. The Order states that it will remain in effect “until rescinded.” Ex. 2.

24           41. The San Bernardino Order is signed by Defendant Dr. Erin Gustafson.  
25  
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27 <sup>7</sup> As of the date of this filing, the San Bernardino Order may be accessed online at the  
28 following URLs: [http://wp.sbcounty.gov/dph/wp-  
content/uploads/sites/7/2020/04/SKM\\_C45820040714190.pdf](http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM_C45820040714190.pdf).

1           42. Dr. Erin Gustafson is not an elected official but is the Acting Public Health  
2 Officer of San Bernardino. The San Bernardino Board of Supervisors have not appointed  
3 a Public Health Officer pursuant to Cal. Health & Safety Code §101000.

4           43. On April 8, 2020, San Bernardino County released a document on their  
5 website titled “Clarification of religious services and face-covering order” (hereinafter  
6 Clarification”). A copy of the Clarification is attached here as Exhibit 4.<sup>8</sup>

7           44. The Clarification is not signed by the Public Health Officer.

8           45. The Clarification does not revoke the San Bernardino Order.

9           46. The Clarification states “[o]n the subject of enforcement, the public is  
10 advised that although violation of a health order is a violation of the California Health  
11 and Safety Code, the County does not expect law enforcement to broadly impose  
12 citations on violators.”

13           47. The Clarification does not revoke law enforcement authority to criminally  
14 charge any individual who violates the San Bernardino Order.

15           48. Defendants have granted law enforcement unfettered discretion when  
16 deciding whether or not to enforce the San Bernardino Order.

17           49. The Clarification states that the “specific reference to drive-in religious  
18 service so close to major religious observances taking place during the next four days,  
19 for which organizations had already conducted considerable planning and incurred  
20 expenses, are clarified as follows: Organizations that have planned such services for the  
21 coming weekend should proceed with those services if they choose to do so and make  
22 every effort to prevent contact between congregants.”

23           50. The Clarification, which is not signed by any individual and is simply a  
24 document posted online, directly contradicts the written San Bernardino Order that  
25  
26  
27

28 <sup>8</sup> As of the date of this filing, the San Bernardino Clarification can be found online at:  
<http://wp.sbcounty.gov/cao/countywire/?p=5862>.

1 makes it a crime for churches to have drive-in religious services and for parishioners to  
2 attend such services.

3 51. Plaintiff Patrick Scales' church, Shield of Faith Family Church, Inc., is  
4 located in San Bernardino County.

5 52. Plaintiff Scales desires to hold in-person religious services for those  
6 congregants who desire to attend church.

7 53. Plaintiff Scales believes that he can hold such religious services and  
8 abiding by social distancing tips recommended by the CDC by keeping congregants at  
9 least six feet apart, and provide for the wearing of masks and gloves.

10 54. Plaintiff Scales believes that religious services are essential for the spiritual  
11 health of the congregation so that the congregants can exhort one another during these  
12 difficult times.

13 55. Plaintiff Scales recognizes that most of his congregants will stay at home  
14 but he wants to be available for those who are healthy and feel that in-person church  
15 service can be safely attended.

16 56. Plaintiff Wendy Gish attends Shield of Faith Family Church and would  
17 attend an in-person church service should it be made available to her.

18 57. Plaintiff Gish regularly attends church services and believes that she has a  
19 scriptural command to "not neglect meeting together."

20 58. To her knowledge, Plaintiff Gish has never had or contracted said  
21 coronavirus; she has never been at any time exposed to the danger of contracting it and  
22 has never been in close proximity to any locality where said coronavirus has or have  
23 existed.

24 59. As a result of not being able to attend in-person church, Plaintiff Gish has  
25 been deprived of the opportunity for important cultural, social, and religious activities,  
26 including speech activities pertaining to the coronavirus outbreak and the government's  
27 response.

28

1           60. As of April 11, 2020, San Bernardino County has eight hundred ten (810)  
2 coronavirus cases and twenty-five (25) COVID-19 associated deaths, according to  
3 information posted on the county's website.<sup>9</sup>

4           61. The United States Census estimates that as of July 1, 2019, San Bernardino  
5 County's population is 2,180,085 people.<sup>10</sup>

6                           **FACTUAL ALLEGATIONS AS TO RIVERSIDE COUNTY**

7           62. On or about April 6, 2020, defendants Dr. Cameron Kaiser and George  
8 Johnson signed the Riverside Order.<sup>11</sup>

9           63. The Riverside Order prohibits "[a]ll public or private gatherings . . .  
10 including, but not limited to an auditorium, . . . church, . . . or any other indoor or  
11 outdoor space used for any non-essential purpose including, but not limited to . . .  
12 church . . . ." Ex. 3, § 1(a).

13           64. Exempted from its prohibition on public or private gatherings are  
14 numerous services, industries, and activities, including: "courts of law, medical  
15 providers . . . daycare and child care . . . [and] necessary shopping at fuel stations, stores  
16 or malls," provided that a "state and federal guidelines for infection control" are  
17 observed. Ex. 3, § 1(b).

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20 <sup>9</sup> Per San Bernardino County Department of Public Health's web page visited on April  
21 11, 2020 <http://wp.sbcounty.gov/dph/coronavirus/>.

22 <sup>10</sup> United States Census Bureau quick facts for San Bernardino County can be found  
23 online at:  
24 [https://www.census.gov/quickfacts/fact/table/sanbernardinocountycalifornia/PST04521](https://www.census.gov/quickfacts/fact/table/sanbernardinocountycalifornia/PST045219)  
25 [9](https://www.census.gov/quickfacts/fact/table/sanbernardinocountycalifornia/PST045219).

26 <sup>11</sup> As of the date of this filing, the Riverside Order may be accessed online at the  
27 following URLs:  
28 [https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC_20200406_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186)  
[EOC\\_20200406\\_090004.pdf?ver=2020-04-06-102528-](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC_20200406_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186)  
[423&timestamp=1586193935186](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC_20200406_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186).

1           65. The Riverside Order provides that “[a]ll essential business that remain in  
2 operation . . . shall follow the Social Distancing and Infection Control Guidelines  
3 published by the [Center for Disease Control] and California Department of Public  
4 Health . . . or the facility shall be closed.” Ex. 3, § 1(c).

5           66. The Riverside Order mandates that all people wear face coverings. Ex. 3, §  
6 1(d).

7           67. The Riverside Order expressly states that any violation “is a crime  
8 publishable by fine, imprisonment, or both.” Ex. 3, § 11.

9           68. The Riverside Order is signed by Defendant Dr. Cameron Kaiser.

10          69. The Riverside Order is also signed by Defendant George Johnson as County  
11 Executive Officer and Director of Emergency Services.

12          70. Dr. Cameron Kaiser is not an elected official but is appointed by the  
13 Riverside County Board of Supervisors. *See* Cal. Health & Safety Code §101000.

14          71. On April 10, 2020, Riverside County issued a press release in which they  
15 stated that “Drive-up church services that practice proper social distancing will be  
16 allowed this weekend in Riverside County, although the order to prohibit such activities  
17 will remain after Easter Sunday.”<sup>12</sup>

18          72. The April 10<sup>th</sup> clarification was issued by Defendant George Johnson.

19          73. Plaintiff James Dean Moffatt’s church, “Church Unlimited” is located in  
20 Riverside County.

21          74. Plaintiff James Dean Moffatt, upon learning about the coronavirus,  
22 immediately had his church building cleaned and disinfected.

23          75. Plaintiff Moffatt ensured that sanitizing materials were available to each  
24 person who entered his church and encouraged family units to sit at least six feet apart.  
25

26           <sup>12</sup> As of the date of this filing, the Riverside County News Release can be found online  
27 at:

28 [https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/News/April\\_10.pdf?ver=2020-04-11-105351-463&timestamp=1586627749323](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/News/April_10.pdf?ver=2020-04-11-105351-463&timestamp=1586627749323).



1           76. Plaintiff Moffatt encouraged anyone who was uncomfortable with  
2 gathering during coronavirus to stay at home.

3           77. Plaintiff Moffatt encouraged anyone who was sick to stay at home.

4           78. On April 9, 2020, Plaintiff Moffatt was fined \$1,000 for violating the  
5 Riverside Order for holding a church service on April 5, 2020, Palm Sunday.

6           79. To his knowledge, Plaintiff Moffatt has never had or contracted the  
7 coronavirus; he has never been at any time exposed to the danger of contracting it; and  
8 has never been in close proximity to any locality where said coronavirus has or have  
9 existed.

10          80. But for the Riverside Order and Defendants' enforcement thereof, Plaintiff  
11 Moffatt would continue to hold in-person religious services in Riverside County, while  
12 taking the same social distancing precautions taken by "essential businesses" that  
13 Defendants continue to allow to operate in the county, despite any prevalence of  
14 COVID-19. Plaintiff Moffatt believes that it is important for Christians to come  
15 together, remember, and celebrate all that Jesus has done for this world.

16          81. As a result of not being able to conduct an in-person church service,  
17 Plaintiff Moffatt has been deprived of the opportunity for important cultural, socials,  
18 and religious activities, including speech activities pertaining to the coronavirus  
19 outbreak and the government's response.

20          82. Plaintiff Brenda Wood's church, Word of Life Ministries International Inc.  
21 is located in Riverside County.

22          83. Word of Life Ministries International Inc. has approximately 20-30 regular  
23 attendees.

24          84. Plaintiff Brenda Wood believes Scripture commands her to provide  
25 opportunities for the believers to obey Hebrews 10:25 where the believers meet together  
26 and encourage one another.

27          85. Plaintiff Brenda Wood held a drive-up church service on Easter Sunday.  
28

1           86. The drive-up church service provided appropriate social distancing, with  
2 everyone wearing masks and staying in their vehicles. The restrooms were not made  
3 available. Each car was parked at least six feet from other vehicles.

4           87. During the service, Plaintiff Brenda Wood used a portable sound  
5 amplification system. The congregants had to roll down their windows in order to listen.

6           88. During the service, communion was served by an individual wearing a  
7 mask and gloves and the elements were pre-packaged. The person serving communion  
8 used tongs to remove the communion cups from the pre-packaged box.

9           89. At this time, Plaintiff Brenda Wood has postponed all baptisms at her  
10 church.

11           90. Plaintiff Brenda Wood would like to hold drive-up church services every  
12 Sunday following safe social distancing practices until the state of emergency has been  
13 lifted.

14           91. As of April 11, 2020, Riverside County has one thousand four hundred  
15 thirty-one (1,431) coronavirus cases and forty-one (41) coronavirus associated deaths,  
16 according to information posted on the county's website.<sup>13</sup>

17           92. The United States Census estimates that as of July 1, 2019, Riverside  
18 County's population is 2,470,546 people.<sup>14</sup>

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26 <sup>13</sup> Per Riverside County Department of Public Health's web page visited on April 11,  
27 2020 <https://rivcoph.org/coronavirus>.

28 <sup>14</sup> United States Census Bureau quick facts for Riverside County can be found online at:  
<https://www.census.gov/quickfacts/fact/table/riversidecountycalifornia/PST045219>.



## **CLAIMS**

### **FIRST CLAIM FOR RELIEF**

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

#### **(42 U.S.C. § 1983)**

*(By all Plaintiffs against all Defendants)*

93. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

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

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

1           96. The Orders are neither neutral nor of general application. Defendants’  
2 restrictions have specifically and explicitly targeted religious and “faith-based” services  
3 and are thus not neutral on their face. Defendants have prohibited certain public and  
4 private gatherings deemed “non-essential,” including out-of-home religious services,  
5 while exempting a laundry list of industries and services purportedly “essential” to the  
6 government’s various interests, including medical cannabis dispensaries and other  
7 medical providers, courts, public utilities, daycare and childcare, and “necessary”  
8 shopping. Further, several Defendants have granted *ad hoc* exemptions to the Orders for  
9 particular religious gatherings of particular faiths – i.e., Christians permitted to  
10 celebrate Easter, but no other gatherings, and other faiths given no exemptions.

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

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

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

1           100. Requiring Plaintiffs to abstain from religious gatherings, despite  
2 substantial modifications to satisfy the public health interests at stake, violates  
3 Plaintiffs' Constitutional right to free exercise of religion. The state does not have the  
4 power under our Constitutional scheme to decree that as to faith activities, "streaming"  
5 (for those congregations and parishioners with the wealth and technological acumen to  
6 partake of such truncated substitutes) is "good enough" when at the same time the state  
7 protects the media organizations' First Amendment rights to freedom of the press while  
8 denying the plaintiffs First Amendment Free Exercise of Religion.

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

12           102. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to  
13 declaratory relief and temporary, preliminary, and permanent injunctive relief  
14 invalidating and restraining enforcement of the Orders.

15           103. Plaintiffs found it necessary to engage the services of private counsel to  
16 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
17 attorneys' fees pursuant to 42 U.S.C. § 1988.

## 18                                   **SECOND CLAIM FOR RELIEF**

### 19                   **Establishment Clause of First Amendment to U.S. Constitution**

#### 20                                   **(42 U.S.C. § 1983)**

21                                   *(By all Plaintiffs against all Defendants)*

22           104. Plaintiffs incorporate by reference the allegations in the preceding  
23 paragraphs, as if fully set forth herein.

24           105. The Orders and Defendants' enforcement thereof violate the First  
25 Amendment, both facially and as-applied to Plaintiffs. The Establishment Clause of the  
26 "First Amendment mandates governmental neutrality between religion and religion, and  
27 between religion and nonreligion." *McCreary Cty., Ky. v. Am. Civil Liberties Union of*  
28 *Ky.*, 545 U.S. 844, 860 (2005) (citing *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)).

1 The Establishment Clause applies to the states through the Due Process Clause of the  
2 Fourteenth Amendment. *Everson v. Board of Ed. of Ewing*, 330 U.S. 1 (1947).

3 106. Defendants have not and do not act with a clearly secular purpose in  
4 adopting and enforcing the Orders. Defendants have made several exceptions to their  
5 Orders, including certain religious activities during Easter, a day significant to  
6 Christians, without exempting those same activities when occurring on days both before  
7 and after Easter, or on days significant to other faiths. It is not for Defendants to  
8 determine which faiths, and on which days of religious significance to those faiths,  
9 religious services may take place.

10 107. The Orders and Defendants' *ad hoc* enforcement thereof have the primary  
11 effect of inhibiting religious activity.

12 108. Defendants have failed to avoid excessive government entanglement with  
13 religion. Defendants permit only some forms of religious observance, such as live-  
14 streamed, at-home religious activities, and, as to the Riverside Order only, in-person  
15 services during Easter weekend.

16 109. There is no historical precedence in the United States for inhibiting  
17 religious practices on terms more restrictive than those imposed on identical secular  
18 activities, as Defendants do now.

19 110. 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.

22 111. 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.

25 112. 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 pursuant to 42 U.S.C. § 1988.  
28

1 **THIRD CLAIM FOR RELIEF**

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

3 **(42 U.S.C. § 1983)**

4 *(By all Plaintiffs against all Defendants)*

5 113. Plaintiffs incorporate by reference the allegations in the preceding  
6 paragraphs, as if fully set forth herein.

7 114. The Orders and Defendants' enforcement thereof violate the First  
8 Amendment, both facially and as-applied to Plaintiffs.

9 115. Under Defendants' Orders, public gatherings and church services are  
10 prohibited.

11 116. Plaintiffs engage in protected speech through worship, religious  
12 discussions, singing hymnals, and praying with their congregation.

13 117. Defendants' imposition of the Orders is unreasonable and has a chilling  
14 effect on protected speech by outright banning in-person church services at the pain of  
15 criminal penalty. Furthermore, several of the Defendants have granted *ad hoc*  
16 exemptions to the Orders for Easter, but not any other Sunday or day of religious  
17 significance to other faiths. Additionally, a representative of Riverside County has  
18 stated that Sheriffs are not expected to enforce every violation, but failed to provide any  
19 guidance as to what violations would be prioritized, leaving it up to the Sheriffs'  
20 unfettered discretion to decide which violations to enforce. Such a lack of standards  
21 along with a grant of such discretion renders the Orders unconstitutional both facially  
22 and as they are applied.

23 118. The Orders are unconstitutionally overbroad, and therefore void as a matter  
24 of law, both on their faces, and as it is applied.

25 119. 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.

28 120. 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.

3 121. 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 pursuant to 42 U.S.C. § 1988.

#### 6 **FOURTH CLAIM FOR RELIEF**

##### 7 **Violation of First Amendment Freedom of Assembly Clause**

##### 8 **(42 U.S.C. § 1983)**

9 *(By all Plaintiffs against all Defendants)*

10 122. Plaintiffs incorporate by reference the allegations in the preceding  
11 paragraphs, as if fully set forth herein.

12 123. The Orders and Defendants' enforcement thereof violate the First  
13 Amendment, both facially and as-applied to Plaintiffs. The First Amendment of the  
14 Constitution protects the "right of the people peaceably to assemble." The Freedom of  
15 Assembly Clause was incorporated against the states in *De Jonge v. Oregon*, 299 U.S.  
16 353 (1937).

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

23 125. By denying Plaintiff Brenda Wood the ability to conduct services via a  
24 drive-in church service that complies with the CDC guidelines for social distancing,  
25 Defendants are in violation of the Freedom of Assembly Clause. Defendants cannot  
26 meet the no-less-restrictive-alternative test. The CDC's social distancing guidelines are  
27 appropriate to limit the spread of COVID-19. Imposing more restrictive requirements  
28 that target churches and their drive-in services while at the same time allowing



1 restaurants, coffee shops, marijuana dispensaries to operate drive-ups is not the least  
2 restrictive means of achieving Defendants' public safety goals.

3 126. By denying Plaintiff Patrick Scales from Shield of Faith Family Church  
4 and Plaintiff James Moffatt of Church Unlimited the ability to assemble via an in-  
5 person church service that complies with the CDC guidelines for social distancing,  
6 Defendants are in violation of the Freedom of Assembly Clause. Defendants cannot  
7 meet the no-less restrictive-alternative test. The CDC's social distancing guidelines are  
8 appropriate to limit the spread of COVID-19. Imposing more restrictive requirements  
9 that target churches and their in-person services while allowing grocery stores,  
10 laundromats, and marijuana dispensaries is not the least restrictive means of achieving  
11 Defendants' public safety goals.

12 127. Requiring Plaintiffs to abstain from religious gatherings, despite  
13 substantial modifications to satisfy the public health interests at stake, violates  
14 Plaintiffs' Constitutional right to peaceably assemble.

15 128. 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.

18 129. 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.

21 130. 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 pursuant to 42 U.S.C. § 1988.

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**FIFTH CLAIM FOR RELIEF**

**Due Process Clause of Fourteenth Amendment to U.S. Constitution**

**(42 U.S.C. § 1983)**

*(By all Plaintiffs against all Defendants)*

131. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

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

133. A regulation is constitutionally void on its face when, as matter of due process, it is so vague that persons "of common intelligence must necessarily guess at its meaning and differ as to its application" *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926); *People ex rel. Gallo v. Acuna*, 14 Cal.4th 1090, 1115 (1997). The void for vagueness doctrine is designed to prevent arbitrary and discriminatory enforcement. The problem with a vague regulation is that it "impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis...." *Grayned v. City of Rockford*, 408 U.S. 104, 108–109 (1972).

134. Defendants' Orders are void for vagueness. In conjunction with issuing the Orders, including for the following reasons:

a. The State Order provides that individuals are ordered to "heed" State public health directives. The word "heed" is defined by Webster's Dictionary to mean "to give consideration or attention to" —not specifically to adhere to those directives. Yet, the State Order is widely reported in the media and cited by local and state officials, including the San Bernardino and Riverside Orders, as compelling compliance with State public health directives to shelter in place unless conducting essential business. The State Order also includes the text of the public health directive, which includes language that ostensibly "order[s]" compliance, creating further ambiguity as to whether Plaintiffs must comply with, or merely heed, the public health directive.



1 Accordingly, the State Order is vague as to what precisely is being ordered, and what  
2 actions may result in criminal penalties, fines, or imprisonment.

3       b.     The San Bernardino Order does not exempt any particular religious  
4 holidays, yet San Bernardino has explicitly exempted compliance during Easter  
5 weekend. County officials have also stated that it “does not expect law enforcement to  
6 broadly impose citations on violators” and that “the expectation is that law enforcement  
7 will rely upon community members to use good judgment, common sense, and act in  
8 the best interest of their own health and the health of their loved ones and the  
9 community at large.”

10       c.     The Riverside County Order states that “non-essential personnel . . . are  
11 prohibited from entry into any hospital or long-term care facility,” ostensibly banning  
12 “non-essential” people from seeking medical care. Yet, the Order states that “visitors”  
13 may be permitted access to hospitals under certain conditions. No reasonable person can  
14 make sense of what conduct is permitted under the Order

15       135. As a result of these ambiguities, no reasonable person could understand  
16 what conduct violates the Order and might subject that person to criminal penalties.

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

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

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

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1 **SIXTH CLAIM FOR RELIEF**

2 **Due Process Clause of Fourteenth Amendment to U.S. Constitution**

3 **(42 U.S.C. § 1983)**

4 *(By all Plaintiffs against all Defendants)*

5 139. Plaintiffs incorporate by reference the allegations in the preceding  
6 paragraphs, as if fully set forth herein.

7 140. The Orders and Defendants' enforcement thereof violate Plaintiffs'  
8 substantive due process rights secured by the Fourteenth Amendment to the U.S.  
9 Constitution. Under the Due Process Clause of the Fourteenth Amendment, no State  
10 shall "deprive any person of life, liberty, or property, without due process of law." The  
11 fundamental liberties protected by this Clause include most of the rights enumerated in  
12 the Bill of Rights. *See Duncan v. Louisiana*, 391 U.S. 145, 147–149 (1968). In addition,  
13 these liberties extend to certain personal choices central to individual dignity and  
14 autonomy, including intimate choices that define personal identity and beliefs. *See, e.g.,*  
15 *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479,  
16 484–486 (1965).

17 141. Plaintiffs' rights to freedom of religion, assembly, speech, and travel are  
18 fundamental rights protected by the U.S. Constitution. *See, e.g., Aptheker v. Secretary*  
19 *of State*, 378 U.S. 500, 520 (1964); *Kent v. Dulles*, 357 U.S. 116, 127 (1958).

20 142. When a government practice restricts fundamental rights such as the right  
21 to practice religion freely, assemble peacefully, speak, and travel, it is subject to "strict  
22 scrutiny" and can be justified only if it furthers a compelling government purpose, and,  
23 even then, only if no less restrictive alternative is available. *See, e.g. Memorial Hospital*  
24 *v. Maricopa County*, 415 U.S. 250, 257-258 (1974); *Dunn v. Blumstein*, 405 U.S. 330,  
25 339-341 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 89 (1969), *Maher v. Roe*, 432  
26 U.S. 464, 488 (1977).

27 143. Strict scrutiny applies to Plaintiffs' claims because both the Riverside  
28 Order and the San Bernardino Order mandate that Plaintiffs stay at home, impinging on

1 their fundamental rights to freedom of religion, assembly, speech, and travel. These  
2 Orders do not permit Plaintiffs to exercise these rights, even while conforming to the  
3 CDC guidelines for social distancing, unless Defendants deem them “essential” or as  
4 participating in “essential” activities.

5 144. Defendants’ mandates are not “narrowly tailored” to further any  
6 compelling governmental interest. Defendants’ have granted numerous special  
7 exemptions to their bans on public gatherings, including for purportedly “essential”  
8 businesses and activities, provided that social distancing practices are observed; and  
9 even for out-of-home religious services during Easter, an important day of religious  
10 significance for Christians. Since these gatherings can be permitted, there can be no  
11 doubt that Defendants may, and therefore must, permit Plaintiffs to engage in  
12 equivalent constitutionally-protected activities provided that Plaintiffs also adhere to the  
13 social distancing guidelines.

14 145. 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.

17 146. 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.

20 147. 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 pursuant to 42 U.S.C. § 1988.

## 23 SEVENTH CLAIM FOR RELIEF

### 24 Equal Protection Clause of Fourteenth Amendment to U.S. Constitution 25 (42 U.S.C. § 1983)

26 *(By all Plaintiffs against all Defendants)*

27 148. Plaintiffs incorporate by reference the allegations in the preceding  
28 paragraphs, as if fully set forth herein.

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

7           150. Defendants intentionally and arbitrarily categorize individuals and conduct  
8 as either "essential" or "non-essential." Those persons classified as "essential," or as  
9 participating in essential services, are permitted to go about their business and activities  
10 provided certain social distancing practices are employed. Those classified as "non-  
11 essential," or as engaging in non-essential activities, are required to stay in their  
12 residence, unless it becomes necessary for them to leave for one of the enumerated  
13 "essential" activities.

14           151. Strict scrutiny under the Equal Protection Clause applies where, as here,  
15 the classification impinges on a fundamental right, including the right to practice  
16 religion freely, to right to free speech and assembly, and the right to travel, among  
17 others.

18           152. Defendants cannot satisfy strict scrutiny, because their arbitrary  
19 classifications are not narrowly tailored measures that further compelling government  
20 interests, for the reasons stated above.

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

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

27           155. Plaintiffs found it necessary to engage the services of private counsel to  
28 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of

1 attorneys' fees pursuant to 42 U.S.C. § 1988.

2 **EIGHTH CLAIM FOR RELIEF**

3 **Right to Liberty**

4 **(Cal. Const. Art. 1, § 1)**

5 *(By all Plaintiffs against all Defendants)*

6 156. Plaintiffs incorporate by reference the allegations in the preceding  
7 paragraphs, as if fully set forth herein.

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

12 158. California courts have held that Public Health Officials’ authority over the  
13 rights of personal liberty is limited. Before exercising their full powers to quarantine,  
14 there must be “reasonable grounds [] to support the belief that the person so held is  
15 infected.” *Ex parte Martin*, 83 Cal. App. 2d 164 (1948). Public Health Officials must be  
16 able to show “probable cause to believe the person so held has an infectious disease ...”  
17 *Id.*

18 159. California courts found that Public Health Officials could not quarantine  
19 12 blocks of San Francisco Chinatown because of nine (9) deaths due to bubonic  
20 plague. *See Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900), and *Wong Wai v.*  
21 *Williamson*, 103 F. 1 (C.C. Cal. 1900).

22 160. The court found it “purely arbitrary, unreasonable, unwarranted, wrongful,  
23 and oppressive interference with the personal liberty of complainant” who had “never  
24 had or contracted said bubonic plague; that he has never been at any time exposed to the  
25 danger of contracting it, and has never been in any locality where said bubonic plague,  
26 or any germs of bacteria thereof, has or have existed”. *Jew Ho*, 103 F. 10 (C.C. Cal.  
27 1900).

1 161. California courts have found that “a mere suspicion [of a contagious  
2 disease], unsupported by facts giving rise to reasonable or probable cause, will afford  
3 no justification at all *for depriving persons of their liberty* and subjecting them to virtual  
4 imprisonment under a purported order of quarantine.” *Ex parte Arta*, 52 Cal. App. 380,  
5 383 (1921) (emphasis added).

6 162. In *Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900), and *Wong Wai v.*  
7 *Williamson*, 103 F. 1 (CC Cal. 1900), the California courts found that there were more  
8 than 15,000 people living in the twelve blocks of San Francisco Chinatown who were to  
9 be quarantined. The courts found it unreasonable to shut down the ability of over  
10 15,000 people to make a living because of nine deaths. This was one death for every  
11 1,666 inhabitants of Chinatown.

12 163. As of July 1, 2020, San Bernardino and Riverside Counties have a  
13 combined population of 4,650,631 individuals and as of April 11, 2020, San Bernardino  
14 and Riverside Counties have a total of 66 coronavirus deaths. That is one death for  
15 every 70,464 inhabitants.

16 164. Plaintiffs have never had or contracted said coronavirus; they have never  
17 been at any time exposed to the danger of contracting it, and have never been in any  
18 locality where said coronavirus, or any germs of bacteria thereof, has or have existed.

19 165. Requiring Plaintiffs to abstain from all religious gatherings, despite  
20 substantial modifications to satisfy the public health interests at stake, violates their  
21 California Constitutional liberty rights.

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

25 167. Plaintiffs have found it necessary to engage the services of private counsel  
26 to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
27 attorney fees and costs pursuant to California Code of Civil Procedure Section 1021.5.  
28



1 **NINTH CLAIM FOR RELIEF**

2 **Freedom of Speech**

3 **(Cal. Const. Art. 1, § 2)**

4 *(By all Plaintiffs against all Defendants)*

5 168. Plaintiffs incorporate by reference the allegations in the preceding  
6 paragraphs, as if fully set forth herein.

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

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

14 171. For the reasons stated in Plaintiffs’ Third Claim for Relief, requiring  
15 Plaintiffs to abstain from its religious gatherings, despite substantial modifications to  
16 satisfy the public health interests at stake, violates Plaintiffs’ liberty of speech rights  
17 under the California Constitution as well.

18 172. 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.

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

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1 **TENTH CLAIM FOR RELIEF**

2 **Freedom of Assembly**

3 **(Cal. Const. Art. 1, § 3)**

4 *(By all Plaintiffs against all Defendants)*

5 174. Plaintiffs incorporate by reference the allegations in the preceding  
6 paragraphs, as if fully set forth herein.

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

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

13 177. 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.

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

19 **ELEVENTH CLAIM FOR RELIEF**

20 **Free Exercise and Enjoyment of Religion**

21 **(Cal. Const. Art. 1, § 4)**

22 *(By all Plaintiffs against all Defendants)*

23 179. Plaintiffs incorporate by reference the allegations in the preceding  
24 paragraphs, as if fully set forth herein.

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



1 181. "In general, the religion clauses of the California Constitution are read  
2 more broadly than their counterparts in the federal Constitution." *Carpenter v. City and*  
3 *County of San Francisco*, 93 F.3d 627, 629 (9th Cir. 1996).

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

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

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

14 **WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment  
15 against Defendants as follows:

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. Constitution and  
18 Article 1, Sections 1, 2, and 4 of the California Constitution;

19 B. An order temporarily, preliminarily, and permanently enjoining and  
20 prohibiting Defendants from enforcing the Orders;

21 C. For attorneys' fees and costs;

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

23  
24 Date: April 13, 2020

DHILLON LAW GROUP INC.

25  
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## VERIFICATION OF COMPLAINT

I, the undersigned, declare as follows:

1. I am a plaintiff in this matter.
2. I have read the foregoing complaint and know the contents thereof.
3. The same is true of my own knowledge, except as to those matters which are therein state on information and belief, and, as to those matters, I believe it to be true.


I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 4/13/2020

DocuSigned by:  
  
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Wendy Gish

Date: 4/13/2020

DocuSigned by:  
  
14CC8A82B3DB44E...


Patrick Scales

Date: 4/13/2020

DocuSigned by:  
  
80DF87D5F1C5496...

James Dean Moffatt

Date: 4/13/2020

DocuSigned by:  
  
CD23BCCA9F72418...

Brenda Wood

# EXHIBIT 1

**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-33-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 19th day  
of March 2020.



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

# EXHIBIT 2





## Public Health

[www.SBCounty.gov](http://www.SBCounty.gov)

Trudy Raymundo  
Director

Corwin Porter  
Assistant Director

Maxwell Ohikhuare, M.D.  
Health Officer

Erin Gustafson, M.D., MPH  
Acting Health Officer

### **ORDER OF THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO** **FOR THE CONTROL OF COVID-19**

**DATE OF ORDER: April 7, 2020**

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295; County Code Section 31.0101 Et. Seq.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, AND SAN BERNARDINO COUNTY CODE SECTION 31.0101 ET. SEQ., THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO ("HEALTH OFFICER") ORDERS:

**Effective 12:00 a.m. on Wednesday, April 8, 2020, and continuing until rescinded,** pending further Order of the Public Health Officer, the following will be in effect for the County of San Bernardino (hereinafter the "County"):

1. The Orders of the San Bernardino County Health Officer issued on March 17, 2020 and March 27, 2020, Governor Newsom's Executive Order N-22-20 and order of the California State Public Health Officer issued on March 19, 2020, requiring all persons residing in the State to remain in their homes or places of residence, except as needed to maintain the continuity of operations for critical infrastructure (the "Stay-at-Home Order") remain in effect until the Governor's Executive Order N-22-20, and the Orders of the San Bernardino County Health Officer remain in effect until they are rescinded.
2. Under the Orders of the San Bernardino County Health Officer, the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, all individuals living in the State of California are ordered to stay home or at their place of residence except as need to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>. This guidance does allow faith based services that are provided through streaming or other technology, while individuals remain in their homes, but does not allow individuals to leave their homes for driving parades or drive-up services, or for picking up non-essential items.

#### BOARD OF SUPERVISORS

ROBERT A. LOVINGOOD  
First District

JANICE RUTHERFORD  
Second District

DAWN ROWE  
Third District

CURT HACMAN  
Chairman, Fourth District

JOSIE GONZALES  
Vice Chair, Fifth District

Gary McBride  
App.211 Officer

3. All non-essential businesses that do not fall under the Essential Critical Infrastructure referenced above are ordered to remain closed. All essential businesses that remain in operation in accordance with the above referenced Orders of the San Bernardino County Health Officer, the Order of the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, shall follow the Social Distancing and Infection Control Guidelines published by the CDC and California Department of Public Health. All essential businesses must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, additional measures shall be identified and implemented or the facility shall be closed.
4. All persons, including Essential Workers shall wear face coverings, such as scarves (dense fabric, without holes), bandanas, neck gaiters, or other fabric face coverings, when they leave their homes or places of residence for essential activities. All persons, including **non-medical** Essential Workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for **non-medical reasons**. Staff working at facilities listed in Attachment A at <http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/Attachment-A-and-B.pdf> must follow the Order of the San Bernardino County Public Health Officer issued on April 6, 2020, requiring staff at these facilities to wear a surgical mask at all times while in the facility.
5. All essential businesses shall make every effort to use telecommuting for its workforce.
6. Government entities shall enforce social distancing requirements at all parks and trails. If a government entity is unable to enforce social distancing at a park or trail, it shall be closed to the public. Parking lots at all parks and/or trails shall be closed and shall be accessible only by members of the public within walking distance of the parks and/or trails. Said parks and/or trails shall be used solely for walking, hiking, equestrian or bicycle riding. The public shall not congregate or participate in group sporting activities at such parks and/or trails.
7. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home.
8. Hospitals and healthcare providers shall take measures to preserve and prioritize resources including delaying non-emergent or elective surgeries or procedures where feasible.
9. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://wwwnc.cdc.gov/travel/notices>) shall be subject to 14-day home quarantine, self-monitoring.
10. A strong recommendation is made for persons exhibiting mild to moderate symptoms of COVID-19 to self-isolate in their place of residence unless seeking medical treatment. A guide to symptoms is found here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
11. This Order is issued based on evidence of increasing transmission of COVID-19 within the County, in the state of California, and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as

best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19. The virus that causes COVID-19 (known as SARS-CoV2) has infected over one million individuals worldwide in over 180 countries and is implicated in over 76,000 worldwide deaths, including at least 530 cases and 16 deaths in San Bernardino County. These numbers increase significantly every day.

12. This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. This Order will help to reduce the number of Californians who contract COVID-19 before an effective treatment or vaccine is available; protect those most likely to experience severe symptoms, such as older Californians and those with underlying chronic conditions; preserve and protect our healthcare delivery system; and minimize the social and economic impacts of COVID-19 over the long run.
13. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 10, 2020 Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in San Bernardino County; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino proclaiming the existence of a Local Emergency in the County of San Bernardino regarding COVID-19; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino ratifying and extending the Declaration of Local Health Emergency due to COVID-19; and Executive Order N-22-20 of the Governor of California and Order of the State Public Health Officer issued on March 19, 2020.
14. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the Centers for Disease Control and Prevention, and other public health officials throughout the United States and around the world, including but not limited to, the Centers for Disease Control and Prevention's "Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes", the California Department of Public Health Face Covering Guidance issued on April 1, 2020, and Recommendation Regarding the Use of Cloth Face Coverings from the Centers for Disease Control and Prevention issued on April 3, 2020.
15. This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101030, et seq.; Health and Safety Code sections 120100, et seq.; and Title 17 of the California Code of Regulations section 2501.
16. This Order shall not supersede any conflicting or more restrictive orders issued by the State of California or Federal governments, including any requirements regarding child care. If any portion of this Order or the application thereof to any person or circumstance is held to be invalid the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
17. To the extent necessary, pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, this order is enforceable by the Sheriff and all Chiefs of Police in the County. The violation of any provision of this Order constitutes an imminent threat to public health.

Copies of this Order shall promptly be: (1) made available at the County of San Bernardino Health Administration office located at 351 N. Mountain View Ave., #303, San Bernardino, CA 92415; (2) posted on the County of San Bernardino Public Health Department's website ([wp.sbcounty.gov/dph](http://wp.sbcounty.gov/dph)); and (3) provided to any member of the public requesting a copy of this Order.

**IT IS SO ORDERED:**

Erin Gustafson, MD, MPH

Dated: April 7, 2020

Dr. Erin Gustafson, MD, MPH  
Acting Public Health Officer  
County of San Bernardino

Approved as to form and legality:

Adam Ebright

Dated: April 7, 2020

Adam Ebright  
County Counsel  
County of San Bernardino

# EXHIBIT 3



**AMENDED ORDER OF THE HEALTH OFFICER FOR THE COUNTY OF  
RIVERSIDE AND OF THE COUNTY EXECUTIVE OFFICER AS DIRECTOR OF  
EMERGENCY SERVICES**

**DATE OF ORDER: APRIL 6, 2020**

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. Violators are also subject to civil enforcement actions including civil penalties of up to \$1,000 per violation per day, injunctive relief, and attorneys' fees and costs. (Penal Code section 19; Government Code sections 8665 and 25132; Health and Safety Code section 120295; County Ordinances 533 and 556.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101030, 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, ARTICLE XI OF THE CALIFORNIA CONSTITUTION; CALIFORNIA GOVERNMENT CODE SECTIONS 8610, 8630, 8634, AND 8665; AND RIVERSIDE COUNTY CODE SECTIONS 442 AND 533.6, THE HEALTH OFFICER OF THE COUNTY OF RIVERSIDE ("HEALTH OFFICER") ORDERS:

**Effective 12:00 a.m. on Sunday, April 5, 2020, and continuing through April 30, 2020**, pending further Order of the Public Health Officer, the following will be in effect for the County of Riverside (hereinafter the "County"):

1. Executive Order N-33-20 issued by the Governor of the State of California ("Executive Order") (available at: <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>) ordered all individuals living in the State of California to stay home or at their place of residence, except as needed to maintain continuity of operations of sectors designated in the document available at: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>) as updated by the State Public Health Officer ("Essential Workers"). This also includes all orders of the State Public Health Officer.

In conformance with, and where not superseded by the Executive Order, this Order additionally specifies and orders as follows:

- a. All public or private "gatherings," as defined in section 2 below, within the jurisdiction of the Public Health Officer of the County of Riverside are prohibited, regardless of venue or size.
- b. **Paragraph 1.a. of** this Order does not apply to courts of law, medical providers, public utilities, critical county, city, and special district operations, critical school operations such as nutrition programs, logistics/distribution centers, congregate living settings, daycare and child care, shelters, public transportation, airport travel, or necessary shopping at fuel stations, stores or malls. However, these settings are instructed to observe all applicable state and federal guidelines for infection control.

- c. All essential businesses that remain in operation in accordance with the Order shall follow the Social Distancing and Infection Control Guidelines published by the CDC and California Department of Public Health. All essential businesses must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing are implemented at each facility that will ensure social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, additional measures shall be identified and implemented or the facility shall be closed.
- d. All persons, including Essential Workers shall wear face coverings, such as scarves (dense fabric, without holes), bandanas, neck gaiter, or other fabric face coverings. All persons, including Essential Workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for **non-medical reasons**.
- e. All bars, adult entertainment establishments, and other business establishments that serve alcohol and do not serve food shall be and shall remain closed.
- f. All restaurants and other business establishments that serve food shall close all on-site dining. All food served shall be by delivery, or through pick-up or drive thru. Social distancing shall be required for persons picking up food on site.
- g. All gyms and fitness centers shall be and shall remain closed.
- h. All essential businesses shall make every effort to use telecommuting for its workforce.
- i. Government entities shall enforce social distancing requirements at all parks and trails. If a government entity is unable to enforce social distancing at a park or trail, it shall be closed to the public. Parking lots at all parks and/or trails shall be closed and shall be accessible only by members of the public within walking distance of the parks and/or trails. Said parks and/or trails shall be used solely for walking, hiking, equestrian or bicycle riding. The public shall not congregate or participate in group sporting activities at such parks and/or trails.
- j. As outlined in the Public Health Officer's Order of April 2, 2020, all public and private golf courses are closed for play. Golf Clubs may allow members to walk the course solely for exercise. Golf Clubs that provide food services may continue to do so by delivery or through pick-up. Social distancing shall be required for persons picking up food on site and using a course for walking.
- k. As outlined in the Health Officer's Amended Order of April 1, 2020, all schools within the jurisdiction of the Public Health Officer of the County of Riverside



including, but not limited to, all preschools, K-12 public, private and charter schools, community colleges, public, private, nonprofit, and for-profit colleges and universities shall remain closed through June 19, 2020, pending further Order of the Public Health Officer. This closure shall be understood to prohibit any activity where students, staff, parents, or members of the public gather on the school campus, including but not limited to: formal instruction; classes; laboratory sessions; tutoring; meeting; sporting events; or other extracurricular activities. Parents of school-aged minor children shall take steps to ensure children are not participating in activities prohibited by this Order, or the Executive Order, and that social distancing requirements are practiced at all times.

Individual school districts and educational institutions shall continue to have the discretion to determine the minimum essential personnel as required to support critical functions within those districts and institutions such as federal food service programs, security, and necessary maintenance.

This order shall not affect on-campus housing, dormitories or other congregate living arrangements, or staffing required to maintain and operate them.

- l. Daycare and childcare facilities shall continue to operate under the following mandatory conditions: (1) Childcare must be carried out in stable groups of 10 or fewer ("stable" means that the same 10 or fewer children are in the same group each day); (2) Children shall not change from one group to another; (3) If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other; and (4) Childcare providers shall remain solely with one group of children.
- m. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home.
- n. "Non-essential personnel," as defined in section 2(c) below, are prohibited from entry into any hospital or long-term care facility.

All essential personnel who show any potential signs or symptoms of COVID-19 shall be strictly prohibited from entry into hospitals or long-term care facilities.

- o. Hospitals and healthcare providers shall take measures to preserve and prioritize resources including delaying non-emergent or elective surgeries or procedures where feasible.
- p. As outlined in the Health Officer's Order of April 3, 2020, all labs that perform COVID-19 testing for Riverside County clients, including but not limited to Kaiser

Permanente; LabCorp, Quest Diagnostics, and labs operated by hospitals across the County of Riverside, shall continue to share COVID-19 orders and results with demographics with Manifest Medex (MX) to create a countywide COVID-19 dashboard to include information regarding tests performed, both pending and resulted, and occurrences by age, gender, and geographical location. Orders and results with demographics shall be shared either through electronic interfaces (preferred) or via electronic file transfers updated on at least a daily basis.

- q. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://wwwnc.cdc.gov/travel/notices>) shall be subject to 14-day home quarantine, self-monitoring.
  - r. A strong recommendation is made for persons exhibiting mild to moderate symptoms of COVID-19 to self-isolate themselves in their place of residence unless seeking medical treatment. A guide to symptoms is found here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
2. For purposes of this Order:
- a. "Gathering" is any event or convening that brings together people in a single room or single space at the same time, including, but not limited to, an auditorium, stadium, arena, theater, church, casino, conference room, meeting hall, cafeteria, drive-in theater, parking lot, or any other indoor or outdoor space used for any non-essential purpose including, but not limited to, movies, church services, swap meets, etc. A gathering does not include:
    - i. A convening of persons who reside in the same residence.
    - ii. Operations at airports and/or public transportation.
    - iii. Operations at essential businesses included in the designated sectors referenced in section 1 above, where many people are present but are able to practice social distancing.
    - iv. Funerals and burial services may proceed with not more than 10 persons present. Funerals and burial services must be conducted in strict compliance with social distancing requirements.
  - b. "Long term care facility" is a facility serving adults that require assistance with activities of daily living, including a skilled nursing facility, and that is licensed by the California Department of Community Care and Licensing, or the California Department of Public Health.
  - c. "Non-essential personnel" for the purpose of section 1 above, are employees, contractors, or members of the public who do not perform treatment, maintenance,

support, or administrative tasks deemed essential to the healthcare mission of the long term care facility or hospital. Non-essential personnel do not include first responders, nor State, federal, or local officials, investigators, or medical personnel carrying out lawful duties. Entry of visitors to hospitals and long-term care facilities are allowed upon the approval of the facility's director, or designee, for the purpose of allowing family and friends to visit a resident such as in an end of life situation, to allow parents or guardians to visit a child who is a patient, or any other circumstances deemed appropriate by the facility director, or designee, and where appropriate precautions by the facility that follow federal, State, and local public health guidance regarding COVID-19 are followed.

- d. "Social distancing" is maintaining a six-foot separation from all persons except for household members and medical providers with the appropriate personal protection equipment.
3. This Order shall be effective immediately and will remain in effect until April 30, 2020, pending further Order of the Public Health Officer. To the extent that any conflict shall arise, this Order supersedes the prior Orders of the Public Health Officer concerning public gatherings, including those issued on March 12, March 16, and April 4, 2020.
4. This Order is issued as a result of the worldwide pandemic of COVID-19 disease, also known as "novel coronavirus," which has infected over one million individuals worldwide in over 180 countries and is implicated in over 50,000 worldwide deaths, including over 600 cases and 15 deaths in Riverside County. These numbers increase significantly every day.
5. This Order is issued based on evidence of increasing transmission of COVID-19 both within the County of Riverside and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19.
6. This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. This Order is issued to prevent circumstances often present in gatherings that may exacerbate the spread of COVID-19, such as: 1) the increased likelihood that gatherings will attract people from a broad geographic area; 2) the prolonged time period in which large numbers of people are in close proximity; 3) the difficulty in tracing exposure when large numbers of people attend a single event or are at a single location; and 4) the inability to ensure that such persons follow adequate hygienic practices.
7. This Order is intended to address the strain upon the health care system from the effects of the COVID-19 virus. Similarly, this Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide.

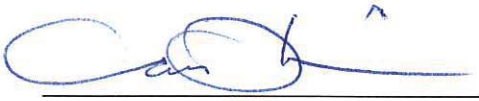


8. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 8, 2020 Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in Riverside County; the March 10, 2020 Resolution of the Board of Supervisors of the County of Riverside proclaiming the existence of a Local Emergency in the County of Riverside regarding COVID-19; the March 10, 2020 Resolution of the Board of Supervisors of the County of Riverside ratifying and extending the Declaration of Local Health Emergency due to COVID-19; the guidance issued on March 11, 2020 by the California Department of Public Health regarding large gatherings of 250 people or more; Governor Gavin Newsom's Executive Order N-25-20 of March 12, 2020 preparing the State to commandeer hotels and other places of temporary residence, medical facilities, and other facilities that are suitable as places of temporary residence or medical facilities as necessary for quarantining, isolating or treating individuals who test positive for COVID-19 or who have had a high-risk exposure and are thought to be in the incubation period; the guidance issued on March 15, 2020 by the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials through the United States and around the world recommending the cancellation of gatherings involving more than fifty (50) or more persons in a single space at the same time; the March 16, 2020 order of the Public Health Officer prohibiting all gatherings with expected presence above ten (10) individuals; Governor Newsom's Executive Order N-33-20 of March 19, 2020 ordering all persons to stay at home to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19; Governor Newsom's Executive Order N-35-20 giving the state the ability to increase the health care capacity in clinics, mobile health care units and adult day health care facilities and allowing local governments more flexibility to utilize the skills of retired employees in order to meet the COVID-19 surge; and Governor Newsom's Executive Order N-39-20 intended to expand the health care workforce and recruit health care professionals to address the COVID-19 surge. The Governor and the County Public Health Officer continue to issue COVID-19-related orders to mitigate the public health crisis.
9. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the Centers for Disease Control and Prevention, and other public health officials throughout the United States and around the world, including but not limited to, the Centers for Disease Control and Prevention's "Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes" and the California Department of Public Health Face Covering Guidance issued on April 1, 2020.
10. This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101030, et seq.; Health and Safety Code sections 120100, et seq.; and Title 17 of the California Code of Regulations section 2501. More specifically, Health and Safety Code section 120175.5(b) which provides that all

governmental entities in the county shall take necessary measures within the governmental entity's control to ensure compliance with this Order and to disseminate this Order to venues or locations within the entity's jurisdiction where gatherings may occur.

11. Violation of this Order is subject to fine, imprisonment, or both. (Penal Code section 19; Government Code sections 8665 and 25132; Health and Safety Code section 120295; County Ordinances 533 and 556.)
12. To the extent necessary, pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all Chiefs of Police in the County ensure compliance with and enforcement of this Order.
13. Copies of this Order shall promptly be: (1) made available at the County of Riverside Health Administration office located at 4065 County Circle Drive, Riverside, CA 92503; (2) posted on the County of Riverside Public Health Department's website (rivcoph.org); and (3) provided to any member of the public requesting a copy of this Order.

**IT IS SO ORDERED:**

A handwritten signature in blue ink, appearing to read 'Cameron Kaiser', is written over a horizontal line.

Dated: April 6, 2020

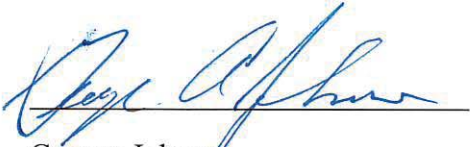
Dr. Cameron Kaiser, MD, MPH, FAAFP  
Public Health Officer  
County of Riverside

**EMERGENCY REGULATIONS**

As Director of Emergency Services for the County of Riverside, I am authorized to promulgate regulations for the protection for life and property pursuant to Government Code section 8634 and Riverside County Ordinances 442 and 533. The following shall be in effect for the duration of the County of Riverside Health Officer's Order issued above which is incorporated in its entirety by reference:

The County of Riverside Health Officer's Order shall be promulgated as a regulation for the protection of life and property.

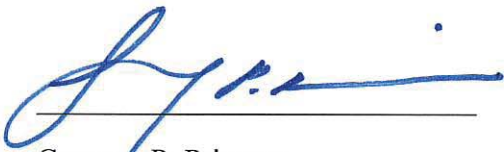
Any person who violates or refuses or willfully neglects to obey this regulation is subject to civil enforcement actions, including civil penalties of up to \$1,000 per violation per day, injunctive relief, and attorneys' fees and costs, imprisonment, or both, pursuant to Government Code section 8665.



George Johnson  
County Executive Officer  
Director of Emergency Services  
County of Riverside

Dated: April 6, 2020

Approved as to form and legality:



Gregory P. Priamos  
County Counsel  
County of Riverside

Dated: April 6, 2020

## APPENDIX 22



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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **EASTERN DIVISION**

16 **WENDY GISH**, an individual, *et al.*,

17 Plaintiffs,

18 v.

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

21 Defendants.

Case Number: 5:20-cv-00755-JGB-KK

Hon. Jesus G. Bernal

**APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND FOR ORDER TO  
SHOW CAUSE WHY  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE;  
MEMORANDUM OF POINTS  
AND AUTHORITIES**

Date Filed: April 14, 2020

**TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that Plaintiffs Wendy Gish, Patrick Scales, James Dean Moffatt, and Brenda Wood, by and through counsel, will and hereby do apply to this Court pursuant to Fed. R. Civ. P. 65(b) and Local Rule 65-1 for a temporary restraining order against Defendants Gavin Newsom, in his official capacity as Governor of California; Xavier Becerra, in his official capacity as Attorney General of California; Erin Gustafson, in her official capacity as the San Bernardino County Acting Public Health Officer; John McMahon, in his official capacity as the San Bernardino County Sheriff; Robert A. Lovinggood, in his official capacity as a San Bernardino County Supervisor; Janice Rutherford, in her official capacity as a San Bernardino County Supervisor; Dawn Rowe, in her official capacity as a San Bernardino County Supervisor; Curt Hagman, in his official capacity as a San Bernardino County Supervisor; Josie Gonzales, in his official capacity as a San Bernardino County Supervisor; Cameron Kaiser, in his official capacity as the Riverside County Public Health Officer; George Johnson, in his official capacity as the Riverside County Executive Officer and Director of Emergency Services; Chad Bianco, in his official capacity as the Riverside County Sheriff; Kevin Jeffries, in his official capacity as a Riverside County Supervisor; Karen Spiegel, in her official capacity as a Riverside County Supervisor; Chuck Washington, in his official capacity as a Riverside County Supervisor; V. Manuel Perez, in his official capacity as a Riverside County Supervisor; and Jeff Hewitt, in his official capacity as a Riverside County Supervisor (“Defendants”), and for the issuance of an order to show cause why a preliminary injunction should not issue, as follows:

1. Defendants, as well as their agents, employees, and successors in office, shall be restrained and enjoined from enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with any prohibition on Plaintiffs’ engagement in religious services, practices, or activities at which the Center for Disease Control’s social distancing guidelines are followed.

1           2. Defendants shall show cause, at a time and place to be directed by the  
2 Court, why a preliminary injunction should not issue requiring Defendants to act as  
3 described in above; the temporary restraining order shall remain effective until such  
4 time as the Court has ruled on whether a preliminary injunction should issue.

5           This Application is made on the grounds that Plaintiffs are likely to succeed on  
6 the merits of this case, they will suffer irreparable harm without injunctive relief, the  
7 balance of equities tips sharply in their favor, and the relief sought is in the public  
8 interest.

9           Good cause exists to issue the requested Order to preserve Plaintiffs' rights  
10 under the Constitution of the United States and the Constitution of the State of  
11 California, and to avoid irreparable harm to those rights. This Application is supported  
12 by the accompanying Memorandum of Points and Authorities, by Plaintiffs' Verified  
13 Complaint, and all exhibits attached thereto, by the declarations of Plaintiffs and their  
14 counsel, Mark P. Meuser, and all exhibits attached thereto, and by such further  
15 argument and evidence that may be adduced at any hearing on this matter or of which  
16 the Court may take judicial notice.

17           The Verified Complaint in this action was filed on April 13, 2020; this  
18 Application followed. All papers relating to this Application will be delivered by  
19 email to the Defendants' counsel by 4:00 p.m. on April 14. As reflected in the  
20 accompanying declaration of Mark P. Meuser, Plaintiffs have notified the Office of  
21 the California Attorney General and county counsel for San Bernardino and Riverside  
22 Counties, informing counsel of Plaintiffs' intention to file this Application and to seek  
23 a temporary restraining order of the nature described above.

24           Plaintiffs request that the Court waive any bond requirement, because enjoining  
25 Defendants from unconstitutionally prohibiting religious practices will not financially  
26 affect Defendants.

27  
28 //

1  
2 Date: April 14, 2020  
3

Respectfully submitted,

DHILLON LAW GROUP INC.

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Attorneys for Plaintiffs

## TABLE OF CONTENTS

1		
2	<i>U.S. Attorney General William Barr Issues Statement on Religious Practice and</i>	
3	<i>Social Distance</i> .....	1
4	On April 14, 2020, U.S. Attorney General William Barr issued the following	
5	statement: .....	1
6	INTRODUCTION.....	1
7	RELEVANT FACTUAL BACKGROUND .....	2
8	LEGAL STANDARD .....	7
9	ARGUMENT .....	9
10	I. PLAINTIFFS ARE ENTITLED TO TEMPORARY AND	
11	PRELIMINARY INJUNCTIVE RELIEF. ....	9
12	A. There Is a Strong Likelihood Plaintiffs’ Will Succeed in Proving	
13	Their Claims on Multiple Constitutional Grounds.....	9
14	1. Defendants’ Ban on Communal Religious Worship Violates the	
15	First Amendment’s Free Exercise Clause and California	
16	Constitution Article 1, Section 4.....	9
17	2. The Orders Violate the Establishment Clause of the First	
18	Amendment. ....	11
19	3. Defendants Violate Plaintiffs’ Free Speech Rights.....	12
20	4. The Orders Ban All Public and Private Assembly in Violation of	
21	the First Amendment to the U.S. Constitution and California	
22	Constitution. ....	15
23	5. Defendants’ Orders Are Void for Reasons of Vagueness.....	16
24	6. The Orders Violate Plaintiffs’ Substantive Due Process Rights	
25	Under the Fourteenth Amendment.....	17
26	7. The Orders Violate Article 1, Section 1 of the California	
27	Constitution. ....	18
28	8. Defendants Violate the Equal Protection Clause of the Fourteenth	
	Amendment. ....	20
	B. Plaintiffs Face Imminent Irreparable Harm Absent Immediate	
	Injunctive Relief .....	21
	C. The Balance of Hardships Tips Decidedly in Plaintiffs’ Favor. ....	22

1	D. Injunctive Relief Is in the Public Interest.....	23
2	II. THE COURT SHOULD DISPENSE WITH ANY BOND	
3	REQUIREMENT.....	23
4	CONCLUSION .....	24

**TABLE OF AUTHORITIES**

<b>Case</b>	<b>Page(s)</b>
<b>UNITED STATES CONSTITUTION</b>	
U. S. Const. amend. I. ....	9, 13
U.S. Const. amend. XIV, § 1.....	20
<b>CALIFORNIA CONSTITUTION</b>	
Cal. Const. art. 1, § 1.....	19
Cal. Const. art. 1, § 2.....	12, 13
Cal. Const. art. 1, § 3.....	15
Cal. Const. art. 1, § 4.....	9, 10
<b>CASES</b>	
<i>All. for Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011).....	8
<i>Am. Legion v. Am. Humanist Ass’n</i> , 139 S. Ct. 2067 (2019).....	12
<i>Americans for Prosperity Foundation v. Harris</i> , 182 F. Supp. 3d 1049 (C.D. Cal. 2016). ....	22, 23
<i>Aptheker v. Secretary of State</i> , 378 U.S. 500 (1964).....	18
<i>Bible Club v. Placentia-Yorba Linda School Dist.</i> , 573 F. Supp. 2d 1291 (C.D. Cal. 2008). ....	24
<i>Cantwell v. Connecticut</i> , 310 U.S. 296 (1940).....	10
<i>Catholic Charities of Sacramento, Inc. v. Superior Court</i> , 32 Cal. 4th 527 (2004) .....	9
<i>Church of the Lukumi Babalu Aye, Inc. v. Hialeah</i> , 508 U.S. 520 (1993).....	10
<i>City of Cleburne, Tex. v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985).....	20



1	<i>College Republicans at San Francisco State University v. Reed</i> ,	
2	523 F. Supp. 2d 1005 (N.D. Cal. 2007). .....	21, 22, 23
3	<i>Connally v. General Const. Co.</i> ,	
4	269 U.S. 385 (1926). .....	16
5	<i>De Jonge v. Oregon</i> ,	
6	299 U.S. 353 (1937). .....	15
7	<i>Dennis v. Higgins</i> ,	
8	498 U.S. 439 (1991). .....	9
9	<i>Doctor John's, Inc. v. Sioux City</i> ,	
10	305 F. Supp. 2d 1022 (N.D. Iowa 2004). .....	24
11	<i>Duncan v. Louisiana</i> ,	
12	391 U.S. 145 (1968). .....	17
13	<i>Dunn v. Blumstein</i> ,	
14	405 U.S. 330 (1972). .....	15, 18
15	<i>Earth Island Inst. v. United States Forest Serv.</i> ,	
16	351 F.3d 1291 (9th Cir. 2003). .....	8
17	<i>Eisenstadt v. Baird</i> ,	
18	405 U.S. 438 (1972). .....	18
19	<i>Elrod v. Burns</i> ,	
20	427 U.S. 347 (1976). .....	21
21	<i>Epperson v. Arkansas</i> ,	
22	393 U.S. 97 (1968). .....	11
23	<i>Everson v. Board of Ed. of Ewing</i> ,	
24	330 U.S. 1 (1947). .....	11
25	<i>Ex parte Arta</i> ,	
26	52 Cal. App. 380 (1921). .....	20
27	<i>Ex parte Martin</i> ,	
28	83 Cal. App. 2d 164 (1948). .....	19
	<i>Fantasyland Video, Inc. v. Cty. of San Diego</i> ,	
	496 F.3d 1040 (9th Cir. 2007). .....	12
	<i>Granny Goose Foods, Inc. v. Brotherhood of Teamsters &amp; Auto Truck Drivers</i> ,	
	415 U.S. 423 (1974). .....	8
	<i>Grayned v. City of Rockford</i> ,	
	408 U.S. 104 (1972). .....	16

1	<i>Griswold v. Connecticut</i> ,	18
2	381 U.S. 479 (1965).....	
3	<i>Houston v. Hill</i> ,	14
4	482 U.S. 451 (1987).....	
5	<i>IDK, Inc. v. Clark Cnty.</i> ,	13, 14
6	836 F.2d 1185 (9th Cir. 1988).....	
7	<i>In re J.M.</i> ,	13
8	36 Cal. App. 5th 668 (2019). ....	
9	<i>Jew Ho v. Williamson</i> ,	19
10	103 F. 10 (C.C. Cal. 1900).....	
11	<i>Jorgensen v. Cassidy</i> ,	24
12	320 F.3d 906 (9th Cir. 2003).....	
13	<i>Ketchum v. Alameda Cnty.</i> ,	9
14	811 F.2d 1243 (9th Cir. 1987).....	
15	<i>Lemon v. Kurtzman</i> ,	12
16	403 U. S. 602 (1971).....	
17	<i>Los Angeles All. For Survival v. City of Los Angeles</i> ,	13
18	22 Cal. 4th 352 (2000). ....	
19	<i>Maher v. Roe</i> ,	18
20	432 U.S. 464 (1977).....	
21	<i>Maynard v. U.S. Dist. Court for Cent. Dist. of California</i> ,	21
22	915 F.2d 1581 (9th Cir. 1990).....	
23	<i>Maynard v. U.S. Dist. Court for the Cent. Dist. of California</i> ,	21
24	701 F. Supp. 738 (C.D. Cal. 1988). ....	
25	<i>McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.</i> ,	11
26	545 U.S. 844 (2005).....	
27	<i>Memorial Hospital v. Maricopa Cnty.</i> ,	18, 21
28	415 U.S. 250 (1974).....	
	<i>Monell v. Dept. of Soc. Servs.</i> ,	9
	436 U.S. 658 (1978).....	
	<i>People ex rel. Gallo v. Acuna</i> ,	16
	14 Cal.4th 1090 (1997). ....	
	<i>People v. Chambers</i> ,	15
	22 Cal. App 2d 687 (1937).....	

1	<i>S.O.C., Inc. v. Cnty. of Clark</i> ,	
2	152 F.3d 1136 (9th Cir. 1998).....	21
3	<i>Sammartano v. First Jud. Dist. Ct.</i> ,	
4	303 F.3d 959 (9th Cir. 2002).....	21, 23
5	<i>San Antonio Indep. Sch. Dist. v. Rodriguez</i> ,	
6	411 U.S. 1 (1973).....	15
7	<i>Sessions v. Dimaya</i> ,	
8	138 S. Ct. 1204 (2018).....	16
9	<i>Shapiro v. Thompson</i> ,	
10	394 U.S. 618 (1969).....	18
11	<i>Stormans, Inc. v. Selecky</i> ,	
12	586 F.3d 1109 (9th Cir. 2009).....	22
13	<i>Stormans, Inc. v. Wiesman</i> ,	
14	794 F.3d 1064 (9th Cir. 2015).....	10
15	<i>Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush &amp; Co., Inc.</i> ,	
16	240 F.3d 832 (9th Cir. 2001).....	8
17	<i>Whitney v. California</i> ,	
18	274 U.S. 357 (1927).....	15
19	<i>Widmar v. Vincent</i> ,	
20	454 U.S. 263 (1981).....	13, 14
21	<i>Wilson v. Superior Court</i> ,	
22	13 Cal.3d 652 (1975). ....	13
23	<i>Winter v. Natural Res. Def. Council, Inc.</i> ,	
24	555 U.S. 7 (2008).....	8
25	<i>Wong Wai v. Williamson</i> ,	
26	103 F. 1 (C.C. Cal. 1900).....	19

## STATUTES

42 U.S.C. § 1983.....	9, 12
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## RULES

Fed. R. Civ. P. 65.	8
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 ***U.S. Attorney General William Barr Issues Statement***  
 3 ***on Religious Practice and Social Distance***

4 On April 14, 2020, U.S. Attorney General William Barr issued the following  
 5 statement:

6 ...As we explain in the Statement of Interest, where a state has not acted  
 7 evenhandedly, it must have a compelling reason to impose restrictions on  
 8 places of worship and must ensure that those restrictions are narrowly  
 9 tailored to advance its compelling interest. While we believe that during  
 10 this period there is a sufficient basis for the social distancing rules that  
 11 have been put in place, the scope and justification of restrictions beyond  
 that will have to be assessed based on the circumstances as they evolve.

12 Religion and religious worship continue to be central to the lives of  
 13 millions of Americans. This is true more so than ever during this  
 14 difficult time. The pandemic has changed the ways Americans live their  
 15 lives. Religious communities have rallied to the critical need to protect  
 16 the community from the spread of this disease by making services  
 available online and in ways that otherwise comply with social distancing  
 guidelines.

17 The United States Department of Justice will continue to ensure that  
 18 religious freedom remains protected if any state or local government, in  
 19 their response to COVID-19, singles out, targets, or discriminates against  
 20 any house of worship for special restrictions.

21 Meuser Dec., Ex. 8.

22 **INTRODUCTION**

23 The United States and California Constitutions do not contain blanket  
 24 exceptions for pandemics, and neither may California's lawmakers ignore  
 25 fundamental Constitutional norms on the basis of a health crisis. In a knee-jerk  
 26 response to the coronavirus pandemic, at a time when people of faith around the  
 27 world have a greater need than ever for spiritual solace, Defendants have  
 28

1 criminalized communal worship across California. While protecting the health and  
 2 safety of the public during this crisis is certainly critically important—to Plaintiffs  
 3 also—that interest may not be secured by abrogating the rights and liberties  
 4 enshrined by the U.S. and California Constitutions.

5 Despite declarations of national, state, and local emergencies surrounding the  
 6 coronavirus outbreak, Defendants have decided to allow “essential” businesses (as  
 7 determined by Defendants on an *ad hoc* basis) to continue operations provided that  
 8 certain social distancing guidelines are followed. For example, Defendants permit  
 9 marijuana dispensaries, fast food restaurants, and laundromats to continue  
 10 operations, subject to these restrictions. Statewide, the news media have been  
 11 permitted to continue operations.

12 Churches and religious services, however, have not made Defendants’ cut.  
 13 Instead, Defendants insist that all religious worship take place only at home, by live-  
 14 streaming, apparently assuming that all Californians have access to high-speed  
 15 internet, computer equipment, a desire to add intrusive, data-collecting apps to their  
 16 computer devices, and the willingness to suspend a lifetime of worship practices at  
 17 the command of the government. The United States and California Constitutions  
 18 simply do not tolerate such arbitrary and discriminatory restrictions thrust upon  
 19 fundamental rights while less restrictive measures are available and are being  
 20 allowed for entities the Government deems “essential.” This Court should  
 21 immediately enjoin Defendants from further violating Plaintiffs’ religious liberty by  
 22 ascribing second-class status to faith practices.

### 23 **RELEVANT FACTUAL BACKGROUND**

24 On March 13, 2020, President Donald J. Trump proclaimed a National State of  
 25 Emergency as a result of the threat of the emergence of a novel coronavirus, COVID-  
 26 19. Verified Complaint [dkt. #1-1] (“Compl.”), ¶ 28. Since the initial outbreak of  
 27 COVID-19 in the United States in February and March 2020, the federal  
 28 government’s projections of the anticipated national death toll related to the virus has

1 decreased substantially, by an order of magnitude. Despite such revisions, Defendants  
 2 have increasingly restricted—where not outright banned— Plaintiffs’ engagement in  
 3 constitutionally-protected activities. Compl., ¶ 29.

4 On March 4, 2020, California Governor Gavin Newsom proclaimed a State of  
 5 Emergency as a result of the threat of COVID-19. Compl., ¶ 30. On March 19, 2020,  
 6 California Governor Newsom issued Executive Order N-33-20 in which he ordered  
 7 “all residents are directed to immediately heed the current State public health  
 8 directives.” Compl., ¶ 31. The state public health directive requires “all individuals  
 9 living in the State of California to stay home or at their place of residence except as  
 10 needed to maintain continuity of operations of the federal critical infrastructure sectors  
 11 ...”. Compl., ¶ 32. The public health directive provides that its directives “shall stay in  
 12 effect until further notice.” Compl., ¶ 35.

13 On March 22, 2020, the California Public Health Officer designated a list of  
 14 “Essential Critical Infrastructure Workers.” Included on the list of the “essential  
 15 workforce” are “faith based services that are provided through streaming or other  
 16 technology.” Compl., ¶ 33. The California state decree prohibits all religious leaders  
 17 from conducting in-person and out-of-home religious services, regardless of measures  
 18 taken to reduce or eliminate the risk of the virus spreading, such as offering socially  
 19 distanced seating for family units, mask and glove requirements, or drive-in-only  
 20 services. Meanwhile, the list deems the continuity of services provided by coffee  
 21 baristas, burger flippers, and laundromat technicians to be so necessary for society that  
 22 these activities are permitted to continue under the State Order, despite the existence  
 23 of the very same risk Defendants rely on to inhibit the exercise of fundamental First  
 24 Amendment rights. Compl., ¶ 34.

25 On or about April 7, 2020, Dr. Erin Gustafson signed the San Bernardino Order.  
 26 Compl., ¶ 36. This Order “allow[s] faith based services that are provided through  
 27 streaming or other technology, while individuals remain in their homes, but does not  
 28 allow individuals to leave their home for driving parades or drive-up services, or for



1 picking up non-essential items.” Compl., ¶ 37. It also states that any violation “is a  
 2 crime punishable by fine, imprisonment, or both.” Compl., ¶ 39. The Order states that  
 3 it will remain in effect “until rescinded.” Compl., ¶ 40.

4 On April 8, 2020, San Bernardino County released a document on their website  
 5 titled “Clarification of religious services and face-covering order” (hereinafter  
 6 Clarification”). The Clarification is not signed by the Public Health Officer nor does it  
 7 revoke the April 7<sup>th</sup> Order. Compl., ¶ 44-45. It states “[o]n the subject of enforcement,  
 8 the public is advised that although violation of a health order is a violation of the  
 9 California Health and Safety Code, the County does not expect law enforcement to  
 10 broadly impose citations on violators.” Compl., ¶ 46. The Clarification does not  
 11 revoke law enforcement authority to criminally charge any individual who violates the  
 12 San Bernardino Order. Compl., ¶ 47.

13 Defendants have granted law enforcement unfettered discretion when deciding  
 14 whether or not to enforce the San Bernardino Order. Compl., ¶ 48. The Clarification  
 15 states that the “specific reference to drive-in religious service so close to major  
 16 religious observances taking place during the next four days, for which organizations  
 17 had already conducted considerable planning and incurred expenses, are clarified as  
 18 follows: Organizations that have planned such services for the coming weekend  
 19 should proceed with those services if they choose to do so and make every effort to  
 20 prevent contact between congregants.” Compl., ¶ 49.

21 Patrick Scales’ church, Shield of Faith Family Church, Inc., is located in San  
 22 Bernardino County. Compl., ¶ 51. He desires to hold in-person religious services for  
 23 those congregants who desire to attend church. Compl., ¶ 52. Scales believes that he  
 24 can hold such religious services and abide by social distancing tips recommended by  
 25 the CDC by keeping congregants at least six feet apart, and provide for the wearing of  
 26 masks and gloves. Compl., ¶ 53. He believes that religious services are essential for  
 27 the spiritual health of the congregation so that the congregants can exhort one another  
 28 during these difficult times. Compl., ¶ 54. Scales recognizes that most of his

1 congregants will stay at home, but he wants to be available for those who are healthy  
 2 and feel that in-person church service can be safely attended with social distancing  
 3 and other measures. Compl., ¶ 55.

4 Wendy Gish attends Shield of Faith Family Church and would attend an in-  
 5 person church service should it be made available to her. Compl., ¶ 56. She regularly  
 6 attends church services and believes that she has a scriptural command to “not neglect  
 7 meeting together.” Compl., ¶ 57. To her knowledge, Gish has never had or contracted  
 8 said coronavirus; she has never been at any time exposed to the danger of contracting  
 9 it and has never been in close proximity to any locality where said coronavirus has or  
 10 have existed. Compl., ¶ 58. As a result of not being able to attend in-person church,  
 11 she has been deprived of the opportunity for important cultural, social, and religious  
 12 activities, including speech activities pertaining to the coronavirus outbreak and the  
 13 government’s response. Compl., ¶ 59.

14 As of April 11, 2020, San Bernardino County has eight hundred ten (810)  
 15 coronavirus cases and twenty-five (25) COVID-19 associated deaths, according to  
 16 information posted on the county’s website. Compl., ¶ 60. The United States Census  
 17 estimates that as of July 1, 2019, San Bernardino County’s population is 2,180,085  
 18 people. Compl., ¶ 61.

19 On or about April 6, 2020, Dr. Cameron Kaiser and George Johnson signed the  
 20 Riverside Order. Compl., ¶ 62. It prohibits “[a]ll public or private gatherings . . .  
 21 including, but not limited to an auditorium, . . . church, . . . or any other indoor or  
 22 outdoor space used for any non-essential purpose including, but not limited to . . .  
 23 church . . . .” Compl., ¶ 63. Exempted from its prohibition on public or private  
 24 gatherings are numerous services, industries, and activities, including: “courts of law,  
 25 medical providers . . . daycare and child care . . . [and] necessary shopping at fuel  
 26 stations, stores or malls,” provided that a “state and federal guidelines for infection  
 27 control” are observed. Compl., ¶ 64. The Riverside Order provides that “[a]ll essential  
 28 business that remain in operation . . . shall follow the Social Distancing and Infection

1 Control Guidelines published by the [Center for Disease Control] and California  
 2 Department of Public Health . . . or the facility shall be closed.” Compl., ¶ 65. The  
 3 Order expressly states that any violation “is a crime punishable by fine,  
 4 imprisonment, or both.” Compl., ¶ 67.

5 On April 10, 2020, Riverside County issued a press release in which they stated  
 6 that “Drive-up church services that practice proper social distancing will be allowed  
 7 this weekend in Riverside County, although the order to prohibit such activities will  
 8 remain after Easter Sunday.” Compl., ¶ 71. The April 10<sup>th</sup> clarification was issued by  
 9 George Johnson. Compl., ¶ 72.

10 James Moffatt’s church, “Church Unlimited” is located in Riverside County.  
 11 Compl., ¶ 73. Upon learning about the coronavirus, he immediately had his church  
 12 building cleaned and disinfected. Compl., ¶ 74. Moffatt ensured that sanitizing  
 13 materials were available to each person who entered his church and encouraged family  
 14 units to sit at least six feet apart. Compl., ¶ 75. He encouraged anyone who was  
 15 uncomfortable with gathering during coronavirus to stay at home. Compl., ¶ 76. He  
 16 also encouraged anyone who was sick to stay at home. Compl., ¶ 77.

17 On April 9, 2020, Moffatt was fined \$1,000 for violating the Riverside Order  
 18 for holding a church service on April 5, 2020, Palm Sunday. Compl., ¶ 78. To his  
 19 knowledge, he has never had or contracted the coronavirus; he has never been at any  
 20 time exposed to the danger of contracting it; and has never been in close proximity to  
 21 any locality where said coronavirus has or have existed. Compl., ¶ 79. But for the  
 22 Riverside Order and Defendants’ enforcement thereof, Moffatt would continue to hold  
 23 in-person religious services in Riverside County, while taking the same social  
 24 distancing precautions taken by “essential businesses” that Defendants continue to  
 25 allow to operate in the county, despite any prevalence of COVID-19. He believes that  
 26 it is important for Christians to come together, remember, and celebrate all that Jesus  
 27 has done for this world. Compl., ¶ 80. As a result of not being able to conduct an in-  
 28 person church service, Moffatt has been deprived of the opportunity for important

1 cultural, socials, and religious activities, including speech activities pertaining to the  
2 coronavirus outbreak and the government's response. Compl., ¶ 81.

3 Brenda Wood's church, Word of Life Ministries International Inc. is located in  
4 Riverside County. Compl., ¶ 82. Word of Life Ministries International Inc. has  
5 approximately 20-30 regular attendees. Compl., ¶ 83. Wood believes Scripture  
6 commands her to provide opportunities for the believers to obey Hebrews 10:25 where  
7 the believers meet together and encourage one another. Compl., ¶ 84.

8 Wood held a drive-up church service on Easter Sunday. Compl., ¶ 85. The  
9 drive-up church service provided appropriate social distancing, with everyone wearing  
10 masks and staying in their vehicles. The restrooms were not made available. Each car  
11 was parked at least six feet from other vehicles. Compl., ¶ 86. During the service,  
12 Wood used a portable sound amplification system. The congregants had to roll down  
13 their windows in order to listen. Compl., ¶ 87. During the service, communion was  
14 served by an individual wearing a mask and gloves and the elements were pre-  
15 packaged. The person serving communion used tongs to remove the communion cups  
16 from the pre-packaged box. Compl., ¶ 88. At this time, Wood has postponed all  
17 baptisms at her church. Compl., ¶ 89. She would like to hold drive-up church services  
18 every Sunday following safe social distancing practices until the state of emergency  
19 has been lifted. Compl., ¶ 89.

20 As of April 11, 2020, Riverside County has one thousand four hundred thirty-  
21 one (1,431) coronavirus cases and forty-one (41) coronavirus associated deaths,  
22 according to information posted on the county's website. Compl., ¶ 91. The United  
23 States Census estimates that as of July 1, 2019, Riverside County's population is  
24 2,470,546 people. Compl., ¶ 92.

## 25 LEGAL STANDARD

26 A temporary restraining order preserves the status quo and prevents irreparable  
27 harm until a hearing can be held on a preliminary injunction application. *See Granny*  
28 *Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423,

1 439 (1974). A temporary restraining order may be issued without providing the  
 2 opposing party an opportunity to be heard where “specific facts in an affidavit or a  
 3 verified complaint clearly show that immediate and irreparable injury, loss, or damage  
 4 will result to the movant before the adverse party can be heard in opposition,” and  
 5 “the movant’s attorney certifies in writing any efforts made to give notice and the  
 6 reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1).

7 The standards for issuing a temporary restraining order and a preliminary  
 8 injunction are the same. *See, e.g., Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush &*  
 9 *Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). The Ninth Circuit has established two  
 10 sets of criteria for evaluating a request for injunctive relief. *Earth Island Inst. v.*  
 11 *United States Forest Serv.*, 351 F.3d 1291, 1297 (9th Cir. 2003). Under the  
 12 “traditional” criteria, a plaintiff must show (1) a strong likelihood of success on the  
 13 merits, (2) a likelihood of irreparable injury to plaintiff if preliminary relief is not  
 14 granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the  
 15 public interest. *See, e.g., Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20  
 16 (2008). Alternatively, a temporary restraining order or preliminary injunction may be  
 17 appropriate when a movant raises “serious questions going to the merits” and the  
 18 “balance of hardships tips sharply in the plaintiff’s favor,” provided that the plaintiff is  
 19 able to show there is a likelihood of irreparable injury and that the injunction is in the  
 20 public interest. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

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## ARGUMENT

### **I. PLAINTIFFS ARE ENTITLED TO TEMPORARY AND PRELIMINARY INJUNCTIVE RELIEF.**

#### **A. There Is a Strong Likelihood Plaintiffs' Will Succeed in Proving Their Claims on Multiple Constitutional Grounds.**

##### **1. Defendants' Ban on Communal Religious Worship Violates the First Amendment's Free Exercise Clause and California Constitution Article 1, Section 4.**

As Plaintiffs' first and eleventh causes of action, they assert facial and as-applied challenges pursuant to (1) 42 U.S.C. Section 1983 on the grounds that Defendants' Orders violate the Free Exercise Clause of the First Amendment to the U.S. Constitution, and (2) state law on the grounds that the Orders violate Article 1, Section 4 of the California Constitution.<sup>1</sup> *See Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562 (2004) (implicitly recognizing state law claim for violations of Art. 1, Section 4 of the California Constitution); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243, 1245 (9th Cir. 1987) (a cause of action arises under Section 1983 where "(1) the conduct that harm[ed] [Plaintiffs] [was] committed under color of state law (i.e. state action), and (2) the conduct . . . deprive[d] [Plaintiffs] of a constitutional right."); *Dennis v. Higgins*, 498 U.S. 439 (1991) (The rights guaranteed by Section 1983 are to be "liberally and beneficently construed.") (quoting *Monell v. Dep't. of Soc. Servs.*, 436 U.S. 658, 684 (1978)).<sup>2</sup>

The First Amendment to the U.S. Constitution prohibits government actors from enforcing any "law respecting an establishment of religion, or prohibiting the free exercise thereof." U. S. Const. amend. I; *see also Cantwell v. Connecticut*, 310

<sup>1</sup> Defendants cannot credibly contest that the issuance and enforcement of the Orders by Defendants in their official capacities constitute state action. Accordingly, the likelihood of Plaintiffs' success turns on whether Defendants deprived Plaintiffs of a constitutional right. As discussed herein, Plaintiffs have amply established such deprivations.



1 U.S. 296, 303 (1940) (applying the First Amendment to the States through the  
 2 Fourteenth Amendment). The California Constitution similarly protects the “[f]ree  
 3 exercise and enjoyment of religion without discrimination or preference.” Cal. Const.,  
 4 art. I, § 4; *see also Catholic Charities of Sacramento, Inc.*, 32 Cal. 4th at 562.

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

16 The Orders are neither neutral nor of general application. Defendants’  
 17 restrictions have specifically and explicitly targeted religious and “faith-based”  
 18 services and are thus not neutral on their face. Defendants have prohibited certain  
 19 public and private gatherings deemed “non-essential,” including out-of-home religious  
 20 services, while exempting a laundry list of industries and services purportedly  
 21 “essential” to the government’s various interests, including medical cannabis  
 22 dispensaries and other medical providers, courts, public utilities, daycare and  
 23 childcare, and “necessary” shopping. Further, several Defendants have granted *ad hoc*  
 24 exemptions to the Orders for particular religious gatherings of particular faiths – i.e.,  
 25 Christians permitted to celebrate Easter, but not for other gatherings or other faiths.

26 Defendants’ mandates are not “narrowly tailored” to further any compelling  
 27 governmental interest. Defendants have granted numerous special exemptions to their  
 28 bans on public gatherings and conduct, including for purportedly “essential”

1 businesses and activities, provided that social distancing practices are observed; and  
 2 even for out-of-home religious services during Easter, an important day of religious  
 3 significance for Christians. Since these gatherings may be permitted, there can be no  
 4 doubt that Defendants may, and therefore must, permit Plaintiffs to engage in  
 5 equivalent religious activities and services provided that Plaintiffs also adhere to the  
 6 social distancing guidelines currently in place.

7 Requiring Plaintiffs to abstain from religious gatherings, despite substantial  
 8 modifications to satisfy the public health interests at stake, violates Plaintiffs’  
 9 Constitutional right to free exercise of religion. The state does not have the power  
 10 under our Constitutional scheme to decree that as to faith activities, “streaming” (for  
 11 those congregations and parishioners with the wealth and technological acumen to  
 12 partake of such truncated substitutes) is “good enough” while at the same time  
 13 acknowledging media organizations’ First Amendment rights to freedom of the press.  
 14 Because narrower restrictions may be applied to Plaintiffs, while still protecting  
 15 legitimate governmental interests, the Orders are unconstitutional and Defendants  
 16 should be enjoined.

## 17 **2. The Orders Violate the Establishment Clause of the First** 18 **Amendment.**

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

27 Under the *Lemon* test, the courts ask whether the government action (1) has a  
 28 clear secular purpose; (2) has a “principal or primary effect” that “neither advances

nor inhibits religion”; and (3) does not foster “an excessive government entanglement with religion.” *Lemon v. Kurtzman*, 403 U. S. 602 (1971); *but see Am. Legion v. Am. Humanist Ass’n*, 139 S. Ct. 2067 (2019) (writing for the plurality, Justice Samuel Alito refused to apply the *Lemon* test to a religious-display case, but failed to garner majority support for any other test).

Defendants have not and do not act with a clearly secular purpose in adopting and enforcing the Orders. The Orders are ambiguous in scope and application, granting law enforcement unfettered discretion in deciding what conduct shall constitute a crime, and what conduct is “essential,” and therefore permissible. This discretion has already been exercised by government officials to temporarily exempt specific faiths (namely, Christians) from compliance with the Orders during Easter. It is not for Defendants to determine which faiths, and on which days of religious significance to those faiths, religious services may take place.

The Orders and Defendants’ *ad hoc* enforcement thereof have the primary effect of inhibiting religious activity. Indeed, the Orders expressly prohibit religious services unless practiced within the home, by live-streaming. As a result, Defendants have also failed to avoid excessive government entanglement with religion. Defendants permit only some forms of religious observance, while disallowing all communal worship. Thus, the Court should grant this Application and enjoin further enforcement of the Orders.

### **3. Defendants Violate Plaintiffs’ Free Speech Rights.**

As Plaintiffs’ third and ninth causes of action, they assert facial and as-applied challenges pursuant to (1) 42 U.S.C. Section 1983 on the grounds that Defendants’ Orders violate the Free Speech Clause of the First Amendment to the U.S. Constitution, and (2) state law on the grounds that the Orders violate Article 1, Section 2 of the California Constitution. “[T]he California liberty of speech clause is broader and more protective than the free speech clause of the First Amendment.” *Fantasyland Video, Inc. v. Cty. of San Diego*, 496 F.3d 1040, 1042 (9th Cir. 2007).

1 However, in some areas, the protection afforded by the California liberty of speech  
 2 clause is coterminous with that provided by the federal Constitution. *Los Angeles All.*  
 3 *For Survival v. City of Los Angeles*, 22 Cal. 4th 352, 367, n.12 (2000). California  
 4 courts treat the prior restraint and overbreadth doctrine similarly to federal courts. *See*  
 5 *Wilson v. Superior Court*, 13 Cal.3d 652, 658-62 (1975) (relying mostly on federal  
 6 citations to analyze prior restraint doctrine under California Constitution); *In re J.M.*,  
 7 36 Cal. App. 5th 668, 680 (2019) (citing some federal cases and paralleling  
 8 overbreadth doctrine analysis under California Constitution with that under the U.S.  
 9 Constitution).

10 The Orders—by acting as a prior restraint to protected speech—are  
 11 unconstitutional facially and as-applied because they impermissibly burden Plaintiffs’  
 12 right to freedom of speech under the First Amendment and California Constitution,  
 13 Article 1, Section 2. *See IDK, Inc. v. Clark Cnty.*, 836 F.2d 1185, 1191 (9th Cir. 1988)  
 14 (stating that a law is facially unconstitutional if it impermissibly burdened the  
 15 plaintiff’s rights, such as in the case of a prior restraint); U.S. Const., amend. I; Cal.  
 16 Const., art. I, § 2. The term prior restraint is used “to describe administrative and  
 17 judicial orders forbidding certain communications when issued in advance of the time  
 18 that such communications are to occur.” *Alexander v. United States*, 509 U.S. 544,  
 19 550 (1993) (citation omitted). “Religious worship and discussion are protected speech  
 20 under the First Amendment.” *Widmar v. Vincent* (“*Widmar*”), 454 U.S. 263, 269, n. 6  
 21 (1981).

22 Here, the Orders, with the exception of Easter, ban all in-person, religious  
 23 meetings by excluding faith-based services from a list of essential businesses, and  
 24 prohibiting people from going outside their homes. Compl. at ¶¶ 31-50, 62-71. The  
 25 Orders were issued before the protected speech was to occur because they prohibit  
 26 congregating to engage in protected speech for the foreseeable future. Accordingly,  
 27 the Orders are facially unconstitutional because they act as a prior restraint to  
 28 protected speech: religious services.

1 The Orders are also facially unconstitutional on the separate basis that they are  
 2 substantially overbroad. *See IDK, Inc.*, 836 F.2d at 1191 (stating that a law is facially  
 3 unconstitutional if it impermissibly burdens the rights of third parties, such as in the  
 4 case of an unconstitutionally overbroad law). “Substantial overbreadth” is shown not  
 5 where one shows that he can conceive of some impermissible applications of the  
 6 order, but where one can show a significant number of situations where an order could  
 7 be applied to prohibit constitutionally protected speech. *Houston v. Hill* (“*Houston*”),  
 8 482 U.S. 451 (1987) (ordinance--outlawing interruption of police officers while  
 9 carrying out their duties--was unconstitutionally overbroad because it criminalized  
 10 substantial amount of constitutionally protected speech and allowed police unfettered  
 11 discretion in enforcement of the ordinance).

12 Here, the purpose of the Orders is to slow the transmission rate of the COVID-  
 13 19 pandemic in California and its counties. However, it virtually eliminates all in-  
 14 person, religious meetings (Compl. ¶¶ 37-39, 63-67), a form of protected speech  
 15 (*Widmar*, 454 U.S. at 269, n.6), despite the fact that alternatives, such as drive-in  
 16 services, would allow such religious speech without risking transmission. This is a  
 17 substantial burden because it covers the protected speech that every Californian who  
 18 attends mosques, temples, synagogues, gurdwaras, and churches regularly usually  
 19 would enjoy. In their current form, the Orders do not allow drive-in church services;  
 20 unsigned clarifications from San Bernardino and Riverside County allowed such  
 21 services for Easter, but not for any Sunday thereafter, nor exceptions for other  
 22 faiths. Compl. ¶¶ 37, 49-50.

23 Not only this, but here, akin to *Houston*, law enforcement officers have  
 24 unfettered discretion in enforcing the law because they are provided no standards as to  
 25 when to enforce, or exempt some event from, the law. Furthermore, violators of the  
 26 Orders are liable for criminal penalties. Compl. ¶¶ 39, 67. Because the Orders  
 27 criminalize a substantial amount of protected speech that is unnecessary for their  
 28 underlying purpose, and provide law enforcement officers no guidance as to



1 enforcement, the Orders are unconstitutionally overbroad, and this Court should grant  
2 injunctive relief.

3 **4. The Orders Ban All Public and Private Assembly in Violation of the**  
4 **First Amendment to the U.S. Constitution and California**  
5 **Constitution.**

6 “The right of free speech, the right to teach, and the right of assembly are, of  
7 course, fundamental rights.” *Whitney v. California*, 274 U.S. 357, 373 (1927). The  
8 First Amendment of the Constitution protects the “right of the people peaceably to  
9 assemble.” The Freedom of Assembly Clause was incorporated against the states in  
10 *De Jonge v. Oregon*, 299 U.S. 353 (1937). The California Constitution also protects  
11 the right to freely assemble. *See, e.g.*, Cal. Const. art. 1, § 3; *People v. Chambers*, 22  
12 Cal. App 2d 687, 706 (1937) (“laws should not infringe upon our guaranteed freedom  
13 of speech and lawful assembly.”). When a government practice restricts fundamental  
14 rights, it is subject to “strict scrutiny” and can be justified only if it furthers a  
15 compelling government purpose and, even then, only if no less restrictive alternative  
16 is available. *See, e.g.*, *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17  
17 (1973); *Dunn v. Blumstein*, 405 U.S. 330 (1972).

18 The Orders and Defendants’ enforcement thereof violate the First Amendment,  
19 both facially and as-applied to Plaintiffs. By denying Plaintiffs the ability to conduct  
20 services that complies with the CDC guidelines for social distancing, Defendants are  
21 in violation of the Freedom of Assembly Clause. Defendants cannot meet the no-less-  
22 restrictive-alternative test. The CDC’s social distancing guidelines are appropriate to  
23 limit the spread of COVID-19. Imposing more restrictive requirements that target  
24 churches and their drive-in services while at the same time allowing restaurants,  
25 coffee shops, marijuana dispensaries to operate drive-ups is not the least restrictive  
26 means of achieving Defendants’ public safety goals.

27 Requiring Plaintiffs to abstain from religious gatherings, despite substantial  
28 modifications to satisfy the public health interests at stake (modifications that have



1 been deemed acceptable in the cases of operations deemed “essential” by government  
2 decree), violates Plaintiffs’ Constitutional right to peaceably assemble.

### 3 **5. Defendants’ Orders Are Void for Reasons of Vagueness.**

4 A regulation is constitutionally void on its face when, as matter of due process,  
5 it is so vague that persons “of common intelligence must necessarily guess at its  
6 meaning and differ as to its application.” *Connally v. General Const. Co.*, 269 U.S.  
7 385, 391 (1926); *People ex rel. Gallo v. Acuna*, 14 Cal.4th 1090, 1115 (1997). Vague  
8 laws “trap the innocent by not providing fair warning.” *Grayned v. City of Rockford*,  
9 408 U.S. 104, 108–109 (1972). If “arbitrary and discriminatory enforcement is to be  
10 prevented, laws must provide explicit standards for those who apply them.” *Id.* The  
11 problem with a vague regulation is that it “impermissibly delegates basic policy  
12 matters to policemen, judges, and juries for resolution on an ad hoc and subjective  
13 basis with the attendant dangers of arbitrary and discriminatory application.” *Id.*; *see*  
14 *also Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018).

15 The Orders at issue in this case are so vague as to their scope and application as  
16 to run afoul of the Due Process Clause of the Fourteenth Amendment. Embedded  
17 within the State Order is a public health directive to shelter in place. The State Order  
18 itself merely orders the public to “heed” the public health directive, it does not appear  
19 to order compliance therewith; Webster’s Dictionary defines the word “heed” to mean  
20 “to give consideration or attention to”—not to “adhere” or comply. Despite this, state  
21 and local officials and the media have widely reported the State Order to require  
22 compliance with the public health directive by sheltering in place. The San Bernardino  
23 and Riverside Orders, for example, both state this.<sup>3</sup> Compl’t. Ex. 2, ¶ 2; Ex. 3, ¶ 1  
24

25  
26 <sup>3</sup> The New York Times, for example, reported that “Gov. Gavin Newsom of  
27 California on Thursday ordered Californians—all 40 million of them—to stay in their  
28 houses....” As of the date of this filing, the article is available online at the following  
URL: <https://www.nytimes.com/2020/03/19/us/California-stay-at-home-order-virus.html>.

1 (“Executive Order N-33-20 issued by the Governor of the State of California . . .  
 2 ordered all individuals living in the State of California to stay home . . .”). Given this  
 3 ambiguity, neither Plaintiffs nor any other reasonable person can understand precisely  
 4 what is being ordered, and what actions may result in criminal penalties, fines, or  
 5 imprisonment. As such, the State Order is void for vagueness.

6 The San Bernardino and Riverside Orders, and Defendants enforcement thereof,  
 7 muddle the issue further. None of the Orders exempt specific religious holidays.  
 8 Nevertheless, San Bernardino County explicitly exempted compliance during Easter  
 9 weekend, only. Meuser Decl., Ex. 5. San Bernardino County officials have also stated  
 10 that it “does not expect law enforcement to broadly impose citations on violators” and  
 11 that “the expectation is that law enforcement will rely upon community members to  
 12 use good judgment, common sense, and act in the best interest of their own health and  
 13 the health of their loved ones and the community at large.” Meuser Decl., Ex. 2. In  
 14 apparent self-contradiction, the Riverside Order states that “non-essential personnel . .  
 15 . are prohibited from entry into any hospital or long-term care facility,” ostensibly  
 16 banning “non-essential” people from seeking medical care. Compl., Ex. 3. Yet, that  
 17 same Order states that “visitors” may be permitted access to hospitals under certain  
 18 conditions. Compl., Ex. 3.

19 No reasonable person can make sense of what conduct is permitted under the  
 20 Orders and what conduct will result in criminal penalties.

## 21 **6. The Orders Violate Plaintiffs’ Substantive Due Process Rights** 22 **Under the Fourteenth Amendment.**

23 The Orders and Defendants’ enforcement thereof violate Plaintiffs’ substantive  
 24 due process rights secured by the Fourteenth Amendment to the U.S. Constitution.  
 25 Under the Due Process Clause of the Fourteenth Amendment, no State shall “deprive  
 26 any person of life, liberty, or property, without due process of law.” The fundamental  
 27 liberties protected by this Clause include most of the rights enumerated in the Bill of  
 28 Rights. *See Duncan v. Louisiana*, 391 U.S. 145, 147–149 (1968). In addition, these

1 liberties extend to certain personal choices central to individual dignity and autonomy,  
 2 including intimate choices that define personal identity and beliefs. *See, e.g.,*  
 3 *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479,  
 4 484–486 (1965).

5 Plaintiffs’ rights to freedom of religion, assembly, speech, and travel are  
 6 fundamental rights protected by the U.S. Constitution. *See, e.g., Aptheker v. Secretary*  
 7 *of State*, 378 U.S. 500, 520 (1964); *Kent v. Dulles*, 357 U.S. 116, 127 (1958). When a  
 8 government practice restricts fundamental right, as is the case here, it is subject to  
 9 “strict scrutiny” and can be justified only if it furthers a compelling government  
 10 purpose, and, even then, only if no less restrictive alternative is available. *See, e.g.*  
 11 *Memorial Hospital v. Maricopa Cnty.*, 415 U.S. 250, 257-258 (1974); *Dunn*, 405 U.S.  
 12 at 339-341; *Shapiro v. Thompson*, 394 U.S. 618, 660 (1969); *Maher v. Roe*, 432 U.S.  
 13 464, 488 (1977).

14 Strict scrutiny applies to Plaintiffs’ claims because all three Orders mandate that  
 15 Plaintiffs stay at home because Plaintiffs desired actions are not deemed essential,  
 16 impinging on their fundamental rights to freedom of religion, assembly, speech, and  
 17 travel. Defendants’ mandates are not “narrowly tailored” to further any compelling  
 18 governmental interest. Defendants’ have granted numerous special exemptions to their  
 19 bans on public gatherings, including for purportedly “essential” businesses and  
 20 activities, provided that social distancing practices are observed; and even for out-of-  
 21 home religious services during Easter. Since these gatherings can be permitted, there  
 22 can be no doubt that Defendants may, and therefore must, permit Plaintiffs to engage  
 23 in equivalent constitutionally-protected activities provided that Plaintiffs also adhere  
 24 to the social distancing guidelines.

## 25 **7. The Orders Violate Article 1, Section 1 of the California** 26 **Constitution.**

27 All Californians “are by nature free and independent and have inalienable  
 28 rights. Among these are enjoying and defending life and liberty, acquiring, possessing,

1 and protecting property, and pursuing and obtaining safety, happiness, and privacy.  
 2 Cal. Const. art. 1, § 1. Understanding the basic fundamental right of liberty, California  
 3 courts have held that Public Health Officials' authority is limited. Before exercising  
 4 their full powers to quarantine, there must be "reasonable grounds [] to support the  
 5 belief that the person so held is infected." *Ex parte Martin*, 83 Cal. App. 2d 164  
 6 (1948). Public Health Officials must be able to show "probable cause to believe the  
 7 person so held has an infectious disease ..." *Id.*

8 In a case that is somewhat analogous to what Californians are facing with the  
 9 coronavirus pandemic of 2020, California courts found that Public Health Officials  
 10 could not quarantine 12 blocks of San Francisco Chinatown because of nine deaths  
 11 due to bubonic plague. *See Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900); *Wong*  
 12 *Wai v. Williamson*, 103 F. 1 (C.C. Cal. 1900). These courts found it "purely arbitrary,  
 13 unreasonable, unwarranted, wrongful, and oppressive interference with the personal  
 14 liberty of complainant" who had "never had or contracted said bubonic plague; that he  
 15 has never been at any time exposed to the danger of contracting it, and has never been  
 16 in any locality where said bubonic plague, or any germs of bacteria thereof, has or  
 17 have existed." *Jew Ho*, 103 F. at 10.

18 In *Jew Ho* and *Wong Wai*, the courts found that there were more than 15,000  
 19 people living in the twelve blocks of San Francisco Chinatown who were to be  
 20 quarantined. The courts found it unreasonable to shut down the ability of over 15,000  
 21 people to make a living because of nine deaths. This was one death for every 1,666  
 22 inhabitants of Chinatown. As of July 1, 2020, San Bernardino and Riverside Counties  
 23 have a combined population of 4,650,631 individuals and as of April 11, 2020, San  
 24 Bernardino and Riverside Counties have a total of 66 coronavirus deaths. That is one  
 25 death for every 70,464 inhabitants.

26 California courts have found that "a mere suspicion [of a contagious disease],  
 27 unsupported by facts giving rise to reasonable or probable cause, will afford no  
 28 justification at all *for depriving persons of their liberty* and subjecting them to virtual

1 imprisonment under a purported order of quarantine.” *Ex parte Arta*, 52 Cal. App.  
 2 380, 383 (1921) (emphasis added). Plaintiffs have never had or contracted said  
 3 coronavirus; they have never been at any time exposed to the danger of contracting it,  
 4 and have never been in any locality where said coronavirus, or any germs of bacteria  
 5 thereof, are known to have existed.

6 Requiring Plaintiffs to abstain from all religious gatherings, despite substantial  
 7 modifications to satisfy the public health interests at stake, violates their California  
 8 Constitutional liberty rights.

9 **8. Defendants Violate the Equal Protection Clause of the Fourteenth**  
 10 **Amendment.**

11 As to Plaintiffs’ seventh claim, the Orders and Defendants’ enforcement thereof  
 12 violate the Fourteenth Amendment, both facially and as applied to Plaintiffs. The  
 13 Fourteenth Amendment of the Constitution provides that “[n]o State shall . . . deny to  
 14 any person within its jurisdiction the equal protection of the laws.” U.S. Const.  
 15 amend. XIV, § 1. Equal protection requires the state to govern impartially—not draw  
 16 arbitrary distinctions between individuals based solely on differences that are  
 17 irrelevant to a legitimate governmental objection. *City of Cleburne, Tex. v. Cleburne*  
 18 *Living Ctr.*, 473 U.S. 432, 446 (1985).

19 Defendants intentionally and arbitrarily categorize individuals and conduct as  
 20 either “essential” or “non-essential.” Compl. ¶¶ 31-34, 37, 63-65. Those persons  
 21 classified as “essential,” or as participating in essential services, are permitted to go  
 22 about their business and activities provided certain social distancing practices are  
 23 employed. *Id.* Those classified as “nonessential,” or as engaging in non-essential  
 24 activities, are required to stay in their residence, unless it becomes necessary for them  
 25 to leave for one of the enumerated “essential” activities. *Id.*

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



1 others. *Maynard v. U.S. Dist. Court for the Cent. Dist. of California*, 701 F. Supp.  
 2 738, 742 (C.D. Cal. 1988) (“When a law disadvantages a suspect class or impinges  
 3 upon a ‘fundamental right,’ the court will examine the law by applying a strict  
 4 scrutiny standard”), *aff’d sub nom. Maynard v. U.S. Dist. Court for Cent. Dist. of*  
 5 *California*, 915 F.2d 1581 (9th Cir. 1990). Under strict scrutiny review, the law can be  
 6 justified only if it furthers a compelling government purpose, and, even then, only if  
 7 no less restrictive alternative is available. *See, e.g. Memorial Hospital*, 415 U.S. at  
 8 257-258.

9 Defendants cannot satisfy strict scrutiny; their arbitrary classifications are not  
 10 narrowly tailored measures (that further a compelling government interest) because  
 11 defendants’ have granted numerous special exemptions to their bans on public  
 12 gatherings, including for purportedly “essential” businesses and activities—provided  
 13 that social distancing practices are observed—and even for out-of-home religious  
 14 services during Easter. Since these gatherings can be permitted, there can be no doubt  
 15 that Defendants must permit Plaintiffs to engage in equivalent constitutionally-  
 16 protected activities provided that Plaintiffs also adhere to the social distancing  
 17 guidelines.

18 **B. Plaintiffs Face Imminent Irreparable Harm Absent Immediate**  
 19 **Injunctive Relief**

20 “In a case like the one at bar, where the First Amendment is implicated, the  
 21 Supreme Court has made clear that ‘[t]he loss of First Amendment freedoms, for even  
 22 minimal periods of time, unquestionably constitutes irreparable injury’ for purposes of  
 23 the issuance of a preliminary injunction.” *College Republicans at San Francisco State*  
 24 *University v. Reed*, 523 F. Supp. 2d 1005, 1011 (N.D. Cal. 2007) (citing *Sammartano*  
 25 *v. First Jud. Dist. Ct.*, 303 F.3d 959, 973-74 (9th Cir. 2002), *in turn citing Elrod v.*  
 26 *Burns*, 427 U.S. 347, 373 (1976)); *see also S.O.C., Inc. v. Cnty. of Clark*, 152 F.3d  
 27 1136, 1148 (9th Cir. 1998) (holding that a civil liberties organization that had  
 28 demonstrated probable success on the merits of its First Amendment overbreadth



claim had thereby also demonstrated irreparable harm). “In other words, the requirement that a party who is seeking a preliminary injunction show ‘irreparable injury’ is deemed fully satisfied if the party shows that, without the injunction, First Amendment freedoms would be lost, even for a short period.” *Reed*, 523 F. Supp. 2d at 1011. “Unlike a monetary injury, violations of the First Amendment ‘cannot be adequately remedied through damages.’” *Americans for Prosperity Foundation v. Harris*, 182 F. Supp. 3d 1049, 1058 (C.D. Cal. 2016) (citing *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009)).

Without an injunction preventing Defendants from further enforcing the Orders will suffer irreparable harm in the form of deprivation of fundamental freedoms secured by the First and Fourteenth Amendment to the U.S. Constitution and the California Constitution. Plaintiffs’ irreparable injuries cannot adequately be compensated by damages or any other remedy available at law. Thus, irreparable injury is clearly shown, necessitating the relief Plaintiffs seek in this Application.

**C. The Balance of Hardships Tips Decidedly in Plaintiffs’ Favor.**

In cases implicating constitutional rights, “the ‘balancing of the hardships’ factor also tends to turn on whether the challengers can show that the regulations they attack are substantially overbroad.” *Reed*, 523 F. Supp. 2d at 1101.

Given Plaintiffs’ showing of the facially and as-applied invalidity of the vague, overbroad Orders, Plaintiffs necessarily have shown that leaving those Orders in place for even a brief period of time “would substantially chill the exercise of fragile and constitutionally fundamental rights,” and thereby constitute an intolerable hardship to Plaintiffs. *Reed*, 523 F.Supp.2d at 1101. As mentioned above, Defendants’ ban on communal religious services will deprive Plaintiffs, and potentially millions of other Californians, of their ability to exercise religious freedom as secured by the First and Fourteenth Amendments and Article 1 of the California Constitution.

By contrast, temporarily enjoining Defendants’ enforcement of the Orders will not result in hardship to Defendants, who are in a position to adopt, at least on an

interim basis, a more narrowly crafted set of equally applied provisions that enable the government to achieve any legitimate ends without unjustifiably invading First and Fourteenth Amendment freedoms. *See id.* In addition, Defendants will suffer no legitimate harm by accommodating a Plaintiffs' exercise of fundamental rights in the same manner Defendants are accommodating thousands—and millions—of others engaged in secular activities. The Constitution demands no less.

#### **D. Injunctive Relief Is in the Public Interest**

“As the Ninth Circuit has consistently recognized, there is a significant public interest in upholding First Amendment principles.” *Americans for Prosperity Foundation*, 182 F. Supp. 3d at 1059 (internal citations omitted); *see also Doe v. Harris*, 772 F.3d 563, 683 (9th Cir.2014); *Sammartano*, 303 F.3d at 974. As such, the requirement that issuance of a preliminary injunction be in the “public interest” usually is deemed satisfied when it is clear that core constitutional rights would remain in jeopardy unless the court intervened. *Reed*, 523 F. Supp. 2d at 1101. The public is best served by preserving a foundational tenet of this American democracy: religious liberty. *See Sammartano*, 303 F.3d at 974 (“Courts considering requests for preliminary injunctions have consistently recognized the significant public interest in upholding First Amendment principles.”).

As discussed above, Plaintiffs' core constitutional rights to practice religion freely, free speech, due process, and equal protection, will remain in jeopardy so long as Defendants remain free to enforce their Orders. Accordingly, issuance of injunctive relief is proper, and the Court should grant this Application.

## **II. THE COURT SHOULD DISPENSE WITH ANY BOND REQUIREMENT**

Rule 65(c) of the Federal Rules of Civil Procedure provides that a TRO or preliminary injunction may be issued “only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c).

1 However, the Court has discretion as to whether any security is required and, if so, the  
2 amount thereof. *See, e.g., Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003).

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

## 17 CONCLUSION

18 Plaintiffs respectfully request that the Court grant Plaintiffs’ motion for a  
19 temporary restraining order, and issue an order to show cause why a preliminary  
20 injunction should not be issued, as follows:

21 1. Defendants, as well as their agents, employees, and successors in office,  
22 shall be restrained and enjoined from enforcing, attempting to enforce, threatening to  
23 enforce, or otherwise requiring compliance with any prohibition on Plaintiffs’  
24 engagement in religious services, practices, or activities at which the Center for  
25 Disease Control’s social distancing guidelines are followed.

26 2. Defendants shall show cause, at a time and place to be directed by the  
27 Court, why a preliminary injunction should not issue requiring Defendants to act as  
28

1 described in above; the temporary restraining order shall remain effective until such  
2 time as the Court has ruled on whether a preliminary injunction should issue.  
3 Such relief is necessary to prevent Defendants from further violating Plaintiffs'  
4 constitutional rights, pending trial on the merits of Plaintiffs' claims.

5 Respectfully submitted,

6 Date: April 14, 2020

DHILLON LAW GROUP INC.

7  
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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **EASTERN DIVISION**

16 **WENDY GISH**, an individual, *et al.*,  
17 Plaintiffs,  
18 v.

19 **GAVIN NEWSOM**, in his official  
20 capacity as Governor of California, *et al.*,  
21 Defendants.

Case Number: 5:20-cv-00755-JGB-KK

Hon. Jesus G. Bernal

**[PROPOSED] TEMPORARY  
RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE WHY  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE**

Date: April 14, 2020

1 The Court GRANTS the application for temporary restraining order filed by  
 2 Plaintiffs Wendy Gish, Patrick Scales, James Dean Moffatt, and Brenda Wood,  
 3 (hereinafter “Plaintiffs”) against Defendants Gavin Newsom, in his official capacity as  
 4 Governor of California; Xavier Becerra, in his official capacity as Attorney General of  
 5 California; Erin Gustafson, in her official capacity as the San Bernardino County  
 6 Acting Public Health Officer; John McMahon, in his official capacity as the San  
 7 Bernardino County Sheriff; Robert A. Lovinggood, in his official capacity as a San  
 8 Bernardino County Supervisor; Janice Rutherford, in her official capacity as a San  
 9 Bernardino County Supervisor; Dawn Rowe, in her official capacity as a San  
 10 Bernardino County Supervisor; Curt Hagman, in his official capacity as a San  
 11 Bernardino County Supervisor; Josie Gonzales, in his official capacity as a San  
 12 Bernardino County Supervisor; Cameron Kaiser, in his official capacity as the  
 13 Riverside County Public Health Officer; George Johnson, in his official capacity as  
 14 the Riverside County Executive Officer and Director of Emergency Services; Chad  
 15 Bianco, in his official capacity as the Riverside County Sheriff; Kevin Jeffries, in his  
 16 official capacity as a Riverside County Supervisor; Karen Spiegel, in her official  
 17 capacity as a Riverside County Supervisor; Chuck Washington, in his official capacity  
 18 as a Riverside County Supervisor; V. Manuel Perez, in his official capacity as a  
 19 Riverside County Supervisor; and Jeff Hewitt, in his official capacity as a Riverside  
 20 County Supervisor (hereinafter “Defendants”).

21 The Court ENJOINS Defendants from enforcing, attempting to enforce;  
 22 threatening to enforce; or otherwise requiring compliance with any prohibition on any  
 23 faith based or religious services in the State of California where the faith based or  
 24 religious services are being conducted within the guidelines for social distancing  
 25 issued by the Center for Disease Control.

26 Unless the Court enters this Temporary Restraining Order, all faith based or  
 27 religious services will suffer irreparable harm. The government has substantially  
 28 burdened and plans to continue to substantially burden the religious practice of



1 millions of Californians.

2 Notice to the Defendants before entering this Temporary Restraining Order is  
3 not necessary. The facts in the Verified Complaint clearly show that immediate and  
4 irreparable injury, loss, or damage will result to Plaintiffs and all Californians who  
5 wish to freely exercise their religious rights will result before defendants may be heard  
6 in opposition. Mark Meuser, Plaintiffs' lawyer, certified that he sent Defendants a  
7 copy of the complaint before the filing of this Motion for Temporary Restraining  
8 Order.

9 The Court issues this Temporary Restraining Order without notice because of  
10 the immediate and ongoing harm to the fundamental constitutional right to free  
11 exercise of religion. Providing notice to Defendants before entering this Temporary  
12 Restraining Order would be impractical in such a short period of time.

13 Plaintiffs do not need to post a security because enjoining defendants from  
14 prohibiting religious services that comply with the CDC guidance on social distancing  
15 does not interfere with Defendants' rights.

16 The Court ORDERS Defendants to show cause why a preliminary injunction  
17 should not issue in this matter. The Court will hold a telephonic hearing on the  
18 preliminary injunction motion on \_\_\_\_\_ at \_\_:\_\_ M. Defendants shall file any  
19 opposition no later than \_\_\_\_\_, and are encourage to consolidate briefs.  
20 Plaintiffs may file a reply no later than \_\_\_\_\_.

21 The Court ORDERS Plaintiffs' lawyers to serve a copy of this Temporary  
22 Restraining Order on Defendants.

23 **IT IS SO ORDERED.**

24  
25 Dated: \_\_\_\_\_

\_\_\_\_\_  
26 U.S. District Court Judge  
27  
28

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12 Attorneys for Plaintiffs

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **EASTERN DIVISION**

16 **WENDY GISH**, an individual, *et al.*,  
17 Plaintiffs,

18 v.

19 **GAVIN NEWSOM**, in his official  
20 capacity as Governor of California, *et al.*,  
21 Defendants.

Case Number: 5:20-cv-00755

22 **DECLARATION OF MARK P.**  
23 **MEUSER IN SUPPORT OF**  
24 **PLAINTIFFS' APPLICATION**  
25 **FOR TEMPORARY**  
26 **RESTRAINING ORDER**

27 Date: April 14, 2020  
28 Judge: Unassigned

1 I, Mark P. Meuser declare:

2 1. I am an attorney in good standing duly admitted to practice before all  
3 Courts of the State of California since June 2004, the United States Supreme Court,  
4 the United States Court of Appeals for the Ninth Circuit, and before the all four  
5 United States District Courts located in California. Except as to those matters stated  
6 on information and belief, I have personal knowledge of the matters set forth herein,  
7 and if called as a witness could and would competently testify thereto. As to those  
8 matters stated on information and belief, I believe them to be true.

9 2. Attached as Exhibit 1 is a true and correct copy of the April 7, 2020  
10 Order of the Health Officer of the County of San Bernardino dated April 7, 2020. In  
11 this order, the Public Health official is referring to the State's Essential Critical  
12 Infrastructure Workers list and states that "[t]his guidance does allow faith based  
13 services that are provided through streaming or other technology, while individuals  
14 remain in their homes, but does not allow individuals to leave their homes for driving  
15 parades or drive-up services, or for picking up non-essential items."

16 3. Attached as Exhibit 2 is a true and correct copy of the April 8, 2020  
17 Clarification whereby in an unsigned press release the county stated "On the subject  
18 of enforcement, the public is advised that although violation of a health order is a  
19 violation of the California Health and Safety Code, the County does not expect law  
20 enforcement to broadly impose citations on violators."

21 4. Attached as Exhibit 3 is a true and correct copy of the April 6, 2020  
22 Amended Order of the Health Officer for the County of Riverside. In this Amended  
23 Order "[a]ll public or private 'gatherings' ... are prohibited, regardless of venue or  
24 size. .... For the purposes of this Order: 'Gatherings' is any event or convening that  
25 brings together people in a single room or single space at the same time, including, but  
26 not limited to ... church ..., or any other indoor or outdoor space used for any non-  
27  
28

1 essential purpose including but not limited to ... church services ... .”

2 5. Attached as Exhibit 4 is a true and correct copy of the demand letter that  
3 Dhillon Law Group sent to San Bernardino County on April 8, 2020 at 7:59 PM. I  
4 emailed this letter to the five County Supervisors and to County Counsel at the  
5 addresses listed in the letter. I did not receive any electronic notifications that any of  
6 the emails that I sent the letter to had bounced.

7 6. On April 9, 2020, at approximately 4:05 PM, I called San Bernardino  
8 County Counsel’s office and requested to speak to County Counsel regarding our  
9 firms plan to file a complaint in Federal Court along with a Motion for a Temporary  
10 Restraining Order the following morning.

11 7. On April 9, 2020, around 5:15 PM, San Bernardino County Counsel  
12 Michelle Blakenmore and I spoke on the phone. I informed her of our plans to file a  
13 lawsuit in the Central District of California and file a Temporary Restraining Order so  
14 that our clients could conduct their Easter Services.

15 8. Attached as Exhibit 5, is a true and correct copy of the letter that I  
16 received via email from San Bernardino County Counsel Michelle Blakenmore at 8:20  
17 PM on April 9, 2020.

18 9. Based on County Counsel’s representation that “faith based organizations  
19 or individuals, face no threat of citations or other punishment for their faith based  
20 activities over the Easter weekend wherein every effort is made to prevent contact  
21 between congregants and adherence to social distancing guidance,” my firm in  
22 consultation with our clients determined that a TRO was necessary to ensure their  
23 ability to freely exercise religions rights after the Easter Weekend.

24 10. Attached as Exhibit 6 is a true and correct copy of the demand letter that  
25 Dhillon Law Group sent to Riverside County on April 8, 2020 at 7:59 PM. I emailed  
26 this letter to the five County Supervisors, County Counsel, the Public Health Officer,  
27  
28

1 the Senior Public Information Specialist, and the County Public Information Officer to  
2 the addresses listed in the letter. I did not receive any electronic notifications that any  
3 of the emails that I sent the letter to had bounced.

4 11. On April 9, 2020, at approximately 4:05 PM, I called Riverside County  
5 Counsel's office and left a voice message to talk to County Counsel about the pending  
6 complaint and Temporary Restraining Order that we prepared to file the next day. I  
7 have not received a response as of the date of this declaration.

8 12. On April 10, 2020, in the afternoon, I heard that Riverside County had  
9 issued a guidance that they would permit drive-up church services over the Easter  
10 Weekend. Attached as Exhibit 7 is a true and correct copy of the Riverside County  
11 Press release.

12 13. Because both San Bernardino and Riverside County only permitted the  
13 free exercise of religion over Easter weekend, my clients' Constitutional rights are  
14 still being violated. As such, in order to protect against these ongoing violations, a  
15 Temporary Restraining Order is necessary.

16 14. On April 13, 2020, at 2:00 PM my firm filed the verified complaint in the  
17 above-referenced matter.

18 15. At approximately 2:40 PM, I personally emailed Benjamin Glickman,  
19 Supervising Deputy Attorney General of California for the Government Law Section  
20 and Thomas Patterson, Senior Assistant Attorney General of California; Michelle  
21 Blakemore, County Counsel for San Bernardino County; and Greg Priamos, County  
22 Counsel for Riverside County with a copy of the Complaint. I did not receive any  
23 electronic notifications that any of the emails that I sent the complaint to had bounced.  
24

25 16. In this email, I notified the receivers that our firm was intended to file an  
26 application for a Temporary Restraining Order.

27 17. At 2:50 P.M., I received an email from Benjamin Glickman thanking me  
28

1 for forwarding the Complaint and requesting that I continue sending documents to  
2 him and Thomas Patterson until they assigned an attorney to the matter.

3 18. At 2:53 P.M, I called and left a message for Michelle Blakemore, County  
4 Counsel for San Bernardino County and informed her that I had emailed her a copy of  
5 the verified complaint and that our firm intended to file an application for a  
6 Temporary Restraining Order and that when we did, I would forward the application  
7 to her via email.

8 19. At 2:50 P.M, I called and left a message for Greg Priamos, County  
9 Counsel for Riverside County and informed him that our firm intended to file an  
10 application for a Temporary Restraining Order. I was told by the operator that he had  
11 already opened my email that contained a copy of the verified complaint.

12 20. On April 14, 2020, United States Attorney General William P. Barr  
13 issued a Statement on Religious Practice and Social Distancing. A true and correct  
14 copy of the Attorney General's Statement is attached as Exhibit 8. The Attorney  
15 General stated:  
16

17 As we explain in the Statement of Interest, where a state has not acted  
18 evenhandedly, it must have a compelling reason to impose restrictions on  
19 places of worship and must ensure that those restrictions are narrowly  
20 tailored to advance its compelling interest. While we believe that during  
21 this period there is a sufficient basis for the social distancing rules that  
22 have been put in place, the scope and justification of restrictions beyond  
23 that will have to be assessed based on the circumstances as they evolve.

24 Religion and religious worship continue to be central to the lives of  
25 millions of Americans. This is true more so than ever during this  
26 difficult time. The pandemic has changed the ways Americans live their  
27 lives. Religious communities have rallied to the critical need to protect  
28 the community from the spread of this disease by making services  
available online and in ways that otherwise comply with social distancing  
guidelines.



1 The United States Department of Justice will continue to ensure that  
2 religious freedom remains protected if any state or local government, in  
3 their response to COVID-19, singles out, targets, or discriminates against  
any house of worship for special restrictions.

4 I declare under penalty of perjury under the laws of the United States of  
5 America that the foregoing is true and correct and is executed this 13th day of April,  
6 2020, at Pasadena, California.  
7

8  
9 Dated: April 14, 2020

/s Mark P. Meuser

Mark P. Meuser

# **Exhibit 1**



## Public Health

[www.SBCounty.gov](http://www.SBCounty.gov)

Trudy Raymundo  
Director

Corwin Porter  
Assistant Director

Maxwell Ohikhuare, M.D.  
Health Officer

Erin Gustafson, M.D., MPH  
Acting Health Officer

### **ORDER OF THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO** **FOR THE CONTROL OF COVID-19**

**DATE OF ORDER: April 7, 2020**

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295; County Code Section 31.0101 Et. Seq.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, AND SAN BERNARDINO COUNTY CODE SECTION 31.0101 ET. SEQ., THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO ("HEALTH OFFICER") ORDERS:

**Effective 12:00 a.m. on Wednesday, April 8, 2020, and continuing until rescinded,** pending further Order of the Public Health Officer, the following will be in effect for the County of San Bernardino (hereinafter the "County"):

1. The Orders of the San Bernardino County Health Officer issued on March 17, 2020 and March 27, 2020, Governor Newsom's Executive Order N-22-20 and order of the California State Public Health Officer issued on March 19, 2020, requiring all persons residing in the State to remain in their homes or places of residence, except as needed to maintain the continuity of operations for critical infrastructure (the "Stay-at-Home Order") remain in effect until the Governor's Executive Order N-22-20, and the Orders of the San Bernardino County Health Officer remain in effect until they are rescinded.
2. Under the Orders of the San Bernardino County Health Officer, the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, all individuals living in the State of California are ordered to stay home or at their place of residence except as need to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>. This guidance does allow faith based services that are provided through streaming or other technology, while individuals remain in their homes, but does not allow individuals to leave their homes for driving parades or drive-up services, or for picking up non-essential items.

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Gary McBride  
App.270 Officer

3. All non-essential businesses that do not fall under the Essential Critical Infrastructure referenced above are ordered to remain closed. All essential businesses that remain in operation in accordance with the above referenced Orders of the San Bernardino County Health Officer, the Order of the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, shall follow the Social Distancing and Infection Control Guidelines published by the CDC and California Department of Public Health. All essential businesses must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, additional measures shall be identified and implemented or the facility shall be closed.
4. All persons, including Essential Workers shall wear face coverings, such as scarves (dense fabric, without holes), bandanas, neck gaiters, or other fabric face coverings, when they leave their homes or places of residence for essential activities. All persons, including **non-medical** Essential Workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for **non-medical reasons**. Staff working at facilities listed in Attachment A at <http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/Attachment-A-and-B.pdf> must follow the Order of the San Bernardino County Public Health Officer issued on April 6, 2020, requiring staff at these facilities to wear a surgical mask at all times while in the facility.
5. All essential businesses shall make every effort to use telecommuting for its workforce.
6. Government entities shall enforce social distancing requirements at all parks and trails. If a government entity is unable to enforce social distancing at a park or trail, it shall be closed to the public. Parking lots at all parks and/or trails shall be closed and shall be accessible only by members of the public within walking distance of the parks and/or trails. Said parks and/or trails shall be used solely for walking, hiking, equestrian or bicycle riding. The public shall not congregate or participate in group sporting activities at such parks and/or trails.
7. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home.
8. Hospitals and healthcare providers shall take measures to preserve and prioritize resources including delaying non-emergent or elective surgeries or procedures where feasible.
9. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://wwwnc.cdc.gov/travel/notices>) shall be subject to 14-day home quarantine, self-monitoring.
10. A strong recommendation is made for persons exhibiting mild to moderate symptoms of COVID-19 to self-isolate in their place of residence unless seeking medical treatment. A guide to symptoms is found here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
11. This Order is issued based on evidence of increasing transmission of COVID-19 within the County, in the state of California, and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as

best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19. The virus that causes COVID-19 (known as SARS-CoV2) has infected over one million individuals worldwide in over 180 countries and is implicated in over 76,000 worldwide deaths, including at least 530 cases and 16 deaths in San Bernardino County. These numbers increase significantly every day.

12. This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. This Order will help to reduce the number of Californians who contract COVID-19 before an effective treatment or vaccine is available; protect those most likely to experience severe symptoms, such as older Californians and those with underlying chronic conditions; preserve and protect our healthcare delivery system; and minimize the social and economic impacts of COVID-19 over the long run.
13. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 10, 2020 Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in San Bernardino County; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino proclaiming the existence of a Local Emergency in the County of San Bernardino regarding COVID-19; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino ratifying and extending the Declaration of Local Health Emergency due to COVID-19; and Executive Order N-22-20 of the Governor of California and Order of the State Public Health Officer issued on March 19, 2020.
14. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the Centers for Disease Control and Prevention, and other public health officials throughout the United States and around the world, including but not limited to, the Centers for Disease Control and Prevention's "Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes", the California Department of Public Health Face Covering Guidance issued on April 1, 2020, and Recommendation Regarding the Use of Cloth Face Coverings from the Centers for Disease Control and Prevention issued on April 3, 2020.
15. This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101030, et seq.; Health and Safety Code sections 120100, et seq.; and Title 17 of the California Code of Regulations section 2501.
16. This Order shall not supersede any conflicting or more restrictive orders issued by the State of California or Federal governments, including any requirements regarding child care. If any portion of this Order or the application thereof to any person or circumstance is held to be invalid the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
17. To the extent necessary, pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, this order is enforceable by the Sheriff and all Chiefs of Police in the County. The violation of any provision of this Order constitutes an imminent threat to public health.

Copies of this Order shall promptly be: (1) made available at the County of San Bernardino Health Administration office located at 351 N. Mountain View Ave., #303, San Bernardino, CA 92415; (2) posted on the County of San Bernardino Public Health Department's website ([wp.sbcounty.gov/dph](http://wp.sbcounty.gov/dph)); and (3) provided to any member of the public requesting a copy of this Order.

**IT IS SO ORDERED:**

Erin Gustafson, MD, MPH

Dated: April 7, 2020

Dr. Erin Gustafson, MD, MPH  
Acting Public Health Officer  
County of San Bernardino

Approved as to form and legality:

Adam Ebright

Dated: April 7, 2020

Adam Ebright  
County Counsel  
County of San Bernardino



## **Exhibit 2**

HomeCo

Home

Countywide Vision

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COVID-19 Response

### Clarification of religious services and face-coverings order

**Published April 8, 2020** | **By County of San Bernardino**

The need has arisen for clarification of a Public Health Order and subsequent guidance issued Tuesday regarding religious services and face coverings.

The County acknowledges the manner in which the order and guidance were created and disseminated created unintended consequences and hardships. The County has taken steps to ensure appropriate notice and coordination will occur in the future as we address the complicated and fast-moving crisis faced by our community and the entire world.

“We recognize the need to act quickly to slow the spread of COVID-19 throughout San Bernardino County,” said Board of Supervisors Chairman Curt Hagman. “But we also recognize that we must take into consideration the myriad of impacts that can be felt in a large and diverse county, and be willing to provide clarification and make adjustments while keeping our communities safe and healthy.”

The specific references to drive-in religious services so close to major religious observances taking place during the next four days, for which organizations had already conducted considerable planning and incurred expenses, are clarified as follows: Organizations that have planned such services for the coming weekend should proceed with those services if they choose to do so and make every effort to prevent contact between congregants.

Regarding the use of face-coverings while driving, there is no need for drivers traveling alone or with members of their households to wear face coverings unless they must lower their windows to interact with first responders, food service workers, or others who are not members of their households.

Other clarifying guidance will be forthcoming.

On the subject of enforcement, the public is advised that although violation of a health order is a violation of the California Health and Safety Code, the County does not expect law enforcement to broadly impose citations on violators. The expectation is that law enforcement will rely upon community members to use good judgment, common sense, and act in the best interests of their own health and the health of their loved ones and the community at large. The imposition of penalties on members of the public who willfully and grossly disregard public health orders by putting others at risk of exposure to this infectious disease is meant as a tool for law enforcement to use as a deterrent.

San Bernardino County has 547 confirmed cases of COVID-19 and the deaths of 17 county residents have been associated with the disease.

Various appropriate County departments and agencies have been working together since Jan. 25 to protect the community from the COVID-19 pandemic.

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For information about the coronavirus crisis, visit the County’s coronavirus website at [sbccovid19.com](https://sbccovid19.com). New information and resources are updated daily. The public can also contact the COVID-19 hotline from 9 a.m. to 5 p.m., Monday through Friday at (909) 387-3911, or email the County at [coronavirus@dph.sbcounty.gov](mailto:coronavirus@dph.sbcounty.gov).

**Aclaración de servicios religiosos y orden de cobertura de la cara.**

Ha surgido la necesidad de aclaración de una Orden de Salud Pública y posterior orientación emitida el martes en relación con los servicios religiosos y cobertura de la cara.

El Condado reconoce la manera en que la orden y la orientación fueron creados y difundidos creando consecuencias y dificultades no deseadas. El Condado ha tomado medidas para asegurar que el aviso y la coordinación apropiada ocurran en el futuro a medida mientras dirigimos la crisis complicada y de rápido movimiento que enfrenta nuestra comunidad y el mundo entero.

“Reconocemos la necesidad de actuar rápidamente para frenar la propagación de COVID-19 en todo el condado de San Bernardino”, dijo el Presidente de la Junta de Supervisores, Curt Hagman. “Pero también reconocemos que debemos tener en cuenta la infinidad de impactos que se pueden sentir en un condado grande y diverso, y estar dispuestos a proporcionar aclaraciones y hacer ajustes mientras mantenemos a nuestras comunidades seguras y saludables”.

Las referencias específicas a los servicios religiosos tan cercanos a las principales celebraciones religiosas que se llevaran a cabo durante los próximos cuatro días, por los cuales las organizaciones ya habían llevado a cabo una planificación considerable y gastos incurridos, se aclaran de la siguiente manera: Las organizaciones que han planificado dichos servicios para el próximo fin de semana deben proceder con esos servicios si así lo deciden y hacer todo lo posible para evitar el contacto entre los congregantes.

Con respeto al uso de coberturas faciales mientras conducen, no hay necesidad de que los conductores que viajen solos o con miembros de sus hogares usen cubiertas faciales a menos que deban bajar las ventanas para interactuar con los socorristas, los trabajadores de servicios de alimentos u otras personas que no son miembros de sus hogares.

Se presentarán otras orientaciones de clarificación.

En cuanto a la aplicación de la ley, se informa al público que aunque la violación de una orden de salud es una violación del Código de Salud y Seguridad de California, el Condado no espera que Agencias de aplicación de la ley impongan ampliamente citas a los infractores. La expectativa es que Agencias de aplicación de la ley confíen en los miembros de la comunidad que utilicen el buen juicio, el sentido común y actúen en el mejor interés de su propia salud y la salud de sus seres queridos y de la comunidad en general. La imposición de sanciones a los miembros del público que descuidan deliberadamente las órdenes de salud pública poniendo a otros en riesgo de exposición a esta enfermedad infecciosa se entiende como una herramienta para que Agencias de aplicación de la ley la utilicen como elemento disuasorio.

El condado de San Bernardino tiene 547 casos confirmados de COVID-19 y la muerte de 17 residentes del condado se ha asociado con la enfermedad.

Varios departamentos y agencias del Condado han estado trabajando juntos desde el 25 de enero para proteger a la comunidad de la pandemia COVID-19.

Para obtener información sobre la crisis del coronavirus, visite el sitio web del coronavirus del Condado en [sbccovid19.com](https://sbccovid19.com). La nueva información y los recursos se actualizan diariamente. El público también puede comunicarse con la línea directa COVID-19 de 9 a.m. a 5 p.m., de lunes a viernes al (909) 387-3911, o enviar un correo electrónico al Condado al [coronavirus@dph.sbcounty.gov](mailto:coronavirus@dph.sbcounty.gov).

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- > [July 2018](#)
- > [June 2018](#)
- > [May 2018](#)
- > [April 2018](#)
- > [March 2018](#)
- > [February 2018](#)
- > [January 2018](#)
- > [December 2017](#)
- > [November 2017](#)
- > [October 2017](#)
- > [September 2017](#)
- > [August 2017](#)
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- > [May 2017](#)
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## **Exhibit 3**

**AMENDED ORDER OF THE HEALTH OFFICER FOR THE COUNTY OF  
RIVERSIDE AND OF THE COUNTY EXECUTIVE OFFICER AS DIRECTOR OF  
EMERGENCY SERVICES**

**DATE OF ORDER: APRIL 6, 2020**

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. Violators are also subject to civil enforcement actions including civil penalties of up to \$1,000 per violation per day, injunctive relief, and attorneys' fees and costs. (Penal Code section 19; Government Code sections 8665 and 25132; Health and Safety Code section 120295; County Ordinances 533 and 556.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101030, 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, ARTICLE XI OF THE CALIFORNIA CONSTITUTION; CALIFORNIA GOVERNMENT CODE SECTIONS 8610, 8630, 8634, AND 8665; AND RIVERSIDE COUNTY CODE SECTIONS 442 AND 533.6, THE HEALTH OFFICER OF THE COUNTY OF RIVERSIDE ("HEALTH OFFICER") ORDERS:

**Effective 12:00 a.m. on Sunday, April 5, 2020, and continuing through April 30, 2020**, pending further Order of the Public Health Officer, the following will be in effect for the County of Riverside (hereinafter the "County"):

1. Executive Order N-33-20 issued by the Governor of the State of California ("Executive Order") (available at: <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>) ordered all individuals living in the State of California to stay home or at their place of residence, except as needed to maintain continuity of operations of sectors designated in the document available at: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>) as updated by the State Public Health Officer ("Essential Workers"). This also includes all orders of the State Public Health Officer.

In conformance with, and where not superseded by the Executive Order, this Order additionally specifies and orders as follows:

- a. All public or private "gatherings," as defined in section 2 below, within the jurisdiction of the Public Health Officer of the County of Riverside are prohibited, regardless of venue or size.
- b. **Paragraph 1.a. of** this Order does not apply to courts of law, medical providers, public utilities, critical county, city, and special district operations, critical school operations such as nutrition programs, logistics/distribution centers, congregate living settings, daycare and child care, shelters, public transportation, airport travel, or necessary shopping at fuel stations, stores or malls. However, these settings are instructed to observe all applicable state and federal guidelines for infection control.

- c. All essential businesses that remain in operation in accordance with the Order shall follow the Social Distancing and Infection Control Guidelines published by the CDC and California Department of Public Health. All essential businesses must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing are implemented at each facility that will ensure social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, additional measures shall be identified and implemented or the facility shall be closed.
- d. All persons, including Essential Workers shall wear face coverings, such as scarves (dense fabric, without holes), bandanas, neck gaiter, or other fabric face coverings. All persons, including Essential Workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for **non-medical reasons**.
- e. All bars, adult entertainment establishments, and other business establishments that serve alcohol and do not serve food shall be and shall remain closed.
- f. All restaurants and other business establishments that serve food shall close all on-site dining. All food served shall be by delivery, or through pick-up or drive thru. Social distancing shall be required for persons picking up food on site.
- g. All gyms and fitness centers shall be and shall remain closed.
- h. All essential businesses shall make every effort to use telecommuting for its workforce.
- i. Government entities shall enforce social distancing requirements at all parks and trails. If a government entity is unable to enforce social distancing at a park or trail, it shall be closed to the public. Parking lots at all parks and/or trails shall be closed and shall be accessible only by members of the public within walking distance of the parks and/or trails. Said parks and/or trails shall be used solely for walking, hiking, equestrian or bicycle riding. The public shall not congregate or participate in group sporting activities at such parks and/or trails.
- j. As outlined in the Public Health Officer's Order of April 2, 2020, all public and private golf courses are closed for play. Golf Clubs may allow members to walk the course solely for exercise. Golf Clubs that provide food services may continue to do so by delivery or through pick-up. Social distancing shall be required for persons picking up food on site and using a course for walking.
- k. As outlined in the Health Officer's Amended Order of April 1, 2020, all schools within the jurisdiction of the Public Health Officer of the County of Riverside

including, but not limited to, all preschools, K-12 public, private and charter schools, community colleges, public, private, nonprofit, and for-profit colleges and universities shall remain closed through June 19, 2020, pending further Order of the Public Health Officer. This closure shall be understood to prohibit any activity where students, staff, parents, or members of the public gather on the school campus, including but not limited to: formal instruction; classes; laboratory sessions; tutoring; meeting; sporting events; or other extracurricular activities. Parents of school-aged minor children shall take steps to ensure children are not participating in activities prohibited by this Order, or the Executive Order, and that social distancing requirements are practiced at all times.

Individual school districts and educational institutions shall continue to have the discretion to determine the minimum essential personnel as required to support critical functions within those districts and institutions such as federal food service programs, security, and necessary maintenance.

This order shall not affect on-campus housing, dormitories or other congregate living arrangements, or staffing required to maintain and operate them.

1. Daycare and childcare facilities shall continue to operate under the following mandatory conditions: (1) Childcare must be carried out in stable groups of 10 or fewer ("stable" means that the same 10 or fewer children are in the same group each day); (2) Children shall not change from one group to another; (3) If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other; and (4) Childcare providers shall remain solely with one group of children.
- m. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home.
- n. "Non-essential personnel," as defined in section 2(c) below, are prohibited from entry into any hospital or long-term care facility.

All essential personnel who show any potential signs or symptoms of COVID-19 shall be strictly prohibited from entry into hospitals or long-term care facilities.

- o. Hospitals and healthcare providers shall take measures to preserve and prioritize resources including delaying non-emergent or elective surgeries or procedures where feasible.
- p. As outlined in the Health Officer's Order of April 3, 2020, all labs that perform COVID-19 testing for Riverside County clients, including but not limited to Kaiser



Permanente; LabCorp, Quest Diagnostics, and labs operated by hospitals across the County of Riverside, shall continue to share COVID-19 orders and results with demographics with Manifest Medex (MX) to create a countywide COVID-19 dashboard to include information regarding tests performed, both pending and resulted, and occurrences by age, gender, and geographical location. Orders and results with demographics shall be shared either through electronic interfaces (preferred) or via electronic file transfers updated on at least a daily basis.

- q. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://wwwnc.cdc.gov/travel/notices>) shall be subject to 14-day home quarantine, self-monitoring.
  - r. A strong recommendation is made for persons exhibiting mild to moderate symptoms of COVID-19 to self-isolate themselves in their place of residence unless seeking medical treatment. A guide to symptoms is found here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
2. For purposes of this Order:
- a. "Gathering" is any event or convening that brings together people in a single room or single space at the same time, including, but not limited to, an auditorium, stadium, arena, theater, church, casino, conference room, meeting hall, cafeteria, drive-in theater, parking lot, or any other indoor or outdoor space used for any non-essential purpose including, but not limited to, movies, church services, swap meets, etc. A gathering does not include:
    - i. A convening of persons who reside in the same residence.
    - ii. Operations at airports and/or public transportation.
    - iii. Operations at essential businesses included in the designated sectors referenced in section 1 above, where many people are present but are able to practice social distancing.
    - iv. Funerals and burial services may proceed with not more than 10 persons present. Funerals and burial services must be conducted in strict compliance with social distancing requirements.
  - b. "Long term care facility" is a facility serving adults that require assistance with activities of daily living, including a skilled nursing facility, and that is licensed by the California Department of Community Care and Licensing, or the California Department of Public Health.
  - c. "Non-essential personnel" for the purpose of section 1 above, are employees, contractors, or members of the public who do not perform treatment, maintenance,

support, or administrative tasks deemed essential to the healthcare mission of the long term care facility or hospital. Non-essential personnel do not include first responders, nor State, federal, or local officials, investigators, or medical personnel carrying out lawful duties. Entry of visitors to hospitals and long-term care facilities are allowed upon the approval of the facility's director, or designee, for the purpose of allowing family and friends to visit a resident such as in an end of life situation, to allow parents or guardians to visit a child who is a patient, or any other circumstances deemed appropriate by the facility director, or designee, and where appropriate precautions by the facility that follow federal, State, and local public health guidance regarding COVID-19 are followed.

- d. "Social distancing" is maintaining a six-foot separation from all persons except for household members and medical providers with the appropriate personal protection equipment.
3. This Order shall be effective immediately and will remain in effect until April 30, 2020, pending further Order of the Public Health Officer. To the extent that any conflict shall arise, this Order supersedes the prior Orders of the Public Health Officer concerning public gatherings, including those issued on March 12, March 16, and April 4, 2020.
4. This Order is issued as a result of the worldwide pandemic of COVID-19 disease, also known as "novel coronavirus," which has infected over one million individuals worldwide in over 180 countries and is implicated in over 50,000 worldwide deaths, including over 600 cases and 15 deaths in Riverside County. These numbers increase significantly every day.
5. This Order is issued based on evidence of increasing transmission of COVID-19 both within the County of Riverside and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19.
6. This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. This Order is issued to prevent circumstances often present in gatherings that may exacerbate the spread of COVID-19, such as: 1) the increased likelihood that gatherings will attract people from a broad geographic area; 2) the prolonged time period in which large numbers of people are in close proximity; 3) the difficulty in tracing exposure when large numbers of people attend a single event or are at a single location; and 4) the inability to ensure that such persons follow adequate hygienic practices.
7. This Order is intended to address the strain upon the health care system from the effects of the COVID-19 virus. Similarly, this Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide.

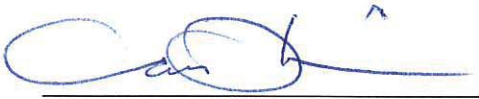


8. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 8, 2020 Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in Riverside County; the March 10, 2020 Resolution of the Board of Supervisors of the County of Riverside proclaiming the existence of a Local Emergency in the County of Riverside regarding COVID-19; the March 10, 2020 Resolution of the Board of Supervisors of the County of Riverside ratifying and extending the Declaration of Local Health Emergency due to COVID-19; the guidance issued on March 11, 2020 by the California Department of Public Health regarding large gatherings of 250 people or more; Governor Gavin Newsom's Executive Order N-25-20 of March 12, 2020 preparing the State to commandeer hotels and other places of temporary residence, medical facilities, and other facilities that are suitable as places of temporary residence or medical facilities as necessary for quarantining, isolating or treating individuals who test positive for COVID-19 or who have had a high-risk exposure and are thought to be in the incubation period; the guidance issued on March 15, 2020 by the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials through the United States and around the world recommending the cancellation of gatherings involving more than fifty (50) or more persons in a single space at the same time; the March 16, 2020 order of the Public Health Officer prohibiting all gatherings with expected presence above ten (10) individuals; Governor Newsom's Executive Order N-33-20 of March 19, 2020 ordering all persons to stay at home to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19; Governor Newsom's Executive Order N-35-20 giving the state the ability to increase the health care capacity in clinics, mobile health care units and adult day health care facilities and allowing local governments more flexibility to utilize the skills of retired employees in order to meet the COVID-19 surge; and Governor Newsom's Executive Order N-39-20 intended to expand the health care workforce and recruit health care professionals to address the COVID-19 surge. The Governor and the County Public Health Officer continue to issue COVID-19-related orders to mitigate the public health crisis.
9. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the Centers for Disease Control and Prevention, and other public health officials throughout the United States and around the world, including but not limited to, the Centers for Disease Control and Prevention's "Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes" and the California Department of Public Health Face Covering Guidance issued on April 1, 2020.
10. This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101030, et seq.; Health and Safety Code sections 120100, et seq.; and Title 17 of the California Code of Regulations section 2501. More specifically, Health and Safety Code section 120175.5(b) which provides that all

governmental entities in the county shall take necessary measures within the governmental entity's control to ensure compliance with this Order and to disseminate this Order to venues or locations within the entity's jurisdiction where gatherings may occur.

11. Violation of this Order is subject to fine, imprisonment, or both. (Penal Code section 19; Government Code sections 8665 and 25132; Health and Safety Code section 120295; County Ordinances 533 and 556.)
12. To the extent necessary, pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all Chiefs of Police in the County ensure compliance with and enforcement of this Order.
13. Copies of this Order shall promptly be: (1) made available at the County of Riverside Health Administration office located at 4065 County Circle Drive, Riverside, CA 92503; (2) posted on the County of Riverside Public Health Department's website (rivcoph.org); and (3) provided to any member of the public requesting a copy of this Order.

**IT IS SO ORDERED:**



Dated: April 6, 2020

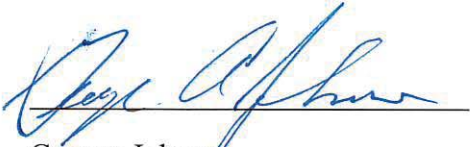
Dr. Cameron Kaiser, MD, MPH, FAAFP  
Public Health Officer  
County of Riverside

**EMERGENCY REGULATIONS**

As Director of Emergency Services for the County of Riverside, I am authorized to promulgate regulations for the protection for life and property pursuant to Government Code section 8634 and Riverside County Ordinances 442 and 533. The following shall be in effect for the duration of the County of Riverside Health Officer's Order issued above which is incorporated in its entirety by reference:

The County of Riverside Health Officer's Order shall be promulgated as a regulation for the protection of life and property.

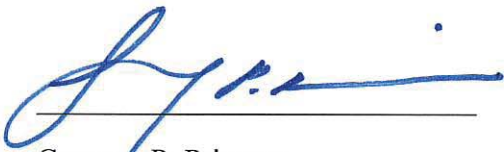
Any person who violates or refuses or willfully neglects to obey this regulation is subject to civil enforcement actions, including civil penalties of up to \$1,000 per violation per day, injunctive relief, and attorneys' fees and costs, imprisonment, or both, pursuant to Government Code section 8665.



George Johnson  
County Executive Officer  
Director of Emergency Services  
County of Riverside

Dated: April 6, 2020

Approved as to form and legality:



Gregory P. Priamos  
County Counsel  
County of Riverside

Dated: April 6, 2020

## **Exhibit 4**



Harmeet K. Dhillon  
Harmeet@DhillonLaw.com

April 8, 2020

VIA EMAIL

Robert A. Lovingood, Supervisor  
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Michelle Blakemore, County Counsel  
[Mblakemore@cc.sbcounty.gov](mailto:Mblakemore@cc.sbcounty.gov)

**Re: Demand for Rescission of Illegitimate and Unconstitutional April 7, 2020  
Order of the Health Office of San Bernardino County**

Dear County Supervisors:

This firm, in coordination with the Center for American Liberty, is in the process of being retained by several San Bernardino County residents in connection with the County's adoption and enforcement of the April 7, 2020 Order of the Health Officer of San Bernardino County (hereinafter "Order").<sup>1</sup> For the reasons addressed in this letter, the Order is unconstitutional on numerous grounds. Accordingly, we ask that the County immediately rescind the Order and notify this office and the public of the same by **5:00 p.m. on April 9, 2020**. If the County fails to do so, our client is prepared to file a federal lawsuit in the immediate future, seeking immediate injunctive relief.

**I. The Order's Ban on In-Person Religious Services Violates the First Amendment.**

The First Amendment to the U.S. Constitution prohibits government actors from enforcing any "law respecting an establishment of religion, or prohibiting the free exercise thereof." U. S. Const. amend. I; *see also Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (applying the First Amendment to the States through the Fourteenth Amendment). The California Constitution similarly protects freedom of religion. Cal. Const., art. I, § 4. Accordingly, the County cannot ban "faith based services" taking place outside the home without

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<sup>1</sup> As of the date of this letter, the Order is available online at the following URL:  
[http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM\\_C45820040714190.pdf](http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM_C45820040714190.pdf).



San Bernardino County

April 8, 2020

Page 2 of 6

first satisfying the most exacting standard of judicial review: strict scrutiny. *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562 (2004).

Under strict scrutiny, the government cannot burden religious activity unless it first establishes (1) a compelling interest for imposing such burdens, and (2) that the burdens are the “least restrictive means” necessary to further that compelling interest. Federal courts routinely enjoin the enforcement of laws and policies under this standard. *See e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 524.

Here, the Order states that faith-based services are permitted only “through streaming or other technology, while individuals remain in their homes, but does not allow individuals to leave their homes for driving parades or drive-up services, or for picking up non-essential items.”<sup>2</sup> The Order makes no exceptions for upcoming religious holidays, including Easter, which is a very important religious observance day to many Christians worldwide. The Order also makes no exceptions for congregates taking extensive protective measures, such as in-person services in which participants are separated by more than six feet, etc. Simply put, there was essentially *no* effort to narrowly tailor the Order so as not to violate individuals’ right to religious freedom. Instead, the County proclaimed its draconian restrictions, essentially blanket-banning participation in religious services for an indefinite period of time, while at the same time allowing other necessary and important movement. As the Order cannot withstand strict scrutiny—or any other form of scrutiny—it must be rescinded immediately.

## **II. The Order Is Overbroad and Chills Religious and Expressive Activity Protected by the First Amendment.**

A statute or regulation is overbroad if it “does not aim specifically at evils within the allowable area of [governmental] control, but ... sweeps within its ambit other activities in ordinary circumstances that constitute an exercise” of protected expression and conduct. *Thornhill v. State of Alabama* (1940) 310 U.S. 88, 97. In *Gatto v. Cty. of Sonoma* (2002) 98 Cal. App. 4th 744, 750, for example, the California Court of Appeal held that the Sonoma County Fair dress code was overbroad and void for vagueness. There, the county ejected the plaintiff from the fair for wearing a jacket adorned with a Hell’s Angel insignia because it was deemed “provocative.” *Id.* at 750. The Court of Appeal held the county’s dress code failed to pass constitutional muster.

Here, the Order broadly prohibits entire swaths of activities, including religious, travel, and speech activities, without any effort to except constitutionally-protected activities. In addition to banning all out-of-home religious activities, the Order requires that all essential workers “wear face coverings, such as scarves (dense fabric, without holes,) bandanas, neck gaiters, or other fabric face coverings, when they leave their homes....”

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<sup>2</sup> We understand the County’s recent statement clarifies that the County will now permit drive-in religious services, although at this time no updated order has been released to the public. <http://wp.sbcounty.gov/cao/countywire/?p=5862>.



San Bernardino County

April 8, 2020

Page 3 of 6

Courts consistently recognize that a person's clothing may contain or constitute protected speech. *See, e.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist.* (1969) 393 U.S. 503. The County's compulsory wearing of face coverings necessarily inhibits—through prior restraint no less—all expressive conduct related to facial adornments, and may even compel citizens to speak when they would otherwise not. *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31* (2018) 138 S. Ct. 2448, 2464 [“Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason, one of our landmark free speech cases said that a law commanding “involuntary affirmation” of objected-to beliefs would require “even more immediate and urgent grounds” than a law demanding silence.”]. Even where such clothing is not expressive *per se*, the forced dress still violates citizen's protected liberty interest in choosing their own attire. *See Karr v. Schmidt* (5th Cir.1972) 460 F.2d 609, 621 (dis. opn. of Wisdom, J.) [“[f]orced dress ... humiliates the unwilling complier, forces him to submerge his individuality in the ‘undistracting’ mass, and in general, smacks of the exaltation of organization over member, unit over component, and state over individual.”]. Accordingly, the Order runs afoul of the overbreadth doctrine and is wholly unconstitutional.

### **III. The Order Is Void for Vagueness.**

A regulation is constitutionally void on its face when, as matter of due process, it is so vague that persons “of common intelligence must necessarily guess at its meaning and differ as to its application” *Connally v. General Const. Co.* (1926) 269 U.S. 385, 391; *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115. The void for vagueness doctrine is designed to prevent arbitrary and discriminatory enforcement. *Ketchens v. Reiner* (1987) 194 Cal.App.3d 470, 477. The problem with a vague regulation is that it “impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis....” *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108–109.

Here, the Order is vague for several reasons, including but not limited to those addressed below.

#### **A. The Order Relies on Absent and Inapplicable Authority.**

The County states that the Order is authorized by California Health and Safety Code Sections 101080 and 101085. This is simply incorrect. Emergency powers exercised pursuant to Section 101085 require that an emergency be declared pursuant to Section 101080, which in turn applies only when “a release, spill, escape, or entry of waste occurs as described in paragraph (2) of subdivision (b) of Section 101075.” Since there is no “release, spill, escape, or entry of waste,” Section 101085 is not applicable, and the Order is void.

The County also states that it relies upon “Executive Order N-22-20” as authority for issuing the Order. As far as we are aware, no such executive order exists.

San Bernardino County

April 8, 2020

Page 4 of 6

### **B. Governor Newsom's Order Requires Only that Persons "Heed" the Public Health Official's "Stay-at-Home" Notice.**

Governor Newsom's March 19, 2020 Executive Order N-33-20 appears to be the intended reference mistakenly titled N-22-20 in the Order. Even so, the County brazenly mischaracterizes it.

Contrary to the County's assertions in the Order, Governor Newsom's order does *not* state that "all persons residing in the State [are] to remain in their homes or places of residence ...". A careful reading of the Governor's order reveals that residents are only instructed to "heed" State public health directives ...". According to Meriam-Webster, the plain meaning of the word "heed" is "to give consideration or attention to"—not to submit or comply with, as suggested by the County's interpretation. Governor Newsom's order that California residents give careful thought to the directives of the Department of Public Health does not equate to an order to comply with those directives.

The Public Health directive itself carries no legal weight, despite nominally "ordering" that all persons not engaging in essential activities stay at home. Under established California law, the Public Health Department cannot forcibly quarantine persons unless there is probable cause that such persons are actually infected. *Ex parte Martin* (1948) 83 Ca.App.2d 164, 167; *Jew Ho v. Williamson* (C.C. Cal. 1900) 103 F. 10 [San Francisco's quarantine to contain bubonic plague in May 1900 found to be unreasonable]; *Wong Wai v. Williamson* (CC Cal. 1900) 103 F. 1 [holding that San Francisco's May 1900 quarantine violated rights secured by the Equal Protection Clause]; *see also Ex parte Arta* (1921) 52 Cal.App. 380, 383 ["a mere suspicion, unsupported by facts giving rise to reasonable or probable cause, will afford no justification at all for depriving persons of their liberty and subjecting them to virtual imprisonment under a purported order of quarantine."]. As such, directives from California public health officials are enforceable only to the extent there exists probable cause that *each* such non-essential worker has contracted Covid-19—which is clearly not the case. Absent such probable cause, the directive has no legally enforceable effect as to any person not shown to be exposed within the meaning of the statute and precedent.

### **IV. The Order Violates the Fundamental Right to Travel.**

The United States Supreme Court has held that the "right to travel is a part of the liberty of which the citizen cannot be deprived without the due process of law under the Fifth Amendment." *Kent v. Dulles* (1958) 357 U.S. 116, 126. The Court found that "[t]ravel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values." *Id.* at 126. They have also ruled that the "right to travel is an unconditional personal right, a right whose exercise may not be conditioned." *Dunn v. Blumstein* (1972) 405 U.S. 330, 341.

Courts apply the compelling state interest test to assess the constitutionality of the government's action when that action implicates the fundamental right to travel. *See, e.g., Memorial Hospital v. Maricopa County* (1974) 415 U.S. 250; *Dunn v. Blumstein* (1972) 405 U.S. 330; and *Shapiro v. Thompson*, (1969) 394 U.S. 618. Under the compelling state interest test, the

**DHILLON LAW GROUP INC.**

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San Bernardino County

April 8, 2020

Page 5 of 6

government must prove that there is a “clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest.” *Dunn* at 341. The *Dunn* Court continued by finding that in order to prove that there is a substantial government interest, the government “cannot choose means that unnecessarily burden or restrict constitutionally protected activity,” that the statute must be “drawn with precision,” and “must be tailored to serve their legitimate objectives.” *Dunn* at 343.

The County fails to satisfy this standard. The County is picking and choosing who can be open and who cannot be open. As such, this order is not narrowly tailored and the fact that the County is not allowing businesses or churches to attempt to practice social distancing clearly shows that the government is not executing a plan that is the least restrictive one possible.

#### **V. The Mandate to Wear a Mask has a Disproportionate Impact Upon the Poor and Those that Cannot Wear a Mask for Medical or Other Reasons.**

The Order also violates the Equal Protection Clause, by mandating that all persons who leave their places of residence must wear a face covering, disproportionately affecting indigent residents of the County, and those that cannot wear a face covering for legitimate medical or other reasons. Indeed, those without facial coverings cannot exercise fundamental constitutional rights—including leaving their home for essential goods and services—while more affluent individuals may be able to comply. The order does not provide for the provision to purchase such face coverings for those who do not already have suitable masks and are not able to afford them.<sup>3</sup> The Order mandates that everyone use or purchase suitable masks in order to comply with the Order. As such, at a minimum, the County needs to have provisions in place to fund the purchase the applicable masks for those who cannot afford them. It fails to provide for this, and therefore cannot rest the exercise of fundamental rights on people’s ability to afford those rights.

#### **VI. The Order Fails to Properly Educate the Public on Proper Use of the Mask.**

Finally, the Order seems to be grossly negligent in that it mandates the wearing of cloth masks without any instruction to the public as to how to properly maintain the mask or how often it is to be changed. In light of all the contradictory evidence being presented on mask use, if the County is going to mandate it, they owe a duty to the general public to ensure that along with the order, proper instructions are given as to how to use and maintain the mask for public health.

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<sup>3</sup> In other contexts, for example, California law prohibits schools from imposing a dress code on children unless there are adequate provisions to “assist economically disadvantage pupils”. Educ. Code § 35183(d). Likewise, employers who mandate that an employee must wear a uniform are required to pay for that uniform. Labor Code § 2802.

San Bernardino County

April 8, 2020

Page 6 of 6

In conclusion, for the foregoing reasons, we feel that the Order is defective and needs to be immediately rescinded in order to limit the County's liability for violations to residents' constitutional rights. Our firm is preparing the necessary paperwork to file a temporary and permanent restraining order. Failure to rescind this order by the end of business on April 9<sup>th</sup> will result in a lawsuit being filed.

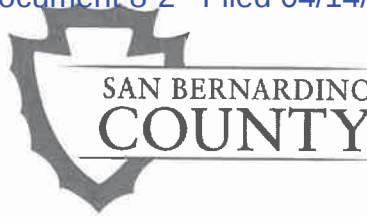
Regards,

A handwritten signature in blue ink, appearing to read "Harmeet K. Dhillon". The signature is fluid and cursive, with the first name "Harmeet" being more prominent.

Harmeet K. Dhillon

## **Exhibit 5**

**MICHELLE D. BLAKEMORE**  
County Counsel



**PENNY ALEXANDER-KELLEY**  
Chief Assistant County Counsel

**COUNTY COUNSEL**  
385 NORTH ARROWHEAD AVENUE, 4<sup>th</sup> FLOOR  
SAN BERNARDINO, CA 92415-0140

(909) 387-5455 Fax (909) 387-5462

April 9, 2020

**VIA ELECTRONIC MAIL**  
Harmeet@DhillonLaw.com

Harmeet K. Dhillon, Esq.  
DHILLON LAW GROUP, LLC  
177 Post Street, Suite 700  
San Francisco, CA 94108

**Re: April 7, 2020 Order Of The Health Office of San Bernardino County**

Dear Ms. Dhillon:

I write in response to your letter dated April 8, 2020 addressed to the County Board of Supervisors and demanding the rescission of the Order of the Health Officer of the County of San Bernardino for the Control of COVID-19, dated April 7, 2020 (“the April 7, 2020 Order”). The purpose of the Order is to address the enormous public health disaster created by the COVID-19 pandemic. Please be advised that the County has clarified the April 7, 2020 Order just yesterday (“the April 8, 2020 Clarification”). The April 8, 2020 Clarification specifically provides that faith based organizations or individuals, face no threat of citations or other punishment for their faith based activities over the Easter weekend wherein every effort is made to prevent contact between congregants and adherence to social distancing guidance. This includes conducting or attending drive-in services where congregants remain in their vehicles to collect items from their vehicles such as Easter baskets.

Please note that the April 7, 2020 Order and the companion April 8, 2020 Clarification are posted at the County Public Health website dedicated to COVID -19. Accordingly, there simply is no emergency here mandating seeking federal court intervention on an expedited basis and asking for a temporary and permanent restraining order for the reasons you assert in your letter. *See Reno Air Racing Ass'n., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) [courts recognize very few circumstances justifying the issuance of an ex parte temporary restraining orders]; *see also Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974); *Stanchart Sec. Int'l, Inc. v. Galvador*, 2012 WL 5286952, at \*1 (S.D. Cal. 2012) [“TROs are for emergencies only”]; Fed. R. Civ. Proc. 65(b).



Harmeet K. Dhillon, Esq

April 9, 2020

Page 2

I also invite you to note that the April 8, 2020 Clarification states that the County “does not expect law enforcement to broadly impose citations on violators” and that “the expectation is that law enforcement will rely upon community members to use good judgment, common sense, and act in the best interest of their own health and the health of their loved ones and the community at large.” Accordingly, there has not been any individual congregant, nor any religious facility, that is under any threat of enforcement here. As such, there simply is no case or controversy to support Article III standing or grounds for preliminary injunctive relief. *See Los Angeles Memorial Coliseum Comm’n v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980) [as a prerequisite to preliminary injunctive relief, plaintiffs must do more than merely allege harm sufficient to establish standing, rather, he or she must demonstrate immediate threatened injury].

The County Public Health Officer is continuing to focus its concerted efforts on dealing with the health crisis posed by COVID-19 pandemic and it is critical that County resources are dedicated to these exigency public health crisis at play with COVID-19. As well, the County and/or Public Health Officer expects to be issuing further clarifications as necessary to address the threat to public health while allowing for public encounters such as religious services that practice social distancing. Further, the County disagrees with the asserted claims of constitutional infirmities based on portions of the April 7, 2020 Order or the April 8, 2020 Clarification regarding face covering requirements. Nevertheless, the County anticipates there will be further clarifications and/or orders issued that will address some additional concerns raised by your letter.

I am confident that in light of the above, the Center for American Liberty will not be seeking extraordinary relief from the federal court. Should you choose to proceed forward despite the lack of need for court intervention, please advise the federal court that the County will be opposing any such temporary restraining order filing.

Sincerely,



MICHELLE D. BLAKEMORE  
County Counsel

cc: Mark Meuser, Esq.  
Dhillon Law Group LLC

## **Exhibit 6**



Harmeet K. Dhillon  
Harmeet@DhillonLaw.com

April 8, 2020

**VIA EMAIL**

Kevin Jeffries, Supervisor  
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**Re: Demand for Rescission of Illegitimate and Unconstitutional April 6, 2020  
Amended Order of the Health Office of Riverside County**

Dear County Supervisors:

This firm, in coordination with the Center for American Liberty, is in the process of being retained by residents of Riverside County in connection with the County's adoption and enforcement of the April 6, 2020 Amended Order of the Health Officer of Riverside County (hereinafter "Order").<sup>1</sup> For the reasons addressed in this letter, the Order is unconstitutional on numerous grounds. Accordingly, we ask that the County immediately rescind the Order and notify this office and the public of the same by **5:00 p.m. on April 9, 2020**. If the County fails to do so, our client is prepared to file a federal lawsuit in the immediate future, seeking immediate injunctive relief.

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<sup>1</sup> As of the date of this letter, the April 6, 2020 Amended Order is available online at:  
[https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC\\_20200406\\_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC_20200406_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186)

Riverside County

April 8, 2020

Page 2 of 6

## **I. The April 6<sup>th</sup> Order’s Ban on Religious Services Violates the First Amendment.**

The First Amendment to the U.S. Constitution prohibits government actors from enforcing any “law respecting an establishment of religion, or prohibiting the free exercise thereof.” U. S. Const. amend. I; *see also Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (applying the First Amendment to the States through the Fourteenth Amendment). The California Constitution similarly protects freedom of religion. Cal. Const., art. I, § 4. Accordingly, the County cannot ban “faith based services” taking place outside the home without first satisfying the most exacting standard of judicial review: strict scrutiny. *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562 (2004).

Under strict scrutiny, the government cannot burden religious activity unless it first establishes (1) a compelling interest for imposing such burdens, and (2) that the burdens are the “least restrictive means” necessary to further that compelling interest. Federal courts routinely enjoin the enforcement of laws and policies under this standard. *See e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 524.

Here, the Order states that all public or private gatherings are prohibited regardless of venue or size. The April 6<sup>th</sup> Order makes no exceptions for upcoming major religious observances, including Easter, which is a very important religious observance day to most Christians. The April 6<sup>th</sup> Order also makes no exceptions for congregates taking extensive protective measures, such as drive-in services in which participants remain isolated in their cars, or in-person services in which participants are separated by more than six feet. Simply put, there was essentially *no* effort to narrowly tailor the Order so as not to violate individuals’ right to religious freedom. Instead, the County proclaimed its draconian restrictions, essentially blanket-banning participation in religious services for an indefinite period of time, while at the same time allowing other necessary and important movement. As the Order cannot withstand strict scrutiny—or any other form of scrutiny—it must be rescinded immediately.

## **II. The Order Is Overbroad and Chills Religious and Expressive Activity Protected by the First Amendment.**

A statute or regulation is overbroad if it “does not aim specifically at evils within the allowable area of [governmental] control, but ... sweeps within its ambit other activities in ordinary circumstances that constitute an exercise” of protected expression and conduct. *Thornhill v. State of Alabama* (1940) 310 U.S. 88, 97. In *Gatto v. Cty. of Sonoma* (2002) 98 Cal. App. 4th 744, 750, for example, the California Court of Appeal held that the Sonoma County Fair dress code was overbroad and void for vagueness. There, the county ejected the plaintiff from the fair for wearing a jacket adorned with a Hell’s Angel insignia because it was deemed “provocative.” *Id.* at 750. The Court of Appeal held the county’s dress code failed to pass constitutional muster.

Here, the Order broadly prohibits entire swaths of activities, including religious, travel, and speech comprising the majority of activities most Californians perform on a daily basis, without any effort to except constitutionally-protected activities. In addition to banning all out-of-home religious activities, the Order requires that all individuals “wear face

Riverside County

April 8, 2020

Page 3 of 6

coverings, such as scarves (dense fabric, without holes,) bandanas, neck gaiters, or other fabric face coverings.” Basically, this order mandates people wear face coverings 24 hours a day, 7 days a week, regardless if they are in their home or car, and without regard to the health or expressive concerns implicated by this blanket, one-size-fits-all order.

Courts consistently recognize that clothing may give rise to protected, speech activities. *See, e.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist.* (1969) 393 U.S. 503. The County’s compulsory wearing of face coverings necessarily inhibits—through prior restraint no less—all expressive conduct related to facial adornments, and may even compel citizens to speak when they would otherwise not. *Janus v. Am. Fed’n of State, Cty., & Mun. Employees, Council 31* (2018) 138 S. Ct. 2448, 2464 [“Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason, one of our landmark free speech cases said that a law commanding “involuntary affirmation” of objected-to beliefs would require “even more immediate and urgent grounds” than a law demanding silence.”]. Even where such clothing is not expressive *per se*, the forced dress still violates citizen’s protected liberty interest in choosing their own attire. *See Karr v. Schmidt* (5th Cir.1972) 460 F.2d 609, 621 (dis. opn. of Wisdom, J.) [“[f]orced dress ... humiliates the unwilling complier, forces him to submerge his individuality in the ‘undistracting’ mass, and in general, smacks of the exaltation of organization over member, unit over component, and state over individual.”]. Accordingly, the Order runs afoul of the overbreadth doctrine and is wholly unconstitutional.

### **III. The Order Is Void for Vagueness.**

A regulation is constitutionally void on its face when, as matter of due process, it is so vague that persons “of common intelligence must necessarily guess at its meaning and differ as to its application” *Connally v. General Const. Co.* (1926) 269 U.S. 385, 391; *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115. The void for vagueness doctrine is designed to prevent arbitrary and discriminatory enforcement. *Ketchens v. Reiner* (1987) 194 Cal.App.3d 470, 477. The problem with a vague regulation is that it “impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis....” *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108–109.

Here, the Order is vague for several reasons, including but not limited to those addressed below.

#### **A. The Order Relies on Inapplicable Authority.**

The County states that the Order is authorized by California Health and Safety Code Sections 101085. This is simply incorrect. Emergency powers exercised pursuant to Section 101085 require that an emergency be declared pursuant to Section 101080, which in turn applies only when “a release, spill, escape, or entry of waste occurs as described in paragraph (2) of subdivision (b) of Section 101075.” Since there is no “release, spill, escape, or entry of waste,” Section 101085 is not applicable, and the Order is void.

Riverside County

April 8, 2020

Page 4 of 6

## **B. Governor Newsom's Order Requires Only that Persons "Heed" the Public Health Official's "Stay-at-Home" Notice.**

The County brazenly mischaracterizes Governor Newsom's March 19, 2020 Executive Order N-33-20

Contrary to the County's assertions in the Order, Governor Newsom's order does *not* state that "all individuals living in the State of California [are] to stay home or at their place of residence ...". A careful reading of the Governor's order reveals that residents are only instructed to "heed" State public health directives ...". According to Meriam-Webster, the plain meaning of the word "heed" is "to give consideration or attention to"—not to submit or comply with, as suggested by the County's interpretation. Governor Newsom's order that California residents give careful thought to the directives of the Department of Public Health does not equate to an order to comply with those directives.

The Public Health directive itself carries no legal weight, despite nominally "ordering" that all persons not engaging in essential activities stay at home. Under established California law, the Public Health Department cannot forcibly quarantine persons unless there is probable cause that such persons are actually infected. *Ex parte Martin* (1948) 83 Ca.App.2d 164, 167; *Jew Ho v. Williamson* (C.C. Cal. 1900) 103 F. 10 [San Francisco's quarantine to contain bubonic plague in May 1900 found to be unreasonable]; *Wong Wai v. Williamson* (CC Cal. 1900) 103 F. 1 [holding that San Francisco's May 1900 quarantine violated rights secured by the Equal Protection Clause]; see also *Ex parte Arta* (1921) 52 Cal.App. 380, 383 ["a mere suspicion, unsupported by facts giving rise to reasonable or probable cause, will afford no justification at all for depriving persons of their liberty and subjecting them to virtual imprisonment under a purported order of quarantine."]. As such, directives from California public health officials are enforceable only to the extent there exists probable cause that *each* such non-essential worker has contracted Covid-19—which is clearly not the case. Absent such probable cause, the directive has no legally enforceable effect as to any person not shown to be exposed within the meaning of the statute and precedent.

## **IV. The Order Violates the Fundamental Right to Travel.**

The United States Supreme Court has held that the "right to travel is a part of the liberty of which the citizen cannot be deprived without the due process of law under the Fifth Amendment." *Kent v. Dulles* (1958) 357 U.S. 116, 126. The Court found that "[t]ravel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values." *Id* at 126. They have also ruled that the "right to travel is an unconditional personal right, a right whose exercise may not be conditioned." *Dunn v. Blumstein* (1972) 405 U.S. 330, 341.

Court's apply the compelling state interest test to assess the constitutionality of the government's action when that action implicates the fundamental right to travel. *See, e.g., Memorial Hospital v. Maricopa County* (1974) 415 U.S. 250; *Dunn v. Blumstein* (1972) 405 U.S. 330; and *Shapiro v. Thompson*, (1969) 394 U.S. 618. Under the compelling state interest test, the government must prove that there is a "clear showing that the burden imposed is

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Riverside County

April 8, 2020

Page 5 of 6

necessary to protect a compelling and substantial governmental interest.” *Dunn* at 341. The *Dunn* Court continued by finding that in order to prove that there is a substantial government interest, the government “cannot choose means that unnecessarily burden or restrict constitutionally protected activity”, that the statute must be “drawn with precision”, and “must be tailored to serve their legitimate objectives.” *Dunn* at 343.

The County fails to satisfy this standard. The County is picking and choosing who can be open and who cannot be open. As such, the Order is not narrowly tailored and the fact that the County is not allowing businesses or churches to attempt to practice social distancing clearly shows that the government is not executing a plan that is the least restrictive one possible – in fact it has imposed the *most* restrictive possible means of accomplishing its ends.

#### **V. The Mandate to Wear a Mask has a Disproportionate Impact Upon the Poor.**

The April 6<sup>th</sup> Order also violates the Equal Protection Clause, by mandating that all persons must wear a face covering, disproportionately affecting indigent residents of the County. Indeed, those without facial coverings cannot exercise fundamental constitutional rights – including leaving their home for essential goods and services – while more affluent individuals may be able to comply. This Order does not provide for the provision to purchase such face coverings for those who do not already have suitable masks and are not able to afford them.<sup>2</sup>

The Order mandates that everyone use or purchase suitable masks in order to comply with the Order. As such, at a minimum, the County needs to have provisions in place to fund the purchase of the applicable masks for those who cannot afford them. It fails to provide for this, and therefore cannot rest the exercise of fundamental rights on people’s ability to afford those rights. Furthermore, this order offers no exception for those people who comfortably cannot wear a mask due to other medical conditions.

#### **VI. The Order Fails to Properly Educate the Public on Proper Use of the Mask.**

Finally, the April 6<sup>th</sup> Order seems to be grossly negligent in that it mandates the wearing of cloth masks without any instruction to the public as to how to properly maintain the mask or how often it is to be changed. In light of all the contradictory evidence being presented on mask use, if the County is going to mandate it, they owe a duty to the general public to ensure that along with the order, proper instructions are given as to how to use and maintain the mask for public health. For example, instructions on washing, re-use – and the real risk of re-infection through the use of a mask.

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<sup>2</sup> In other contexts, for example, California law prohibits schools from imposing a dress code on children unless there are adequate provisions to “assist economically disadvantaged pupils”. Educ. Code § 35183(d). Likewise, employers who mandate that an employee must wear a uniform are required to pay for that uniform. Labor Code § 2802.

Riverside County

April 8, 2020

Page 6 of 6

In conclusion, for the foregoing reasons, we feel that the Order is defective and must be immediately rescinded in order to limit the County's liability for violations to residents' constitutional rights. Our firm is preparing the necessary paperwork to file a suit seeking immediate relief. Failure to rescind this order by the end of business on April 9<sup>th</sup> will result in a lawsuit being filed.

Regards,

A handwritten signature in blue ink, appearing to read "Harmeet K. Dhillon". The signature is fluid and cursive, with the first name "Harmeet" being more prominent.

Harmeet K. Dhillon

## **Exhibit 7**



April 10, 2020

Riverside County  
**NEWS RELEASE**

Contact:  
Brooke Federico  
(951) 743-0075  
[bcfederico@rivco.org](mailto:bcfederico@rivco.org)

## **Drive-in religious services permitted this weekend only**

Drive-up church services that practice proper social distancing will be allowed this weekend in Riverside County, although the order to prohibit such activities will remain after Easter Sunday.

The clarification is issued from County Executive Officer George Johnson, who is the Director of Emergency Services during emergencies and disasters. This clarification is issued today, April 10 (Friday) and includes drive-up services for April 10, 11 and 12 (Easter).

Health officials continue to believe that residents should remain at home and only travel for essential services, such as grocery shopping, trips to the pharmacy and purchasing gasoline. The order remains until April 30.

They are also required to wear a face covering whenever they leave their residences.

# # #

## **Exhibit 8**

 An official website of the United States government  
[Here's how you know](#)



## Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, April 14, 2020

# Attorney General William P. Barr Issues Statement on Religious Practice and Social Distancing; Department of Justice Files Statement of Interest in Mississippi Church Case

Attorney General William P. Barr issued the following statement:

"In light of the COVID-19 pandemic, the President has issued guidelines calling on all Americans to do their part to slow the spread of a dangerous and highly contagious virus. Those measures are important because the virus is transmitted so easily from person to person, and because it all too often has life-threatening consequences for its victims, it has the potential to overwhelm health care systems when it surges.

To contain the virus and protect the most vulnerable among us, Americans have been asked, for a limited period of time, to practice rigorous social distancing. The President has also asked Americans to listen to and follow directions issued by state and local authorities regarding social distancing. Social distancing, while difficult and unfamiliar for a nation that has long prided itself on the strength of its voluntary associations, has the potential to save hundreds of thousands of American lives from an imminent threat. Scrupulously observing these guidelines is the best path to swiftly ending COVID-19's profound disruptions to our national life and resuming the normal economic life of our country. Citizens who seek to do otherwise are not merely assuming risk with respect to themselves, but are exposing others to danger. In exigent circumstances, when the community as a whole faces an impending harm of this magnitude, and where the measures are tailored to meeting the imminent danger, the constitution does allow some temporary restriction on our liberties that would not be tolerated in normal circumstances.

But even in times of emergency, when reasonable and temporary restrictions are placed on rights, the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. Thus, government may not impose special restrictions on religious activity that do not also apply to similar nonreligious activity. For example, if a government allows movie theaters, restaurants, concert halls, and other comparable places of assembly to remain open and unrestricted, it may not order houses of worship to close, limit their congregation size, or otherwise impede religious gatherings. Religious institutions must not be singled out for special burdens.

Today, the Department filed a Statement of Interest in support of a church in Mississippi that allegedly sought to hold parking lot worship services, in which congregants listened to their pastor preach over their car radios, while sitting in their cars in the church parking lot with their windows rolled up. The City of Greenville fined congregants \$500 per person for attending these parking lot services – while permitting citizens to attend nearby drive-in restaurants, even with their windows open.[1] The City appears to have thereby singled churches out as the only essential service (as designated by the state of Mississippi) that may not operate despite following all CDC and state recommendations regarding social distancing.

As we explain in the Statement of Interest, where a state has not acted evenhandedly, it must have a compelling reason to impose restrictions on places of worship and must ensure that those restrictions are narrowly tailored to advance its compelling interest. While we believe that during this period there is a sufficient basis for the social distancing rules that



have been put in place, the scope and justification of restrictions beyond that will have to be assessed based on the circumstances as they evolve.

Religion and religious worship continue to be central to the lives of millions of Americans. This is true more so than ever during this difficult time. The pandemic has changed the ways Americans live their lives. Religious communities have rallied to the critical need to protect the community from the spread of this disease by making services available online and in ways that otherwise comply with social distancing guidelines.

The United States Department of Justice will continue to ensure that religious freedom remains protected if any state or local government, in their response to COVID-19, singles out, targets, or discriminates against any house of worship for special restrictions."

[1] The City has since stated it will drop the fines, but will continue to enforce the order.

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**Attachment(s):**

[Download Statement of Interest](#)

**Component(s):**

[Office of the Attorney General](#)

**Press Release Number:**

20-380

*Updated April 14, 2020*

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12 Attorneys for Plaintiffs

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **EASTERN DIVISION**

16 **WENDY GISH**, an individual, *et al.*,  
17 Plaintiffs,

18 v.

19 **GAVIN NEWSOM**, in his official  
20 capacity as Governor of California, *et al.*,  
21 Defendants.

Case Number: 5:20-cv-00755

22 **DECLARATION OF WENDY**  
23 **GISH IN SUPPORT OF**  
24 **PLAINTIFFS' APPLICATION**  
25 **FOR TEMPORARY**  
26 **RESTRAINING ORDER**

27 Date: April 14, 2020  
28 Judge: Unassigned

1 I, Wendy Gish declare:

2 1. I am a resident of San Bernardino County, California.

3 2. I attend Shield of Faith Family Church located in Fontana, California.

4 3. My sincerely held religious belief is that God commands me, and other  
5 believers, to regularly come together to worship Him. This belief comes directly from  
6 Scripture. In Hebrews 10:25, it says, “Let us not neglect meeting together, as some  
7 have made a habit, but let us encourage one another, and all the more as you see the  
8 Day approaching.”

9 4. I regularly attend church services on Sundays and Wednesdays at Shield  
10 of Faith Family Church.

11 5. I believe the Governor’s shelter-in-place order and the County’s order  
12 burden my ability to practice my faith according to the dictates of my conscience.

13 6. If this temporary restraining order is granted, I will attend in-person  
14 church regularly, as is my sincerely held religious belief, but do so in a manner that is  
15 responsible, adhering to social distancing guidelines—I will wear gloves, a mask, and  
16 sit six feet apart from the next family unit.

17 7. To my knowledge, I have never had or contracted the coronavirus. I do  
18 not believe that I’ve ever been in close proximity or exposed to it.

19 I declare under penalty of perjury under the laws of the United States of  
20 America that the foregoing is true and correct and is executed this 14th day of April,  
21 2020, at San Bernardino County, California.

22 Dated: April 14, 2020

23 \_\_\_\_\_  
24 Wendy Gish

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12 Attorneys for Plaintiffs

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **EASTERN DIVISION**

16 **WENDY GISH**, an individual, *et al.*,

17 Plaintiffs,

18 v.

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

21 Defendants.

Case Number: 5:20-cv-00755

22 **DECLARATION OF JAMES**  
23 **MOFFATT IN SUPPORT OF**  
24 **PLAINTIFFS' APPLICATION**  
25 **FOR TEMPORARY**  
26 **RESTRAINING ORDER**

27 Date: April 14, 2020

28 Judge: Unassigned

1 I, James Moffatt, declare:

2 1. I am a resident of Riverside County, California.

3 2. I am the pastor of Church Unlimited in Indio, California.

4 3. It is my sincerely held religious belief that Hebrews 10:25 is a command  
5 from God. I believe that Christians must meet together, in-person, regularly. I also  
6 believe that moving our services to an exclusively online platform would go against  
7 my faith. If my congregation is not allowed to gather in person, we will be in a  
8 situation where we have to decide whether to be obedient to God or to our local  
9 government.

10 4. Upon hearing of the Coronavirus, our church building was immediately  
11 cleaned and disinfected to the best of our ability.

12 5. On April 9, 2020, I was threatened with a fine of \$1,000 for holding a  
13 church service on April 5, 2020, Palm Sunday. During this service, the congregation  
14 adhered to social distancing requirements.

15 6. Two days before being fined, on April 7, 2020, Deputy Counsel Kelly  
16 Moran called me. The conversation was initially cordial. She asked me about our  
17 Palm Sunday service. But her tone quickly changed to threatening insisting that  
18 Church Unlimited stop meeting in person. She threatened me with a civil complaint  
19 explaining that the full force of the government would be against me, "alone."

20 7. I feel like I am being targeted for my faith—for my desire to be obedient  
21 to God. I see retailers open for business, yet my church, and my personal ministry, are  
22 being monitored and shut down by law enforcement, even though we follow the same  
23 social distancing guidelines as "essential" retailers.

24 8. The prohibition of church in-person gatherings, and the subsequent  
25 \$1,000 fine that I received for being obedient to God as a pastor on Palm Sunday, are  
26 a burden on my free exercise of religion.  
27  
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1           9.     God has called me to a life of service. I served my country in the United  
2 States Army. For more than 15 years I've served as a Correctional Sergeant at the  
3 Riverside County Sheriff's Department. I currently serve incarcerated individuals at  
4 the Riverside County Jail as a Jail Chaplain. I serve others because of Jesus's  
5 example. Mark 10:45 says, "For even the Son of Man did not come to be served, but  
6 to serve..." It is my hope to continue to serve my community, through Church  
7 Unlimited, by sharing with them hope, and faith, and love.

8           10.    If this temporary restraining order is granted, our church will hold in-  
9 person church services adhering to social distancing guidelines. I will continue to  
10 encourage congregants to sit six feet apart, to wash hands, and for those feeling sick to  
11 stay home. I also placed hand sanitizer stations in the lobby so that upon entering our  
12 church building, all congregants can clean their hands.

13           11.    To my knowledge, I have never had or contracted the coronavirus. I do  
14 not believe that I've ever been in close proximity or exposed to it.

15           12.    Prior to the coronavirus, I conducted services on Sundays and  
16 Wednesdays.

17           13.    It is my desire to keep the doors of my church open to the needs of my  
18 community by conducting services each Sundays and Wednesdays.

19           14.    I am aware that history is full of examples of how during the Black  
20 Plague in Europe, religious leaders were essential to helping take care of the needs of  
21 those around them.

22           15.    I believe that as a pastor, it is my duty both towards my God and to my  
23 community to keep the doors of my church open so that I can serve both the physical  
24 and spiritual needs of not only my congregants but also my community.

25           I declare under penalty of perjury under the laws of the United States of  
26 America that the foregoing is true and correct and is executed this 14th day of April,  
27  
28



2020, at Riverside County, California.

Dated: April 14, 2020

DocuSigned by:  
*James Moffatt*  
80DF67D5F1C5496...  
James Moffatt

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13 **UNITED STATES DISTRICT COURT**  
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16 **WENDY GISH**, an individual, *et al.*,  
17 Plaintiffs,  
18 v.  
19 **GAVIN NEWSOM**, in his official  
20 capacity as Governor of California, *et al.*,  
21 Defendants.

Case Number: 5:20-cv-00755

22 **DECLARATION OF PATRICK**  
23 **SCALES IN SUPPORT OF**  
24 **PLAINTIFFS' APPLICATION**  
25 **FOR TEMPORARY**  
26 **RESTRAINING ORDER**

27 Date: April 14, 2020  
28 Judge: Unassigned

1 I, Patrick Scales declare:

2 1. I am a resident of San Bernardino County, California.

3 2. I am the pastor of Shield of Faith Family Church in Fontana, California.

4 3. As a pastor, I believe that I have a duty to God to tend to the spiritual  
5 health of my congregation. This includes meeting in-person regularly where I preach,  
6 pray, and encourage congregants.

7 4. Hebrews 10:25, it says, "Let us not neglect meeting together, as some  
8 have made a habit, but let us encourage one another, and all the more as you see the  
9 Day approaching." I believe the Bible is very clear here; regular in-person church  
10 services are a command from God.

11 5. At Shield of Faith Family Church, we offer services on Sunday morning,  
12 Wednesday evening, and Friday evening.

13 6. I am concerned that my church will no longer be able to exist, under the  
14 prohibitions against communal gatherings. I believe these prohibitions—both on the  
15 state level and county level—have a chilling effect on the exercise of our faith.

16 7. If this temporary restraining order is granted, our church services will  
17 adhere to social distancing guidelines. The congregation will wear gloves. They will  
18 wear masks. And, family units will sit six feet apart. We will also encourage anyone  
19 who is sick, or exhibiting cold or flu symptoms, to stay home.

20 8. To my knowledge, I have never had or contracted the coronavirus. I do  
21 not believe that I've ever been in close proximity or exposed to it.

22 9. I am aware that history is full of examples of how during the Black  
23 Plague in Europe, religious leaders were essential to helping take care of the needs of  
24 those around them.

25 10. I believe that as a pastor, it is my duty both towards my God and to my  
26 community to keep the doors of my church open so that I can serve both the physical  
27  
28

1 and spiritual needs of not only my congregants but also my community.

2 I declare under penalty of perjury under the laws of the United States of  
3 America that the foregoing is true and correct and is executed this 14th day of April,  
4 2020, at San Bernardino County, California.

5  
6 Dated: April 14, 2020

7 \_\_\_\_\_  
Patrick Scales  
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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **EASTERN DIVISION**

16 **WENDY GISH**, an individual, *et al.*,  
17 Plaintiffs,

18 v.

19 **GAVIN NEWSOM**, in his official  
20 capacity as Governor of California, *et al.*,  
21 Defendants.

Case Number: 5:20-cv-00755

22 **DECLARATION OF BRENDA**  
23 **WOOD IN SUPPORT OF**  
24 **PLAINTIFFS' APPLICATION**  
25 **FOR TEMPORARY**  
26 **RESTRAINING ORDER**

27 Date: April 14, 2020  
28 Judge: Unassigned

1 I, Brenda Wood declare:

2 1. I am a resident of Riverside County, California.

3 2. I am the pastor of Word of Life Ministries International Inc. in Riverside,  
4 California.

5 3. On Sunday mornings, we average between 20 and 30 people in service.

6 4. As a Christian, I believe the Scripture in Hebrews 10:25 tells us to meet  
7 together to encourage one another. This is especially true is days like today where  
8 people desperately need a message of hope.

9 5. I feel intimidated by the state's and county's criminalization of holding a  
10 drive-in church service. I am afraid that I will be fined or put in jail for serving my  
11 church, as pastor, in the manner that I believe God has called me to serve.

12 6. If this temporary restraining order is granted, our church services will  
13 adhere to social distancing guidelines. Services will continue to be made available  
14 online. We will also host drive-in church services that take place in our parking lot.  
15 Cars will be parked six feet apart. Congregants will be encouraged to participate in the  
16 services from their cars. We will use a short-wave radio that can be played through car  
17 stereos. We will also utilize a portable PA system. Communion will be served by a  
18 person wearing a mask and gloves; all of the communion elements are pre-packaged  
19 individually—both the cup and the wafer. The person handing out the individually  
20 packaged communion elements will do so with tongs. To further adhere to social  
21 distancing, we will postpone baptisms.

22 7. To my knowledge, I have never had or contracted the coronavirus. I do  
23 not believe that I've ever been in close proximity or exposed to it.

24 8. I am aware that history is full of examples of how during the Black  
25 Plague in Europe, religious leaders were essential to helping take care of the needs of  
26 those around them.  
27  
28



1           9. I believe that as a pastor, it is my duty both towards my God and to my  
2 community to keep the doors of my church open so that I can serve both the physical  
3 and spiritual needs of not only my congregants but also my community.

4           I declare under penalty of perjury under the laws of the United States of  
5 America that the foregoing is true and correct and is executed this 14th day of April,  
6 2020, at Riverside County, California.

7  
8  
9 Dated: April 14, 2020\_

\_\_\_\_\_  
Brenda Wood

## APPENDIX 23

No. 20-55445

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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WENDY GISH, *et al.*,  
Plaintiffs and Appellants,

v.

GAVIN NEWSOM,  
in his official capacity as Governor of California, *et al.*,  
Defendants and Appellees.

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On Appeal from the Order of the United States  
District Court for the Central District of California  
The Honorable Jesus G. Bernal  
District Court Case Number: 5:20-00755-JGB-KK

---

**EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 AND FRAP 8  
FOR INJUNCTION PENDING APPEAL  
OR ALTERNATIVELY TO EXPEDITE APPEAL**

***IMMEDIATE RELIEF REQUESTED***

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## TABLE OF CONTENTS

CIRCUIT RULE 27-3 CERTIFICATE.....	vii
INTRODUCTION.....	1
STATEMENT OF JURISDICTION.....	2
FACTUAL BACKGROUND .....	3
THE PROCEEDINGS BELOW .....	8
RELIEF SOUGHT .....	9
LEGAL STANDARD .....	9
ARGUMENT .....	10
I. THIS COURT SHOULD ENJOIN ENFORCEMENT OF APPELLEES’ SHELTER-IN-PLACE ORDERS AGAINST SOCIALLY- DISTANCED RELIGIOUS ACTIVITIES PENDING THIS APPEAL. ....	10
A. Appellants Are Likely to Succeed on the Merits.....	10
1. The Shelter-In-Place Orders violate Appellants’ fundamental rights, including freedom of religion, assembly, speech, due process, and equal protection. ....	11
2. The presence of an emergency does not subjugate fundamental rights to executive whims.....	14
B. Appellants Face Imminent Irreparable Harm Absent Immediate Injunctive Relief. ....	16
C. Appellants Satisfy the Remaining Factors for Injunctive Relief. ....	17
II. ALTERNATIVELY, THE COURT SHOULD EXPEDITE THIS APPEAL.....	18
CONCLUSION .....	19
CERTIFICATE OF COMPLIANCE .....	21
CERTIFICATE OF SERVICE.....	22

## TABLE OF AUTHORITIES

<b>Case</b>	<b>Page(s)</b>
-------------	----------------

### UNITED STATES CONSTITUTION

U. S. Const. amend. I.....	11
----------------------------	----

### CALIFORNIA CONSTITUTION

Cal. Const. Art. 1, § 1.....	11
Cal. Const. Art. 1, § 2.....	11
Cal. Const. Art. 1, § 3.....	11
Cal. Const. Art. 1, § 4.....	11

### CASES

<i>All. for Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011).....	10, 11
<i>Americans for Prosperity Foundation v. Harris</i> , 182 F. Supp. 3d 1049 (C.D. Cal. 2016).....	17
<i>Cantwell v. Connecticut</i> , 310 U.S. 296 (1940).....	11
<i>Catholic Charities of Sacramento, Inc. v. Superior Court</i> , 32 Cal. 4th 527 (2004) .....	11
<i>Church of the Lukumi Babalu Aye, Inc. v. Hialeah</i> , 508 U.S. 520 (1993).....	12
<i>College Republicans at San Francisco State University v. Reed</i> , 523 F. Supp. 2d 1005 (N.D. Cal. 2007). ....	16, 17
<i>Connally v. General Const. Co.</i> , 269 U.S. 385 (1926).....	13
<i>De Jonge v. Oregon</i> , 299 U.S. 353 (1937).....	15

<i>Dunn v. Blumstein</i> , 405 U.S. 330 (1972).....	14
<i>Earth Island Inst. v. United States Forest Serv.</i> , 351 F.3d 1291 (9th Cir. 2003).....	10
<i>Edwards v. South Carolina</i> , 372 U.S. 229 (1963).....	15
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976).....	16
<i>Envtl. Defense Fund, Inc. v. Andrus</i> , 625 F.2d 861 (9th Cir. 1980).....	2
<i>First Baptist Church v. Kelly</i> , No. 20-1102-JWB, 2020 WL 1910021 (D. Kan. Apr. 18, 2020).....	13, 16
<i>G &amp; V Lounge, Inc. v. Mich. Liquor Control Comm’n</i> , 23 F.3d 1071 (6th Cir. 1994).....	17
<i>Gitlow v. New York</i> , 268 U.S. 652 (1925).....	15
<i>Granny Goose Foods, Inc. v. Brotherhood of Teamsters &amp; Auto Truck Drivers</i> , 415 U.S. 423 (1974).....	9
<i>In re Abbott</i> , 954 F.3d 772 (5th Cir. 2020).....	19
<i>Jacobson v. Commonwealth of Massachusetts</i> , 197 U.S. 11 (1905).....	14, 16
<i>McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.</i> , 545 U.S. 844 (2005).....	12
<i>New York Times Co. v. United States</i> , 403 U.S. 713 (1971).....	15
<i>On Fire Christian Ctr., Inc. v. Fischer</i> , No. 3:20-CV-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020).....	12



<i>Religious Tech. Ctr., Church of Scientology Int’l, Inc. v. Scott</i> , 869 F.2d 1306 (9th Cir. 1989).....	2
<i>Robinson v. Marshall</i> , No. 2:19CV365-MHT, 2020 WL 1847128 (M.D. Ala. Apr. 12, 2020).....	16
<i>S.O.C., Inc. v. Cnty. of Clark</i> , 152 F.3d 1136 (9th Cir. 1998).....	17
<i>Sammartano v. First Jud. Dist. Ct.</i> , 303 F.3d 959 (9th Cir. 2002).....	16, 17
<i>San Antonio Indep. Sch. Dist. v. Rodriguez</i> , 411 U.S. 1 (1973).....	14
<i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (2018).....	13
<i>Stormans, Inc. v. Selecky</i> , 586 F.3d 1109 (9th Cir. 2009).....	17
<i>Stormans, Inc. v. Wiesman</i> , 794 F.3d 1064 (9th Cir. 2015).....	12
<i>Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush &amp; Co., Inc.</i> , 240 F.3d 832 (9th Cir. 2001).....	9
<i>Widmar v. Vincent</i> , 454 U.S. 263 (1981).....	12
<i>Winter v. Natural Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	10

## STATUTES

28 U.S.C. § 1292(a)(1).....	2
28 U.S.C. § 1657.....	18

## RULES

Fed. R. App. P. 27.....	18
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### **CIRCUIT RULE 27-3 CERTIFICATE**

The undersigned counsel certifies the following:

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**(2) Facts showing the existence and nature of the emergency:**

This appeal follows the April 23, 2020 Order of the U.S. District Court, Central District of California, which denied Plaintiffs-Appellants’ emergency motion for temporary and preliminary injunctive relief. A copy of the Order is attached here as **Exhibit A**.

In a facially overbroad response to the coronavirus pandemic, at a time when Californians of faith need spiritual solace most, Defendants-Appellees—all of whom are California State and county officials—have criminalized communal religious gatherings across California. In March and April 2020, Appellees issued a series of orders requiring the public to shelter in place until further notice, including: (1) the March 19, 2020 Executive Order N-20-33 (“Executive Order”) issued by California Governor Gavin Newsom, attached here as **Exhibit B**; and (2) the April 7, 2020 “Order of the Health Officer of the County of San Bernardino for the Control of COVID-19” (the “San Bernardino Order”) attached here as **Exhibit C**. The Executive Order and San Bernardino Order are hereafter referred to as the “Shelter-In-Place Orders.”<sup>1</sup>

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<sup>1</sup> In the district court, Appellants also challenge a shelter-in-place order issued by Riverside County officials. Appellants understand that Riverside County now relies solely on the Executive Order for purposes of enforcement. *See* [https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/News/4.29.20\\_kaiser\\_order\\_CLARIFICATION.pdf?ver=2020-04-29-160508-500&timestamp=1588201557824](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/News/4.29.20_kaiser_order_CLARIFICATION.pdf?ver=2020-04-29-160508-500&timestamp=1588201557824). Accordingly, Appellants seek emergency injunctive relief as to the Executive Order and San Bernardino Order, only.

Despite nominally applying to all persons in California, the Shelter-In-Place Orders permit “essential” businesses (as determined by Appellees on an *ad hoc* basis) to continue operations provided they comply with social distancing protocols that by now have become familiar to all Americans—namely, by having customers remain six feet apart. These essential businesses include, for example, grocery stores, marijuana dispensaries, hardware stores, and shipping providers.

No such accommodation is afforded to houses of worship and their congregants. Thus, Appellants—each of whom are practicing Christians, and three of whom are religious leaders in their respective communities—may lawfully stand six feet apart in line with dozens of strangers while waiting to pay for groceries. They may shop for hammers in aisle 6 with several strangers. They may linger in the wine section of any number of alcohol retailers in California for an unlimited time. But if they attempt to enter their house of worship for the purpose of receiving or providing the Sacrament of Holy Communion, however, they are labeled criminals and may be arrested, imprisoned for up to ninety days, and fined up to one thousand dollars.

There is only one meaningful difference between these activities: the activities permitted by the State are motivated by secular concerns (physical sustenance, home improvement/maintenance, or consuming alcohol), while the latter is motivated by religious conviction (spiritual sustenance). And yet, of these

actions, the Shelter-In-Place Orders expressly criminalize only the actions undertaken with the *religious purpose*. Even though many other gatherings are also banned, the wide array of activities that are *permitted* under the Shelter-in-Place orders, makes it clear that the government has selected winners and losers in the enjoyment of civil rights in a manner that places religion at a lower level of importance than numerous secular actions. Falling woefully short of a neutral order of general applicability, the Shelter-In-Place Orders facially criminalize certain acts only when motivated by religious belief.<sup>2</sup> This, the U.S. and California Constitutions do not abide, even for a day.

On April 13, 2020, Appellants filed suit, challenging the Shelter-In-Place Orders and moving for a temporary restraining order and an order to show cause why preliminary injunctive relief should not issue. Dkts.<sup>3</sup> 1, 8. On April 23, 2020, following a full briefing and hour-long telephone hearing on the matter, the U.S. District Court, Central District of California issued an Order denying Plaintiffs-Appellants' motion. Ex. A. A copy of the reporter's transcript of the hearing is

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<sup>2</sup> Other examples include: (1) socially distancing in a park (permitted) versus socially distancing at a cemetery for a funeral (prohibited); (2) performing an elective surgery at a hospital (permitted) versus performing a baptism (prohibited); and (3) providing plumbing services at another's home (permitted) versus providing the Sacrament of Reconciliation (prohibited).

<sup>3</sup> All citations to "Dkt." in this filing refer to the district court's docket for this case.



attached here as **Exhibit D**. In it, the court did not grant Appellants' request, in their moving papers and at the hearing, for a preliminary injunction hearing.

With each passing moment, Appellants suffer irreparable harm of the worst caliber: a severe deprivation of religious liberty. This Court should therefore immediately enjoin enforcement of Appellees' orders against religious activities that comply with the same social distancing protocols that "essential" businesses follow. *See, e.g., Pickup v. Brown*, No. 12-17681, 2012 WL 6869637, at \*1 (9th Cir. Dec. 21, 2012) (granting an injunction pending an appeal following denial of preliminary injunction motion).

**(3) When and how counsel was notified:**

The undersigned counsel notified counsel for Appellees by email on April 27, 2020 of Appellants' intent to file a notice of appeal and to thereafter request that this Court expedite that appeal. On May 1, 2020, counsel further notified Appellees' counsel and this Court of Appellants' intent to file this Emergency Motion seeking interim injunctive relief. Appellees have indicated that they oppose Appellants' request to expedite, but they have not yet indicated their position as to Appellants' request for emergency injunctive relief.

**(4) Timeliness and Relief Sought Below:**

On April 13, 2020, Appellants filed their Verified Complaint with the district court, followed by their emergency request for temporary and preliminary

injunctive relief on April 14, 2020. Dkts. 1, 8. A copy of the Verified Complaint is attached here as **Exhibit E**. Appellees filed oppositions to the motion on April 17, 2020. Dkts. 13-15. Appellants filed their reply and motion for leave to file the same on April 19.<sup>4</sup> Dkt. 30. On April 22, 2020, the district court held a telephonic hearing on Appellants' motion, and later issued an Order denying the motion on April 23, 2020. Ex. A.

Appellants filed their notice of appeal the following court day, April 27, 2020. Dkt. 52. The transcript for the April 22 hearing was completed and received by counsel on April 30. *See* Dkts. 59-60. Appellants filed this Motion three days thereafter, on May 3, 2020.

Appellants have proceeded in this matter as expeditiously as reasonably possible. They do so in the face of Appellees' Shelter-In-Place Orders, which restrict access to ordinary business environs otherwise available to Appellants and their counsel. Further, since the district court has already refused to provide the interim injunctive relief of the same form sought by this Motion (or even a hearing on such relief), Appellants submit that filing a repetitive request with the district court for relief pending this appeal would be impracticable and waste judicial resources; the district court has already denied Appellants' motion for injunctive

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<sup>4</sup> As of the date of this filing, the district court has not yet issued any order on Appellants' unopposed motion for leave to file the reply.

relief on the same set of facts, after a full briefing, and a nearly hour-long hearing.

Accordingly, Appellants do not intend to file a separate motion in the district court for entry of an injunction pending this appeal.

## INTRODUCTION

Flouting the U.S. and California Constitutions, Appellees have unilaterally decided that communal religious worship is not “essential” during the current coronavirus crisis. Under Appellees’ Shelter-In-Place Orders, secular activities of an indistinguishable nature from religiously-motivated activities are still permitted, provided that certain social distancing protocols are observed. As a result, Appellants and their congregations are free to stroll down the busy aisles of their local grocery store; go to the hospital for certain types of elective surgeries; and even arrange for plumbers, electricians, and exterminators to come into their homes for extended periods. Yet, they cannot go to church; attend a baptism; gather to pray for the sick and dying; or even attend an outdoor funeral service for departed loved ones, regardless of the precautions they may take.

The Shelter-In-Place Orders violate Appellants’ fundamental rights to religious liberty, freedom of speech and assembly, and due process and equal protection under the law. Accordingly, Appellants respectfully request that this Court grant their Emergency Motion and enjoin enforcement of the orders against religious activities compliant with the Center for Disease Control’s social distancing standards pending this appeal, or, alternatively, expedite this appeal.

## STATEMENT OF JURISDICTION

This Court may hear appeals from interlocutory orders of the District Court, which grant, continue, modify, refuse, or dissolve injunctions. *See* 28 U.S.C. § 1292(a)(1). An order denying a temporary restraining order may be appealable if it is tantamount to the denial of a preliminary injunction. *Religious Tech. Ctr., Church of Scientology Int’l, Inc. v. Scott*, 869 F.2d 1306, 1308 (9th Cir. 1989) (*citing* *Env’tl. Defense Fund, Inc. v. Andrus*, 625 F.2d 861, 862 (9th Cir. 1980)). This is so where the denial followed a “full adversary hearing” and if, “in the absence of review, the appellant would be effectively foreclosed from pursuing further interlocutory relief.” *Andrus*, 625 F.2d at 862.

Here, this Court has jurisdiction over this appeal because the Order below is tantamount to the denial of a preliminary injunction. Appellants had moved for (1) a temporary restraining order and (2) an order to show cause why a preliminary injunction should not issue. Dkt. 8. The district denied their requests following a full briefing on the merits and a lengthy telephonic hearing, at which all parties were represented by counsel. Ex. D.

At the conclusion of the hearing, Appellants’ counsel renewed their request for a further hearing on whether a preliminary injunction should issue. Ex. D. The Honorable Jesus G. Bernal responded by stating that he would “consider that,” and

thereafter issued the Order denying Appellants' motion in full, and without setting any further hearing on Appellants' request for a preliminary injunction. Exs. A, D.

By denying Appellants' motion, the district court effectively decided the merits of the case and foreclosed the possibility of any further interlocutory relief. In the Order, the district court erroneously held, for example, that "as acts of the executive in response to a national emergency, the [Shelter-In-Place] Orders are subject to only minimal scrutiny, which they easily survive." Ex. A, p. 4. The court further held that "even absent consideration of greater leeway afforded to executive acts during a state of emergency, the [Shelter-In-Place] Orders do not violate Plaintiffs' rights under traditional constitutional analysis," because the orders survive rational basis review. Ex. A.

The court's decision, while incorrect, conclusively denies interlocutory injunctive relief. Given the evolving nature of the government's response to the coronavirus outbreak, interlocutory relief may very well be the only relief Appellants may expect to achieve in this action. As such, the district court's order is tantamount to an order denying injunctive relief altogether, which decision this Court has jurisdiction to review.

### **FACTUAL BACKGROUND**

On March 13, 2020, President Donald J. Trump proclaimed a National State of Emergency following an outbreak of a novel coronavirus, COVID-19. Ex. E, ¶



28. In the weeks since, the federal government’s projections of the anticipated national death toll from the virus has decreased substantially.<sup>5</sup> *Id.*

On March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency as a result of the threat of COVID-19. *Id.* at ¶ 30. On March 19, 2020, Newsom issued the Executive Order, requiring that “all residents . . . heed the current State public health directives.” Ex. B. The state public health directive requires “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors . . . .” *Id.* The directive states that it “shall stay in effect until further notice.” *Id.*

On March 22, 2020, the California Public Health Officer designated a list of “Essential Critical Infrastructure Workers.” Ex. L, p. 16-24. Included on the list of the “essential workforce” are variety of activities, including services provided by coffee baristas, grocery stores, and laundromats. The list also includes “faith based services that are provided through streaming or other technology.” *Id.* at p. 26.

Accordingly, the Executive Order prohibits religious leaders from providing

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<sup>5</sup> According to data released by the Center for Disease Control, the percentage of hospital visits for influenza-like illnesses (“ILI”) has fallen sharply in recent weeks and is currently lower than ILI rates at the end of 2019, before any known outbreak of COVID-19 in the United States. <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html>.

communal religious services to their congregations, regardless of whether any non-technological measures might be taken to reduce or eliminate the risk of the virus spreading, such as offering socially-distanced seating for family units, or mask and glove requirements. Ex. E, ¶ 34.

On or about April 7, 2020, Dr. Erin Gustafson signed the San Bernardino Order. Ex. C. As with the Executive Order, the San Bernardino Order “allow[s] faith based services that are provided through streaming or other technology.” *Id.* The order also provides that any violation “is a crime punishable by fine, imprisonment, or both,” and that it will remain in effect “until rescinded.” *Id.*

On April 8, 2020, San Bernardino County issued a “Clarification of religious services and face-covering order” stating that “[o]n the subject of enforcement, the public is advised that although violation of a health order is a violation of the California Health and Safety Code, the County does not expect law enforcement to broadly impose citations on violators.” *Id.* The Clarification further provided that religious organizations that “have planned [] services for the coming [Easter] weekend should proceed with those services if they choose to do so and make every effort to prevent contact between congregants.” *Id.* at ¶ 49.<sup>6</sup>

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<sup>6</sup> In Governor Newsom’s opposition brief filed in the district court, he indicated that drive-in worship services were permitted under the Executive Order as a form of “other technology.” Dkt. 13. Thereafter, San Bernardino and Riverside Counties issued statements indicating that drive-in worship services would henceforth be

Appellant Patrick Scales’ church, Shield of Faith Family Church, Inc., is located in San Bernardino County.<sup>7</sup> *Id.* at ¶ 51; Ex. I. He desires to hold in-person religious services for those congregants who desire to attend church. Ex. E, ¶ 52. Scales believes that he can hold such religious services and abide by social distancing tips recommended by the CDC by keeping congregants at least six feet apart and providing masks and gloves. *Id.* at ¶ 53. He believes that religious services are essential for the spiritual health of the congregation so that the congregants may exhort one another during these difficult times. *Id.* at ¶ 54. Scales recognizes that most of his congregants will stay at home, but he wants to be available for those who are healthy and feel that in-person church service can be safely attended with social distancing and other measures. *Id.* at ¶ 55.

Appellant Wendy Gish attends Shield of Faith Family Church and would attend an in-person church service should it be made available to her.<sup>8</sup> *Id.* at ¶ 56; Ex. G. She regularly attends church services and believes that she has a scriptural command to “not neglect meeting together.” Ex. E, ¶ 57.

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permitted. See <https://www.pe.com/2020/04/17/riverside-san-bernardino-counties-change-course-allow-drive-up-worship/>.

<sup>7</sup> A copy of Scales’ declaration submitted to the district court is attached here as **Exhibit I**.

<sup>8</sup> A copy of Gish’s declaration submitted to the district court is attached here as **Exhibit G**.

Appellant James Moffatt's church, Church Unlimited, is located in Riverside County.<sup>9</sup> *Id.* at ¶ 73; Ex. H. Upon learning about the coronavirus, he immediately had his church building cleaned and disinfected. Ex. E, ¶ 74. Moffatt ensured that sanitizing materials were available to each person who entered his church and encouraged family units to sit at least six feet apart. *Id.* at ¶ 75. He encouraged anyone who was uncomfortable with gathering to stay at home. *Id.* at ¶ 76. He also encouraged anyone experiencing symptoms of illness to stay at home. *Id.* at ¶ 77.

On April 9, 2020, Moffatt was threatened with a fine of one thousand dollars for holding a church service on April 5, 2020, Palm Sunday. Ex. H. But for the Executive Order, Moffatt would continue to hold in-person religious services in Riverside County, while taking the same social distancing precautions taken by the laundry list of "essential businesses" that continue to operate in the county, despite any prevalence of COVID-19. He believes that it is important for Christians to come together, remember, and celebrate all that Jesus has done for this world. *Id.* at ¶ 80.

Appellant Brenda Wood's church, Word of Life Ministries International Inc. is located in Riverside County.<sup>10</sup> *Id.* at ¶ 82; Ex. J. Word of Life Ministries

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<sup>9</sup> A copy of Moffatt's declaration submitted to the district court is attached here as **Exhibit H**.

<sup>10</sup> A copy of Wood's declaration submitted to the district court is attached here as **Exhibit J**.

International Inc. has approximately 20-30 regular attendees. Ex. E, ¶ 83. Wood believes Scripture commands her to provide opportunities for the believers to obey Hebrews 10:25 where the believers meet together and encourage one another. *Id.* at ¶ 84.

During a drive-up Easter Sunday service at her church, communion was served by an individual wearing a mask and gloves and the elements were pre-packaged. Ex. J. The person serving Holy Communion used tongs to remove the communion cups from the pre-packaged box. Ex. E, at ¶ 88. At this time, Wood has postponed all baptisms at her church. *Id.* at ¶ 89. She would like to hold drive-up church services every Sunday, including by following reasonable precautions while sharing Holy Communion with her congregation. *Id.* at ¶ 89.

### **THE PROCEEDINGS BELOW**

On April 13, 2020, Appellants filed their Verified Complaint, followed by an emergency motion for a temporary restraining order and for an order to show cause why a preliminary injunction should not issue on April 14, 2020. Ex. E; Dkt. 8. Appellees filed oppositions to the motion on April 17, 2020. Dkts. 13-15. Appellants filed their reply and motion for leave to file the same on April 19. Dkt. 30. On April 22, 2020, the District Court held a telephonic hearing on Appellants' motion, and later issued the Order denying the motion on April 24, 2020. Exs. A; D.

Appellants filed their notice of appeal on the following court day, April 27, 2020. This Motion followed.

### **RELIEF SOUGHT**

Pursuant to Rule 8(a) of the Federal Rules of Appellate Procedure, Plaintiffs respectfully request that this Court grant injunctive relief pending the outcome of their appeal as follows:

Defendants-Appellees, as well as their agents, employees, and successors in office, shall be restrained and enjoined from enforcing, attempting to enforce, threatening to enforce, or otherwise requiring compliance with any prohibition on Plaintiffs-Appellants' engagement in religious services, practices, or activities at which the Center for Disease Control's social distancing guidelines are followed.

**Alternatively**, Appellants request that this Court issue an order expediting this matter to the extent reasonably possible, including by requiring simultaneous briefing on the merits, and by scheduling a telephonic oral argument for the earliest date available with the Court.

### **LEGAL STANDARD**

A temporary restraining order and preliminary injunction preserves the *status quo* and prevents irreparable harm until a decision may be reached on the merits. *See Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423, 439 (1974); *Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).

This Court has established two sets of criteria for evaluating a request for injunctive relief. *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1297 (9th Cir. 2003). Under the “traditional” criteria, a plaintiff must show (1) a strong likelihood of success on the merits, (2) a likelihood of irreparable injury to plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest. *See, e.g., Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Alternatively, injunctive relief may be appropriate when a movant raises “serious questions going to the merits” and the “balance of hardships tips sharply in the plaintiff’s favor,” provided that the plaintiff is able to show there is a likelihood of irreparable injury and that the injunction is in the public interest. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

## ARGUMENT

### **I. THIS COURT SHOULD ENJOIN ENFORCEMENT OF APPELLEES’ SHELTER-IN-PLACE ORDERS AGAINST SOCIALLY-DISTANCED RELIGIOUS ACTIVITIES PENDING THIS APPEAL.**

#### **A. Appellants Are Likely to Succeed on the Merits.**

Central to each of Appellants’ eleven causes of action asserted under the U.S. and California Constitutions is Appellees’ criminalization of gatherings for



religious purposes.<sup>11</sup> Appellants are likely to succeed on each of their claims, and, at an absolute minimum, they have established serious constitutional questions concerning Appellants' rights, such that immediate injunctive relief is proper. *See Cottrell*, 632 F.3d at 1131.

**1. The Shelter-In-Place Orders violate Appellants' fundamental rights, including freedom of religion, assembly, speech, due process, and equal protection.**

The First Amendment to the U.S. Constitution prohibits government actors from enforcing any “law respecting an establishment of religion, or prohibiting the free exercise thereof.” U. S. Const. amend. I; *see also Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The California Constitution similarly protects the “[f]ree exercise and enjoyment of religion without discrimination or preference.” Cal. Const., Art. 1, § 4; *see also Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562 (2004). “Religious worship and discussion are

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<sup>11</sup> The Verified Complaint asserts the following causes of action: (1) violation of the Free Exercise Clause of First Amendment; (2) violation of the Establishment Clause of First Amendment; (3) violation of the Free Speech Clause of First Amendment; (4) violation of the First Amendment Freedom of Assembly; (5) violation of the Due Process Clause of Fourteenth Amendment by reason of vagueness; (6) violation of substantive rights protected by the Due Process Clause of Fourteenth Amendment; (7) violation of the Equal Protection Clause of Fourteenth Amendment; (8) violation of the Right to Liberty (Cal. Const. Art. 1, § 1); (9) Freedom of Speech (Cal. Const. Art. 1, § 2); (10) Freedom of Assembly (Cal. Const. Art. 1, § 3); and (11) Free Exercise and Enjoyment of Religion (Cal. Const. Art. 1, § 4). Ex. E.

protected speech under the First Amendment.” *Widmar v. Vincent*, 454 U.S. 263, 269, n. 6 (1981).

“[I]f a law pursues the government’s interest ‘only against conduct motivated by religious belief,’ but fails to include in its prohibitions substantial, comparable secular conduct that would similarly threaten the government’s interest, then the law is not generally applicable” and is subject to strict scrutiny. *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1079 (9th Cir. 2015) (citing *Lukumi*, 508 U.S. at 542–46); *see also Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993). Relatedly, the “First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion.” *McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005).

Here, the Shelter-In-Place Orders violate the Free Exercise and Establishment Clauses of First Amendment and related protections provided by the California Constitution. The orders are simultaneously underinclusive—by permitting equally risky non-religiously motivated activities—and overinclusive—by proscribing religious activities to a degree greater than necessary, as made evident by “essential” businesses being allowed to continue operations. *See On Fire Christian Ctr., Inc. v. Fischer*, No. 3:20-CV-264-JRW, 2020 WL 1820249, at \*7 (W.D. Ky. Apr. 11, 2020) (granting a temporary restraining order against

Louisville’s prohibition on religious gatherings); *First Baptist Church v. Kelly*, No. 20-1102-JWB, 2020 WL 1910021, at \*6 (D. Kan. Apr. 18, 2020) (granting a temporary restraining order against Kansas State’s prohibition on religious gatherings).

The orders are also unconstitutionally vague on their faces, indefinite in effect, and afford law enforcement unfettered discretion in deciding which religious ceremonies may be observed and which may not. *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926) (holding that a regulation is constitutionally void on its face when, as matter of due process, it is so vague that persons “of common intelligence must necessarily guess at its meaning and differ as to its application.”); *see also Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018). This discretion has already been exercised by officials, who discriminatorily suspended the orders on an important day for Christians (Easter), without doing so on days important to other faiths.<sup>12</sup>

When a government practice restricts fundamental rights, it is subject to strict scrutiny and can be justified only if it furthers a compelling government

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<sup>12</sup> On April 8, 2020, San Bernardino County officials issued the Clarification, excepting religious services held on Easter weekend from the San Bernardino Order. Ex. F, p. 14. The Clarification further provided that the “County does not expect law enforcement to broadly impose citations on violators.” *Id.* On April 10, 2020, Riverside County officials issued a similar statement, declaring that “[d]rive-in religious services [would be] permitted [Easter] weekend, only.” *Id.* at p. 46.

purpose and, even then, only if no less restrictive alternative is available. *See, e.g., San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973); *Dunn v. Blumstein*, 405 U.S. 330 (1972).

In their current form, the Shelter-In-Place Orders do not allow any gatherings undertaken for a religious purpose, even those that can take place while maintaining CDC guidelines on social distancing. Exs. B-C. This is a substantial burden because it prohibits every Californian from attending religious services during this time of crisis; not all Californians own cars or have access to “other technology” needed to engage in communal worship while sheltering at home. Violators of the orders are liable for harsh criminal penalties including a fine of up to one thousand dollars and imprisonment for up to ninety days. The Shelter-In-Place Orders are unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution, and under Article One, Sections One through Four of the California Constitution. This Court should therefore immediately enjoin enforcement of the orders as to socially-distanced religious practices for the duration of this appeal.

**2. The presence of an emergency does not subjugate fundamental rights to executive whims.**

The district court improperly relied on *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905) when reviewing Appellants’ claims, holding

that during a state of emergency executive actions are reviewed with “minimal scrutiny.” Ex. A. However, *Jacobson* is inapposite to the facts at hand.

In *Jacobson*, the Supreme Court upheld a conviction under a Massachusetts statute that criminalized the defendant’s refusal to vaccinate himself from smallpox, despite the defendant’s assertion that the statute violated his Fourteenth Amendment rights. *Jacobson*, 197 U.S. at 12. *Jacobson* was decided decades before the First Amendment was held to apply to the States by incorporation; it was not a case involving religious liberty. See *Gitlow v. New York*, 268 U.S. 652 (1925) (incorporating the Free Speech Clause against the States); *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937) (Free Assembly Clause); *Edwards v. South Carolina*, 372 U.S. 229 (1963) (Right to Petition). As such, *Jacobson* does not, and could not, control this Court’s analysis of Appellants’ First Amendment claims.

During the 115 years since *Jacobson* was decided, the Supreme Court has developed a substantial and durable body of case law establishing, unequivocally, that a state’s infringement of fundamental rights enshrined by the First Amendment to the U.S. Constitution are subject to the most rigorous form of judicial scrutiny: strict scrutiny. See, e.g., *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) (“The word ‘security’ is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment.”). The Court should not abandon this analysis here, for the first time.

Even under *Jacobson*, government action is still rendered unconstitutional if it “has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law.” *Jacobson*, 197 U.S. at 31; *see also Robinson v. Marshall*, No. 2:19CV365-MHT, 2020 WL 1847128 (M.D. Ala. Apr. 12, 2020) (granting a temporary restraining order to abortion providers) (appeal pending); *First Baptist Church*, No. 20-1102-JWB, 2020 WL 1910021, at \*3 (applying strict scrutiny to the plaintiff’s claims of constitutional violations arising from Kansas’ prohibition on public gatherings).

Appellees cannot meet even the more deferential standard applied in *Jacobson*; their indefinite and total ban on gatherings undertaken for purposes of communal worship is beyond all question, a plain, palpable invasion of fundamental rights protected by the First and Fourteenth Amendments.

**B. Appellants Face Imminent Irreparable Harm Absent Immediate Injunctive Relief.**

“In a case like the one at bar, where the First Amendment is implicated, the Supreme Court has made clear that ‘[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury’ for purposes of the issuance of a preliminary injunction.” *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005, 1011 (N.D. Cal. 2007) (citing *Sammartano v. First Jud. Dist. Ct.*, 303 F.3d 959, 973-74 (9th Cir. 2002), *in turn citing Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see also S.O.C., Inc. v. Cnty.*

of *Clark*, 152 F.3d 1136, 1148 (9th Cir. 1998). “Unlike a monetary injury, violations of the First Amendment ‘cannot be adequately remedied through damages.’” *Americans for Prosperity Foundation v. Harris*, 182 F. Supp. 3d 1049, 1058 (C.D. Cal. 2016) (citing *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009)).

Without an injunction preventing Appellees from further enforcing the Shelter-In-Place Orders, Appellants will suffer irreparable harm in the form of deprivations of fundamental freedoms secured by the First and Fourteenth Amendments to the U.S. and the California Constitutions. Thus, irreparable injury is shown and interim injunctive relief is proper.

**C. Appellants Satisfy the Remaining Factors for Injunctive Relief.**

“The fact that a case raises serious First Amendment questions compels a finding that there exists the potential for irreparable injury, or that at the very least the balance of hardships tips sharply in [movant’s] favor.” *Sammartano*, 303 F.3d at 973. The Shelter-In-Place Orders raise serious constitutional questions concerning the rights of Appellants. As such, the balance of hardships tips strongly in favor of granting relief. Finally, “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *G & V Lounge, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994); *see also Reed*, 523 F. Supp. 2d at 1101; *Sammartano*, 303 F.3d at 974.



## **II. ALTERNATIVELY, THE COURT SHOULD EXPEDITE THIS APPEAL.**

Pursuant to 28 U.S.C. § 1657, Fed. R. App. P. 27, and Circuit Rule 27-12, Appellants respectfully move in the alternative for expedited treatment of this case. Appellants request that the Court issue an order requiring simultaneous briefing on the merits. Alternatively, Appellants request that the Court set an expedited briefing schedule as follows:

May 11, 2020: Appellants file their opening brief;

May 21, 2020: Appellees file their responding brief;

May 27, 2020: Appellants file their reply brief.

Appellants further request that the Court schedule oral argument for as soon as practicable thereafter. Pursuant to Circuit Rule 27(a), Appellants notified Appellees of their intent to file this Motion, and counsel for Appellees have indicated that they oppose any expedited treatment of this appeal.

Appellants submit that their appeal warrants to be further expedited for the following reasons:

1. As an appeal following the denial of temporary and preliminary injunctive relief, this matter is entitled to priority by statute. 28 U.S.C. § 1657. While the Court has already set an expedited briefing schedule pursuant to Circuit Rule 3-3, standard for all appeals following an order granting or denying preliminary injunctive relief, the current schedule provides that Appellees'

answering brief is due on June 23, 2020. Under the current schedule, Appellants will be deprived of their fundamental rights for at least two additional months.

2. This case presents constitutional issues of major and daily significance to millions of Californians. Recognizing the need for prompt review of constitutional issues relating to COVID-19, other courts have expeditiously reviewed those cases. *See In re Abbott*, 954 F.3d 772 (5th Cir. 2020) (granting writ of mandamus less than one week following the district court's issuance of a preliminary injunction).

3. As discussed above, Appellants continue to suffer irreparable harm with each passing moment. Appellees have criminalized communal religious worship in violation of Appellants' fundamental rights.

4. The Parties presented full briefs and argument to the district court on an even more expedited basis. The transcript of the hearing at the district court has already been prepared and is available to counsel.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs-Appellants respectfully request that this Court grant their Motion for injunctive relief pending their appeal, or, alternatively, expedite the appeal by requiring simultaneous or expedited briefing and setting oral argument for as soon as reasonably possible.

May 3, 2020

Respectfully submitted,

/s/ Harmeet K. Dhillon

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Dean Moffatt, and Brenda Wood

### **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing motion complies with the requirements of FRAP 27(d). The Motion was prepared in Times New Roman 14-point font, and contains 4296 words, as counted by Microsoft Word 2016.

May 3, 2020

/s/ Harmeet K. Dhillon  
Harmeet K. Dhillon

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 3, 2020, I filed the foregoing Motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

May 3, 2020

/s/ Harmeet K. Dhillon  
Harmeet K. Dhillon

# EXHIBIT A

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

<b>Case No.</b>	<b>EDCV 20-755 JGB (KKx)</b>	<b>Date</b>	April 23, 2020
<b>Title</b>	<i>Wendy Gish, et al. v. Gavin Newsom, et al.</i>		

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**Present: The Honorable** JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

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MAYNOR GALVEZ

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

**Proceedings: Order DENYING Plaintiffs' Emergency Request for Temporary Restraining Order (Dkt. No. 8) (IN CHAMBERS)**

Before the Court is an Emergency Request for Temporary Restraining Order filed by Plaintiffs Patrick Scales, Wendy Gish, James Dean Moffatt, and Brenda Wood. ("Request," Dkt. No. 8.) The Court held a hearing on the Request on April 22, 2020. After considering the papers filed in support of and in opposition to the Request and argument presented at the hearing, the Court DENIES the Request.

## I. BACKGROUND

On April 13, 2020, Plaintiffs filed their complaint against Defendants Xavier Becerra and Gavin Newsom (collectively, "State Defendants"); Chad Bianco, Jeff Hewitt, Kevin Jeffries, George Johnson, Cameron Kaiser, V. Manuel Perez, Karen Spiegel, and Chuck Washington (collectively, "Riverside Defendants"); Erin Gustafson, John McMahon, Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, and Josie Gonzales (collectively, "San Bernardino Defendants"). ("Complaint," Dkt. No. 1.) The Complaint alleges eleven causes of action: (1) Violation of Free Exercise Clause of First Amendment to U.S. Constitution; (2) Violation of Establishment Clause of First Amendment to U.S. Constitution; (3) Violation of Free Speech Clause of First Amendment to U.S. Constitution; (4) Violation of First Amendment Freedom of Assembly Clause; (5) Violation of Due Process Clause of Fourteenth Amendment to U.S. Constitution; (6) Violation of Due Process Clause of Fourteenth Amendment to U.S. Constitution; (7) Violation of Equal Protection Clause of Fourteenth Amendment to U.S. Constitution; (8) Right to Liberty (Cal. Const. Art. 1, § 1); (9) Freedom of Speech (Cal. Const.



Art. 1, § 2); (10) Freedom of Assembly (Cal. Const. Art. 1, § 3); and (11) Free Exercise and Enjoyment of Religion (Cal. Const. Art. 1, § 4).

Plaintiffs filed the Request on April 13, 2020, the same day they filed the Complaint. (Request.) In support of the Request, Plaintiffs filed:

- Declaration of Mark Meuser (“Meuser Declaration,” Dkt. No. 8-2);
- Declaration of Wendy Gish (“Gish Declaration,” Dkt. No. 8-3);
- Declaration of James Moffatt (“Moffatt Declaration,” Dkt. No. 8-4);
- Declaration of Patrick Scales (“Scales Declaration,” Dkt. No. 8-5);
- Declaration of Brenda Wood (“Wood Declaration,” Dkt. No. 8-6);

Defendants opposed the Request on April 17, 2020. (“State Opposition,” Dkt. No. 13; “Riverside Opposition,” Dkt. No. 15; “San Bernardino Opposition,” Dkt. No. 18.) In support of the State Opposition, State Defendants filed the Declaration of Todd Grabarsky. (Grabarsky Declaration,” Dkt. No. 13-1.) In support of the Riverside Opposition, Riverside Defendants filed:

- Request for Judicial Notice (“Riverside RJN,” Dkt. No. 15-1);
- Jason Anderson (“Anderson Declaration,” Dkt. No. 15-2);
- Declaration of Kelly A. Moran, (“Moran Declaration,” Dkt. No. 15-3);
- Declaration of Dr. Cameron Kaiser (“Kaiser Declaration,” Dkt. No. 15-4.)

In support of the San Bernardino Opposition, San Bernardino Defendants filed a request for judicial notice. (“San Bernardino RJN,” Dkt. No. 18-1.) The Court held a telephonic hearing on April 22, 2020.

## II. REQUESTS FOR JUDICIAL NOTICE

Riverside Defendants and San Bernardino Defendants separately submit unopposed requests for judicial notice. (See Riverside RJN; San Bernardino RJN.) A court may take judicial notice of an adjudicative fact not subject to “reasonable dispute,” either because it is “generally known within the territorial jurisdiction of the trial court,” or it is capable of accurate and ready determination by resort to sources whose “accuracy cannot reasonably be questioned.” Fed. R. Evid. 201. Under Federal Rule of Evidence 201, “[a] court must take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2).

Judicial notice is appropriate here. The documents at issue are publicly available and not subject to reasonable dispute. Moreover, Defendants request only that the Court take judicial notice of the contents of the documents, not of the truth of those contents. Accordingly, the Court GRANTS the Riverside RJN and the San Bernardino RJN.

## III. FACTS

On December 31, 2019, China reported incidents of a pneumonia of unknown cause

to the World Health Organization. Since then, that infectious disease, which came to be known as coronavirus disease 2019 (COVID-19), has swept the globe, infecting millions and killing nearly two hundred thousand people.<sup>1</sup>

Defendant Newsom, the Governor of California, declared a State of Emergency in California on March 4, 2020. (Complaint ¶ 30; Grabarsky Declaration, Exhibit 1.) On March 19, 2020, the Defendant Newsom issued Executive Order N-33-20, which directed all California residents to heed the State's public health directives relating to COVID-19, including the March 19, 2020 Order of the State Public Health Officer ("State Order"). (Complaint ¶ 31; Grabarsky Declaration, Exhibit 3.) The State Order requires "all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors." (Grabarsky Declaration, Exhibit 3.) On March 22, 2020, the Public Health Officer designated a list of "Essential Critical Infrastructure Workers," including "[f]aith based services that are provided through streaming or other technology." (Grabarsky Declaration, Exhibit 4.)

Defendant Kaiser, Riverside County's Public Health Officer, issued a Declaration of Local Health Emergency in Riverside County on March 8, 2020. (Kaiser Declaration ¶ 10.) On April 6, 2020, Defendants Kaiser and Johnson issued an Amended Order of the Health Officer for the County of Riverside and of the County Executive Officer as Director of Emergency Services ("Riverside Order"). (Complaint ¶ 62; Kaiser Declaration ¶ 10, Exhibit I.) The Riverside Order prohibits "[a]ll public or private gatherings . . . including, but not limited to an auditorium, . . . church, . . . or any other indoor or outdoor space used for any non-essential purpose including, but not limited to . . . church . . . ." (Complaint ¶ 63; Kaiser Declaration, Exhibit I.) Consistent with the State Order, the Riverside Order exempts essential business, including "courts of law, medical providers . . . daycare and child care . . . [and] necessary shopping at fuel stations, stores or malls," provided that a "state and federal guidelines for infection control" are observed. (Complaint ¶ 64; Kaiser Declaration Exhibit I.)

The County of San Bernardino Board of Supervisors declared a Local Health Emergency in San Bernardino County on March 10, 2020. (San Bernardino RJN, Exhibits F and G.) On April 7, 2020, Defendant Gustafson, the San Bernardino Health Officer, signed the Order of the Health Officer of the County of San Bernardino for the Control of COVID-19 ("San Bernardino Order"). (Complaint ¶ 36; San Bernardino RJN, Exhibit I.) The San Bernardino Order "allow[s] faith based services that are provided through streaming or other technology, while individuals remain in their homes, but does not allow individuals to leave their home for driving parades or drive-up services, or for picking up non-essential items." (Complaint ¶ 37; San Bernardino RJN, Exhibit I.)

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<sup>1</sup> World Health Organization, Coronavirus Disease 2019 Situation Report, April 23, 2020 [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19.pdf?sfvrsn=b8304bf0\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19.pdf?sfvrsn=b8304bf0_4)

#### IV. LEGAL STANDARD

The purpose of a temporary restraining order is to preserve the status quo and prevent irreparable harm until a hearing may be held on the propriety of a preliminary injunction. See Reno Air Racing Ass’n, Inc. v. McCord, 452 F.3d 1126, 1131 (9th Cir. 2006). The standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. Lockheed Missile & Space Co. v. Hughes Aircraft Co., 887 F. Supp. 1320, 1323 (N.D. Cal. 1995); see Stuhlbarg Intern. Sales Co., Inc. v. John D. Brushy and Co., Inc., 240 F.3d 832, 839 n.7 (9th Cir. 2011).

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). The Ninth Circuit employs the “serious questions” test, which states “‘serious questions going to the merits’ and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011). “A preliminary injunction is an ‘extraordinary and drastic remedy.’ It should never be awarded as of right.” Munaf v. Geren, 553 U.S. 674, 690 (2008) (citation omitted). When seeking a temporary restraining order through an *ex parte* application, a plaintiff must further show that he is without fault in creating the crisis necessitating the bypass of regular motion procedures. See Mission Power Eng’g Co. v. Cont’l Gas Co., 883 F. Supp. 488, 492–93 (C.D. Cal. 1995). The propriety of a temporary restraining order, in particular, hinges on a significant threat of irreparable injury, Simula, Inc. Autoliv, Inc., 175 F.3d 716, 725 (9th Cir. 1999), that must be imminent in nature, Caribbean Marine Serv. Co. v. Baldridge, 844 F.2d 668, 674 (9th Cir. 1988).

#### V. DISCUSSION

Plaintiffs request that the Court enjoin enforcement of the State Order, Riverside Order, and San Bernardino Order (collectively, “Orders”) to “Plaintiffs’ engagement in religious services, practices, or activities at which the Center for Disease Control’s social distancing guidelines are followed.” (Request at 24.) To succeed, Plaintiffs must demonstrate that they are likely to succeed on their claims that the Orders violate their constitutional rights and demonstrate that the other factors weigh in favor of granting the temporary restraining order.

##### A. Success on the Merits or Serious Questions

Plaintiffs assert that the Orders violate their constitutionally protected rights, including their right to the free exercise of religion. (Request at 9–21.) In response, Defendants argue that Plaintiffs will not succeed on their constitutional claims for two reasons: First, as acts of the executive in response to a national emergency, the Orders are subject to only minimal scrutiny,

which they easily survive.<sup>2</sup> (State Opposition at 7–14.) Second, even absent consideration of greater leeway afforded to executive acts during a state of emergency, the Orders do not violate Plaintiffs’ rights under traditional constitutional analysis. (State Opposition at 14–19; Riverside Opposition at 16–34; San Bernardino Opposition at 11–17.)

### 1. Exercise of Executive Powers During State of Emergency

State Defendants argue that because the Orders are temporary executive actions taken in response to a national emergency, they are entitled to substantial judicial deference and not subject to traditional constitutional scrutiny. (State Opposition at 7–14.) The Court agrees: Defendants have a right to protect California residents from the spread of COVID-19—even if those protections temporarily burden constitutional rights to a greater degree than normally permissible.

The Supreme Court held over a century ago that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 27 (1905). The COVID-19 pandemic threatens the lives of all Californians: indeed, nearly 1,500 have already died.<sup>3</sup> The virus has proven to be extremely contagious—it is airborne and can linger on surfaces for days.<sup>4</sup> Because asymptomatic and pre-symptomatic carriers of the virus can infect others, a belief that one “has never had or contracted the coronavirus . . . been at any time exposed to the danger of contracting it . . . and has never been in close proximity to any locality where said coronavirus has or have existed” is largely meaningless. (See Complaint ¶¶ 58, 79.) Anyone could be an unknowing, undetectable vector for the virus at any time. For these reasons, government and health officials have struggled to contain the virus. Without a vaccine, measures limiting physical contact between citizens, such as the Orders, are widely recognized as the only way to effectively slow the spread of the virus.

Undoubtedly, the Orders—and the similar orders in effect around the country—restrict the rights and freedoms normally enjoyed by citizens. The residents of California are confined to their homes, unable to gather with friends and family, unable to attend political rallies, unable to enjoy art and recreation, and largely unable to work or go to school. The Orders also prevent Plaintiffs (and all other California residents) from gathering for in-person worship or laying hands upon each other. Because Plaintiffs’ religious beliefs compel them to do these things, the Orders

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<sup>2</sup> Although only the State Defendants advance this argument, the Court will apply it to all three orders.

<sup>3</sup> *Tracking Coronavirus in California*, Los Angeles Times <https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/> (last accessed April 23, 2020.)

<sup>4</sup> Neeltje van Doremalen, Ph.D., et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, N. England J. Med. 2020; 382:1564-1567 <https://www.nejm.org/doi/full/10.1056/NEJMc2004973> (last accessed April 23, 2020.)

do burden Plaintiffs' unrestrained exercise of their religion. But the Constitution does not guarantee "an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint." Jacobson, 197 U.S. at 26. Indeed, "[t]he right to practice religion freely does not include liberty to expose the community . . . to communicable disease." Prince v. Massachusetts, 321 U.S. 158, 166–67 (1944).

Recognizing that the need to protect the public may trump individual rights during a crisis, the Supreme Court has held that states and municipalities have greater leeway to burden constitutionally protected rights during public emergencies:

In every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.

Jacobson, 197 U.S. at 29; *see also* United States v. Caltex, 344 U.S. 149 (1952) (acknowledging that "in times of imminent peril—such as when fire threatened a whole community—the sovereign could, with immunity, destroy the property of a few that the property of many and the lives of many more could be saved"). When responding to the COVID-19 pandemic, therefore, Defendants "may implement emergency measures that curtail constitutional rights so long as the measures have at least some 'real or substantial relation' to the public health crisis and are not 'beyond all question, a plain, palpable invasion of rights secured by the fundamental law.'" In re Abbott, 2020 WL 1685929, at \*7 (5th Cir. Apr. 7, 2020) (quoting Jacobson, 197 U.S. at 31). In other words, during an emergency, traditional constitutional scrutiny does not apply. Instead, any measures that limit or suspend constitutional rights (1) must have a "real or substantial relation" to the crisis and (2) must not represent "plain, palpable" invasions of clearly protected rights. Jacobson, 197 U.S. at 31.

The Orders easily meet that test. First, they have a substantial relation to the COVID-19 crisis: they require the physical distancing that is needed to slow the spread of the virus. Second, there is no "plain, palpable invasion" of Plaintiffs' free exercise of religion. While Plaintiffs are unable to gather together in-person, they are free to gather virtually or over the phone. They are also free to gather in-person with the members of their household. They remain free to practice their religion in whatever way they see fit so long as they remain within the confines of their own homes. Although physical contact with others is curtailed, a wide swath of religious expression remains untouched by the Orders. The Orders, therefore, do not represent a plain or palpable invasion of the general right to free exercise of religion. Accordingly, the Orders are likely a permissible exercise of executive authority during a national emergency.

## 2. Traditional Constitutional Analysis

Because the Orders survive the minimal scrutiny required where executive action taken in response to an emergency, the Court need not determine whether the Orders likewise survive traditional constitutional analysis. But they do: the Request must also be denied because the

Orders likely do not impermissibly infringe on Plaintiffs' constitutional rights even when applying the traditional constitutional scrutiny.

**a. Free Exercise of Religion**

Plaintiffs argue that the Orders target religion and must therefore be subjected to a strict scrutiny analysis. (Request at 9–11.) Defendants respond that the Orders are neutral and generally applicable and therefore only rational basis review applies. (State Opposition 15–16; Riverside Opposition at 16–19; San Bernardino Opposition at 11–13.) “In assessing neutrality and general applicability, courts evaluate both ‘the text of the challenged law as well as the effect . . . in its real operation.’” Parents for Privacy v. Barr, 949 F.3d 1210, 1234 (9th Cir. 2020).

The Orders are neutral on their faces: they “make no reference to any religious practice, conduct, belief, or motivation.” Stormans, Inc. v. Wiesman, 794 F.3d 1064, 1076 (9th Cir. 2015). While they do list faith-based gatherings as a type of in-person gathering that is prohibited, faith-based gatherings are referenced as an example—they are not the target of the Orders. (See e.g., Kaiser Declaration Exhibit I (prohibiting all gatherings including those for “church”).) Facial neutrality does not require freedom from any mention of religion, instead “the minimum requirement of neutrality is that a law not *discriminate* on its face.” Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 533 (1993) (emphasis added). Because the orders apply to both religious and secular gatherings, they do not discriminate, and are therefore facially neutral.

The Orders are also neutral in operation: they apply to both religious and secular conduct and do not “substantially underinclude nonreligiously motivated conduct that might endanger the same governmental interest that the law is designed to protect.” See Stormans, 794 F.3d at 1079. The Supreme Court has long recognized that “[o]fficial action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality.” Church of the Lukumi Babalu Aye, 508 U.S. at 534. Plaintiffs have presented no evidence that the Orders target religious conduct over secular conduct. And a review of the Orders demonstrates that both secular and religious conduct are prohibited equally. The majority of the prohibited conduct is secular: schools are closed, restaurants are shuttered, concerts and sporting events are canceled; citizens cannot visit public recreation spaces or gather with friends who live outside of their household; non-essential workers fortunate enough to still have jobs must work from home. Far from singling out religious conduct for additional restrictions, the State Order identifies workers preparing religious videoconferences as essential workers—an exception that facilitates religious conduct. Similar exceptions have not been made for sports, concerts, or non-essential work events. The Orders, therefore, are not restrictions against religion in disguise. They are generally applicable restrictions on gatherings of all kinds.

Plaintiffs argue that the Orders are underinclusive of secular activities that may also contribute to the spread of COVID-19 because they allow grocery stores, fast food restaurants, and marijuana dispensaries to remain open. (Request at 10.) But these are all essential services: without access to the food and medicines sold at these locations, more citizens would become ill or die. And despite social distancing the virus is spreading at these locations—grocery store



employees are falling ill and dying.<sup>5</sup> If the state applies the same rules to in-person religious gatherings as it does to grocery stores, people will get sick and die from attending religious gatherings just as they are dying from working in grocery stores.

Moreover, because the risk of transmission increases with every out-of-home contact, it is necessary to suspend non-essential activities so that essential functions can be less dangerous. Many older and immunocompromised people must leave their homes to purchase food and medicine. Grocery store employees, food preparers, delivery drivers, pharmacists, and other essential workers must go to work to ensure that California residents have what they need to survive. These individuals risk contracting the virus when performing these essential tasks. If those that they encounter engage in non-essential contacts, the risk of transmission increases. But if everyone limits their out-of-home contacts to only essential tasks, the risk decreases. When we all reduce our contacts to the minimum possible level, the rates of transmission go down. In sum, Californians need to stay home whenever possible to protect those who cannot.

Finally, as Defendants argued at the hearing, constitutional analysis only requires that the Court compare the prohibited religious conduct with analogous secular conduct when assessing underinclusivity. See *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1079 (9th Cir. 2015) (holding that a law is only fatally underinclusive if it prohibits religious conduct but not “comparable secular conduct”). An in-person religious gathering is not analogous to picking up groceries, food, or medicine, where people enter a building quickly, do not engage directly with others except at points of sale, and leave once the task is complete. Instead, it is more analogous to attending school or a concert—activities where people sit together in an enclosed space to share a communal experience. Those activities are prohibited under the Orders. Because the Orders treat in-person religious gatherings the same as they treat secular in-person communal activities, they are generally applicable.

Because the Orders are facially neutral and generally applicable, they are subject to rational basis review. *Stormans, Inc.*, 794 F.3d at 1075–76. And they easily survive rational basis: the social distancing measures implemented by the Order are rationally related to slowing the spread of COVID-19—a state interest that is not only legitimate but compelling. Accordingly, the Orders likely do not violate the Free Exercise Clause.

### **b. Establishment of Religion**

A government action violates the Establishment Clause if it lacks a “secular legislative purpose” or endorses religion. *Lemon v. Kurtzman*, 403 U.S. 602, 612–13 (1971); see also *Trunk v. City of San Diego*, 629 F.3d 1099, 1106 (9th Cir. 2011) (noting that “the Supreme Court

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<sup>5</sup> Dalvin Brown, *COVID-19 Claims Lives of 30 Grocery Store Workers, Thousands More May Have It, Union Says*, USA Today, <https://www.usatoday.com/story/money/2020/04/14/coronavirus-claims-lives-30-grocery-store-workers-union-says/2987754001/> (last accessed April 23, 2020.)

(continued . . . )



essentially has collapsed the[] last two prongs [of the test articulated in Lemon] to ask whether the challenged governmental practice has the effect of endorsing religion.”) The Orders do neither. First, they serve the important secular purpose of slowing the spread of COVID-19. Second, they do not endorse any religion: the order bans gatherings for all religions along with secular gatherings.<sup>6</sup> Accordingly, the Orders likely do not violate the Establishment Clause.

### **c. Other Alleged Constitutional Violations**

Plaintiffs make several other claims for violations of their rights under the U.S. and California Constitutions. (Request at 12–20.) Each of these, however, is premised on Plaintiffs’ argument that the Orders impermissibly restrict their religious exercise. (See, e.g., Request at 13 (arguing that the Orders are an unconstitutional prior restraint on speech because religious worship is protected speech).) Because the Court concludes that the Orders do not impermissibly restrict Plaintiffs’ free exercise of religion, Plaintiffs’ other claims likely fail as well.

### **B. Remaining TRO Factors**

Defendants have shown that because the Orders are likely a proper exercise of executive authority in a state of emergency they are entitled to enhanced deference, even where they infringe on typically protected rights. Moreover, even applying a traditional constitutional analysis, Plaintiffs’ claims are unlikely to succeed. Accordingly, Plaintiffs are not likely to succeed on the merits of their claims, and the Court need not consider the remaining factors.

## **VI. CONCLUSION**

For the reasons above, the Court DENIES Plaintiffs’ Request.

**IT IS SO ORDERED.**

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<sup>6</sup> Plaintiffs argue that special accommodations were made by the Riverside Defendants and the San Bernardino Defendants for Christians celebrating Easter. (Request at 2.) However, they do not seek to enjoin enforcement of any Easter exception. And they could not: Easter has passed. Accordingly, the Court need not determine whether the Easter exceptions violated the Establishment Clause.

# EXHIBIT B

**EXECUTIVE ORDER N-33-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 19th day  
of March 2020.

  
\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

# EXHIBIT C

[www.SBCounty.gov](http://www.SBCounty.gov)

## Public Health

Trudy Raymundo  
Director

Corwin Porter  
Assistant Director

Maxwell Ohikhuare, M.D.  
Health Officer

Erin Gustafson, M.D., MPH  
Acting Health Officer

### **ORDER OF THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO**

#### **FOR THE CONTROL OF COVID-19**

**DATE OF ORDER: April 7, 2020**

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295; County Code Section 31.0101 Et. Seq.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, AND SAN BERNARDINO COUNTY CODE SECTION 31.0101 ET. SEQ., THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO ("HEALTH OFFICER") ORDERS:

**Effective 12:00 a.m. on Wednesday, April 8, 2020, and continuing until rescinded,** pending further Order of the Public Health Officer, the following will be in effect for the County of San Bernardino (hereinafter the "County"):

1. The Orders of the San Bernardino County Health Officer issued on March 17, 2020 and March 27, 2020, Governor Newsom's Executive Order N-22-20 and order of the California State Public Health Officer issued on March 19, 2020, requiring all persons residing in the State to remain in their homes or places of residence, except as needed to maintain the continuity of operations for critical infrastructure (the "Stay-at-Home Order") remain in effect until the Governor's Executive Order N-22-20, and the Orders of the San Bernardino County Health Officer remain in effect until they are rescinded.
2. Under the Orders of the San Bernardino County Health Officer, the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, all individuals living in the State of California are ordered to stay home or at their place of residence except as need to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>. This guidance does allow faith based services that are provided through streaming or other technology, while individuals remain in their homes, but does not allow individuals to leave their homes for driving parades or drive-up services, or for picking up non-essential items.

#### BOARD OF SUPERVISORS

ROBERT A. LOVINGOOD  
First District

JANICE RUTHERFORD  
Second District

DAWN ROWE  
Third District

CURT HAGMAN  
Chairman, Fourth District

JOSIE GONZALES  
Vice Chair, Fifth District

Gary McBride  
Chief Executive Officer



3. All non-essential businesses that do not fall under the Essential Critical Infrastructure referenced above are ordered to remain closed. All essential businesses that remain in operation in accordance with the above referenced Orders of the San Bernardino County Health Officer, the Order of the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, shall follow the Social Distancing and Infection Control Guidelines published by the CDC and California Department of Public Health. All essential businesses must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, additional measures shall be identified and implemented or the facility shall be closed.
4. All persons, including Essential Workers shall wear face coverings, such as scarves (dense fabric, without holes), bandanas, neck gaiters, or other fabric face coverings, when they leave their homes or places of residence for essential activities. All persons, including **non-medical** Essential Workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for **non-medical reasons**. Staff working at facilities listed in Attachment A at <http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/Attachment-A-and-B.pdf> must follow the Order of the San Bernardino County Public Health Officer issued on April 6, 2020, requiring staff at these facilities to wear a surgical mask at all times while in the facility.
5. All essential businesses shall make every effort to use telecommuting for its workforce.
6. Government entities shall enforce social distancing requirements at all parks and trails. If a government entity is unable to enforce social distancing at a park or trail, it shall be closed to the public. Parking lots at all parks and/or trails shall be closed and shall be accessible only by members of the public within walking distance of the parks and/or trails. Said parks and/or trails shall be used solely for walking, hiking, equestrian or bicycle riding. The public shall not congregate or participate in group sporting activities at such parks and/or trails.
7. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home.
8. Hospitals and healthcare providers shall take measures to preserve and prioritize resources including delaying non-emergent or elective surgeries or procedures where feasible.
9. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://wwwnc.cdc.gov/travel/notices>) shall be subject to 14-day home quarantine, self-monitoring.
10. A strong recommendation is made for persons exhibiting mild to moderate symptoms of COVID-19 to self-isolate in their place of residence unless seeking medical treatment. A guide to symptoms is found here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
11. This Order is issued based on evidence of increasing transmission of COVID-19 within the County, in the state of California, and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as



best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19. The virus that causes COVID-19 (known as SARS-CoV2) has infected over one million individuals worldwide in over 180 countries and is implicated in over 76,000 worldwide deaths, including at least 530 cases and 16 deaths in San Bernardino County. These numbers increase significantly every day.

12. This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. This Order will help to reduce the number of Californians who contract COVID-19 before an effective treatment or vaccine is available; protect those most likely to experience severe symptoms, such as older Californians and those with underlying chronic conditions; preserve and protect our healthcare delivery system; and minimize the social and economic impacts of COVID-19 over the long run.
13. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 10, 2020 Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in San Bernardino County; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino proclaiming the existence of a Local Emergency in the County of San Bernardino regarding COVID-19; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino ratifying and extending the Declaration of Local Health Emergency due to COVID-19; and Executive Order N-22-20 of the Governor of California and Order of the State Public Health Officer issued on March 19, 2020.
14. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the Centers for Disease Control and Prevention, and other public health officials throughout the United States and around the world, including but not limited to, the Centers for Disease Control and Prevention's "Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes", the California Department of Public Health Face Covering Guidance issued on April 1, 2020, and Recommendation Regarding the Use of Cloth Face Coverings from the Centers for Disease Control and Prevention issued on April 3, 2020.
15. This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101030, et seq.; Health and Safety Code sections 120100, et seq.; and Title 17 of the California Code of Regulations section 2501.
16. This Order shall not supersede any conflicting or more restrictive orders issued by the State of California or Federal governments, including any requirements regarding child care. If any portion of this Order or the application thereof to any person or circumstance is held to be invalid the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
17. To the extent necessary, pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, this order is enforceable by the Sheriff and all Chiefs of Police in the County. The violation of any provision of this Order constitutes an imminent threat to public health.

Copies of this Order shall promptly be: (1) made available at the County of San Bernardino Health Administration office located at 351 N. Mountain View Ave., #303, San Bernardino, CA 92415; (2) posted on the County of San Bernardino Public Health Department's website ([wp.sbcounty.gov/dph](http://wp.sbcounty.gov/dph)); and (3) provided to any member of the public requesting a copy of this Order.

**IT IS SO ORDERED:**



Dated: April 7, 2020

Dr. Erin Gustafson, MD, MPH  
Acting Public Health Officer  
County of San Bernardino

Approved as to form and legality:



Dated: April 7, 2020

Adam Ebright  
County Counsel  
County of San Bernardino

# EXHIBIT D

— — —

— — —

2:04 p.m.

App.378

1 APPEARANCES:

2  
3 For the Plaintiffs:

4 DHILLON LAW GROUP, INC.  
5 BY: **HARMEET DHILLON**  
6 **MARK MEUSER**  
7 **GREGORY MICHAEL**  
8 177 Post Street, Suite 700  
9 San Francisco, California 94108

10 For the State of California Defendants:

11 CAAG - OFFICE OF ATTORNEY GENERAL  
12 California Department of Justice  
13 BY: **TODD GRABARSKY**  
14 Deputy Attorney General  
15 300 South Spring Street, Suite 1702  
16 Los Angeles, California 90013

17 For the County of Riverside Defendants:

18 OFFICE OF COUNTY COUNSEL  
19 County of Riverside  
20 BY: **JAMES BROWN**  
21 **RONAK PATEL**  
22 **KELLY MORAN**  
23 3960 Orange Street, Suite 500  
24 Riverside, California 92501

25 For the County of San Bernardino Defendants:

MEYERS NAVE RIBACK SILVER & WILSON  
BY: **DEBORAH FOX**  
**MARGARET ROSEQUIST**  
707 Wilshire Boulevard, 24th Floor  
Los Angeles, California 90017

1 WEDNESDAY, APRIL 22, 2020; RIVERSIDE, CALIFORNIA

2 -o0o-

3 THE CLERK: Case No. ED-20-CV-755, Wendy Gish, et  
4 al., v. Gavin Newsom, et al. And if I can have plaintiffs'  
5 counsel state their name for their appearance, and then once  
6 they are done, defense counsel can then proceed. Thank you  
7 very much.

02:04

8 MS. DHILLON: This is Harmeet Dhillon at the Dhillon  
9 Law Group appearing on behalf of all of the plaintiffs in this  
10 case.

02:05

11 THE COURT: Good afternoon.

12 MR. MEUSER: This is Mark Meuser on behalf of the  
13 Dhillon Law Group representing all plaintiffs.

14 THE COURT: Good afternoon.

15 MR. MICHAEL: Good afternoon, Your Honor. This is  
16 Gregory Michael also appearing on behalf of the plaintiffs.

02:05

17 THE COURT: Good afternoon.

18 Very well. Now, for the defendants, for the County  
19 of Riverside, who is appearing?

20 MS. MORAN: Good afternoon, Your Honor. This is  
21 Kelly Moran on behalf of the County of Riverside.

02:05

22 MR. PATEL: Good morning, Your Honor. This is Ronak  
23 Patel on behalf of the County of Riverside defendants.

24 MR. BROWN: Good afternoon, Your Honor. Jeb Brown,  
25 Riverside County Counsel, on behalf of the Riverside County

02:05

1 defendants.

2 THE COURT: Very well. And for the State of  
3 California?

4 MR. GRABARSKY: Good afternoon, Your Honor. This is  
5 Deputy Attorney General Todd Grabarsky on behalf of the State  
6 defendants, Governor Newsom, and Attorney General Becerra.

02:06

7 THE COURT: Very well. Any other appearances?

8 MS. FOX: Yes, Your Honor. This is Deborah Fox of  
9 Meyers Nave on behalf of the various named County of San  
10 Bernardino defendants, Dr. Erin Gustafson, Sheriff John  
11 McMahon, Supervisor Lovinggood, Supervisor Janice Rutherford,  
12 Supervisor Dawn Rowe, Supervisor Curt Hagman, and Supervisor  
13 Josie Gonzales.

02:06

14 THE COURT: Thank you and good afternoon.

15 MS. MORAN: Ms. Fox, do you plan on arguing or have  
16 you delegated the argument to anybody else?

02:06

17 MS. FOX: I plan on arguing, Your Honor, and as well  
18 joining me is my colleague on the line, Ms. Margaret Rosequist.

19 THE COURT: Very well.

20 Who is going to be arguing for the County of  
21 Riverside?

02:07

22 MR. PATEL: Your Honor, Ronak Patel and Kelly Moran.

23 THE COURT: Very well. So I would prefer that only  
24 one person argue for each group of defendants. It makes it  
25 easier, especially in a telephonic hearing, especially where

02:07



1 you might not be in each other's presence so you might step  
2 over each other trying to speak. If that can't be helped and  
3 more than one person wants to speak on behalf of any particular  
4 group of defendants, then it's going to get a little bit  
5 messier, but if you feel compelled to speak up, you can do so.

02:07

6 So do I understand that for the State of California  
7 only Mr. Grabarsky is going to argue?

8 MR. GRABARSKY: Yes, that's correct, Your Honor.  
9 This is Todd Grabarsky.

10 THE COURT: And for the San Bernardino officers,  
11 Ms. Fox and Ms. Rosequist, which one of you will argue?

02:08

12 MS. FOX: Your Honor, I will be arguing. This is  
13 Deborah Fox.

14 THE COURT: Very well.

15 And for the County of Riverside, it will be  
16 Mr. Patel?

02:08

17 MR. PATEL: Yes, Your Honor.

18 THE COURT: Very well.

19 So, Ms. Vasquez, have you taken the appearances?

20 THE CLERK: Yes, I have, Judge.

02:08

21 THE COURT: Very well. So for others listening on  
22 the hearing, please remember that the normal prohibitions  
23 against the recording of any proceeding stand in place and  
24 remain. So even though we are conducting this hearing through  
25 a telephone, you are prohibited from recording any aspect of

02:08

1 this hearing.

2           Very well. So the matter is on calendar today for  
3 the application for an emergency request for a Temporary  
4 Restraining Order by the plaintiffs in this case against  
5 various officers from the counties of Riverside and San  
6 Bernardino as well as Governor Newsom and various State  
7 officers.

02:09

8           So I've read your submissions and I think that a good  
9 way to start or a good place to start might be the defendants,  
10 at least the California defendants we'll call them, the primary  
11 argument that this ordinance or these orders should not be  
12 subjected to traditional constitutional analysis and instead  
13 should be viewed in the light of the wide latitude given to  
14 executive officers in the course of an emergency, a health  
15 emergency primarily, so they're not subject to traditional  
16 constitutional analysis.

02:09

02:10

17           So why doesn't the plaintiff please respond to that  
18 position and argue why this ordinance should be subjected to  
19 constitutional analysis, or maybe you can argue that even if it  
20 is under an emergency state, that it's still invalid.

02:10

21           Ms. Dhillon.

22           MS. DHILLON: Yes, Your Honor. Thank you for that.  
23 I will start by saying that, of course, we disagree with the  
24 proposition that this order -- these orders should be subjected  
25 to rational basis review simply because of the state of

02:10

1 emergency. And I do not believe there is case law that  
2 supports the proposition that the normal constitutional  
3 standards that apply in cases analyzing burdens on religion,  
4 burdens on assembly, and burdens on speech, which are the First  
5 Amendment burdens that are implicated in this case, are waived  
6 in an emergency setting. 02:11

7 I will also add that the emergency nature of the  
8 orders here is evolving on a daily basis. Only earlier today  
9 the governor, in a press conference, amended their  
10 restrictions. So these restrictions are ongoing and they are 02:11  
11 rolling and they are being edited and amended on the fly. In a  
12 reply brief -- in an opposition brief in this matter filed with  
13 this Court last Friday, the Government amended its position.

14 And so we have a real problem here with a lack of  
15 clarity in these orders, which is part of what we've attacked 02:11  
16 in our complaint and our brief. And that actually enhances the  
17 need for this Court to bring some constitutional certainty to  
18 this situation.

19 Many of the cases cited by both parties, Your Honor,  
20 involve some type of emergency. In fact the *Jew Ho* case, which 02:12  
21 is discussed by all the parties, involving the attempted  
22 quarantine of everybody in San Francisco's Chinatown on the  
23 basis of a health emergency, was examined on the basis of then  
24 current constitutional standards regarding disparate treatment.  
25 So I don't believe there is a compelling need here to suspend 02:12

1 the constitutional analysis that would otherwise apply.

2 And I think -- and to be very fair and in credit to  
3 the government, I think the fact that the attorney general on  
4 behalf of the governor responded in their brief last week that,  
5 in fact, drive-in services, which had widely been understood to 02:12  
6 not apply in California, were, in fact, being allowed. I think  
7 that is a concession by the government that they respect and  
8 understand that there are important needs being expressed here  
9 by people of faith that are not being met. And, in fact, both  
10 of the other defendants here changed their position immediately 02:13  
11 in response to that. And so even the government itself is  
12 recognizing that these are important rights, they are simply  
13 getting the balance wrong.

14 And I also want to note, Your Honor, that there have  
15 been some comments in the briefs to suggest that we are 02:13  
16 accusing the governor or the state officials of acting with  
17 malice or in bad faith, and that is not true. I think  
18 everybody here is acting in good faith, but it is important  
19 given the fundamental nature of these rights and the fact that  
20 the governor himself has expressed that this emergency and 02:13  
21 restrictions will go on into the fall. And after the time that  
22 the briefs were filed in this case, people of -- faith leaders  
23 in this state and the county that I'm sitting in right now, in  
24 Sonoma County, Your Honor, were informed that church would not  
25 be allowed to resume until September at the earliest. This 02:14

1 imposes not a two-week or a four-week or a very limited  
2 restriction on faith, but it is potentially the better part of  
3 a year and potentially into next year. This sharpens the need  
4 for an immediate analysis of this situation and bringing some  
5 clarity to it under traditional constitutional norm.

02:14

6 Your Honor then asked me to articulate our position  
7 with respect to if one were to apply the traditional, what we  
8 believe should be strict scrutiny analysis here because we do  
9 not have a law of general applicability with the orders. We  
10 have numerous exceptions, numerous exceptions for every one of  
11 the 40 million Californians living under these orders, numerous  
12 exceptions exceeding, by my mathematics, over a million  
13 essential workers who are permitted to ply their trades under  
14 the current orders, and specific restrictions on religious  
15 practices, in the governor's order and in the orders of the two  
16 counties, that make these laws clearly not laws of general and  
17 neutral applicability under the test and under the *Church of*  
18 *the Lukumi Babalu*, the *Santeria* case out of Florida in 1993,  
19 which is the unanimous decision in the judgment by the United  
20 States Supreme Court.

02:14

02:15

02:15

21 And so where a law lacks facial neutrality, as do all  
22 of the orders in question here, by referring to religious  
23 practices, which all of these orders do, and where they assign  
24 different rights to citizens based on whether they are pursuing  
25 a secular practice, i.e., going to the grocery store, going to

02:16

1 the marijuana store, going to the liquor store, going to the  
2 laundromat versus going to the church, going to the Sikh  
3 gurdwara, the temple or the mosque, these restrictions may be  
4 permissible, but they must be analyzed under a strict scrutiny  
5 analysis.

02:16

6 THE COURT: Let me stop you right there.

7 MS. DHILLON: Yes, Your Honor.

8 THE COURT: Just so we're all on the same page, I  
9 think the defendants' arguments are that if this is deemed an  
10 emergency action by an executive, then the ordinances and the  
11 orders are not subject to either rational basis or strict  
12 scrutiny but, rather, should be evaluated under the standards  
13 set out in *Jacobson*; and one, they must have a real substantial  
14 relation to the crisis and must not present a plain and  
15 probable invasion of the protected rights. So I think that's  
16 their argument.

02:16

02:17

17 I don't think they're arguing that if this is an  
18 emergency order, it goes down to rational basis. It's even a  
19 more lenient standard than that, and they have presented some  
20 authority, especially in the *Prince* case by the Supreme Court  
21 in 1944, and the *Jacobson* case. This might apply, this  
22 emergency situation might apply to cases in which there is an  
23 infringement of the practice of religion. And we'll talk about  
24 *Lukumi* a little bit more. I have my views on that case, but I  
25 think it's distinguishable.

02:17

02:17

1 But I'll let the defendants respond to Ms. Dhillon.

2 MS. DHILLON: Your Honor, if I may just address  
3 *Jacobson* for a moment. I'm sorry if I did not get your  
4 question correctly in the first instance, but I can respond to  
5 that briefly, if I may.

02:18

6 THE COURT: Let me have the defendants respond first  
7 and then you may respond to them.

8 MS. DHILLON: Thank you.

9 MR. GRABARSKY: Thank you, Your Honor. This is Todd  
10 Grabarsky for the State defendants.

02:18

11 To respond to plaintiffs' counsel's contention that  
12 there's no case law covering this, we disagree with that, and  
13 we've cited several cases in our briefs. In really an  
14 emergency situation, and this is a highly unusual,  
15 extraordinary, once in a century pandemic involving an  
16 extremely contagious and dangerous disease that really  
17 threatens to cause severe illness and death on a massive scale,  
18 on an unprecedented massive scale.

02:18

19 In situations like this, the Supreme Court has  
20 instructed that states can protect themselves even where those  
21 measures might infringe on freedoms and liberties that would  
22 otherwise be protected in normal times. That principle is  
23 derived from *Prince* and *Jacobson*. That principle has been  
24 applied in rulings from the Fourth Circuit, the  
25 *United States v. Chalk* case; the Eleventh Circuit, *Smith v.*

02:18

02:19



1 *Avino*; and the Fifth Circuit, *in re Abbott*, which deals  
2 directly with the present COVID-19 pandemic, all of which we've  
3 cited and discussed in our briefs.

4           And I also draw the Court's attention to the routine  
5 upholding of mandatory vaccination laws. Like what was at 02:19  
6 issue in *Jacobson* against constitutional challenges in order to  
7 preemptively protect against disease epidemics like COVID-19.  
8 And those cases beyond *Jacobson*, the mandatory vaccination  
9 cases, they all rely on standards established in *Jacobson* and  
10 *Prince*. 02:19

11           Quoting from *Abbott*, this is a settled rule that  
12 states facing emergencies are allowed to, quote, restrict, for  
13 example, one's right to peaceably assemble, publicly worship,  
14 to travel, and even leave one's home. And that's the *Abbott*  
15 decision at page 1. And that's why in the face of such an 02:20  
16 extraordinary pandemic, courts recognize the necessity to defer  
17 to state executives' swift and decisive action to slow the  
18 spread of such a dangerous disease as long as those actions are  
19 made in good faith and there's some factual basis for them.

20           Plaintiffs' counsel appears to concede that the 02:20  
21 State's order was made in good faith, and that's our  
22 contention. And plaintiffs make no argument that the  
23 stay-at-home order lacks a factual basis. The order has -- in  
24 California has proven to be effective, especially when compared  
25 to other states like New York or regions like northern Italy. 02:20

1 Fortunately, you know, although there is a significant -- there  
2 is a death toll in California, it's significantly less than in  
3 other places. And I'll note that this is true even in highly  
4 dense areas like San Francisco, which is the second densest  
5 major city in the United States that has really done well to  
6 mitigate the effects of the virus due, in part, to the  
7 stay-at-home order.

02:21

8 Plaintiffs' counsel also contends that this situation  
9 is analogous to the *Jew Ho v. Williamson* case. That case is  
10 readily distinguishable from the situation here. In *Jew Ho* the  
11 Government or the Court considered --

02:21

12 THE COURT: Mr. Grabarsky, I know that case. You  
13 don't have to argue that.

14 Mr. Patel, anything you'd like to add?

15 MR. PATEL: No, Your Honor.

02:22

16 THE COURT: Very well. Ms. Dhillon, you may respond.

17 MS. DHILLON: Yes, Your Honor. Thank you. So in the  
18 *Jacobson* case, it is readily distinguishable from the  
19 circumstances here in a number of different respects. First of  
20 all, that case in 1905 precedes the incorporation of the First  
21 Amendment's establishment and free clause jurisprudence to the  
22 states in the *Everson* case in 1947. So a different standard  
23 applied there.

02:22

24 Second, it was a facially neutral smallpox  
25 vaccination law. That is the factual circumstance there. So,

02:22

1 in effect, the religious plaintiffs in that case were seeking  
2 an exception from an undoubtedly facially neutral law. But our  
3 factual pattern is *Jacobson* and its progeny on its head. In  
4 fact, the state and the county laws have numerous exceptions,  
5 in fact, metastasizing, growing with exceptions every single 02:23  
6 day. In every press conference there's a new exception, and  
7 that's in good faith and I appreciate the increasing liberty  
8 that we're all getting.

9 But, in reality, religion is continuing to be  
10 burdened under rules that are not being applied to the same 02:23  
11 individuals when they visit a Walmart or other commercial  
12 entities. They're allowed to go and visit them and practice  
13 social distancing. We all have experienced, those of us who  
14 have gone to grocery stores, the six feet apart markings, the  
15 protections for the clerk, the requirement in most counties now 02:23  
16 and municipalities to wear masks, and in some instances people  
17 are also wearing gloves, and behaving responsibly.

18 Yet while this is permitted for a large category of  
19 secular endeavor, laundromats are included, for example, pet  
20 groomers are now being allowed in some counties, it is barred 02:23  
21 for people of faith to practice their faith inside a church  
22 building in a socially distanced manner. In fact, until  
23 Friday's opposition brief by the attorney general, it was  
24 considered to be barred to have drive-in services throughout  
25 the State of California. 02:24

1           And so that is a significant burden on people of  
2   faith that is not being imposed on the same people of faith  
3   pursuing secular things, because the Government has decided, in  
4   good faith, that getting your marijuana or your liquor or  
5   getting your laundry done or your food or getting your dog  
6   groomed, in some circumstances, is more important than being  
7   able to have a religious service.

02:24

8           And also due to the emergency nature of this  
9   proceeding, Your Honor, it was not fully briefed, that many  
10  people in California do not have access to the only type of  
11  worship that the government permitted in its original order  
12  which is video conferencing. There are many counties in  
13  California that have no -- have very limited bandwidth and  
14  limited broadband access and no ability to do that.

02:24

15           And so the *Jacobson* situation simply does not apply.

02:25

16           People of faith in California, through this lawsuit,  
17  are not seeking a special dispensation to be exempt from the  
18  shutdown or stay-at-home orders. Instead, they are asking that  
19  the least restrictive aspects of those orders, i.e., social  
20  distancing and limited gatherings for limited purposes, be  
21  permitted. And speaking on behalf of my clients in this case,  
22  and, of course, not on behalf of all people of faith in  
23  California, they have been willing to submit themselves to  
24  reasonable restrictions.

02:25

25           But we are not dealing with a short outbreak or an

02:25

1 epidemic that is -- or a vaccination situation. We are dealing  
2 with, according to some analysis by the governor, a situation  
3 that will last into the next year. So the Government's current  
4 position is, people cannot engage in any in-person enjoyment of  
5 their First Amendment rights of assembly or of speech or of  
6 religion if that involves a gathering, whereas assembly and  
7 speech and certain types of other activities are permitted  
8 under the orders for a broad swath of categories.

02:26

9 And so we are simply asking that the least  
10 restrictive means necessary, as is required under strict  
11 scrutiny, be allowed.

02:26

12 THE COURT: Very well. Let me hear from  
13 Mr. Grabarsky in response to that argument.

14 So Ms. Dhillon's argument seems to be that they're  
15 not seeking special treatment, they're seeking to be treated  
16 just as the other exceptions are being treated, to be permitted  
17 to engage in those activities with the restrictions of social  
18 distancing. What is your response?

02:26

19 MR. GRABARSKY: Yes, Your Honor. First I'll note  
20 that liquor stores are subject to the exemptions only where  
21 they sell food. And cannabis dispensaries are exempted under  
22 the health care category of exemptions due to the medicinal  
23 status of cannabis.

02:26

24 Second, *Lukumi* instructs us that when we're comparing  
25 activities, we must compare analogous activities. So comparing

02:27

1 indoor gatherings of large amounts of people at places of  
2 worship for an extended period of time to picking up food at  
3 takeout restaurants, picking up food at restaurants via takeout  
4 or picking up food at the grocery store, it's really a false  
5 equivalent that isn't the right analogy.

02:27

6           What plaintiffs here seek to have is large groups of  
7 people gathering indoors in close space sharing in a communal  
8 experience. And they're looking for people to come that are  
9 inside at the same time for the same amount of time and in the  
10 same enclosed space. Thus, the proper comparison is actually  
11 with similarly situated activities of communal experience like  
12 theaters, schools, concert halls, sporting events, dining rooms  
13 at restaurants, jury trials, all of those secular gatherings  
14 are prohibited by the State's order.

02:28

15           In contrast, grocery stores and drive-through  
16 restaurants, picking up takeout or picking up medicine, are  
17 singular and transitory experiences that don't involve groups  
18 of people gathered together. For example, picking up takeout  
19 is just a brief interaction. Often it's not even required to  
20 interact -- for two people to interact with each other at all.  
21 At grocery stores individuals enter the store at different  
22 times for different lengths of time, purchase various items.  
23 They move around individually. Grocery stores and restaurants  
24 are subject to stringent health codes and regulations even in  
25 normal times and additional cleanliness guidelines in light of

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1 the present pandemic emergency. Individuals, they pay for the  
2 food and then they leave.

3 So these exempted activities aren't gatherings in the  
4 same way that concerts or schools or jury trials in courthouses  
5 or court hearings or indoor worship services that plaintiffs  
6 are making a comparison, they're not like each other. The  
7 analogous secular conduct is also prohibited by the  
8 stay-at-home order.

02:29

9 And also to respond to plaintiffs' counsel's point  
10 that the order is changing often, you know, I'm not sure what  
11 is happening in Sonoma County, but the governor's order has  
12 been consistent since March 19th when it was issued.

02:29

13 March 27th -- March 22nd the executive order incorporated the  
14 list of exemptions from the public health officers. And we'll  
15 note that that list of exemptions specifically includes  
16 faith-based workers.

02:30

17 So, in other words, faith-based services are deemed  
18 as essential services in the executive order to the extent that  
19 they provide congregants with worship opportunities through  
20 technology such as online streaming. They could do  
21 teleconferencing. There's various free platforms, *Zoom*, *WeBex*,  
22 *Facebook*, *Google*, to accomplish this that wouldn't require, you  
23 know, spending any money, and through drive-in services  
24 provided that congregants observe distancing and refrain from  
25 direct or indirect physical contact.

02:30

02:31



1           So this notion that the order is changing, the  
2     State's order is changing, is just not correct. It's been  
3     consistent since -- fortunately, since March when, you know,  
4     before things really started to take a toll on public health  
5     and safety.

02:31

6           THE COURT: Thank you.

7           Mr. Patel, anything you'd like to add to that?

8           MR. PATEL: Just very briefly, Your Honor. There was  
9     a mention about *Jacobson* and it being a very early case that  
10    predated the incorporation of the Fourteenth Amendment. I did  
11    want to note for the Court that we have cited three cases in  
12    our brief, including *Carroll*, *West Virginia*, and *Collins*, that  
13    all apply a clear and present danger sort of situation to  
14    limiting peaceful assembly. I just wanted to make that known  
15    for the record, Your Honor. That's it.

02:31

02:31

16          THE COURT: Very well. So let's move on.

17          MS. FOX: Your Honor, if I might, this is Deborah  
18    Fox. Might I speak to this issue for the County of San  
19    Bernardino defendants?

20          THE COURT: You may briefly.

02:32

21          MS. FOX: Thank you so much. Your Honor, I join with  
22    the State's argument that the proper examination, in looking at  
23    the State orders and the County orders at play, are whether or  
24    not the distinction as to gathering are of general application  
25    here. They apply both to secular and nonsecular activities

02:32

1 across the board, private or public. They're restricted  
2 without regard to contact. So whether you want to have people  
3 over to your private home for a dinner party, a birthday party,  
4 a book club, a Bible study, those are all temporarily  
5 restricted.

02:32

6 Similarly, if you want to have public gatherings,  
7 whether it's at the Fontana Raceway, the Mission Inn, the  
8 Coachella Music Festival, the LoanMart Field, or any of the  
9 various faith communities, churches, mosques, synagogues in San  
10 Bernardino and Riverside County, those public gatherings are  
11 also temporarily restricted.

02:33

12 The denominator and the common denominator here is  
13 the gatherings. The various secular exceptions are different  
14 qualitatively. I think the State has aptly noted that a  
15 gathering is directed at activities which by design people come  
16 together for a communal experience at a set time and set place.  
17 The overall design is to spend time with the group. That's  
18 markedly different from going to pick up a prescription at CVS  
19 or to get milk and eggs at Ralph's. That is not a gathering.  
20 It's a single transitory event.

02:33

02:33

21 As well, plaintiffs in their TRO application ask this  
22 Court and somewhat dismissively refer to the burger flippers  
23 and the baristas who are part of the food service industry.  
24 You are only allowed to go there and get items to go. You  
25 can't go in and sit inside a McDonald's and have a burger and

02:34

1 fries, nor can you go into Starbucks with your latte in hand  
2 and sit and read the *New York Times*. Those are all equivalent  
3 to gatherings and they are all precluded under these particular  
4 orders.

5 So there is no similar secular gatherings that are 02:34  
6 exempted from the orders. Theaters, restaurants, conventions,  
7 exercise classes, sporting events, concerts, they're all  
8 prohibited. And so, Your Honor, we think this very much meets  
9 the definition of restrictions of general application.

10 THE COURT: Thank you. 02:34

11 So we'll move on to, in the event that it applies, so  
12 let's have a brief discussion about traditional constitutional  
13 analysis and whether or not the orders should be subjected to  
14 strict scrutiny or a rational basis.

15 So the plaintiffs make the argument that, relying 02:35  
16 somewhat heavily on *Lukumi*, that this ordinance as to these  
17 orders are not to be analyzed under rational basis but under  
18 strict scrutiny because they single out religion and are not  
19 neutral, even though they might be facially neutral because of  
20 the exceptions in the way it prohibits religious activities 02:35  
21 that is not subject to a rational basis analysis.

22 So, you know, just in reading *Lukumi*, it's very  
23 obvious to me that that's a case in which, even though the  
24 ordinance against animal sacrifices was neutral on its face,  
25 the object of the ordinance by the city council was very much 02:35

1 aimed at the fact that the city council knew that there was  
2 going to be a new Santeria church established within its  
3 jurisdiction, that they had leased land, and there was, in  
4 response to that, an emergency meeting which resulted in the  
5 passing of the restriction on the animal sacrifice.

02:36

6 So for me, I view *Lukumi* as standing for the  
7 proposition that even though an ordinance or law can be  
8 facially neutral if it is -- if it has as its object the  
9 infringement or targets specifically the infringement of  
10 religion, it is not on -- it should not be treated as a  
11 facially neutral ordinance but is subject to a higher standard.

02:36

12 So there are distinctive features in *Lukumi* which are  
13 not present here, i.e., the fact that the ordinance seems to  
14 have targeted that specific prospective religious exercise, and  
15 there was an emergency meeting, as I said, by the city council.  
16 And in his opinion, Justice Kennedy pointed all those facts  
17 out.

02:37

18 So I guess the question turns to the plaintiff.  
19 Given those differences between what happened in Florida and  
20 here, how do you think that *Lukumi* applies to the situation at  
21 hand?

02:37

22 MS. DHILLON: Well, Your Honor, thank you for that  
23 question. And the point is taken that there appears to have  
24 been an animus against Santeria in that case; however, the case  
25 law does not rest on the animus, but rather, I believe, the

02:37

1 various justices, of course, had different positions on that.  
2 But what came out of *Lukumi* was a rule that has been applied in  
3 numerous other circumstances.

4 And in this situation, I think it is very clear from  
5 the face of the governor's orders taken together, including the 02:37  
6 exception provided for faith-based organizations to, you know,  
7 put on a performance, if you will, for streaming purposes or  
8 audio purposes with ten or fewer people, that specifically  
9 calls out and mentions religion and dictates the manner in  
10 which people may enjoy religious services in California. 02:38

11 Now, it is interesting that the State has taken the  
12 position now that all along drive-in services were permitted  
13 because they are a technology; yet, in fact, nobody in  
14 California understood that to be the case, including two of the  
15 defendants here who issued tickets as well as, you know, 02:38  
16 demands to disperse and not hold services for our plaintiffs  
17 who were contemplating only drive-in services at that time.  
18 And so these rules have been perceived by people of faith and  
19 law enforcement throughout the State of California to have  
20 special rules for religion. 02:38

21 I would even have sympathy for the concept that these  
22 were rules of general applicability if there were some sort of  
23 temporal limitation or numerical limitation assigned to some of  
24 the secular activities that are permitted by these orders. For  
25 example, if one were limited to no more than ten minutes in a 02:39

1 grocery store or call it half an hour in a Costco or there was  
2 a limit of ten people in any establishment at any given time,  
3 but that is not the case. In fact, theoretically, a creative  
4 person of faith who wanted to hold a gathering but in a safe  
5 way could actually do it at a Costco and people could stand six 02:39  
6 feet apart, and they could stay there for an hour. There are  
7 no restrictions on that. In fact, I think if this Court and  
8 other courts that look at this issue do not right side that  
9 situation, we are going to see creative people making use of  
10 such loopholes, vast loopholes in these laws. 02:39

11 Nobody has argued for large, closely packed  
12 gatherings of people. And I want to be clear, none of my  
13 clients want their parishioners or each other to get sick.  
14 People of faith are no riskier or more or less caring about  
15 human life than secular people are. And nobody wants to get 02:40  
16 sick. There are many ways that people of faith and the pastors  
17 in this case can enjoy religious activities, but following the  
18 same secular rules that permit people to spend an unlimited  
19 amount of time in a Costco or a Walmart or have an unlimited  
20 number of people in those institutions so long as they are 02:40  
21 socially distanced.

22 For example, pastors could hold multiple services on  
23 a Sunday. Pastors could hold services limited to a certain  
24 number of people. There could be a statewide rule regarding  
25 their duration of time people are permitted to be in a 02:40

1 facility. There could be religious observances that are  
2 practiced outdoors for safety purposes. In fact, as the State  
3 concedes, the science is evolving on these issues, the State  
4 bears the burden of justifying these restrictions, by the way,  
5 not the plaintiffs. But the science is evolving. And, in  
6 fact, there do not appear to be cases of outdoor transmission.

02:41

7 So there are a number of ways that people could  
8 safely practice their faith without -- and in the same way as  
9 the State has permitted secular people to practice their  
10 interest and their important endeavors without putting people  
11 at risk under current science.

02:41

12 And I would also add that none of the cases under  
13 discussion involve emergencies stretching out, as we have  
14 before us, according to our governor, for the better part of a  
15 year or well into next year. In fact, some people in the  
16 government have suggested that we have restrictions on our  
17 liberty until such time as a vaccine is developed for this  
18 disease, which could be 18 months or more.

02:41

19 So what we are seeking is a uniform rule. If the  
20 State had a uniform rule regarding the nature of duration or  
21 occupancy of secular institutions, I would have a harder time  
22 arguing that such restrictions should not apply to faith  
23 organizations, but to say that there is one rule for churches  
24 or gurdwaras or synagogues and a different rule for Walmart,  
25 simply does not pass either rational basis scrutiny or

02:41

02:42



1 certainly strict scrutiny.

2 THE COURT: Thank you.

3 Any response by Mr. Patel or Mr. Grabarsky?

4 MR. GRABARSKY: Yes, Your Honor. Plaintiffs' counsel  
5 isn't discussing the legal standard that the Ninth Circuit has 02:42  
6 extracted from *Lukumi*. In *Stormans v. Weisman* the Court was  
7 concerned in analyzing whether a law is generally applicable  
8 when concerned with substantial under-inclusion of analogous  
9 secular conduct.

10 Here, as I've discussed, the analogous conduct, 02:43  
11 gatherings at schools or schools or concerts or movie theaters  
12 or playhouses, that conduct is prohibited under the  
13 stay-at-home order. So we have to look at what the case law  
14 instructs, not to compare analogous secular conduct.

15 With regard to plaintiff counsel's point that they 02:43  
16 could gather indoors in an enclosed space for worship and do so  
17 in a healthful way in light of the COVID disease, there's  
18 simply no evidence that they've presented confirming that.

19 What we're dealing with is really a highly technical  
20 public health problem that -- really that the Government has 02:43  
21 considered of what might be -- what's best. And in the  
22 emergency situation, deference is owed to the executive  
23 decision that, look, it's an emergency. People need to refrain  
24 from being out there, from gathering in large spaces, and need  
25 to remain home. 02:44

1           So in our briefing we discussed numerous examples of  
2 large gatherings, even in houses of religious worship where,  
3 unfortunately, they were -- there were claims for super  
4 spreaders of the disease. And we discussed that and  
5 plaintiffs' counsel haven't responded directly to those  
6 situations.

02:44

7           So, in light of the fact that they aren't presenting  
8 evidence of that -- of the specifics of what precautions  
9 they're going to take and the effectiveness of those  
10 precautions, deference must be owed to the State on this  
11 matter.

02:44

12           THE COURT: Very well.

13           Mr. Patel, anything to add?

14           MR. PATEL: No, Your Honor.

15           THE COURT: Ms. Fox?

02:45

16           MS. FOX: Your Honor, just that I think that the  
17 *Lukumi* case yields the results that the position of the general  
18 application prevails here. The restrictions on gatherings here  
19 is not based on the government deciding one religious activity  
20 is more important than another religious activity but, indeed,  
21 it stems from the singular motivation to control the spread of  
22 this highly contagious and many times deadly disease.

02:45

23           THE COURT: Thank you. So I think I will give each  
24 side some minutes to sum up their arguments, if you wish.

25           So, Ms. Dhillon, do you wish to sum up in a few

02:45

1 minutes?

2 MS. DHILLON: I do, Your Honor. I'll try to be  
3 brief. I think we've covered a lot of the points already.  
4 With regard to the point about super spreaders, that is not  
5 addressed because, frankly, it did not merit response. But now 02:45  
6 that it's been brought up, I think it is clear that the  
7 incidents that are referred to by the government occurred prior  
8 to the governor's order, in most instances, and certainly prior  
9 to knowledge of the nature of this pandemic being known. In  
10 fact, many of those gatherings took place before there was any 02:46  
11 declaration of emergency in the United States. And so I don't  
12 think it's apposite at all. And, again, people of faith are no  
13 more interested in dying than anybody else in this state.

14 I will also say that in regards to what is analogous  
15 and what isn't, in fact, if you look closely at the governor's 02:46  
16 order, it allows, in its exemption of so-called essential  
17 workers, many types of gatherings that would be analogous to  
18 what could be proposed here. So the State entities seem to be  
19 comparing a religious gathering to a concert, a Coachella, or  
20 some sort of an optional frivolous entertainment, which is not 02:46  
21 the case. In fact, religion is as central to people of faith  
22 as eating, as going to work, and even more so for many people.  
23 So it is not optional, it is not entertainment, it is not  
24 weekend for people, it is central.

25 So many businesses that are described as essential 02:47

1 businesses in California are allowed to operate and if you  
2 would like to call it congregate and gather in close quarters.  
3 For example, businesses that provide shipping services, you  
4 know, people who are -- Amazon workers are gathering together  
5 in warehouses to ship and provide items to the public, the 02:47  
6 government is deeming that necessary. But, in fact, to people  
7 of faith, gathering together with other people of faith in a  
8 safe manner is more important than those types of activities.

9 The media from day one was given a free pass out of  
10 these orders without any restrictions. And, in fact, reporters 02:47  
11 are free to gather together, if they wish, and be in a  
12 newsroom. So many businesses are allowed to operate under the  
13 exceptions. And by my calculation, again, that's over a  
14 million people in this state who are operating under those  
15 circumstances. 02:48

16 So what we are seeking here in this situation, Your  
17 Honor, is that given the importance of faith, it is not  
18 entertainment, it is not optional, it is not for Sundays only,  
19 and it is not something that can be suspended legally for  
20 six months or a year because, otherwise, you will definitely 02:48  
21 100 percent have churches going underground as they go in  
22 countries where religious gatherings are prohibited. And that  
23 will not be safe for the public.

24 I think what would be safe and reasonable and  
25 rational would be to allow limited coming together so people 02:48

1 can share fellowship and in a time where they need it more than  
2 normally. And I think that that is what we are asking for  
3 here, reasonable restrictions that are no more onerous than  
4 those deemed important by the State.

5 The State has deemed religious gatherings to be of a  
6 second tier of importance and has dictated to California  
7 residents what is permitted and what is not. The State's order  
8 has assumed that people have cars, has assumed that people have  
9 Wi-Fi, has assumed that people are interested in putting *Google*  
10 or *Zoom* or *WebEx* or some other form of technology that may, in  
11 fact, be stealing their data on their computers, assumes they  
12 have computers. These are all false assumptions.

13 But what is not a false assumption is that, if  
14 allowed, people of faith would like to come together and use  
15 the same restrictions that are allowed for secular endeavors to  
16 safely worship. And if there are temporal restrictions applied  
17 to that, I think that the churches in question would be open to  
18 that. If there are numerical restrictions that are applied  
19 that are reasonable within the safe that is allowed for these  
20 purposes, people would be willing and have submitted that that  
21 is acceptable. And it is actually not the burden of the  
22 plaintiffs to prove that these practices are safe. We are  
23 actually submitting that whatever the restrictions are that the  
24 government is allowing for secular endeavors, those are good  
25 enough for the plaintiff.

02:49

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02:49

02:50

1           Since the government has been changing those  
2     restrictions on a regular basis, including today the governor  
3     allowed certain types of elective procedures to move forward,  
4     so he is allowing more people to be in hospitals and health  
5     facilities than he was yesterday, we similarly request that the  
6     State look at expanding the limited rights that are allowed to  
7     all citizens in this state for secular purposes to allow those  
8     for religious purposes; and, frankly, not to characterize them  
9     and treat them as if they are a concert for entertainment.

10    That is not what they are.

11           And under the applicable standards, Your Honor, I  
12    think it is clear that we do not have law of general  
13    applicability. And there are so many exceptions and so many  
14    evolving exceptions, including in the opposition brief in this  
15    case on Friday, that it is important that there be a rule and  
16    there be a rule of general applicability, and that rule of  
17    general applicability be applied to people of faith and allow  
18    them to practice in the same way that secular endeavors are  
19    allowed.

20           But even if it were a rational basis test, Your  
21    Honor, the government has not proved a rational basis to treat  
22    limited, health-compliant, CDC-compliant, safe gatherings any  
23    differently than people gathering, if you will, at a grocery  
24    store or at some of these other places, or at work places that  
25    are deemed essential, including certain government offices,

1 including healthcare workers, including others.

2           So I think, Your Honor, I would submit that many  
3 people of faith, including, you know, people who practice my  
4 faith, the Sikh faith, would be satisfied with a short or a  
5 limited or some form of coming together, but streaming and 02:51  
6 dictating that we use technology that is not readily available  
7 to all Californians is simply inadequate substitute. And we  
8 cannot go for six months or a year or eighteen months without  
9 enjoying our rights to practice our faith without, in fact,  
10 increasing the health risk on Californians by driving faith 02:52  
11 underground.

12           Thank you, Your Honor.

13           THE COURT: Thank you.

14           Mr. Patel or Mr. Grabarsky?

15           MR. GRABARSKY: Yes, Your Honor. This is Todd 02:52  
16 Grabarsky. To respond first to the point about frivolous  
17 entertainment activities are prohibited, as I mentioned and as  
18 we discussed in our brief, I also note that schools,  
19 courthouses, essential -- really fundamental essential  
20 gatherings for society to operate would also be prohibited by 02:52  
21 the stay-at-home order. Gatherings at those places are  
22 prohibited.

23           Next, plaintiffs' counsel is suggesting that strict  
24 scrutiny were to be applied, if the Court, you know, as we've  
25 argued, strict scrutiny is not the proper standard in the 02:53



1 emergency situation. Even under normal constitutional  
2 analysis, it's rational basis given the neutral and general  
3 application of the State's order, but even if strict scrutiny  
4 were to be applied, it's narrowly tailored to fulfill-- to  
5 further the compelling interest.

02:53

6 And plaintiffs don't argue that the government --  
7 that the order doesn't further a compelling interest nor could  
8 they. This is really an unprecedented emergency health  
9 situation. The COVID-19 virus is causing severe illness and  
10 death on really a massive scale. And there is a wealth of  
11 examples demonstrating how the -- that the virus spreads in  
12 gatherings of all types. And what's particularly disturbing  
13 about the way that the virus transmits is that it can transmit  
14 among people, even those who don't exhibit symptoms. It would  
15 be asymptomatic transmission.

02:53

02:54

16 So taking plaintiffs' declarations that they haven't  
17 been in contact with someone who was exposed to Corona virus  
18 just can't be given much weight given the asymptomatic  
19 transmission of the virus. And we've cited examples,  
20 unfortunate incidences of houses of worship having gatherings  
21 and attempting to abide by distancing and cleanliness  
22 precautions, yet the virus has broken out, unfortunately, among  
23 the congregants.

02:54

24 With regard to narrowly tailoring, it's important to  
25 note that the order is limited in scope. There is a temporal

02:55

1 limit. It's only for the course of the pandemic. From the  
2 issuance of the order back in March, faith-based leaders and  
3 staff have been recognized as exempted, essential, and critical  
4 workers. Those persons may leave their homes to set up and  
5 broadcast services over online streaming. They can also do it 02:55  
6 over teleconferencing, over telephones, which even though the  
7 Internet in this day and age is really akin to a utility, it's  
8 really a utility akin to that of a telephone or electricity,  
9 but they can broadcast services over the telephone.

10 And third, the order allows for drive-in services, 02:55  
11 again, provided that people remain in their cars and refrain  
12 from direct or indirect touching. So there is this narrow  
13 tailoring of the order.

14 And just to emphasize how dangerous this situation  
15 could be, the statistics are changing on a daily or hourly 02:56  
16 basis, but tens of thousands have perished in the United States  
17 where there's over 800,000 cases. I believe it's close to  
18 150,000 deaths across the world. And we need only look to  
19 places like New York or Northern Italy or Iran or other places  
20 to really appreciate the deadliness that this disease poses and 02:56  
21 the problems it causes for hospitals and healthcare systems  
22 that have been really overwhelmed in a frightening way by the  
23 disease's effect. And, again, this is based on how the disease  
24 spreads from person to person, even those who aren't exhibiting  
25 symptoms. The virus is still spreading. It's infecting people 02:56

1 and killing people.

2 And we'll note that, again, California has been  
3 fortunate to have done as best a job as they could in  
4 minimizing the effects of the disease, but that's due in large  
5 part to the State's stay-at-home order.

02:57

6 Lastly, just to comment on the remaining factors that  
7 weigh heavily against issuing a TRO in plaintiffs' favor, any  
8 harm plaintiffs suffer is really significantly outweighed by  
9 the harm to the public health that this disease provides. That  
10 harm being a significant risk of severe illness and death on a  
11 massive scale. We're dealing with a life and death situation  
12 of whole groups of people. And for those reasons, the Court  
13 should deny plaintiffs' TRO application.

02:57

14 THE COURT: Very well.

15 Mr. Patel, do you wish to add anything?

02:58

16 MR. PATEL: No, Your Honor.

17 THE COURT: Very well. So I have thought about this.  
18 I'll issue an order shortly. My intent is to deny the  
19 application. I do think that the State, the defendants, have  
20 put forth some authority that during a state of emergency the  
21 executive powers are in effect and that they are empowered to  
22 provide for emergency remedies which may infringe on  
23 fundamental constitutional rights. And even if that wasn't the  
24 case, I think rational basis would apply and that it would pass  
25 muster under that standard.

02:58

02:58

1           I want to congratulate both sides for both briefing  
2 these issues very well and for arguing today very well. This  
3 is probably the best argument that I've had on a telephonic  
4 conference of all the hearings that I've had. So I  
5 congratulate both sides on their fine performance.

02:59

6           I'll issue the order probably tomorrow or the next  
7 day. And thank you very much. The matter is under submission.

8           MS. DHILLON: Your Honor, if I may ask -- thank you  
9 for your comments. If I may ask a clarifying question  
10 regarding our request for a hearing date on the preliminary  
11 injunction. In light of the fact that we do not have an end  
12 date for these restrictions, I do think that we would like to  
13 pursue that and I request that the Court may set a date for  
14 preliminary injunction on the same matter.

02:59

15           THE COURT: I'll consider that. Thank you.  
16 Thank you, counsel.

02:59

17           MS. DHILLON: Thank you, Your Honor.

18                       (Proceedings concluded.)

19                               -o0o-

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CERTIFICATE OF OFFICIAL REPORTER

I, PHYLLIS A. PRESTON, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 30TH DAY OF APRIL, 2020

/s/ PHYLLIS A. PRESTON

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PHYLLIS A. PRESTON, CSR No. 8701, FCRR  
FEDERAL OFFICIAL COURT REPORTER

# EXHIBIT E

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**UNITED STATES DISTRICT COURT FOR  
THE CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

**WENDY GISH**, an individual;

**PATRICK SCALES**, an individual,

**JAMES DEAN MOFFATT**, an individual; and **BRENDA WOOD**, 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; **ERIN GUSTAFSON**, in

her official capacity as the San

Bernardino County Acting Public

Health Officer; **JOHN MCMAHON**,

in his official capacity as the San

Bernardino County Sheriff; **ROBERT**

**A. LOVINGGOOD**, in his official

Case No.: \_\_\_\_\_

**VERIFIED COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**



1 capacity as a San Bernardino County  
 2 Supervisor; **JANICE**  
 3 **RUTHERFORD**, in her official  
 4 capacity as a San Bernardino County  
 5 Supervisor; **DAWN ROWE**, in her  
 6 official capacity as a San Bernardino  
 7 County Supervisor; **CURT HAGMAN**,  
 8 in his official capacity as a San  
 9 Bernardino County Supervisor; **JOSIE**  
 10 **GONZALES**, in his official capacity as  
 11 a San Bernardino County Supervisor;  
 12 **CAMERON KAISER**, in his official  
 13 capacity as the Riverside County Public  
 14 Health Officer; **GEORGE JOHNSON**,  
 15 in his official capacity as the Riverside  
 16 County Executive Officer and Director  
 17 of Emergency Services; **CHAD**  
 18 **BIANCO**, in his official capacity as a  
 19 Riverside County Sheriff; **KEVIN**  
 20 **JEFFRIES**, in his official capacity as a  
 21 Riverside County Supervisor; **KAREN**  
 22 **SPIEGEL**, in her official capacity as a  
 23 Riverside County Supervisor; **CHUCK**  
 24 **WASHINGTON**, in his official  
 25 capacity as a Riverside County  
 26 Supervisor; **V. MANUEL PEREZ**, in  
 27 his official capacity as a Riverside  
 28 County Supervisor; and **JEFF**  
**HEWITT**, in his official capacity as a  
 Riverside County Supervisor,

Defendants.

*Liberty must at all hazards be supported. We have a right to it, derived from our  
 Maker. But if we had not, our fathers have earned and bought it for us, at the expense of  
 their ease, their estates, their pleasure, and their blood.*

– John Adams, 1765

1 NOW COME the above-named Plaintiffs Wendy Gish, Patrick Scales, James  
 2 Dean Moffatt, and Brenda Wood, by and through their attorneys, Dhillon Law Group,  
 3 Inc., as and for claims against the above-named Defendants Gavin Newsom, in his  
 4 official capacity as Governor of California; Xavier Becerra, in his official capacity as  
 5 Attorney General of California; Erin Gustafson, in her official capacity as the San  
 6 Bernardino County Acting Public Health Officer; John McMahon, in his official  
 7 capacity as the San Bernardino County Sheriff; Robert A. Lovinggood, in his official  
 8 capacity as a San Bernardino County Supervisor; Janice Rutherford, in her official  
 9 capacity as a San Bernardino County Supervisor; Dawn Rowe, in her official capacity  
 10 as a San Bernardino County Supervisor; Curt Hagman, in his official capacity as a San  
 11 Bernardino County Supervisor; Josie Gonzales, in his official capacity as a San  
 12 Bernardino County Supervisor; Cameron Kaiser, in his official capacity as the  
 13 Riverside County Public Health Officer; George Johnson, in his official capacity as the  
 14 Riverside County Executive Officer and Director of Emergency Services; Chad Bianco,  
 15 in his official capacity as the Riverside County Sheriff; Kevin Jeffries, in his official  
 16 capacity as a Riverside County Supervisor; Karen Spiegel, in her official capacity as a  
 17 Riverside County Supervisor; Chuck Washington, in his official capacity as a Riverside  
 18 County Supervisor; V. Manuel Perez, in his official capacity as a Riverside County  
 19 Supervisor; and Jeff Hewitt, in his official capacity as a Riverside County Supervisor,  
 20 allege and show the Court as follows (this "Complaint").

### 21 NATURE OF ACTION

22 1. Defendants, in a gross abuse of their power, have seized the Coronavirus  
 23 pandemic to expand their authority by unprecedented lengths, depriving Plaintiffs and  
 24 all other residents of California of fundamental rights protected by the U.S. and  
 25 California Constitutions, including freedom of religion, speech, and assembly, and due  
 26 process and equal protection under the law. It is this Court's duty to defend these  
 27 constitutional principles, by safeguarding the many rights and liberties of Californians  
 28 that Defendants so brazenly violate.

2. This Action presents facial and as-applied challenges to the Governor of California's March 19, 2020 Executive Order N-33-20 (the "State Order") attached here as Exhibit 1; the April 7, 2020 "Order of the Health Officer of the County of San Bernardino for the Control of COVID-19" (the "San Bernardino Order") attached here as Exhibit 2; and the April 6, 2020 "Amended Order of the Health Officer for the County of Riverside and of the County Executive Officer as Director of Emergency Services" (the "Riverside Order") attached here as Exhibit 3, which violate the constitutional rights of Plaintiffs and the people of California. The State Order, San Bernardino Order, and Riverside Order may at times be referred to collectively as the "Orders" in this Complaint.<sup>1</sup>

3. The Orders and Defendants' enforcement thereof violate (I) the Free Exercise Clause of the First Amendment; (II) the Establishment Clause of the First Amendment; (III) the Free Speech Clause of the First Amendment; (IV) the Freedom of Assembly Clause of the First Amendment; (V) the Vagueness Doctrine enshrined by Due Process of Clause of the Fourteenth Amendment; (VI) substantive rights protected by Due Process of Clause of the Fourteenth Amendment; (VII) the Equal Protection Clause of the Fourteenth Amendment; (VIII) California Constitution Article 1, Section 1's right to liberty; (IX) California Constitution Article 1, Section 2's right to free

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<sup>1</sup> As of the date of this filing, the State Order, San Bernardino Order, and Riverside Order, respectively, may be accessed online at the following URLs:

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

San Bernardino Order: [http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM\\_C45820040714190.pdf](http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM_C45820040714190.pdf);

Riverside Order: [https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC\\_20200406\\_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC_20200406_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186).

1 speech; (X) California Constitution Article 1, Section 3's right to assemble freely; (XI)  
 2 California Constitution Article 1, Section 4's right free exercise and enjoyment of  
 3 religion.

#### 4 **JURISDICTION AND VENUE**

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

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

#### 18 **PARTIES**

19 6. Plaintiff Wendy Gish is a resident of San Bernardino County, California.  
 20 She attends Shield of Faith Family Church located in Fontana, California. Gish is a  
 21 strong believer in the scriptural command found in Hebrew 10:25: "Let us not neglect  
 22 meeting together, as some have made a habit, but let us encourage one another, and all  
 23 the more as you see the Day approaching." In fulfillment of her sincerely held religious  
 24 belief, Gish attends church twice a week, Sundays and Wednesday.

25 7. Plaintiff Patrick Scales is a resident of San Bernardino County, California.  
 26 He is the head pastor of Shield of Faith Family Church located in Fontana, California.  
 27 Scales believes that he must serve the needs of his church's parishioners, especially  
 28 right now in the midst of the COVID-19 crisis. James 5:14 commands believers that "Is

1 any sick among you? Let him call for the elders of the church; and let them pray over  
2 him, anointing him with oil in the name of the Lord ... .” Scales desires to keep Shield  
3 of Faith Family Church open to help deal with the spiritual and physical needs of its  
4 congregants. Scales believes that he can have in-person church services while making  
5 every effort to prevent contact between congregants by adhering to social distancing  
6 guidance, just as grocery stores, laundromats, and marijuana dispensaries are  
7 implementing to keep their customers safe. Congregants in the Shield of Faith Family  
8 Church are seated with family units at least six feet apart, and all worshippers wearing  
9 masks in the church.

10 8. Plaintiff James Dean Moffatt is a resident of Riverside County. Moffatt is  
11 the senior pastor at Church Unlimited located in Indio, California. Moffatt believes that  
12 scripture commands him as a pastor to lay hands on people and pray for them, this  
13 includes the sick. Moffatt also believes that he is required by scripture to baptize  
14 individuals, something that cannot be done at an online service.

15 9. Plaintiff Brenda Wood is a resident of Riverside County. Wood is the  
16 senior pastor at Word of Life Ministries International, Inc. located in Riverside,  
17 California. Wood desires to hold services in a manner that properly protects her  
18 parishioners so that its parishioners may follow Hebrews 10:25 and encourage one  
19 another during these troubling times of COVID-19. Wood believes that her parishioners  
20 need to connect with other people so as to give them hope and encouragement. Wood  
21 believes she can implement proper social distancing measures similar to those practiced  
22 by restaurants, auto mechanics, and abortion clinics. Wood also would like to offer  
23 drive-in services for parishioners.

24 10. Defendant Gavin Newsom is made a party to this Action in his official  
25 capacity as the Governor of California. The California Constitution vests the “supreme  
26 executive power of the State” in the Governor, who “shall see that the law is faithfully  
27 executed.” Cal. Const. Art. V, § 1. Governor Newsom signed the State Order.  
28

1           11. Defendant Xavier Becerra is made a party to this Action in his official  
2 capacity as the Attorney General of California. Under California law he is the chief law  
3 enforcement officer with supervision over all sheriffs in the state. Cal. Const. Art. V, §  
4 13.

5           12. Defendant Erin Gustafson is made a party to this Action in her official  
6 capacity as the San Bernardino County Acting Public Health Officer. She signed the  
7 San Bernardino Order.

8           13. Defendant John Mahon is made a party to this Action in his official  
9 capacity as the San Bernardino County Sheriff. Under California law he has the  
10 responsibility to enforce the San Bernardino Order in San Bernardino County. *See* Cal.  
11 Gov't. Code § 26601.

12           14. Defendant Robert A. Lovinggood is made a party to this Action in his  
13 official capacity as a member of the San Bernardino County Board of Supervisors,  
14 which exercises broad legislative, executive, and quasi-judicial authority under  
15 California law, including the supervision of the county sheriff and public health  
16 officials. *See, e.g.,* Cal. Gov't. Code § 25000, *et seq.*; Cal. Health & Safety Code §  
17 101000.

18           15. Defendant Janice Rutherford is made a party to this Action in her official  
19 capacity as a member of the San Bernardino County Board of Supervisors, which  
20 exercises broad legislative, executive, and quasi-judicial authority under California law,  
21 including the supervision of the county sheriff and public health officials. *See, e.g.,* Cal.  
22 Gov't. Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

23           16. Defendant Dawn Rowe is made a party to this Action in her official  
24 capacity as a member of the San Bernardino County Board of Supervisors, which  
25 exercises broad legislative, executive, and quasi-judicial authority under California law,  
26 including the supervision of the county sheriff and public health officials. *See, e.g.,* Cal.  
27 Gov't. Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.  
28



1           17. Defendant Curt Hagman is made a party to this Action in his official  
2 capacity as a member of the San Bernardino County Board of Supervisors, which  
3 exercises broad legislative, executive, and quasi-judicial authority under California law,  
4 including the supervision of the county sheriff and public health officials. *See, e.g.*, Cal.  
5 Gov't. Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

6           18. Defendant Josie Gonzales is made a party to this Action in his official  
7 capacity as a member of the San Bernardino County Board of Supervisors, which  
8 exercises broad legislative, executive, and quasi-judicial authority under California law,  
9 including the supervision of the county sheriff and public health officials. *See, e.g.*, Cal.  
10 Gov't. Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

11           19. Defendant Cameron Kaiser is made a party to this Action in his official  
12 capacity as the Riverside County Public Health Officer. He signed the Riverside Order  
13 on April 6, 2020.

14           20. Defendant George Johnson is made a party to this Action in his official  
15 capacity as the Riverside County Executive Officer and Director of Emergency  
16 Services. He also signed the Riverside Order on April 6, 2020.

17           21. Defendant Chad Bianco is made a party to this Action in his official  
18 capacity as the Riverside County Sheriff. Under California law he has the responsibility  
19 to enforce the Riverside Amend Order in Riverside County. *See* Cal. Gov't. Code §  
20 26601.

21           22. Defendant Kevin Jeffries is made a party to this Action in his official  
22 capacity as a member of the Riverside County Board of Supervisors, which exercises  
23 broad legislative, executive, and quasi-judicial authority under California law, including  
24 the supervision of the county sheriff and public health officials. *See, e.g.*, Cal. Gov't.  
25 Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

26           23. Defendant Karen Spiegel is made a party to this Action in her official  
27 capacity as a member of the Riverside County Board of Supervisors, which exercises  
28 broad legislative, executive, and quasi-judicial authority under California law, including



1 the supervision of the county sheriff and public health officials. *See, e.g.*, Cal. Gov't.  
2 Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

3 24. Defendant Chuck Washington is made a party to this Action in his official  
4 capacity as a member of the Riverside County Board of Supervisors, which exercises  
5 broad legislative, executive, and quasi-judicial authority under California law, including  
6 the supervision of the county sheriff and public health officials. *See, e.g.*, Cal. Gov't.  
7 Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

8 25. Defendant V. Manuel Perez is made a party to this Action in his official  
9 capacity as a member of the Riverside County Board of Supervisors, which exercises  
10 broad legislative, executive, and quasi-judicial authority under California law, including  
11 the supervision of the county sheriff and public health officials. *See, e.g.*, Cal. Gov't.  
12 Code § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

13 26. Defendant Jeff Hewitt is made a party to this Action in his official capacity  
14 as a member of the Riverside County Board of Supervisors, which exercises broad  
15 legislative, executive, and quasi-judicial authority under California law, including the  
16 supervision of the county sheriff and public health officials. *See, e.g.*, Cal. Gov't. Code  
17 § 25000, *et seq.*; Cal. Health & Safety Code § 101000.

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

## 20 **FACTUAL ALLEGATIONS**

21 28. On or about March 13, 2020, President Donald J. Trump proclaimed a  
22 National State of Emergency as a result of the threat of the emergence of a novel  
23 coronavirus, COVID-19.<sup>2</sup>

24 29. Since the initial outbreak of COVID-19 in the United States in February  
25 and March 2020, the federal government's projections of the anticipated national death  
26

27 <sup>2</sup> As of the date of this filing, the Proclamation of a National Emergency can be found  
28 online at: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

1 toll related to the virus has decreased substantially, by an order of magnitude. Despite  
 2 such revisions, Defendants have increasingly restricted—where not outright banned—  
 3 Plaintiffs’ engagement in constitutionally-protected activities.<sup>3</sup>

#### 4 **FACTUAL ALLEGATIONS AS TO THE STATE OF CALIFORNIA**

5 30. On or about March 4, 2020, California Governor Gavin Newsom  
 6 proclaimed a State of Emergency as a result of the threat of COVID-19.<sup>4</sup>

7 31. On or about March 19, 2020, California Governor Newsom issued  
 8 Executive Order N-33-20 in which he ordered “all residents are directed to immediately  
 9 heed the current State public health directives.”

10 32. The state public health directive requires “all individuals living in the State  
 11 of California to stay home or at their place of residence except as needed to maintain  
 12 continuity of operations of the federal critical infrastructure sectors ...”.<sup>5</sup>

13 33. On or about March 22, 2020, the California Public Health Officer  
 14 designated a list of “Essential Critical Infrastructure Workers.”<sup>6</sup> Included on the list of  
 15 the “essential workforce” are “faith based services that are provided through streaming  
 16 or other technology.”

17  
 18  
 19  
 20 <sup>3</sup> See, e.g.,  
 21 [https://www.usatoday.com/story/news/investigations/2020/04/09/coronavirus-deaths-u-](https://www.usatoday.com/story/news/investigations/2020/04/09/coronavirus-deaths-u-s-could-closer-60-k-new-model-shows/5122467002/)  
 22 [s-could-closer-60-k-new-model-shows/5122467002/](https://www.usatoday.com/story/news/investigations/2020/04/09/coronavirus-deaths-u-s-could-closer-60-k-new-model-shows/5122467002/)

23 <sup>4</sup> As of the date of this filing, the Proclamation of a State of Emergency can be found  
 24 online at: [https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)  
 25 [SOE-Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf).

26 <sup>5</sup>The State Public Health Directive was included in the text of Executive Order N-33-  
 27 20.

28 <sup>6</sup> As of the date of this filing, the list of Essential Critical Infrastructure Workers can be  
 found online at: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>.

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

35. The public health directive provides that its directives “shall stay in effect until further notice.” Ex. 1.

#### **FACTUAL ALLEGATIONS AS TO SAN BERNADINO COUNTY**

36. On or about April 7, 2020, defendant Dr. Erin Gustafson signed the San Bernardino Order.<sup>7</sup>

37. The San Bernardino Order “allow[s] faith based services that are provided through streaming or other technology, while individuals remain in their homes, but does not allow individuals to leave their home for driving parades or drive-up services, or for picking up non-essential items.” Ex. 2, § 2.

38. The San Bernardino Order requires all residents to “wear face coverings, such as scarves (dense fabric, without holes), bandanas, neck gaiters, or other fabric face coverings when they leave their homes or places of residence for essential activities.” Ex. 2, § 4.

39. The San Bernardino Order states that any violation “is a crime punishable by fine, imprisonment, or both.” Ex. 2.

40. The Order states that it will remain in effect “until rescinded.” Ex. 2.

41. The San Bernardino Order is signed by Defendant Dr. Erin Gustafson.

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<sup>7</sup> As of the date of this filing, the San Bernardino Order may be accessed online at the following URLs: [http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM\\_C45820040714190.pdf](http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM_C45820040714190.pdf).

1           42. Dr. Erin Gustafson is not an elected official but is the Acting Public Health  
2 Officer of San Bernardino. The San Bernardino Board of Supervisors have not appointed  
3 a Public Health Officer pursuant to Cal. Health & Safety Code §101000.

4           43. On April 8, 2020, San Bernardino County released a document on their  
5 website titled “Clarification of religious services and face-covering order” (hereinafter  
6 Clarification”). A copy of the Clarification is attached here as Exhibit 4.<sup>8</sup>

7           44. The Clarification is not signed by the Public Health Officer.

8           45. The Clarification does not revoke the San Bernardino Order.

9           46. The Clarification states “[o]n the subject of enforcement, the public is  
10 advised that although violation of a health order is a violation of the California Health  
11 and Safety Code, the County does not expect law enforcement to broadly impose  
12 citations on violators.”

13           47. The Clarification does not revoke law enforcement authority to criminally  
14 charge any individual who violates the San Bernardino Order.

15           48. Defendants have granted law enforcement unfettered discretion when  
16 deciding whether or not to enforce the San Bernardino Order.

17           49. The Clarification states that the “specific reference to drive-in religious  
18 service so close to major religious observances taking place during the next four days,  
19 for which organizations had already conducted considerable planning and incurred  
20 expenses, are clarified as follows: Organizations that have planned such services for the  
21 coming weekend should proceed with those services if they choose to do so and make  
22 every effort to prevent contact between congregants.”

23           50. The Clarification, which is not signed by any individual and is simply a  
24 document posted online, directly contradicts the written San Bernardino Order that  
25  
26  
27

28 <sup>8</sup> As of the date of this filing, the San Bernardino Clarification can be found online at:  
<http://wp.sbcounty.gov/cao/countywire/?p=5862>.

1 makes it a crime for churches to have drive-in religious services and for parishioners to  
2 attend such services.

3 51. Plaintiff Patrick Scales' church, Shield of Faith Family Church, Inc., is  
4 located in San Bernardino County.

5 52. Plaintiff Scales desires to hold in-person religious services for those  
6 congregants who desire to attend church.

7 53. Plaintiff Scales believes that he can hold such religious services and  
8 abiding by social distancing tips recommended by the CDC by keeping congregants at  
9 least six feet apart, and provide for the wearing of masks and gloves.

10 54. Plaintiff Scales believes that religious services are essential for the spiritual  
11 health of the congregation so that the congregants can exhort one another during these  
12 difficult times.

13 55. Plaintiff Scales recognizes that most of his congregants will stay at home  
14 but he wants to be available for those who are healthy and feel that in-person church  
15 service can be safely attended.

16 56. Plaintiff Wendy Gish attends Shield of Faith Family Church and would  
17 attend an in-person church service should it be made available to her.

18 57. Plaintiff Gish regularly attends church services and believes that she has a  
19 scriptural command to "not neglect meeting together."

20 58. To her knowledge, Plaintiff Gish has never had or contracted said  
21 coronavirus; she has never been at any time exposed to the danger of contracting it and  
22 has never been in close proximity to any locality where said coronavirus has or have  
23 existed.

24 59. As a result of not being able to attend in-person church, Plaintiff Gish has  
25 been deprived of the opportunity for important cultural, social, and religious activities,  
26 including speech activities pertaining to the coronavirus outbreak and the government's  
27 response.  
28

1           60. As of April 11, 2020, San Bernardino County has eight hundred ten (810)  
2 coronavirus cases and twenty-five (25) COVID-19 associated deaths, according to  
3 information posted on the county's website.<sup>9</sup>

4           61. The United States Census estimates that as of July 1, 2019, San Bernardino  
5 County's population is 2,180,085 people.<sup>10</sup>

#### 6                           **FACTUAL ALLEGATIONS AS TO RIVERSIDE COUNTY**

7           62. On or about April 6, 2020, defendants Dr. Cameron Kaiser and George  
8 Johnson signed the Riverside Order.<sup>11</sup>

9           63. The Riverside Order prohibits "[a]ll public or private gatherings . . .  
10 including, but not limited to an auditorium, . . . church, . . . or any other indoor or  
11 outdoor space used for any non-essential purpose including, but not limited to . . .  
12 church . . . ." Ex. 3, § 1(a).

13           64. Exempted from its prohibition on public or private gatherings are  
14 numerous services, industries, and activities, including: "courts of law, medical  
15 providers . . . daycare and child care . . . [and] necessary shopping at fuel stations, stores  
16 or malls," provided that a "state and federal guidelines for infection control" are  
17 observed. Ex. 3, § 1(b).

18  
19  
20 <sup>9</sup> Per San Bernardino County Department of Public Health's web page visited on April  
21 11, 2020 <http://wp.sbcounty.gov/dph/coronavirus/>.

22 <sup>10</sup> United States Census Bureau quick facts for San Bernardino County can be found  
23 online at:  
24 [https://www.census.gov/quickfacts/fact/table/sanbernardinocountycalifornia/PST04521](https://www.census.gov/quickfacts/fact/table/sanbernardinocountycalifornia/PST045219)  
25 [9](https://www.census.gov/quickfacts/fact/table/sanbernardinocountycalifornia/PST045219).

26 <sup>11</sup> As of the date of this filing, the Riverside Order may be accessed online at the  
27 following URLs:  
28 [https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC\\_20200406\\_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC_20200406_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186).

1           65. The Riverside Order provides that “[a]ll essential business that remain in  
2 operation . . . shall follow the Social Distancing and Infection Control Guidelines  
3 published by the [Center for Disease Control] and California Department of Public  
4 Health . . . or the facility shall be closed.” Ex. 3, § 1(c).

5           66. The Riverside Order mandates that all people wear face coverings. Ex. 3, §  
6 1(d).

7           67. The Riverside Order expressly states that any violation “is a crime  
8 publishable by fine, imprisonment, or both.” Ex. 3, § 11.

9           68. The Riverside Order is signed by Defendant Dr. Cameron Kaiser.

10          69. The Riverside Order is also signed by Defendant George Johnson as County  
11 Executive Officer and Director of Emergency Services.

12          70. Dr. Cameron Kaiser is not an elected official but is appointed by the  
13 Riverside County Board of Supervisors. *See* Cal. Health & Safety Code §101000.

14          71. On April 10, 2020, Riverside County issued a press release in which they  
15 stated that “Drive-up church services that practice proper social distancing will be  
16 allowed this weekend in Riverside County, although the order to prohibit such activities  
17 will remain after Easter Sunday.”<sup>12</sup>

18          72. The April 10<sup>th</sup> clarification was issued by Defendant George Johnson.

19          73. Plaintiff James Dean Moffatt’s church, “Church Unlimited” is located in  
20 Riverside County.

21          74. Plaintiff James Dean Moffatt, upon learning about the coronavirus,  
22 immediately had his church building cleaned and disinfected.

23          75. Plaintiff Moffatt ensured that sanitizing materials were available to each  
24 person who entered his church and encouraged family units to sit at least six feet apart.  
25

26 \_\_\_\_\_  
27 <sup>12</sup> As of the date of this filing, the Riverside County News Release can be found online  
28 at:

[https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/News/April\\_10.pdf?ver=2020-04-11-105351-463&timestamp=1586627749323](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/News/April_10.pdf?ver=2020-04-11-105351-463&timestamp=1586627749323).



1           76. Plaintiff Moffatt encouraged anyone who was uncomfortable with  
2 gathering during coronavirus to stay at home.

3           77. Plaintiff Moffatt encouraged anyone who was sick to stay at home.

4           78. On April 9, 2020, Plaintiff Moffatt was fined \$1,000 for violating the  
5 Riverside Order for holding a church service on April 5, 2020, Palm Sunday.

6           79. To his knowledge, Plaintiff Moffatt has never had or contracted the  
7 coronavirus; he has never been at any time exposed to the danger of contracting it; and  
8 has never been in close proximity to any locality where said coronavirus has or have  
9 existed.

10          80. But for the Riverside Order and Defendants' enforcement thereof, Plaintiff  
11 Moffatt would continue to hold in-person religious services in Riverside County, while  
12 taking the same social distancing precautions taken by "essential businesses" that  
13 Defendants continue to allow to operate in the county, despite any prevalence of  
14 COVID-19. Plaintiff Moffatt believes that it is important for Christians to come  
15 together, remember, and celebrate all that Jesus has done for this world.

16          81. As a result of not being able to conduct an in-person church service,  
17 Plaintiff Moffatt has been deprived of the opportunity for important cultural, socials,  
18 and religious activities, including speech activities pertaining to the coronavirus  
19 outbreak and the government's response.

20          82. Plaintiff Brenda Wood's church, Word of Life Ministries International Inc.  
21 is located in Riverside County.

22          83. Word of Life Ministries International Inc. has approximately 20-30 regular  
23 attendees.

24          84. Plaintiff Brenda Wood believes Scripture commands her to provide  
25 opportunities for the believers to obey Hebrews 10:25 where the believers meet together  
26 and encourage one another.

27          85. Plaintiff Brenda Wood held a drive-up church service on Easter Sunday.  
28

1 86. The drive-up church service provided appropriate social distancing, with  
 2 everyone wearing masks and staying in their vehicles. The restrooms were not made  
 3 available. Each car was parked at least six feet from other vehicles.

4 87. During the service, Plaintiff Brenda Wood used a portable sound  
 5 amplification system. The congregants had to roll down their windows in order to listen.

6 88. During the service, communion was served by an individual wearing a  
 7 mask and gloves and the elements were pre-packaged. The person serving communion  
 8 used tongs to remove the communion cups from the pre-packaged box.

9 89. At this time, Plaintiff Brenda Wood has postponed all baptisms at her  
 10 church.

11 90. Plaintiff Brenda Wood would like to hold drive-up church services every  
 12 Sunday following safe social distancing practices until the state of emergency has been  
 13 lifted.

14 91. As of April 11, 2020, Riverside County has one thousand four hundred  
 15 thirty-one (1,431) coronavirus cases and forty-one (41) coronavirus associated deaths,  
 16 according to information posted on the county's website.<sup>13</sup>

17 92. The United States Census estimates that as of July 1, 2019, Riverside  
 18 County's population is 2,470,546 people.<sup>14</sup>

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 26 <sup>13</sup> Per Riverside County Department of Public Health's web page visited on April 11,  
 27 2020 <https://rivcoph.org/coronavirus>.

28 <sup>14</sup> United States Census Bureau quick facts for Riverside County can be found online at:  
<https://www.census.gov/quickfacts/fact/table/riversidecountycalifornia/PST045219>.

**CLAIMS****FIRST CLAIM FOR RELIEF****Free Exercise Clause of First Amendment to U.S. Constitution****(42 U.S.C. § 1983)***(By all Plaintiffs against all Defendants)*

93. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

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

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

1           96. The Orders are neither neutral nor of general application. Defendants’  
2 restrictions have specifically and explicitly targeted religious and “faith-based” services  
3 and are thus not neutral on their face. Defendants have prohibited certain public and  
4 private gatherings deemed “non-essential,” including out-of-home religious services,  
5 while exempting a laundry list of industries and services purportedly “essential” to the  
6 government’s various interests, including medical cannabis dispensaries and other  
7 medical providers, courts, public utilities, daycare and childcare, and “necessary”  
8 shopping. Further, several Defendants have granted *ad hoc* exemptions to the Orders for  
9 particular religious gatherings of particular faiths – i.e., Christians permitted to  
10 celebrate Easter, but no other gatherings, and other faiths given no exemptions.

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

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

19           99. Defendants’ mandates are not “narrowly tailored” to further any  
20 compelling governmental interest. Defendants have granted numerous special  
21 exemptions to their bans on public gatherings and conduct, including for purportedly  
22 “essential” businesses and activities, provided that social distancing practices are  
23 observed; and even for out-of-home religious services during Easter, an important day  
24 of religious significance for Christians. Since these gatherings may be permitted, there  
25 can be no doubt that Defendants may, and therefore must, permit Plaintiffs to engage in  
26 equivalent religious activities and services provided that Plaintiffs also adhere to the  
27 social distancing guidelines currently in place.  
28



1 The Establishment Clause applies to the states through the Due Process Clause of the  
2 Fourteenth Amendment. *Everson v. Board of Ed. of Ewing*, 330 U.S. 1 (1947).

3 106. Defendants have not and do not act with a clearly secular purpose in  
4 adopting and enforcing the Orders. Defendants have made several exceptions to their  
5 Orders, including certain religious activities during Easter, a day significant to  
6 Christians, without exempting those same activities when occurring on days both before  
7 and after Easter, or on days significant to other faiths. It is not for Defendants to  
8 determine which faiths, and on which days of religious significance to those faiths,  
9 religious services may take place.

10 107. The Orders and Defendants' *ad hoc* enforcement thereof have the primary  
11 effect of inhibiting religious activity.

12 108. Defendants have failed to avoid excessive government entanglement with  
13 religion. Defendants permit only some forms of religious observance, such as live-  
14 streamed, at-home religious activities, and, as to the Riverside Order only, in-person  
15 services during Easter weekend.

16 109. There is no historical precedence in the United States for inhibiting  
17 religious practices on terms more restrictive than those imposed on identical secular  
18 activities, as Defendants do now.

19 110. 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.

22 111. 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.

25 112. 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 pursuant to 42 U.S.C. § 1988.  
28

### THIRD CLAIM FOR RELIEF

#### Free Speech Clause of First Amendment to U.S. Constitution

#### (42 U.S.C. § 1983)

*(By all Plaintiffs against all Defendants)*

113. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

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

115. Under Defendants' Orders, public gatherings and church services are prohibited.

116. Plaintiffs engage in protected speech through worship, religious discussions, singing hymnals, and praying with their congregation.

117. Defendants' imposition of the Orders is unreasonable and has a chilling effect on protected speech by outright banning in-person church services at the pain of criminal penalty. Furthermore, several of the Defendants have granted *ad hoc* exemptions to the Orders for Easter, but not any other Sunday or day of religious significance to other faiths. Additionally, a representative of Riverside County has stated that Sheriffs are not expected to enforce every violation, but failed to provide any guidance as to what violations would be prioritized, leaving it up to the Sheriffs' unfettered discretion to decide which violations to enforce. Such a lack of standards along with a grant of such discretion renders the Orders unconstitutional both facially and as they are applied.

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

119. 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.

120. 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.

3 121. 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 pursuant to 42 U.S.C. § 1988.

#### 6 **FOURTH CLAIM FOR RELIEF**

##### 7 **Violation of First Amendment Freedom of Assembly Clause** 8 **(42 U.S.C. § 1983)**

9 *(By all Plaintiffs against all Defendants)*

10 122. Plaintiffs incorporate by reference the allegations in the preceding  
11 paragraphs, as if fully set forth herein.

12 123. The Orders and Defendants' enforcement thereof violate the First  
13 Amendment, both facially and as-applied to Plaintiffs. The First Amendment of the  
14 Constitution protects the "right of the people peaceably to assemble." The Freedom of  
15 Assembly Clause was incorporated against the states in *De Jonge v. Oregon*, 299 U.S.  
16 353 (1937).

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

23 125. By denying Plaintiff Brenda Wood the ability to conduct services via a  
24 drive-in church service that complies with the CDC guidelines for social distancing,  
25 Defendants are in violation of the Freedom of Assembly Clause. Defendants cannot  
26 meet the no-less-restrictive-alternative test. The CDC's social distancing guidelines are  
27 appropriate to limit the spread of COVID-19. Imposing more restrictive requirements  
28 that target churches and their drive-in services while at the same time allowing

1 restaurants, coffee shops, marijuana dispensaries to operate drive-ups is not the least  
2 restrictive means of achieving Defendants' public safety goals.

3 126. By denying Plaintiff Patrick Scales from Shield of Faith Family Church  
4 and Plaintiff James Moffatt of Church Unlimited the ability to assemble via an in-  
5 person church service that complies with the CDC guidelines for social distancing,  
6 Defendants are in violation of the Freedom of Assembly Clause. Defendants cannot  
7 meet the no-less restrictive-alternative test. The CDC's social distancing guidelines are  
8 appropriate to limit the spread of COVID-19. Imposing more restrictive requirements  
9 that target churches and their in-person services while allowing grocery stores,  
10 laundromats, and marijuana dispensaries is not the least restrictive means of achieving  
11 Defendants' public safety goals.

12 127. Requiring Plaintiffs to abstain from religious gatherings, despite  
13 substantial modifications to satisfy the public health interests at stake, violates  
14 Plaintiffs' Constitutional right to peaceably assemble.

15 128. 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.

18 129. 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.

21 130. 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 pursuant to 42 U.S.C. § 1988.

24  
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1 **FIFTH CLAIM FOR RELIEF**

2 **Due Process Clause of Fourteenth Amendment to U.S. Constitution**

3 **(42 U.S.C. § 1983)**

4 *(By all Plaintiffs against all Defendants)*

5 131. Plaintiffs incorporate by reference the allegations in the preceding  
6 paragraphs, as if fully set forth herein.

7 132. The Orders and Defendants' enforcement thereof violate the Due Process  
8 Clause of the Fourteenth Amendment, both facially and as-applied to Plaintiffs.

9 133. A regulation is constitutionally void on its face when, as matter of due  
10 process, it is so vague that persons "of common intelligence must necessarily guess at  
11 its meaning and differ as to its application" *Connally v. General Const. Co.*, 269 U.S.  
12 385, 391 (1926); *People ex rel. Gallo v. Acuna*, 14 Cal.4th 1090, 1115 (1997). The void  
13 for vagueness doctrine is designed to prevent arbitrary and discriminatory enforcement.  
14 The problem with a vague regulation is that it "impermissibly delegates basic policy  
15 matters to policemen, judges, and juries for resolution on an ad hoc and subjective  
16 basis...." *Grayned v. City of Rockford*, 408 U.S. 104, 108–109 (1972).

17 134. Defendants' Orders are void for vagueness. In conjunction with issuing the  
18 Orders, including for the following reasons:

19 a. The State Order provides that individuals are ordered to "heed" State  
20 public health directives. The word "heed" is defined by Webster's Dictionary to mean  
21 "to give consideration or attention to" —not specifically to adhere to those directives.  
22 Yet, the State Order is widely reported in the media and cited by local and state  
23 officials, including the San Bernardino and Riverside Orders, as compelling compliance  
24 with State public health directives to shelter in place unless conducting essential  
25 business. The State Order also includes the text of the public health directive, which  
26 includes language that ostensibly "order[s]" compliance, creating further ambiguity as  
27 to whether Plaintiffs must comply with, or merely heed, the public health directive.  
28

1 Accordingly, the State Order is vague as to what precisely is being ordered, and what  
2 actions may result in criminal penalties, fines, or imprisonment.

3 b. The San Bernardino Order does not exempt any particular religious  
4 holidays, yet San Bernardino has explicitly exempted compliance during Easter  
5 weekend. County officials have also stated that it “does not expect law enforcement to  
6 broadly impose citations on violators” and that “the expectation is that law enforcement  
7 will rely upon community members to use good judgment, common sense, and act in  
8 the best interest of their own health and the health of their loved ones and the  
9 community at large.”

10 c. The Riverside County Order states that “non-essential personnel . . . are  
11 prohibited from entry into any hospital or long-term care facility,” ostensibly banning  
12 “non-essential” people from seeking medical care. Yet, the Order states that “visitors”  
13 may be permitted access to hospitals under certain conditions. No reasonable person can  
14 make sense of what conduct is permitted under the Order

15 135. As a result of these ambiguities, no reasonable person could understand  
16 what conduct violates the Order and might subject that person to criminal penalties.

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

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

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

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1 **SIXTH CLAIM FOR RELIEF**

2 **Due Process Clause of Fourteenth Amendment to U.S. Constitution**

3 **(42 U.S.C. § 1983)**

4 *(By all Plaintiffs against all Defendants)*

5 139. Plaintiffs incorporate by reference the allegations in the preceding  
6 paragraphs, as if fully set forth herein.

7 140. The Orders and Defendants' enforcement thereof violate Plaintiffs'  
8 substantive due process rights secured by the Fourteenth Amendment to the U.S.  
9 Constitution. Under the Due Process Clause of the Fourteenth Amendment, no State  
10 shall "deprive any person of life, liberty, or property, without due process of law." The  
11 fundamental liberties protected by this Clause include most of the rights enumerated in  
12 the Bill of Rights. *See Duncan v. Louisiana*, 391 U.S. 145, 147–149 (1968). In addition,  
13 these liberties extend to certain personal choices central to individual dignity and  
14 autonomy, including intimate choices that define personal identity and beliefs. *See, e.g.,*  
15 *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972); *Griswold v. Connecticut*, 381 U.S. 479,  
16 484–486 (1965).

17 141. Plaintiffs' rights to freedom of religion, assembly, speech, and travel are  
18 fundamental rights protected by the U.S. Constitution. *See, e.g., Aptheker v. Secretary*  
19 *of State*, 378 U.S. 500, 520 (1964); *Kent v. Dulles*, 357 U.S. 116, 127 (1958).

20 142. When a government practice restricts fundamental rights such as the right  
21 to practice religion freely, assemble peacefully, speak, and travel, it is subject to "strict  
22 scrutiny" and can be justified only if it furthers a compelling government purpose, and,  
23 even then, only if no less restrictive alternative is available. *See, e.g. Memorial Hospital*  
24 *v. Maricopa County*, 415 U.S. 250, 257-258 (1974); *Dunn v. Blumstein*, 405 U.S. 330,  
25 339-341 (1972); *Shapiro v. Thompson*, 394 U.S. 618, 89 (1969), *Maher v. Roe*, 432  
26 U.S. 464, 488 (1977).

27 143. Strict scrutiny applies to Plaintiffs' claims because both the Riverside  
28 Order and the San Bernardino Order mandate that Plaintiffs stay at home, impinging on

1 their fundamental rights to freedom of religion, assembly, speech, and travel. These  
 2 Orders do not permit Plaintiffs to exercise these rights, even while conforming to the  
 3 CDC guidelines for social distancing, unless Defendants deem them “essential” or as  
 4 participating in “essential” activities.

5 144. Defendants’ mandates are not “narrowly tailored” to further any  
 6 compelling governmental interest. Defendants’ have granted numerous special  
 7 exemptions to their bans on public gatherings, including for purportedly “essential”  
 8 businesses and activities, provided that social distancing practices are observed; and  
 9 even for out-of-home religious services during Easter, an important day of religious  
 10 significance for Christians. Since these gatherings can be permitted, there can be no  
 11 doubt that Defendants may, and therefore must, permit Plaintiffs to engage in  
 12 equivalent constitutionally-protected activities provided that Plaintiffs also adhere to the  
 13 social distancing guidelines.

14 145. 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.

17 146. 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.

20 147. 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 pursuant to 42 U.S.C. § 1988.

## 23 SEVENTH CLAIM FOR RELIEF

### 24 Equal Protection Clause of Fourteenth Amendment to U.S. Constitution

25 (42 U.S.C. § 1983)

26 *(By all Plaintiffs against all Defendants)*

27 148. Plaintiffs incorporate by reference the allegations in the preceding  
 28 paragraphs, as if fully set forth herein.

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

7           150. Defendants intentionally and arbitrarily categorize individuals and conduct  
8 as either "essential" or "non-essential." Those persons classified as "essential," or as  
9 participating in essential services, are permitted to go about their business and activities  
10 provided certain social distancing practices are employed. Those classified as "non-  
11 essential," or as engaging in non-essential activities, are required to stay in their  
12 residence, unless it becomes necessary for them to leave for one of the enumerated  
13 "essential" activities.

14           151. Strict scrutiny under the Equal Protection Clause applies where, as here,  
15 the classification impinges on a fundamental right, including the right to practice  
16 religion freely, to right to free speech and assembly, and the right to travel, among  
17 others.

18           152. Defendants cannot satisfy strict scrutiny, because their arbitrary  
19 classifications are not narrowly tailored measures that further compelling government  
20 interests, for the reasons stated above.

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

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

27           155. Plaintiffs found it necessary to engage the services of private counsel to  
28 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of



attorneys' fees pursuant to 42 U.S.C. § 1988.

## **EIGHTH CLAIM FOR RELIEF**

### **Right to Liberty**

#### **(Cal. Const. Art. 1, § 1)**

*(By all Plaintiffs against all Defendants)*

156. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

157. 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.

158. California courts have held that Public Health Officials’ authority over the rights of personal liberty is limited. Before exercising their full powers to quarantine, there must be “reasonable grounds [] to support the belief that the person so held is infected.” *Ex parte Martin*, 83 Cal. App. 2d 164 (1948). Public Health Officials must be able to show “probable cause to believe the person so held has an infectious disease ...” *Id.*

159. California courts found that Public Health Officials could not quarantine 12 blocks of San Francisco Chinatown because of nine (9) deaths due to bubonic plague. *See Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900), and *Wong Wai v. Williamson*, 103 F. 1 (C.C. Cal. 1900).

160. The court found it “purely arbitrary, unreasonable, unwarranted, wrongful, and oppressive interference with the personal liberty of complainant” who had “never had or contracted said bubonic plague; that he has never been at any time exposed to the danger of contracting it, and has never been in any locality where said bubonic plague, or any germs of bacteria thereof, has or have existed”. *Jew Ho*, 103 F. 10 (C.C. Cal. 1900).

1 161. California courts have found that “a mere suspicion [of a contagious  
2 disease], unsupported by facts giving rise to reasonable or probable cause, will afford  
3 no justification at all *for depriving persons of their liberty* and subjecting them to virtual  
4 imprisonment under a purported order of quarantine.” *Ex parte Arta*, 52 Cal. App. 380,  
5 383 (1921) (emphasis added).

6 162. In *Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900), and *Wong Wai v.*  
7 *Williamson*, 103 F. 1 (CC Cal. 1900), the California courts found that there were more  
8 than 15,000 people living in the twelve blocks of San Francisco Chinatown who were to  
9 be quarantined. The courts found it unreasonable to shut down the ability of over  
10 15,000 people to make a living because of nine deaths. This was one death for every  
11 1,666 inhabitants of Chinatown.

12 163. As of July 1, 2020, San Bernardino and Riverside Counties have a  
13 combined population of 4,650,631 individuals and as of April 11, 2020, San Bernardino  
14 and Riverside Counties have a total of 66 coronavirus deaths. That is one death for  
15 every 70,464 inhabitants.

16 164. Plaintiffs have never had or contracted said coronavirus; they have never  
17 been at any time exposed to the danger of contracting it, and have never been in any  
18 locality where said coronavirus, or any germs of bacteria thereof, has or have existed.

19 165. Requiring Plaintiffs to abstain from all religious gatherings, despite  
20 substantial modifications to satisfy the public health interests at stake, violates their  
21 California Constitutional liberty rights.

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

25 167. Plaintiffs have found it necessary to engage the services of private counsel  
26 to vindicate their rights under the law. Plaintiffs are therefore entitled to an award of  
27 attorney fees and costs pursuant to California Code of Civil Procedure Section 1021.5.  
28

1 **NINTH CLAIM FOR RELIEF**

2 **Freedom of Speech**

3 **(Cal. Const. Art. 1, § 2)**

4 *(By all Plaintiffs against all Defendants)*

5 168. Plaintiffs incorporate by reference the allegations in the preceding  
6 paragraphs, as if fully set forth herein.

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

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

14 171. For the reasons stated in Plaintiffs’ Third Claim for Relief, requiring  
15 Plaintiffs to abstain from its religious gatherings, despite substantial modifications to  
16 satisfy the public health interests at stake, violates Plaintiffs’ liberty of speech rights  
17 under the California Constitution as well.

18 172. 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.

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

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**TENTH CLAIM FOR RELIEF****Freedom of Assembly****(Cal. Const. Art. 1, § 3)***(By all Plaintiffs against all Defendants)*

174. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

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

176. For the reasons stated in Plaintiffs’ Fourth Claim for Relief, requiring Plaintiffs to abstain from its 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.

177. 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.

178. 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 attorney fees and costs pursuant to California Code of Civil Procedure Section 1021.5.

**ELEVENTH CLAIM FOR RELIEF****Free Exercise and Enjoyment of Religion****(Cal. Const. Art. 1, § 4)***(By all Plaintiffs against all Defendants)*

179. Plaintiffs incorporate by reference the allegations in the preceding paragraphs, as if fully set forth herein.

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

1 181. "In general, the religion clauses of the California Constitution are read  
2 more broadly than their counterparts in the federal Constitution." *Carpenter v. City and*  
3 *County of San Francisco*, 93 F.3d 627, 629 (9th Cir. 1996).

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

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

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

14 **WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment  
15 against Defendants as follows:

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. Constitution and  
18 Article 1, Sections 1, 2, and 4 of the California Constitution;

19 B. An order temporarily, preliminarily, and permanently enjoining and  
20 prohibiting Defendants from enforcing the Orders;

21 C. For attorneys' fees and costs;

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

23  
24 Date: April 13, 2020

DHILLON LAW GROUP INC.

25  
26 By: /s/ Harmeet K. Dhillon

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28 mmeuser@dhillonlaw.com

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Attorneys for Plaintiffs

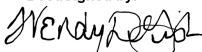
## VERIFICATION OF COMPLAINT

I, the undersigned, declare as follows:

1. I am a plaintiff in this matter.
2. I have read the foregoing complaint and know the contents thereof.
3. The same is true of my own knowledge, except as to those matters which are therein state on information and belief, and, as to those matters, I believe it to be true.

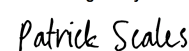
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: 4/13/2020

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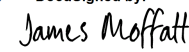
Wendy Gish

Date: 4/13/2020

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Patrick Scales

Date: 4/13/2020

DocuSigned by:  
  
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James Dean Moffatt

Date: 4/13/2020

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Brenda Wood



# EXHIBIT 1

**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-33-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 19th day  
of March 2020.



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State



# EXHIBIT 2



## Public Health

[www.SBCounty.gov](http://www.SBCounty.gov)

Trudy Raymundo  
Director

Corwin Porter  
Assistant Director

Maxwell Ohikhuare, M.D.  
Health Officer

Erin Gustafson, M.D., MPH  
Acting Health Officer

### **ORDER OF THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO**

#### **FOR THE CONTROL OF COVID-19**

**DATE OF ORDER: April 7, 2020**

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295; County Code Section 31.0101 Et. Seq.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, AND SAN BERNARDINO COUNTY CODE SECTION 31.0101 ET. SEQ., THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO ("HEALTH OFFICER") ORDERS:

**Effective 12:00 a.m. on Wednesday, April 8, 2020, and continuing until rescinded,** pending further Order of the Public Health Officer, the following will be in effect for the County of San Bernardino (hereinafter the "County"):

1. The Orders of the San Bernardino County Health Officer issued on March 17, 2020 and March 27, 2020, Governor Newsom's Executive Order N-22-20 and order of the California State Public Health Officer issued on March 19, 2020, requiring all persons residing in the State to remain in their homes or places of residence, except as needed to maintain the continuity of operations for critical infrastructure (the "Stay-at-Home Order") remain in effect until the Governor's Executive Order N-22-20, and the Orders of the San Bernardino County Health Officer remain in effect until they are rescinded.
2. Under the Orders of the San Bernardino County Health Officer, the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, all individuals living in the State of California are ordered to stay home or at their place of residence except as need to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>. This guidance does allow faith based services that are provided through streaming or other technology, while individuals remain in their homes, but does not allow individuals to leave their homes for driving parades or drive-up services, or for picking up non-essential items.

#### **BOARD OF SUPERVISORS**

ROBERT A. LOVINGOOD  
First District

JANICE RUTHERFORD  
Second District

DAWN ROWE  
Third District

CURT HAGMAN  
Chairman, Fourth District

JOSIE GONZALES  
Vice Chair, Fifth District

Gary McBride  
Chief Executive Officer



3. All non-essential businesses that do not fall under the Essential Critical Infrastructure referenced above are ordered to remain closed. All essential businesses that remain in operation in accordance with the above referenced Orders of the San Bernardino County Health Officer, the Order of the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, shall follow the Social Distancing and Infection Control Guidelines published by the CDC and California Department of Public Health. All essential businesses must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, additional measures shall be identified and implemented or the facility shall be closed.
4. All persons, including Essential Workers shall wear face coverings, such as scarves (dense fabric, without holes), bandanas, neck gaiters, or other fabric face coverings, when they leave their homes or places of residence for essential activities. All persons, including **non-medical** Essential Workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for **non-medical reasons**. Staff working at facilities listed in Attachment A at <http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/Attachment-A-and-B.pdf> must follow the Order of the San Bernardino County Public Health Officer issued on April 6, 2020, requiring staff at these facilities to wear a surgical mask at all times while in the facility.
5. All essential businesses shall make every effort to use telecommuting for its workforce.
6. Government entities shall enforce social distancing requirements at all parks and trails. If a government entity is unable to enforce social distancing at a park or trail, it shall be closed to the public. Parking lots at all parks and/or trails shall be closed and shall be accessible only by members of the public within walking distance of the parks and/or trails. Said parks and/or trails shall be used solely for walking, hiking, equestrian or bicycle riding. The public shall not congregate or participate in group sporting activities at such parks and/or trails.
7. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home.
8. Hospitals and healthcare providers shall take measures to preserve and prioritize resources including delaying non-emergent or elective surgeries or procedures where feasible.
9. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://www.cdc.gov/travel/notices>) shall be subject to 14-day home quarantine, self-monitoring.
10. A strong recommendation is made for persons exhibiting mild to moderate symptoms of COVID-19 to self-isolate in their place of residence unless seeking medical treatment. A guide to symptoms is found here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
11. This Order is issued based on evidence of increasing transmission of COVID-19 within the County, in the state of California, and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as

best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19. The virus that causes COVID-19 (known as SARS-CoV2) has infected over one million individuals worldwide in over 180 countries and is implicated in over 76,000 worldwide deaths, including at least 530 cases and 16 deaths in San Bernardino County. These numbers increase significantly every day.

12. This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. This Order will help to reduce the number of Californians who contract COVID-19 before an effective treatment or vaccine is available; protect those most likely to experience severe symptoms, such as older Californians and those with underlying chronic conditions; preserve and protect our healthcare delivery system; and minimize the social and economic impacts of COVID-19 over the long run.
13. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 10, 2020 Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in San Bernardino County; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino proclaiming the existence of a Local Emergency in the County of San Bernardino regarding COVID-19; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino ratifying and extending the Declaration of Local Health Emergency due to COVID-19; and Executive Order N-22-20 of the Governor of California and Order of the State Public Health Officer issued on March 19, 2020.
14. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the Centers for Disease Control and Prevention, and other public health officials throughout the United States and around the world, including but not limited to, the Centers for Disease Control and Prevention's "Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes", the California Department of Public Health Face Covering Guidance issued on April 1, 2020, and Recommendation Regarding the Use of Cloth Face Coverings from the Centers from Disease Control and Prevention issued on April 3, 2020.
15. This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101030, et seq.; Health and Safety Code sections 120100, et seq.; and Title 17 of the California Code of Regulations section 2501.
16. This Order shall not supersede any conflicting or more restrictive orders issued by the State of California or Federal governments, including any requirements regarding child care. If any portion of this Order or the application thereof to any person or circumstance is held to be invalid the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
17. To the extent necessary, pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, this order is enforceable by the Sheriff and all Chiefs of Police in the County. The violation of any provision of this Order constitutes an imminent threat to public health.



Copies of this Order shall promptly be: (1) made available at the County of San Bernardino Health Administration office located at 351 N. Mountain View Ave., #303, San Bernardino, CA 92415; (2) posted on the County of San Bernardino Public Health Department's website ([wp.sbcounty.gov/dph](http://wp.sbcounty.gov/dph)); and (3) provided to any member of the public requesting a copy of this Order.

**IT IS SO ORDERED:**



Dated: April 7, 2020

Dr. Erin Gustafson, MD, MPH  
Acting Public Health Officer  
County of San Bernardino

Approved as to form and legality:



Dated: April 7, 2020

Adam Ebright  
County Counsel  
County of San Bernardino

# EXHIBIT 3

**AMENDED ORDER OF THE HEALTH OFFICER FOR THE COUNTY OF  
RIVERSIDE AND OF THE COUNTY EXECUTIVE OFFICER AS DIRECTOR OF  
EMERGENCY SERVICES**

**DATE OF ORDER: APRIL 6, 2020**

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. Violators are also subject to civil enforcement actions including civil penalties of up to \$1,000 per violation per day, injunctive relief, and attorneys' fees and costs. (Penal Code section 19; Government Code sections 8665 and 25132; Health and Safety Code section 120295; County Ordinances 533 and 556.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101030, 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, ARTICLE XI OF THE CALIFORNIA CONSTITUTION; CALIFORNIA GOVERNMENT CODE SECTIONS 8610, 8630, 8634, AND 8665; AND RIVERSIDE COUNTY CODE SECTIONS 442 AND 533.6, THE HEALTH OFFICER OF THE COUNTY OF RIVERSIDE ("HEALTH OFFICER") ORDERS:

**Effective 12:00 a.m. on Sunday, April 5, 2020, and continuing through April 30, 2020,** pending further Order of the Public Health Officer, the following will be in effect for the County of Riverside (hereinafter the "County"):

1. Executive Order N-33-20 issued by the Governor of the State of California ("Executive Order") (available at: <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>) ordered all individuals living in the State of California to stay home or at their place of residence, except as needed to maintain continuity of operations of sectors designated in the document available at: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf> as updated by the State Public Health Officer ("Essential Workers"). This also includes all orders of the State Public Health Officer.

In conformance with, and where not superseded by the Executive Order, this Order additionally specifies and orders as follows:

- a. All public or private "gatherings," as defined in section 2 below, within the jurisdiction of the Public Health Officer of the County of Riverside are prohibited, regardless of venue or size.
- b. **Paragraph 1.a. of** this Order does not apply to courts of law, medical providers, public utilities, critical county, city, and special district operations, critical school operations such as nutrition programs, logistics/distribution centers, congregate living settings, daycare and child care, shelters, public transportation, airport travel, or necessary shopping at fuel stations, stores or malls. However, these settings are instructed to observe all applicable state and federal guidelines for infection control.

- c. All essential businesses that remain in operation in accordance with the Order shall follow the Social Distancing and Infection Control Guidelines published by the CDC and California Department of Public Health. All essential businesses must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing are implemented at each facility that will ensure social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, additional measures shall be identified and implemented or the facility shall be closed.
- d. All persons, including Essential Workers shall wear face coverings, such as scarves (dense fabric, without holes), bandanas, neck gaiter, or other fabric face coverings. All persons, including Essential Workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for **non-medical reasons**.
- e. All bars, adult entertainment establishments, and other business establishments that serve alcohol and do not serve food shall be and shall remain closed.
- f. All restaurants and other business establishments that serve food shall close all on-site dining. All food served shall be by delivery, or through pick-up or drive thru. Social distancing shall be required for persons picking up food on site.
- g. All gyms and fitness centers shall be and shall remain closed.
- h. All essential businesses shall make every effort to use telecommuting for its workforce.
- i. Government entities shall enforce social distancing requirements at all parks and trails. If a government entity is unable to enforce social distancing at a park or trail, it shall be closed to the public. Parking lots at all parks and/or trails shall be closed and shall be accessible only by members of the public within walking distance of the parks and/or trails. Said parks and/or trails shall be used solely for walking, hiking, equestrian or bicycle riding. The public shall not congregate or participate in group sporting activities at such parks and/or trails.
- j. As outlined in the Public Health Officer's Order of April 2, 2020, all public and private golf courses are closed for play. Golf Clubs may allow members to walk the course solely for exercise. Golf Clubs that provide food services may continue to do so by delivery or through pick-up. Social distancing shall be required for persons picking up food on site and using a course for walking.
- k. As outlined in the Health Officer's Amended Order of April 1, 2020, all schools within the jurisdiction of the Public Health Officer of the County of Riverside

including, but not limited to, all preschools, K-12 public, private and charter schools, community colleges, public, private, nonprofit, and for-profit colleges and universities shall remain closed through June 19, 2020, pending further Order of the Public Health Officer. This closure shall be understood to prohibit any activity where students, staff, parents, or members of the public gather on the school campus, including but not limited to: formal instruction; classes; laboratory sessions; tutoring; meeting; sporting events; or other extracurricular activities. Parents of school-aged minor children shall take steps to ensure children are not participating in activities prohibited by this Order, or the Executive Order, and that social distancing requirements are practiced at all times.

Individual school districts and educational institutions shall continue to have the discretion to determine the minimum essential personnel as required to support critical functions within those districts and institutions such as federal food service programs, security, and necessary maintenance.

This order shall not affect on-campus housing, dormitories or other congregate living arrangements, or staffing required to maintain and operate them.

1. Daycare and childcare facilities shall continue to operate under the following mandatory conditions: (1) Childcare must be carried out in stable groups of 10 or fewer ("stable" means that the same 10 or fewer children are in the same group each day); (2) Children shall not change from one group to another; (3) If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other; and (4) Childcare providers shall remain solely with one group of children.
- m. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home.
- n. "Non-essential personnel," as defined in section 2(c) below, are prohibited from entry into any hospital or long-term care facility.

All essential personnel who show any potential signs or symptoms of COVID-19 shall be strictly prohibited from entry into hospitals or long-term care facilities.

- o. Hospitals and healthcare providers shall take measures to preserve and prioritize resources including delaying non-emergent or elective surgeries or procedures where feasible.
- p. As outlined in the Health Officer's Order of April 3, 2020, all labs that perform COVID-19 testing for Riverside County clients, including but not limited to Kaiser



Permanente; LabCorp, Quest Diagnostics, and labs operated by hospitals across the County of Riverside, shall continue to share COVID-19 orders and results with demographics with Manifest Medex (MX) to create a countywide COVID-19 dashboard to include information regarding tests performed, both pending and resulted, and occurrences by age, gender, and geographical location. Orders and results with demographics shall be shared either through electronic interfaces (preferred) or via electronic file transfers updated on at least a daily basis.

- q. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://wwwnc.cdc.gov/travel/notices>) shall be subject to 14-day home quarantine, self-monitoring.
  - r. A strong recommendation is made for persons exhibiting mild to moderate symptoms of COVID-19 to self-isolate themselves in their place of residence unless seeking medical treatment. A guide to symptoms is found here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
2. For purposes of this Order:
- a. "Gathering" is any event or convening that brings together people in a single room or single space at the same time, including, but not limited to, an auditorium, stadium, arena, theater, church, casino, conference room, meeting hall, cafeteria, drive-in theater, parking lot, or any other indoor or outdoor space used for any non-essential purpose including, but not limited to, movies, church services, swap meets, etc. A gathering does not include:
    - i. A convening of persons who reside in the same residence.
    - ii. Operations at airports and/or public transportation.
    - iii. Operations at essential businesses included in the designated sectors referenced in section 1 above, where many people are present but are able to practice social distancing.
    - iv. Funerals and burial services may proceed with not more than 10 persons present. Funerals and burial services must be conducted in strict compliance with social distancing requirements.
  - b. "Long term care facility" is a facility serving adults that require assistance with activities of daily living, including a skilled nursing facility, and that is licensed by the California Department of Community Care and Licensing, or the California Department of Public Health.
  - c. "Non-essential personnel" for the purpose of section 1 above, are employees, contractors, or members of the public who do not perform treatment, maintenance,

support, or administrative tasks deemed essential to the healthcare mission of the long term care facility or hospital. Non-essential personnel do not include first responders, nor State, federal, or local officials, investigators, or medical personnel carrying out lawful duties. Entry of visitors to hospitals and long-term care facilities are allowed upon the approval of the facility's director, or designee, for the purpose of allowing family and friends to visit a resident such as in an end of life situation, to allow parents or guardians to visit a child who is a patient, or any other circumstances deemed appropriate by the facility director, or designee, and where appropriate precautions by the facility that follow federal, State, and local public health guidance regarding COVID-19 are followed.

- d. "Social distancing" is maintaining a six-foot separation from all persons except for household members and medical providers with the appropriate personal protection equipment.
3. This Order shall be effective immediately and will remain in effect until April 30, 2020, pending further Order of the Public Health Officer. To the extent that any conflict shall arise, this Order supersedes the prior Orders of the Public Health Officer concerning public gatherings, including those issued on March 12, March 16, and April 4, 2020.
4. This Order is issued as a result of the worldwide pandemic of COVID-19 disease, also known as "novel coronavirus," which has infected over one million individuals worldwide in over 180 countries and is implicated in over 50,000 worldwide deaths, including over 600 cases and 15 deaths in Riverside County. These numbers increase significantly every day.
5. This Order is issued based on evidence of increasing transmission of COVID-19 both within the County of Riverside and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19.
6. This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. This Order is issued to prevent circumstances often present in gatherings that may exacerbate the spread of COVID-19, such as: 1) the increased likelihood that gatherings will attract people from a broad geographic area; 2) the prolonged time period in which large numbers of people are in close proximity; 3) the difficulty in tracing exposure when large numbers of people attend a single event or are at a single location; and 4) the inability to ensure that such persons follow adequate hygienic practices.
7. This Order is intended to address the strain upon the health care system from the effects of the COVID-19 virus. Similarly, this Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide.



8. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 8, 2020 Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in Riverside County; the March 10, 2020 Resolution of the Board of Supervisors of the County of Riverside proclaiming the existence of a Local Emergency in the County of Riverside regarding COVID-19; the March 10, 2020 Resolution of the Board of Supervisors of the County of Riverside ratifying and extending the Declaration of Local Health Emergency due to COVID-19; the guidance issued on March 11, 2020 by the California Department of Public Health regarding large gatherings of 250 people or more; Governor Gavin Newsom's Executive Order N-25-20 of March 12, 2020 preparing the State to commandeer hotels and other places of temporary residence, medical facilities, and other facilities that are suitable as places of temporary residence or medical facilities as necessary for quarantining, isolating or treating individuals who test positive for COVID-19 or who have had a high-risk exposure and are thought to be in the incubation period; the guidance issued on March 15, 2020 by the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials through the United States and around the world recommending the cancellation of gatherings involving more than fifty (50) or more persons in a single space at the same time; the March 16, 2020 order of the Public Health Officer prohibiting all gatherings with expected presence above ten (10) individuals; Governor Newsom's Executive Order N-33-20 of March 19, 2020 ordering all persons to stay at home to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19; Governor Newsom's Executive Order N-35-20 giving the state the ability to increase the health care capacity in clinics, mobile health care units and adult day health care facilities and allowing local governments more flexibility to utilize the skills of retired employees in order to meet the COVID-19 surge; and Governor Newsom's Executive Order N-39-20 intended to expand the health care workforce and recruit health care professionals to address the COVID-19 surge. The Governor and the County Public Health Officer continue to issue COVID-19-related orders to mitigate the public health crisis.
9. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the Centers for Disease Control and Prevention, and other public health officials throughout the United States and around the world, including but not limited to, the Centers for Disease Control and Prevention's "Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes" and the California Department of Public Health Face Covering Guidance issued on April 1, 2020.
10. This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101030, et seq.; Health and Safety Code sections 120100, et seq.; and Title 17 of the California Code of Regulations section 2501. More specifically, Health and Safety Code section 120175.5(b) which provides that all

governmental entities in the county shall take necessary measures within the governmental entity's control to ensure compliance with this Order and to disseminate this Order to venues or locations within the entity's jurisdiction where gatherings may occur.

11. Violation of this Order is subject to fine, imprisonment, or both. (Penal Code section 19; Government Code sections 8665 and 25132; Health and Safety Code section 120295; County Ordinances 533 and 556.)
12. To the extent necessary, pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all Chiefs of Police in the County ensure compliance with and enforcement of this Order.
13. Copies of this Order shall promptly be: (1) made available at the County of Riverside Health Administration office located at 4065 County Circle Drive, Riverside, CA 92503; (2) posted on the County of Riverside Public Health Department's website (rivcoph.org); and (3) provided to any member of the public requesting a copy of this Order.

**IT IS SO ORDERED:**



Dated: April 6, 2020

Dr. Cameron Kaiser, MD, MPH, FAAFP  
Public Health Officer  
County of Riverside

**EMERGENCY REGULATIONS**

As Director of Emergency Services for the County of Riverside, I am authorized to promulgate regulations for the protection for life and property pursuant to Government Code section 8634 and Riverside County Ordinances 442 and 533. The following shall be in effect for the duration of the County of Riverside Health Officer's Order issued above which is incorporated in its entirety by reference:

The County of Riverside Health Officer's Order shall be promulgated as a regulation for the protection of life and property.

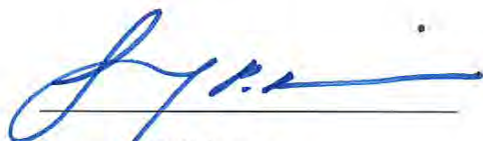
Any person who violates or refuses or willfully neglects to obey this regulation is subject to civil enforcement actions, including civil penalties of up to \$1,000 per violation per day, injunctive relief, and attorneys' fees and costs, imprisonment, or both, pursuant to Government Code section 8665.



George Johnson  
County Executive Officer  
Director of Emergency Services  
County of Riverside

Dated: April 6, 2020

Approved as to form and legality:



Gregory P. Priamos  
County Counsel  
County of Riverside

Dated: April 6, 2020

# EXHIBIT F

Case 5:20-cv-00755-JGB-KK Document 8-2 Filed 04/14/20 Page 1 of 48 Page ID #:112

1 HARMEET K. DHILLON (SBN: 207873)

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3 MARK P. MEUSER (SBN: 231335)

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5 GREGORY R. MICHAEL (SBN: 306814)

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7 DHILLON LAW GROUP INC.

8 177 Post Street, Suite 700

9 San Francisco, California 94108

10 Telephone: (415) 433-1700

11 Facsimile: (415) 520-6593

12 Attorneys for Plaintiffs

13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**  
 15 **EASTERN DIVISION**

16 **WENDY GISH**, an individual, *et al.*,

17 Plaintiffs,

18 v.

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

21 Defendants.

Case Number: 5:20-cv-00755

**DECLARATION OF MARK P.  
 MEUSER IN SUPPORT OF  
 PLAINTIFFS' APPLICATION  
 FOR TEMPORARY  
 RESTRAINING ORDER**

Date: April 14, 2020

Judge: Unassigned



Declaration of Mark P. Meuser

Case No. 5:20-cv-00755

Case 5:20-cv-00755-JGB-KK Document 8-2 Filed 04/14/20 Page 2 of 48 Page ID #:113

1 I, Mark P. Meuser declare:

2 1. I am an attorney in good standing duly admitted to practice before all  
3 Courts of the State of California since June 2004, the United States Supreme Court,  
4 the United States Court of Appeals for the Ninth Circuit, and before the all four  
5 United States District Courts located in California. Except as to those matters stated  
6 on information and belief, I have personal knowledge of the matters set forth herein,  
7 and if called as a witness could and would competently testify thereto. As to those  
8 matters stated on information and belief, I believe them to be true.  
9

10 2. Attached as Exhibit 1 is a true and correct copy of the April 7, 2020  
11 Order of the Health Officer of the County of San Bernardino dated April 7, 2020. In  
12 this order, the Public Health official is referring to the State's Essential Critical  
13 Infrastructure Workers list and states that "[t]his guidance does allow faith based  
14 services that are provided through streaming or other technology, while individuals  
15 remain in their homes, but does not allow individuals to leave their homes for driving  
16 parades or drive-up services, or for picking up non-essential items."

17 3. Attached as Exhibit 2 is a true and correct copy of the April 8, 2020  
18 Clarification whereby in an unsigned press release the county stated "On the subject  
19 of enforcement, the public is advised that although violation of a health order is a  
20 violation of the California Health and Safety Code, the County does not expect law  
21 enforcement to broadly impose citations on violators."

22 4. Attached as Exhibit 3 is a true and correct copy of the April 6, 2020  
23 Amended Order of the Health Officer for the County of Riverside. In this Amended  
24 Order "[a]ll public or private 'gatherings' ... are prohibited, regardless of venue or  
25 size. .... For the purposes of this Order: 'Gatherings' is any event or convening that  
26 brings together people in a single room or single space at the same time, including, but  
27 not limited to ... church ..., or any other indoor or outdoor space used for any non-  
28



1 essential purpose including but not limited to ... church services ... .”

2 5. Attached as Exhibit 4 is a true and correct copy of the demand letter that  
3 Dhillon Law Group sent to San Bernardino County on April 8, 2020 at 7:59 PM. I  
4 emailed this letter to the five County Supervisors and to County Counsel at the  
5 addresses listed in the letter. I did not receive any electronic notifications that any of  
6 the emails that I sent the letter to had bounced.

7 6. On April 9, 2020, at approximately 4:05 PM, I called San Bernardino  
8 County Counsel’s office and requested to speak to County Counsel regarding our  
9 firms plan to file a complaint in Federal Court along with a Motion for a Temporary  
10 Restraining Order the following morning.

11 7. On April 9, 2020, around 5:15 PM, San Bernardino County Counsel  
12 Michelle Blakenmore and I spoke on the phone. I informed her of our plans to file a  
13 lawsuit in the Central District of California and file a Temporary Restraining Order so  
14 that our clients could conduct their Easter Services.

15 8. Attached as Exhibit 5, is a true and correct copy of the letter that I  
16 received via email from San Bernardino County Counsel Michelle Blakenmore at 8:20  
17 PM on April 9, 2020.

18 9. Based on County Counsel’s representation that “faith based organizations  
19 or individuals, face no threat of citations or other punishment for their faith based  
20 activities over the Easter weekend wherein every effort is made to prevent contact  
21 between congregants and adherence to social distancing guidance,” my firm in  
22 consultation with our clients determined that a TRO was necessary to ensure their  
23 ability to freely exercise religions rights after the Easter Weekend.

24 10. Attached as Exhibit 6 is a true and correct copy of the demand letter that  
25 Dhillon Law Group sent to Riverside County on April 8, 2020 at 7:59 PM. I emailed  
26 this letter to the five County Supervisors, County Counsel, the Public Health Officer,  
27  
28



1 the Senior Public Information Specialist, and the County Public Information Officer to  
2 the addresses listed in the letter. I did not receive any electronic notifications that any  
3 of the emails that I sent the letter to had bounced.

4 11. On April 9, 2020, at approximately 4:05 PM, I called Riverside County  
5 Counsel's office and left a voice message to talk to County Counsel about the pending  
6 complaint and Temporary Restraining Order that we prepared to file the next day. I  
7 have not received a response as of the date of this declaration.

8 12. On April 10, 2020, in the afternoon, I heard that Riverside County had  
9 issued a guidance that they would permit drive-up church services over the Easter  
10 Weekend. Attached as Exhibit 7 is a true and correct copy of the Riverside County  
11 Press release.

12 13. Because both San Bernardino and Riverside County only permitted the  
13 free exercise of religion over Easter weekend, my clients' Constitutional rights are  
14 still being violated. As such, in order to protect against these ongoing violations, a  
15 Temporary Restraining Order is necessary.

16 14. On April 13, 2020, at 2:00 PM my firm filed the verified complaint in the  
17 above-referenced matter.

18 15. At approximately 2:40 PM, I personally emailed Benjamin Glickman,  
19 Supervising Deputy Attorney General of California for the Government Law Section  
20 and Thomas Patterson, Senior Assistant Attorney General of California; Michelle  
21 Blakemore, County Counsel for San Bernardino County; and Greg Priamos, County  
22 Counsel for Riverside County with a copy of the Complaint. I did not receive any  
23 electronic notifications that any of the emails that I sent the complaint to had bounced.  
24

25 16. In this email, I notified the receivers that our firm was intended to file an  
26 application for a Temporary Restraining Order.

27 17. At 2:50 P.M., I received an email from Benjamin Glickman thanking me  
28

1 for forwarding the Complaint and requesting that I continue sending documents to  
2 him and Thomas Patterson until they assigned an attorney to the matter.

3 18. At 2:53 P.M, I called and left a message for Michelle Blakemore, County  
4 Counsel for San Bernardino County and informed her that I had emailed her a copy of  
5 the verified complaint and that our firm intended to file an application for a  
6 Temporary Restraining Order and that when we did, I would forward the application  
7 to her via email.

8 19. At 2:50 P.M, I called and left a message for Greg Priamos, County  
9 Counsel for Riverside County and informed him that our firm intended to file an  
10 application for a Temporary Restraining Order. I was told by the operator that he had  
11 already opened my email that contained a copy of the verified complaint.

12 20. On April 14, 2020, United States Attorney General William P. Barr  
13 issued a Statement on Religious Practice and Social Distancing. A true and correct  
14 copy of the Attorney General's Statement is attached as Exhibit 8. The Attorney  
15 General stated:

16  
17 As we explain in the Statement of Interest, where a state has not acted  
18 evenhandedly, it must have a compelling reason to impose restrictions on  
19 places of worship and must ensure that those restrictions are narrowly  
20 tailored to advance its compelling interest. While we believe that during  
21 this period there is a sufficient basis for the social distancing rules that  
22 have been put in place, the scope and justification of restrictions beyond  
23 that will have to be assessed based on the circumstances as they evolve.

24 Religion and religious worship continue to be central to the lives of  
25 millions of Americans. This is true more so than ever during this  
26 difficult time. The pandemic has changed the ways Americans live their  
27 lives. Religious communities have rallied to the critical need to protect  
28 the community from the spread of this disease by making services  
available online and in ways that otherwise comply with social distancing  
guidelines.

1 The United States Department of Justice will continue to ensure that  
2 religious freedom remains protected if any state or local government, in  
3 their response to COVID-19, singles out, targets, or discriminates against  
any house of worship for special restrictions.

4 I declare under penalty of perjury under the laws of the United States of  
5 America that the foregoing is true and correct and is executed this 13th day of April,  
6 2020, at Pasadena, California.  
7

8  
9 Dated: April 14, 2020

/s Mark P. Meuser

Mark P. Meuser

# **Exhibit 1**

[www.SBCounty.gov](http://www.SBCounty.gov)

## Public Health

Trudy Raymundo  
Director

Corwin Porter  
Assistant Director

Maxwell Ohikhuare, M.D.  
Health Officer

Erin Gustafson, M.D., MPH  
Acting Health Officer

### ORDER OF THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO

#### FOR THE CONTROL OF COVID-19

DATE OF ORDER: April 7, 2020

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295; County Code Section 31.0101 Et. Seq.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, AND SAN BERNARDINO COUNTY CODE SECTION 31.0101 ET. SEQ., THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO ("HEALTH OFFICER") ORDERS:

Effective 12:00 a.m. on Wednesday, April 8, 2020, and continuing until rescinded, pending further Order of the Public Health Officer, the following will be in effect for the County of San Bernardino (hereinafter the "County"):

1. The Orders of the San Bernardino County Health Officer issued on March 17, 2020 and March 27, 2020, Governor Newsom's Executive Order N-22-20 and order of the California State Public Health Officer issued on March 19, 2020, requiring all persons residing in the State to remain in their homes or places of residence, except as needed to maintain the continuity of operations for critical infrastructure (the "Stay-at-Home Order") remain in effect until the Governor's Executive Order N-22-20, and the Orders of the San Bernardino County Health Officer remain in effect until they are rescinded.
2. Under the Orders of the San Bernardino County Health Officer, the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, all individuals living in the State of California are ordered to stay home or at their place of residence except as need to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>. This guidance does allow faith based services that are provided through streaming or other technology, while individuals remain in their homes, but does not allow individuals to leave their homes for driving parades or drive-up services, or for picking up non-essential items.

#### BOARD OF SUPERVISORS

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3. All non-essential businesses that do not fall under the Essential Critical Infrastructure referenced above are ordered to remain closed. All essential businesses that remain in operation in accordance with the above referenced Orders of the San Bernardino County Health Officer, the Order of the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, shall follow the Social Distancing and Infection Control Guidelines published by the CDC and California Department of Public Health. All essential businesses must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, additional measures shall be identified and implemented or the facility shall be closed.
4. All persons, including Essential Workers shall wear face coverings, such as scarves (dense fabric, without holes), bandanas, neck gaiters, or other fabric face coverings, when they leave their homes or places of residence for essential activities. All persons, including **non-medical** Essential Workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for **non-medical reasons**. Staff working at facilities listed in Attachment A at <http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/Attachment-A-and-B.pdf> must follow the Order of the San Bernardino County Public Health Officer issued on April 6, 2020, requiring staff at these facilities to wear a surgical mask at all times while in the facility.
5. All essential businesses shall make every effort to use telecommuting for its workforce.
6. Government entities shall enforce social distancing requirements at all parks and trails. If a government entity is unable to enforce social distancing at a park or trail, it shall be closed to the public. Parking lots at all parks and/or trails shall be closed and shall be accessible only by members of the public within walking distance of the parks and/or trails. Said parks and/or trails shall be used solely for walking, hiking, equestrian or bicycle riding. The public shall not congregate or participate in group sporting activities at such parks and/or trails.
7. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home.
8. Hospitals and healthcare providers shall take measures to preserve and prioritize resources including delaying non-emergent or elective surgeries or procedures where feasible.
9. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://wwwnc.cdc.gov/travel/notices>) shall be subject to 14-day home quarantine, self-monitoring.
10. A strong recommendation is made for persons exhibiting mild to moderate symptoms of COVID-19 to self-isolate in their place of residence unless seeking medical treatment. A guide to symptoms is found here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
11. This Order is issued based on evidence of increasing transmission of COVID-19 within the County, in the state of California, and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as



best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19. The virus that causes COVID-19 (known as SARS-CoV2) has infected over one million individuals worldwide in over 180 countries and is implicated in over 76,000 worldwide deaths, including at least 530 cases and 16 deaths in San Bernardino County. These numbers increase significantly every day.

12. This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. This Order will help to reduce the number of Californians who contract COVID-19 before an effective treatment or vaccine is available; protect those most likely to experience severe symptoms, such as older Californians and those with underlying chronic conditions; preserve and protect our healthcare delivery system; and minimize the social and economic impacts of COVID-19 over the long run.
13. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 10, 2020 Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in San Bernardino County; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino proclaiming the existence of a Local Emergency in the County of San Bernardino regarding COVID-19; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino ratifying and extending the Declaration of Local Health Emergency due to COVID-19; and Executive Order N-22-20 of the Governor of California and Order of the State Public Health Officer issued on March 19, 2020.
14. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the Centers for Disease Control and Prevention, and other public health officials throughout the United States and around the world, including but not limited to, the Centers for Disease Control and Prevention's "Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes", the California Department of Public Health Face Covering Guidance issued on April 1, 2020, and Recommendation Regarding the Use of Cloth Face Coverings from the Centers for Disease Control and Prevention issued on April 3, 2020.
15. This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101030, et seq.; Health and Safety Code sections 120100, et seq.; and Title 17 of the California Code of Regulations section 2501.
16. This Order shall not supersede any conflicting or more restrictive orders issued by the State of California or Federal governments, including any requirements regarding child care. If any portion of this Order or the application thereof to any person or circumstance is held to be invalid the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
17. To the extent necessary, pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, this order is enforceable by the Sheriff and all Chiefs of Police in the County. The violation of any provision of this Order constitutes an imminent threat to public health.



Case 5:20-cv-00755-JGB-KK Document 8-2 Filed 04/14/20 Page 11 of 48 Page ID #:122

Copies of this Order shall promptly be: (1) made available at the County of San Bernardino Health Administration office located at 351 N. Mountain View Ave., #303, San Bernardino, CA 92415; (2) posted on the County of San Bernardino Public Health Department's website ([wp.sbcounty.gov/dph](http://wp.sbcounty.gov/dph)); and (3) provided to any member of the public requesting a copy of this Order.

**IT IS SO ORDERED:**



Dated: April 7, 2020

Dr. Erin Gustafson, MD, MPH  
Acting Public Health Officer  
County of San Bernardino

Approved as to form and legality:



Dated: April 7, 2020

Adam Ebright  
County Counsel  
County of San Bernardino

## **Exhibit 2**

Home	Countywide Vision	Services A-Z	Visiting	Living	Working	Contacts	Email Subscriptions	Translate:  Select Language ▼
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## Clarification of religious services and face-coverings order

**Published April 8, 2020** | **By County of San Bernardino**



### COVID-19 Response

The need has arisen for clarification of a Public Health Order and subsequent guidance issued Tuesday regarding religious services and face coverings.

The County acknowledges the manner in which the order and guidance were created

and disseminated created unintended consequences and hardships. The County has taken steps to ensure appropriate notice and coordination will occur in the future as we address the complicated and fast-moving crisis faced by our community and the entire world.

"We recognize the need to act quickly to slow the spread of COVID-19 throughout San Bernardino County," said Board of Supervisors Chairman Curt Hagman. "But we also recognize that we must take into consideration the myriad of impacts that can be felt in a large and diverse county, and be willing to provide clarification and make adjustments while keeping our communities safe and healthy."

The specific references to drive-in religious services so close to major religious observances taking place during the next four days, for which organizations had already conducted considerable planning and incurred expenses, are clarified as follows: Organizations that have planned such services for the coming weekend should proceed with those services if they choose to do so and make every effort to prevent contact between congregants.

Regarding the use of face-coverings while driving, there is no need for drivers traveling alone or with members of their households to wear face coverings unless they must lower their windows to interact with first responders, food service workers, or others who are not members of their households.

Other clarifying guidance will be forthcoming.

On the subject of enforcement, the public is advised that although violation of a health order is a violation of the California Health and Safety Code, the County does not expect law enforcement to broadly impose citations on violators. The expectation is that law enforcement will rely upon community members to use good judgment, common sense, and act in the best interests of their own health and the health of their loved ones and the community at large. The imposition of penalties on members of the public who willfully and grossly disregard public health orders by putting others at risk of exposure to this infectious disease is meant as a tool for law enforcement to use as a deterrent.

San Bernardino County has 547 confirmed cases of COVID-19 and the deaths of 17 county residents have been associated with the disease.

Various appropriate County departments and agencies have been working together since Jan. 25 to protect the community from the COVID-19 pandemic.



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## Recent Posts

- [COVID-19 crisis endures, but County plans for recovery](#)
- [Homeless sheltering effort to protect all county residents gets underway](#)
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- [County launches COVID-19 "Stay Home, Stay Safe" billboard campaign](#)

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-

For information about the coronavirus crisis, visit the County's coronavirus website at [sbccovid19.com](https://sbccovid19.com). New information and resources are updated daily. The public can also contact the COVID-19 hotline from 9 a.m. to 5 p.m., Monday through Friday at (909) 387-3911, or email the County at [coronavirus@dph.sbcounty.gov](mailto:coronavirus@dph.sbcounty.gov).

#### Aclaración de servicios religiosos y orden de cobertura de la cara.

Ha surgido la necesidad de aclaración de una Orden de Salud Pública y posterior orientación emitida el martes en relación con los servicios religiosos y cobertura de la cara.

El Condado reconoce la manera en que la orden y la orientación fueron creados y difundidos creando consecuencias y dificultades no deseadas. El Condado ha tomado medidas para asegurar que el aviso y la coordinación apropiada ocurran en el futuro a medida mientras dirigimos la crisis complicada y de rápido movimiento que enfrenta nuestra comunidad y el mundo entero.

"Reconocemos la necesidad de actuar rápidamente para frenar la propagación de COVID-19 en todo el condado de San Bernardino", dijo el Presidente de la Junta de Supervisores, Curt Hagman. "Pero también reconocemos que debemos tener en cuenta la infinidad de impactos que se pueden sentir en un condado grande y diverso, y estar dispuestos a proporcionar aclaraciones y hacer ajustes mientras mantenemos a nuestras comunidades seguras y saludables".

Las referencias específicas a los servicios religiosos tan cercanos a las principales celebraciones religiosas que se llevarán a cabo durante los próximos cuatro días, por los cuales las organizaciones ya habían llevado a cabo una planificación considerable y gastos incurridos, se aclaran de la siguiente manera: Las organizaciones que han planificado dichos servicios para el próximo fin de semana deben proceder con esos servicios si así lo deciden y hacer todo lo posible para evitar el contacto entre los congregantes.

Con respeto al uso de coberturas faciales mientras conducen, no hay necesidad de que los conductores que viajen solos o con miembros de sus hogares usen cubiertas faciales a menos que deban bajar las ventanillas para interactuar con los socorristas, los trabajadores de servicios de alimentos u otras personas que no son miembros de sus hogares.

Se presentarán otras orientaciones de clarificación.

En cuanto a la aplicación de la ley, se informa al público que aunque la violación de una orden de salud es una violación del Código de Salud y Seguridad de California, el Condado no espera que Agencias de aplicación de la ley impongan ampliamente citas a los infractores. La expectativa es que Agencias de aplicación de la ley confíen en los miembros de la comunidad que utilicen el buen juicio, el sentido común y actúen en el mejor interés de su propia salud y la salud de sus seres queridos y de la comunidad en general. La imposición de sanciones a los miembros del público que descuidan deliberadamente las órdenes de salud pública poniendo a otros en riesgo de exposición a esta enfermedad infecciosa se entiende como una herramienta para que Agencias de aplicación de la ley la utilicen como elemento disuasorio.

El condado de San Bernardino tiene 547 casos confirmados de COVID-19 y la muerte de 17 residentes del condado se ha asociado con la enfermedad.

Varios departamentos y agencias del Condado han estado trabajando juntos desde el 25 de enero para proteger a la comunidad de la pandemia COVID-19.

Para obtener información sobre la crisis del coronavirus, visite el sitio web del coronavirus del Condado en [sbccovid19.com](https://sbccovid19.com). La nueva información y los recursos se actualizan diariamente. El público también puede comunicarse con la línea directa COVID-19 de 9 a.m. a 5 p.m., de lunes a viernes al (909) 387-3911, o enviar un correo electrónico al Condado al [coronavirus@dph.sbcounty.gov](mailto:coronavirus@dph.sbcounty.gov).

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- > [December 2018](#)
- > [November 2018](#)
- > [October 2018](#)
- > [September 2018](#)
- > [August 2018](#)
- > [July 2018](#)
- > [June 2018](#)
- > [May 2018](#)
- > [April 2018](#)
- > [March 2018](#)
- > [February 2018](#)
- > [January 2018](#)
- > [December 2017](#)
- > [November 2017](#)
- > [October 2017](#)
- > [September 2017](#)
- > [August 2017](#)
- > [July 2017](#)
- > [June 2017](#)
- > [May 2017](#)
- > [April 2017](#)
- > [March 2017](#)
- > [February 2017](#)
- > [January 2017](#)
- > [December 2016](#)
- > [November 2016](#)
- > [October 2016](#)
- > [September 2016](#)
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- › [Community Vital Signs](#)
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- › [Public Defender](#)
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Clarification of religious services and face-coverings order | County of San Bernardino – CountyWire

Case 5:20-cv-00755-JGB-KK Document 8-2 Filed 04/14/20 Page 17 of 48 Page ID #:128

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- [Veterans Affairs](#)
- [Workforce Investment Board](#)

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## **Exhibit 3**

**AMENDED ORDER OF THE HEALTH OFFICER FOR THE COUNTY OF  
RIVERSIDE AND OF THE COUNTY EXECUTIVE OFFICER AS DIRECTOR OF  
EMERGENCY SERVICES**

**DATE OF ORDER: APRIL 6, 2020**

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. Violators are also subject to civil enforcement actions including civil penalties of up to \$1,000 per violation per day, injunctive relief, and attorneys' fees and costs. (Penal Code section 19; Government Code sections 8665 and 25132; Health and Safety Code section 120295; County Ordinances 533 and 556.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101030, 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, ARTICLE XI OF THE CALIFORNIA CONSTITUTION; CALIFORNIA GOVERNMENT CODE SECTIONS 8610, 8630, 8634, AND 8665; AND RIVERSIDE COUNTY CODE SECTIONS 442 AND 533.6, THE HEALTH OFFICER OF THE COUNTY OF RIVERSIDE ("HEALTH OFFICER") ORDERS:

**Effective 12:00 a.m. on Sunday, April 5, 2020, and continuing through April 30, 2020**, pending further Order of the Public Health Officer, the following will be in effect for the County of Riverside (hereinafter the "County"):

1. Executive Order N-33-20 issued by the Governor of the State of California ("Executive Order") (available at: <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>) ordered all individuals living in the State of California to stay home or at their place of residence, except as needed to maintain continuity of operations of sectors designated in the document available at: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>) as updated by the State Public Health Officer ("Essential Workers"). This also includes all orders of the State Public Health Officer.

In conformance with, and where not superseded by the Executive Order, this Order additionally specifies and orders as follows:

- a. All public or private "gatherings." as defined in section 2 below, within the jurisdiction of the Public Health Officer of the County of Riverside are prohibited, regardless of venue or size.
- b. **Paragraph 1.a. of** this Order does not apply to courts of law, medical providers, public utilities, critical county, city, and special district operations, critical school operations such as nutrition programs, logistics/distribution centers, congregate living settings, daycare and child care, shelters, public transportation, airport travel, or necessary shopping at fuel stations, stores or malls. However, these settings are instructed to observe all applicable state and federal guidelines for infection control.



- c. All essential businesses that remain in operation in accordance with the Order shall follow the Social Distancing and Infection Control Guidelines published by the CDC and California Department of Public Health. All essential businesses must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing are implemented at each facility that will ensure social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, additional measures shall be identified and implemented or the facility shall be closed.
- d. All persons, including Essential Workers shall wear face coverings, such as scarves (dense fabric, without holes), bandanas, neck gaiter, or other fabric face coverings. All persons, including Essential Workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for non-medical reasons.
- e. All bars, adult entertainment establishments, and other business establishments that serve alcohol and do not serve food shall be and shall remain closed.
- f. All restaurants and other business establishments that serve food shall close all on-site dining. All food served shall be by delivery, or through pick-up or drive thru. Social distancing shall be required for persons picking up food on site.
- g. All gyms and fitness centers shall be and shall remain closed.
- h. All essential businesses shall make every effort to use telecommuting for its workforce.
- i. Government entities shall enforce social distancing requirements at all parks and trails. If a government entity is unable to enforce social distancing at a park or trail, it shall be closed to the public. Parking lots at all parks and/or trails shall be closed and shall be accessible only by members of the public within walking distance of the parks and/or trails. Said parks and/or trails shall be used solely for walking, hiking, equestrian or bicycle riding. The public shall not congregate or participate in group sporting activities at such parks and/or trails.
- j. As outlined in the Public Health Officer's Order of April 2, 2020, all public and private golf courses are closed for play. Golf Clubs may allow members to walk the course solely for exercise. Golf Clubs that provide food services may continue to do so by delivery or through pick-up. Social distancing shall be required for persons picking up food on site and using a course for walking.
- k. As outlined in the Health Officer's Amended Order of April 1, 2020, all schools within the jurisdiction of the Public Health Officer of the County of Riverside



including, but not limited to, all preschools, K-12 public, private and charter schools, community colleges, public, private, nonprofit, and for-profit colleges and universities shall remain closed through June 19, 2020, pending further Order of the Public Health Officer. This closure shall be understood to prohibit any activity where students, staff, parents, or members of the public gather on the school campus, including but not limited to: formal instruction; classes; laboratory sessions; tutoring; meeting; sporting events; or other extracurricular activities. Parents of school-aged minor children shall take steps to ensure children are not participating in activities prohibited by this Order, or the Executive Order, and that social distancing requirements are practiced at all times.

Individual school districts and educational institutions shall continue to have the discretion to determine the minimum essential personnel as required to support critical functions within those districts and institutions such as federal food service programs, security, and necessary maintenance.

This order shall not affect on-campus housing, dormitories or other congregate living arrangements, or staffing required to maintain and operate them.

1. Daycare and childcare facilities shall continue to operate under the following mandatory conditions: (1) Childcare must be carried out in stable groups of 10 or fewer ("stable" means that the same 10 or fewer children are in the same group each day); (2) Children shall not change from one group to another; (3) If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other; and (4) Childcare providers shall remain solely with one group of children.
- m. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home.
- n. "Non-essential personnel," as defined in section 2(c) below, are prohibited from entry into any hospital or long-term care facility.

All essential personnel who show any potential signs or symptoms of COVID-19 shall be strictly prohibited from entry into hospitals or long-term care facilities.

- o. Hospitals and healthcare providers shall take measures to preserve and prioritize resources including delaying non-emergent or elective surgeries or procedures where feasible.
- p. As outlined in the Health Officer's Order of April 3, 2020, all labs that perform COVID-19 testing for Riverside County clients, including but not limited to Kaiser



Permanente; LabCorp, Quest Diagnostics, and labs operated by hospitals across the County of Riverside, shall continue to share COVID-19 orders and results with demographics with Manifest Medex (MX) to create a countywide COVID-19 dashboard to include information regarding tests performed, both pending and resulted, and occurrences by age, gender, and geographical location. Orders and results with demographics shall be shared either through electronic interfaces (preferred) or via electronic file transfers updated on at least a daily basis.

- q. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://wwwnc.cdc.gov/travel/notices>) shall be subject to 14-day home quarantine, self-monitoring.
  - r. A strong recommendation is made for persons exhibiting mild to moderate symptoms of COVID-19 to self-isolate themselves in their place of residence unless seeking medical treatment. A guide to symptoms is found here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
2. For purposes of this Order:
- a. "Gathering" is any event or convening that brings together people in a single room or single space at the same time, including, but not limited to, an auditorium, stadium, arena, theater, church, casino, conference room, meeting hall, cafeteria, drive-in theater, parking lot, or any other indoor or outdoor space used for any non-essential purpose including, but not limited to, movies, church services, swap meets, etc. A gathering does not include:
    - i. A convening of persons who reside in the same residence.
    - ii. Operations at airports and/or public transportation.
    - iii. Operations at essential businesses included in the designated sectors referenced in section 1 above, where many people are present but are able to practice social distancing.
    - iv. Funerals and burial services may proceed with not more than 10 persons present. Funerals and burial services must be conducted in strict compliance with social distancing requirements.
  - b. "Long term care facility" is a facility serving adults that require assistance with activities of daily living, including a skilled nursing facility, and that is licensed by the California Department of Community Care and Licensing, or the California Department of Public Health.
  - c. "Non-essential personnel" for the purpose of section 1 above, are employees, contractors, or members of the public who do not perform treatment, maintenance,



support, or administrative tasks deemed essential to the healthcare mission of the long term care facility or hospital. Non-essential personnel do not include first responders, nor State, federal, or local officials, investigators, or medical personnel carrying out lawful duties. Entry of visitors to hospitals and long-term care facilities are allowed upon the approval of the facility's director, or designee, for the purpose of allowing family and friends to visit a resident such as in an end of life situation, to allow parents or guardians to visit a child who is a patient, or any other circumstances deemed appropriate by the facility director, or designee, and where appropriate precautions by the facility that follow federal, State, and local public health guidance regarding COVID-19 are followed.

- d. "Social distancing" is maintaining a six-foot separation from all persons except for household members and medical providers with the appropriate personal protection equipment.
3. This Order shall be effective immediately and will remain in effect until **April 30, 2020**, pending further Order of the Public Health Officer. To the extent that any conflict shall arise, this Order supersedes the prior Orders of the Public Health Officer concerning public gatherings, including those issued on March 12, March 16, and April 4, 2020.
4. This Order is issued as a result of the worldwide pandemic of COVID-19 disease, also known as "novel coronavirus," which has infected over one million individuals worldwide in over 180 countries and is implicated in over 50,000 worldwide deaths, including over 600 cases and 15 deaths in Riverside County. These numbers increase significantly every day.
5. This Order is issued based on evidence of increasing transmission of COVID-19 both within the County of Riverside and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19.
6. This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. This Order is issued to prevent circumstances often present in gatherings that may exacerbate the spread of COVID-19, such as: 1) the increased likelihood that gatherings will attract people from a broad geographic area; 2) the prolonged time period in which large numbers of people are in close proximity; 3) the difficulty in tracing exposure when large numbers of people attend a single event or are at a single location; and 4) the inability to ensure that such persons follow adequate hygienic practices.
7. This Order is intended to address the strain upon the health care system from the effects of the COVID-19 virus. Similarly, this Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide.



8. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 8, 2020 Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in Riverside County; the March 10, 2020 Resolution of the Board of Supervisors of the County of Riverside proclaiming the existence of a Local Emergency in the County of Riverside regarding COVID-19; the March 10, 2020 Resolution of the Board of Supervisors of the County of Riverside ratifying and extending the Declaration of Local Health Emergency due to COVID-19; the guidance issued on March 11, 2020 by the California Department of Public Health regarding large gatherings of 250 people or more; Governor Gavin Newsom's Executive Order N-25-20 of March 12, 2020 preparing the State to commandeer hotels and other places of temporary residence, medical facilities, and other facilities that are suitable as places of temporary residence or medical facilities as necessary for quarantining, isolating or treating individuals who test positive for COVID-19 or who have had a high-risk exposure and are thought to be in the incubation period; the guidance issued on March 15, 2020 by the Centers for Disease Control and Prevention, the California Department of Public Health, and other public health officials through the United States and around the world recommending the cancellation of gatherings involving more than fifty (50) or more persons in a single space at the same time; the March 16, 2020 order of the Public Health Officer prohibiting all gatherings with expected presence above ten (10) individuals; Governor Newsom's Executive Order N-33-20 of March 19, 2020 ordering all persons to stay at home to protect the health and well-being of all Californians and to establish consistency across the state in order to slow the spread of COVID-19; Governor Newsom's Executive Order N-35-20 giving the state the ability to increase the health care capacity in clinics, mobile health care units and adult day health care facilities and allowing local governments more flexibility to utilize the skills of retired employees in order to meet the COVID-19 surge; and Governor Newsom's Executive Order N-39-20 intended to expand the health care workforce and recruit health care professionals to address the COVID-19 surge. The Governor and the County Public Health Officer continue to issue COVID-19-related orders to mitigate the public health crisis.
9. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the Centers for Disease Control and Prevention, and other public health officials throughout the United States and around the world, including but not limited to, the Centers for Disease Control and Prevention's "Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes" and the California Department of Public Health Face Covering Guidance issued on April 1, 2020.
10. This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101030, et seq.; Health and Safety Code sections 120100, et seq.; and Title 17 of the California Code of Regulations section 2501. More specifically, Health and Safety Code section 120175.5(b) which provides that all



governmental entities in the county shall take necessary measures within the governmental entity's control to ensure compliance with this Order and to disseminate this Order to venues or locations within the entity's jurisdiction where gatherings may occur.

11. Violation of this Order is subject to fine, imprisonment, or both. (Penal Code section 19; Government Code sections 8665 and 25132; Health and Safety Code section 120295; County Ordinances 533 and 556.)
12. To the extent necessary, pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and all Chiefs of Police in the County ensure compliance with and enforcement of this Order.
13. Copies of this Order shall promptly be: (1) made available at the County of Riverside Health Administration office located at 4065 County Circle Drive, Riverside, CA 92503; (2) posted on the County of Riverside Public Health Department's website (rivcoph.org); and (3) provided to any member of the public requesting a copy of this Order.

**IT IS SO ORDERED:**



Dated: April 6, 2020

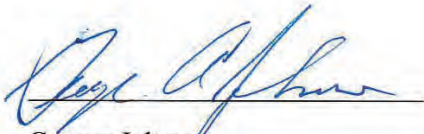
Dr. Cameron Kaiser, MD, MPH, FAAFP  
Public Health Officer  
County of Riverside

**EMERGENCY REGULATIONS**

As Director of Emergency Services for the County of Riverside, I am authorized to promulgate regulations for the protection for life and property pursuant to Government Code section 8634 and Riverside County Ordinances 442 and 533. The following shall be in effect for the duration of the County of Riverside Health Officer's Order issued above which is incorporated in its entirety by reference:

The County of Riverside Health Officer's Order shall be promulgated as a regulation for the protection of life and property.

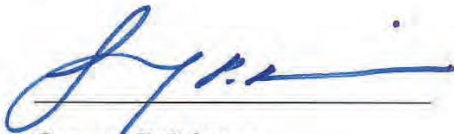
Any person who violates or refuses or willfully neglects to obey this regulation is subject to civil enforcement actions, including civil penalties of up to \$1,000 per violation per day, injunctive relief, and attorneys' fees and costs, imprisonment, or both, pursuant to Government Code section 8665.



George Johnson  
County Executive Officer  
Director of Emergency Services  
County of Riverside

Dated: April 6, 2020

Approved as to form and legality:



Gregory P. Priamos  
County Counsel  
County of Riverside

Dated: April 6, 2020

## **Exhibit 4**



Harmeet K. Dhillon  
Harmeet@DhillonLaw.com

April 8, 2020

**VIA EMAIL**

Robert A. Lovingood, Supervisor  
[Robert.Lovingood@bos.sbcounty.gov](mailto:Robert.Lovingood@bos.sbcounty.gov)

Curt Hagman, Supervisor  
[Curt.Hagman@bos.sbcounty.gov](mailto:Curt.Hagman@bos.sbcounty.gov)

Janice Rutherford, Supervisor  
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Josie Gonzales, Supervisor  
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Dawn Rowe, Supervisor  
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Michelle Blakemore, County Counsel  
[Mblakemore@cc.sbcounty.gov](mailto:Mblakemore@cc.sbcounty.gov)

**Re: Demand for Rescission of Illegitimate and Unconstitutional April 7, 2020  
Order of the Health Office of San Bernardino County**

Dear County Supervisors:

This firm, in coordination with the Center for American Liberty, is in the process of being retained by several San Bernardino County residents in connection with the County's adoption and enforcement of the April 7, 2020 Order of the Health Officer of San Bernardino County (hereinafter "Order").<sup>1</sup> For the reasons addressed in this letter, the Order is unconstitutional on numerous grounds. Accordingly, we ask that the County immediately rescind the Order and notify this office and the public of the same by **5:00 p.m. on April 9, 2020**. If the County fails to do so, our client is prepared to file a federal lawsuit in the immediate future, seeking immediate injunctive relief.

**I. The Order's Ban on In-Person Religious Services Violates the First Amendment.**

The First Amendment to the U.S. Constitution prohibits government actors from enforcing any "law respecting an establishment of religion, or prohibiting the free exercise thereof." U. S. Const. amend. I; *see also Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (applying the First Amendment to the States through the Fourteenth Amendment). The California Constitution similarly protects freedom of religion. Cal. Const., art. I, § 4. Accordingly, the County cannot ban "faith based services" taking place outside the home without

<sup>1</sup> As of the date of this letter, the Order is available online at the following URL:  
[http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM\\_C45820040714190.pdf](http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/SKM_C45820040714190.pdf).

San Bernardino County  
 April 8, 2020  
 Page 2 of 6

first satisfying the most exacting standard of judicial review: strict scrutiny. *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562 (2004).

Under strict scrutiny, the government cannot burden religious activity unless it first establishes (1) a compelling interest for imposing such burdens, and (2) that the burdens are the “least restrictive means” necessary to further that compelling interest. Federal courts routinely enjoin the enforcement of laws and policies under this standard. *See e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 524.

Here, the Order states that faith-based services are permitted only “through streaming or other technology, while individuals remain in their homes, but does not allow individuals to leave their homes for driving parades or drive-up services, or for picking up non-essential items.”<sup>2</sup> The Order makes no exceptions for upcoming religious holidays, including Easter, which is a very important religious observance day to many Christians worldwide. The Order also makes no exceptions for congregates taking extensive protective measures, such as in-person services in which participants are separated by more than six feet, etc. Simply put, there was essentially *no* effort to narrowly tailor the Order so as not to violate individuals’ right to religious freedom. Instead, the County proclaimed its draconian restrictions, essentially blanket-banning participation in religious services for an indefinite period of time, while at the same time allowing other necessary and important movement. As the Order cannot withstand strict scrutiny—or any other form of scrutiny—it must be rescinded immediately.

## **II. The Order Is Overbroad and Chills Religious and Expressive Activity Protected by the First Amendment.**

A statute or regulation is overbroad if it “does not aim specifically at evils within the allowable area of [governmental] control, but ... sweeps within its ambit other activities in ordinary circumstances that constitute an exercise” of protected expression and conduct. *Thornhill v. State of Alabama* (1940) 310 U.S. 88, 97. In *Gatto v. Cty. of Sonoma* (2002) 98 Cal. App. 4th 744, 750, for example, the California Court of Appeal held that the Sonoma County Fair dress code was overbroad and void for vagueness. There, the county ejected the plaintiff from the fair for wearing a jacket adorned with a Hell’s Angel insignia because it was deemed “provocative.” *Id.* at 750. The Court of Appeal held the county’s dress code failed to pass constitutional muster.

Here, the Order broadly prohibits entire swaths of activities, including religious, travel, and speech activities, without any effort to except constitutionally-protected activities. In addition to banning all out-of-home religious activities, the Order requires that all essential workers “wear face coverings, such as scarves (dense fabric, without holes,) bandanas, neck gaiters, or other fabric face coverings, when they leave their homes....”

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<sup>2</sup> We understand the County’s recent statement clarifies that the County will now permit drive-in religious services, although at this time no updated order has been released to the public. <http://wp.sbcounty.gov/cao/countywire/?p=5862>.



San Bernardino County

April 8, 2020

Page 3 of 6

Courts consistently recognize that a person's clothing may contain or constitute protected speech. *See, e.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist.* (1969) 393 U.S. 503. The County's compulsory wearing of face coverings necessarily inhibits—through prior restraint no less—all expressive conduct related to facial adornments, and may even compel citizens to speak when they would otherwise not. *Janus v. Am. Fed'n of State, Cty., & Mun. Employees, Council 31* (2018) 138 S. Ct. 2448, 2464 [“Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason, one of our landmark free speech cases said that a law commanding “involuntary affirmation” of objected-to beliefs would require “even more immediate and urgent grounds” than a law demanding silence.”]. Even where such clothing is not expressive *per se*, the forced dress still violates citizen's protected liberty interest in choosing their own attire. *See Karr v. Schmidt* (5th Cir.1972) 460 F.2d 609, 621 (dis. opn. of Wisdom, J.) [“[f]orced dress ... humiliates the unwilling complier, forces him to submerge his individuality in the ‘undistracting’ mass, and in general, smacks of the exaltation of organization over member, unit over component, and state over individual.”]. Accordingly, the Order runs afoul of the overbreadth doctrine and is wholly unconstitutional.

### **III. The Order Is Void for Vagueness.**

A regulation is constitutionally void on its face when, as matter of due process, it is so vague that persons “of common intelligence must necessarily guess at its meaning and differ as to its application” *Connally v. General Const. Co.* (1926) 269 U.S. 385, 391; *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115. The void for vagueness doctrine is designed to prevent arbitrary and discriminatory enforcement. *Ketchens v. Reiner* (1987) 194 Cal.App.3d 470, 477. The problem with a vague regulation is that it “impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis....” *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108–109.

Here, the Order is vague for several reasons, including but not limited to those addressed below.

#### **A. The Order Relies on Absent and Inapplicable Authority.**

The County states that the Order is authorized by California Health and Safety Code Sections 101080 and 101085. This is simply incorrect. Emergency powers exercised pursuant to Section 101085 require that an emergency be declared pursuant to Section 101080, which in turn applies only when “a release, spill, escape, or entry of waste occurs as described in paragraph (2) of subdivision (b) of Section 101075.” Since there is no “release, spill, escape, or entry of waste,” Section 101085 is not applicable, and the Order is void.

The County also states that it relies upon “Executive Order N-22-20” as authority for issuing the Order. As far as we are aware, no such executive order exists.

**DHILLON LAW GROUP INC.**

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San Bernardino County  
 April 8, 2020  
 Page 4 of 6

**B. Governor Newsom’s Order Requires Only that Persons “Heed” the Public Health Official’s “Stay-at-Home” Notice.**

Governor Newsom’s March 19, 2020 Executive Order N-33-20 appears to be the intended reference mistakenly titled N-22-20 in the Order. Even so, the County brazenly mischaracterizes it.

Contrary to the County’s assertions in the Order, Governor Newsom’s order does *not* state that “all persons residing in the State [are] to remain in their homes or places of residence ...”. A careful reading of the Governor’s order reveals that residents are only instructed to “heed” State public health directives ...”. According to Meriam-Webster, the plain meaning of the word “heed” is “to give consideration or attention to”—not to submit or comply with, as suggested by the County’s interpretation. Governor Newsom’s order that California residents give careful thought to the directives of the Department of Public Health does not equate to an order to comply with those directives.

The Public Health directive itself carries no legal weight, despite nominally “ordering” that all persons not engaging in essential activities stay at home. Under established California law, the Public Health Department cannot forcibly quarantine persons unless there is probable cause that such persons are actually infected. *Ex parte Martin* (1948) 83 Ca.App.2d 164, 167; *Jew Ho v. Williamson* (C.C. Cal. 1900) 103 F. 10 [San Francisco’s quarantine to contain bubonic plague in May 1900 found to be unreasonable]; *Wong Wai v. Williamson* (CC Cal. 1900) 103 F. 1 [holding that San Francisco’s May 1900 quarantine violated rights secured by the Equal Protection Clause]; *see also Ex parte Arta* (1921) 52 Cal.App. 380, 383 [“a mere suspicion, unsupported by facts giving rise to reasonable or probable cause, will afford no justification at all for depriving persons of their liberty and subjecting them to virtual imprisonment under a purported order of quarantine.”]. As such, directives from California public health officials are enforceable only to the extent there exists probable cause that *each* such non-essential worker has contracted Covid-19—which is clearly not the case. Absent such probable cause, the directive has no legally enforceable effect as to any person not shown to be exposed within the meaning of the statute and precedent.

**IV. The Order Violates the Fundamental Right to Travel.**

The United States Supreme Court has held that the “right to travel is a part of the liberty of which the citizen cannot be deprived without the due process of law under the Fifth Amendment.” *Kent v. Dulles* (1958) 357 U.S. 116, 126. The Court found that “[t]ravel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.” *Id* at 126. They have also ruled that the “right to travel is an unconditional personal right, a right whose exercise may not be conditioned.” *Dunn v. Blumstein* (1972) 405 U.S. 330, 341.

Courts apply the compelling state interest test to assess the constitutionality of the government’s action when that action implicates the fundamental right to travel. *See, e.g., Memorial Hospital v. Maricopa County* (1974) 415 U.S. 250; *Dunn v. Blumstein* (1972) 405 U.S. 330; and *Shapiro v. Thompson*, (1969) 394 U.S. 618. Under the compelling state interest test, the

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Case 5:20-cv-00755-JGB-KK Document 8-2 Filed 04/14/20 Page 32 of 48 Page ID #:143

San Bernardino County  
April 8, 2020  
Page 5 of 6

government must prove that there is a “clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest.” *Dunn* at 341. The *Dunn* Court continued by finding that in order to prove that there is a substantial government interest, the government “cannot choose means that unnecessarily burden or restrict constitutionally protected activity,” that the statute must be “drawn with precision,” and “must be tailored to serve their legitimate objectives.” *Dunn* at 343.

The County fails to satisfy this standard. The County is picking and choosing who can be open and who cannot be open. As such, this order is not narrowly tailored and the fact that the County is not allowing businesses or churches to attempt to practice social distancing clearly shows that the government is not executing a plan that is the least restrictive one possible.

**V. The Mandate to Wear a Mask has a Disproportionate Impact Upon the Poor and Those that Cannot Wear a Mask for Medical or Other Reasons.**

The Order also violates the Equal Protection Clause, by mandating that all persons who leave their places of residence must wear a face covering, disproportionately affecting indigent residents of the County, and those that cannot wear a face covering for legitimate medical or other reasons. Indeed, those without facial coverings cannot exercise fundamental constitutional rights—including leaving their home for essential goods and services—while more affluent individuals may be able to comply. The order does not provide for the provision to purchase such face coverings for those who do not already have suitable masks and are not able to afford them.<sup>3</sup> The Order mandates that everyone use or purchase suitable masks in order to comply with the Order. As such, at a minimum, the County needs to have provisions in place to fund the purchase the applicable masks for those who cannot afford them. It fails to provide for this, and therefore cannot rest the exercise of fundamental rights on people’s ability to afford those rights.

**VI. The Order Fails to Properly Educate the Public on Proper Use of the Mask.**

Finally, the Order seems to be grossly negligent in that it mandates the wearing of cloth masks without any instruction to the public as to how to properly maintain the mask or how often it is to be changed. In light of all the contradictory evidence being presented on mask use, if the County is going to mandate it, they owe a duty to the general public to ensure that along with the order, proper instructions are given as to how to use and maintain the mask for public health.

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<sup>3</sup> In other contexts, for example, California law prohibits schools from imposing a dress code on children unless there are adequate provisions to “assist economically disadvantaged pupils”. Educ. Code § 35183(d). Likewise, employers who mandate that an employee must wear a uniform are required to pay for that uniform. Labor Code § 2802.

Case 5:20-cv-00755-JGB-KK Document 8-2 Filed 04/14/20 Page 33 of 48 Page ID #:144

San Bernardino County

April 8, 2020

Page 6 of 6

In conclusion, for the foregoing reasons, we feel that the Order is defective and needs to be immediately rescinded in order to limit the County's liability for violations to residents' constitutional rights. Our firm is preparing the necessary paperwork to file a temporary and permanent restraining order. Failure to rescind this order by the end of business on April 9<sup>th</sup> will result in a lawsuit being filed.

Regards,

A handwritten signature in blue ink, appearing to read "Harmeet K. Dhillon". The signature is fluid and cursive, with the first name "Harmeet" being more prominent.

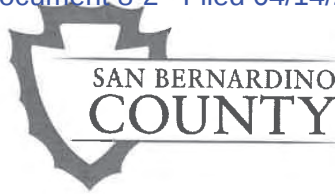
Harmeet K. Dhillon

**DHILLON LAW GROUP INC.**

177 POST STREET, SUITE 700 | SAN FRANCISCO, CA 94108 | 415.433.1700 | 415.520.6593 (F)

## **Exhibit 5**

**MICHELLE D. BLAKEMORE**  
County Counsel



**PENNY ALEXANDER-KELLEY**  
Chief Assistant County Counsel

**COUNTY COUNSEL**  
385 NORTH ARROWHEAD AVENUE, 4<sup>th</sup> FLOOR  
SAN BERNARDINO, CA 92415-0140  
(909) 387-5455 Fax (909) 387-5462

April 9, 2020

**VIA ELECTRONIC MAIL**  
Harmeet@DhillonLaw.com

Harmeet K. Dhillon, Esq.  
DHILLON LAW GROUP, LLC  
177 Post Street, Suite 700  
San Francisco, CA 94108

**Re: April 7, 2020 Order Of The Health Office of San Bernardino County**

Dear Ms. Dhillon:

I write in response to your letter dated April 8, 2020 addressed to the County Board of Supervisors and demanding the rescission of the Order of the Health Officer of the County of San Bernardino for the Control of COVID-19, dated April 7, 2020 ("the April 7, 2020 Order"). The purpose of the Order is to address the enormous public health disaster created by the COVID-19 pandemic. Please be advised that the County has clarified the April 7, 2020 Order just yesterday ("the April 8, 2020 Clarification"). The April 8, 2020 Clarification specifically provides that faith based organizations or individuals, face no threat of citations or other punishment for their faith based activities over the Easter weekend wherein every effort is made to prevent contact between congregants and adherence to social distancing guidance. This includes conducting or attending drive-in services where congregants remain in their vehicles to collect items from their vehicles such as Easter baskets.

Please note that the April 7, 2020 Order and the companion April 8, 2020 Clarification are posted at the County Public Health website dedicated to COVID -19. Accordingly, there simply is no emergency here mandating seeking federal court intervention on an expedited basis and asking for a temporary and permanent restraining order for the reasons you assert in your letter. *See Reno Air Racing Ass'n., Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) [courts recognize very few circumstances justifying the issuance of an ex parte temporary restraining orders]; *see also Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cty.*, 415 U.S. 423, 439 (1974); *Stanchart Sec. Int'l, Inc. v. Galvador*, 2012 WL 5286952, at \*1 (S.D. Cal. 2012) ["TROs are for emergencies only"]; Fed. R. Civ. Proc. 65(b).

Case 5:20-cv-00755-JGB-KK Document 8-2 Filed 04/14/20 Page 36 of 48 Page ID #:147

Harmeet K. Dhillon, Esq  
April 9, 2020  
Page 2

I also invite you to note that the April 8, 2020 Clarification states that the County “does not expect law enforcement to broadly impose citations on violators” and that “the expectation is that law enforcement will rely upon community members to use good judgment, common sense, and act in the best interest of their own health and the health of their loved ones and the community at large.” Accordingly, there has not been any individual congregant, nor any religious facility, that is under any threat of enforcement here. As such, there simply is no case or controversy to support Article III standing or grounds for preliminary injunctive relief. *See Los Angeles Memorial Coliseum Comm’n v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980) [as a prerequisite to preliminary injunctive relief, plaintiffs must do more than merely allege harm sufficient to establish standing, rather, he or she must demonstrate immediate threatened injury].

The County Public Health Officer is continuing to focus its concerted efforts on dealing with the health crisis posed by COVID-19 pandemic and it is critical that County resources are dedicated to these exigency public health crisis at play with COVID-19. As well, the County and/or Public Health Officer expects to be issuing further clarifications as necessary to address the threat to public health while allowing for public encounters such as religious services that practice social distancing. Further, the County disagrees with the asserted claims of constitutional infirmities based on portions of the April 7, 2020 Order or the April 8, 2020 Clarification regarding face covering requirements. Nevertheless, the County anticipates there will be further clarifications and/or orders issued that will address some additional concerns raised by your letter.

I am confident that in light of the above, the Center for American Liberty will not be seeking extraordinary relief from the federal court. Should you choose to proceed forward despite the lack of need for court intervention, please advise the federal court that the County will be opposing any such temporary restraining order filing.

Sincerely,



MICHELLE D. BLAKEMORE  
County Counsel

cc: Mark Meuser, Esq.  
Dhillon Law Group LLC

## **Exhibit 6**



Harmeet K. Dhillon  
Harmeet@DhillonLaw.com

April 8, 2020

**VIA EMAIL**

Kevin Jeffries, Supervisor  
[district1@rivco.org](mailto:district1@rivco.org)

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V. Manuel Perez, Supervisor  
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Brooke Federico, County Public  
Information Officer  
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Jeff Hewitt, Supervisor  
[district5@rivco.org](mailto:district5@rivco.org)

**Re: Demand for Rescission of Illegitimate and Unconstitutional April 6, 2020  
Amended Order of the Health Office of Riverside County**

Dear County Supervisors:

This firm, in coordination with the Center for American Liberty, is in the process of being retained by residents of Riverside County in connection with the County's adoption and enforcement of the April 6, 2020 Amended Order of the Health Officer of Riverside County (hereinafter "Order").<sup>1</sup> For the reasons addressed in this letter, the Order is unconstitutional on numerous grounds. Accordingly, we ask that the County immediately rescind the Order and notify this office and the public of the same by **5:00 p.m. on April 9, 2020**. If the County fails to do so, our client is prepared to file a federal lawsuit in the immediate future, seeking immediate injunctive relief.

<sup>1</sup> As of the date of this letter, the April 6, 2020 Amended Order is available online at:  
[https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC\\_20200406\\_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186](https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/PHOrders/Riv-EOC_20200406_090004.pdf?ver=2020-04-06-102528-423&timestamp=1586193935186)



Riverside County  
 April 8, 2020  
 Page 2 of 6

## **I. The April 6<sup>th</sup> Order's Ban on Religious Services Violates the First Amendment.**

The First Amendment to the U.S. Constitution prohibits government actors from enforcing any “law respecting an establishment of religion, or prohibiting the free exercise thereof.” U. S. Const. amend. I; *see also Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (applying the First Amendment to the States through the Fourteenth Amendment). The California Constitution similarly protects freedom of religion. Cal. Const., art. I, § 4. Accordingly, the County cannot ban “faith based services” taking place outside the home without first satisfying the most exacting standard of judicial review: strict scrutiny. *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562 (2004).

Under strict scrutiny, the government cannot burden religious activity unless it first establishes (1) a compelling interest for imposing such burdens, and (2) that the burdens are the “least restrictive means” necessary to further that compelling interest. Federal courts routinely enjoin the enforcement of laws and policies under this standard. *See e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S. 520, 524.

Here, the Order states that all public or private gatherings are prohibited regardless of venue or size. The April 6<sup>th</sup> Order makes no exceptions for upcoming major religious observances, including Easter, which is a very important religious observance day to most Christians. The April 6<sup>th</sup> Order also makes no exceptions for congregates taking extensive protective measures, such as drive-in services in which participants remain isolated in their cars, or in-person services in which participants are separated by more than six feet. Simply put, there was essentially *no* effort to narrowly tailor the Order so as not to violate individuals’ right to religious freedom. Instead, the County proclaimed its draconian restrictions, essentially blanket-banning participation in religious services for an indefinite period of time, while at the same time allowing other necessary and important movement. As the Order cannot withstand strict scrutiny—or any other form of scrutiny—it must be rescinded immediately.

## **II. The Order Is Overbroad and Chills Religious and Expressive Activity Protected by the First Amendment.**

A statute or regulation is overbroad if it “does not aim specifically at evils within the allowable area of [governmental] control, but ... sweeps within its ambit other activities in ordinary circumstances that constitute an exercise” of protected expression and conduct. *Thornhill v. State of Alabama* (1940) 310 U.S. 88, 97. In *Gatto v. Cty. of Sonoma* (2002) 98 Cal. App. 4th 744, 750, for example, the California Court of Appeal held that the Sonoma County Fair dress code was overbroad and void for vagueness. There, the county ejected the plaintiff from the fair for wearing a jacket adorned with a Hell’s Angel insignia because it was deemed “provocative.” *Id.* at 750. The Court of Appeal held the county’s dress code failed to pass constitutional muster.

Here, the Order broadly prohibits entire swaths of activities, including religious, travel, and speech comprising the majority of activities most Californians perform on a daily basis, without any effort to except constitutionally-protected activities. In addition to banning all out-of-home religious activities, the Order requires that all individuals “wear face

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Case 5:20-cv-00755-JGB-KK Document 8-2 Filed 04/14/20 Page 40 of 48 Page ID #:151

Riverside County  
 April 8, 2020  
 Page 3 of 6

coverings, such as scarves (dense fabric, without holes,) bandanas, neck gaiters, or other fabric face coverings.” Basically, this order mandates people where face coverings 24 hours a day, 7 days a week, regardless if they are in their home or car, and without regard to the health or expressive concerns implicated by this blanket, one-size-fits-all order.

Courts consistently recognize that clothing may give rise to protected, speech activities. *See, e.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist.* (1969) 393 U.S. 503. The County’s compulsory wearing of face coverings necessarily inhibits—through prior restraint no less—all expressive conduct related to facial adornments, and may even compel citizens to speak when they would otherwise not. *Janus v. Am. Fed’n of State, Cty., & Mun. Employees, Council 31* (2018) 138 S. Ct. 2448, 2464 [“Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason, one of our landmark free speech cases said that a law commanding “involuntary affirmation” of objected-to beliefs would require “even more immediate and urgent grounds” than a law demanding silence.”]. Even where such clothing is not expressive *per se*, the forced dress still violates citizen’s protected liberty interest in choosing their own attire. *See Karr v. Schmidt* (5th Cir.1972) 460 F.2d 609, 621 (dis. opn. of Wisdom, J.) [“[f]orced dress ... humiliates the unwilling complier, forces him to submerge his individuality in the ‘undistracting’ mass, and in general, smacks of the exaltation of organization over member, unit over component, and state over individual.”]. Accordingly, the Order runs afoul of the overbreadth doctrine and is wholly unconstitutional.

### **III. The Order Is Void for Vagueness.**

A regulation is constitutionally void on its face when, as matter of due process, it is so vague that persons “of common intelligence must necessarily guess at its meaning and differ as to its application” *Connally v. General Const. Co.* (1926) 269 U.S. 385, 391; *People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1115. The void for vagueness doctrine is designed to prevent arbitrary and discriminatory enforcement. *Ketchens v. Reiner* (1987) 194 Cal.App.3d 470, 477. The problem with a vague regulation is that it “impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis....” *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108–109.

Here, the Order is vague for several reasons, including but not limited to those addressed below.

#### **A. The Order Relies on Inapplicable Authority.**

The County states that the Order is authorized by California Health and Safety Code Sections 101085. This is simply incorrect. Emergency powers exercised pursuant to Section 101085 require that an emergency be declared pursuant to Section 101080, which in turn applies only when “a release, spill, escape, or entry of waste occurs as described in paragraph (2) of subdivision (b) of Section 101075.” Since there is no “release, spill, escape, or entry of waste,” Section 101085 is not applicable, and the Order is void.

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Case 5:20-cv-00755-JGB-KK Document 8-2 Filed 04/14/20 Page 41 of 48 Page ID #:152

Riverside County  
 April 8, 2020  
 Page 4 of 6

**B. Governor Newsom’s Order Requires Only that Persons “Heed” the Public Health Official’s “Stay-at-Home” Notice.**

The County brazenly mischaracterizes Governor Newsom’s March 19, 2020 Executive Order N-33-20

Contrary to the County’s assertions in the Order, Governor Newsom’s order does *not* state that “all individuals living in the State of California [are] to stay home or at their place of residence ...”. A careful reading of the Governor’s order reveals that residents are only instructed to “heed” State public health directives ...”. According to Meriam-Webster, the plain meaning of the word “heed” is “to give consideration or attention to”—not to submit or comply with, as suggested by the County’s interpretation. Governor Newsom’s order that California residents give careful thought to the directives of the Department of Public Health does not equate to an order to comply with those directives.

The Public Health directive itself carries no legal weight, despite nominally “ordering” that all persons not engaging in essential activities stay at home. Under established California law, the Public Health Department cannot forcibly quarantine persons unless there is probable cause that such persons are actually infected. *Ex parte Martin* (1948) 83 Cal.App.2d 164, 167; *Jew Ho v. Williamson* (C.C. Cal. 1900) 103 F. 10 [San Francisco’s quarantine to contain bubonic plague in May 1900 found to be unreasonable]; *Wong Wai v. Williamson* (CC Cal. 1900) 103 F. 1 [holding that San Francisco’s May 1900 quarantine violated rights secured by the Equal Protection Clause]; see also *Ex parte Arta* (1921) 52 Cal.App. 380, 383 [“a mere suspicion, unsupported by facts giving rise to reasonable or probable cause, will afford no justification at all for depriving persons of their liberty and subjecting them to virtual imprisonment under a purported order of quarantine.”]. As such, directives from California public health officials are enforceable only to the extent there exists probable cause that *each* such non-essential worker has contracted Covid-19—which is clearly not the case. Absent such probable cause, the directive has no legally enforceable effect as to any person not shown to be exposed within the meaning of the statute and precedent.

**IV. The Order Violates the Fundamental Right to Travel.**

The United States Supreme Court has held that the “right to travel is a part of the liberty of which the citizen cannot be deprived without the due process of law under the Fifth Amendment.” *Kent v. Dulles* (1958) 357 U.S. 116, 126. The Court found that “[t]ravel abroad, like travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.” *Id* at 126. They have also ruled that the “right to travel is an unconditional personal right, a right whose exercise may not be conditioned.” *Dunn v. Blumstein* (1972) 405 U.S. 330, 341.

Court’s apply the compelling state interest test to assess the constitutionality of the government’s action when that action implicates the fundamental right to travel. *See, e.g., Memorial Hospital v. Maricopa County* (1974) 415 U.S. 250; *Dunn v. Blumstein* (1972) 405 U.S. 330; and *Shapiro v. Thompson*, (1969) 394 U.S. 618. Under the compelling state interest test, the government must prove that there is a “clear showing that the burden imposed is

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Riverside County  
 April 8, 2020  
 Page 5 of 6

necessary to protect a compelling and substantial governmental interest.” *Dunn* at 341. The *Dunn* Court continued by finding that in order to prove that there is a substantial government interest, the government “cannot choose means that unnecessarily burden or restrict constitutionally protected activity”, that the statute must be “drawn with precision”, and “must be tailored to serve their legitimate objectives.” *Dunn* at 343.

The County fails to satisfy this standard. The County is picking and choosing who can be open and who cannot be open. As such, the Order is not narrowly tailored and the fact that the County is not allowing businesses or churches to attempt to practice social distancing clearly shows that the government is not executing a plan that is the least restrictive one possible – in fact it has imposed the *most* restrictive possible means of accomplishing its ends.

#### **V. The Mandate to Wear a Mask has a Disproportionate Impact Upon the Poor.**

The April 6<sup>th</sup> Order also violates the Equal Protection Clause, by mandating that all persons must wear a face covering, disproportionately affecting indigent residents of the County. Indeed, those without facial coverings cannot exercise fundamental constitutional rights – including leaving their home for essential goods and services – while more affluent individuals may be able to comply. This Order does not provide for the provision to purchase such face coverings for those who do not already have suitable masks and are not able to afford them.<sup>2</sup>

The Order mandates that everyone use or purchase suitable masks in order to comply with the Order. As such, at a minimum, the County needs to have provisions in place to fund the purchase of the applicable masks for those who cannot afford them. It fails to provide for this, and therefore cannot rest the exercise of fundamental rights on people’s ability to afford those rights. Furthermore, this order offers no exception for those people who comfortably cannot wear a mask due to other medical conditions.

#### **VI. The Order Fails to Properly Educate the Public on Proper Use of the Mask.**

Finally, the April 6<sup>th</sup> Order seems to be grossly negligent in that it mandates the wearing of cloth masks without any instruction to the public as to how to properly maintain the mask or how often it is to be changed. In light of all the contradictory evidence being presented on mask use, if the County is going to mandate it, they owe a duty to the general public to ensure that along with the order, proper instructions are given as to how to use and maintain the mask for public health. For example, instructions on washing, re-use – and the real risk of re-infection through the use of a mask.

---

<sup>2</sup> In other contexts, for example, California law prohibits schools from imposing a dress code on children unless there are adequate provisions to “assist economically disadvantage pupils”. Educ. Code § 35183(d). Likewise, employers who mandate that an employee must wear a uniform are required to pay for that uniform. Labor Code § 2802.

Case 5:20-cv-00755-JGB-KK Document 8-2 Filed 04/14/20 Page 43 of 48 Page ID #:154

Riverside County  
April 8, 2020  
Page 6 of 6

In conclusion, for the foregoing reasons, we feel that the Order is defective and must be immediately rescinded in order to limit the County's liability for violations to residents' constitutional rights. Our firm is preparing the necessary paperwork to file a suit seeking immediate relief. Failure to rescind this order by the end of business on April 9<sup>th</sup> will result in a lawsuit being filed.

Regards,

A handwritten signature in blue ink, appearing to read "Harmeet K. Dhillon".

Harmeet K. Dhillon

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## **Exhibit 7**



April 10, 2020

Riverside County  
**NEWS RELEASE**

Contact:  
Brooke Federico  
(951) 743-0075  
[bcfederico@rivco.org](mailto:bcfederico@rivco.org)

## **Drive-in religious services permitted this weekend only**

Drive-up church services that practice proper social distancing will be allowed this weekend in Riverside County, although the order to prohibit such activities will remain after Easter Sunday.

The clarification is issued from County Executive Officer George Johnson, who is the Director of Emergency Services during emergencies and disasters. This clarification is issued today, April 10 (Friday) and includes drive-up services for April 10, 11 and 12 (Easter).

Health officials continue to believe that residents should remain at home and only travel for essential services, such as grocery shopping, trips to the pharmacy and purchasing gasoline. The order remains until April 30.

They are also required to wear a face covering whenever they leave their residences.

# # #



## **Exhibit 8**

4/14/2020 Case 5:20-cv-00755-JCB-RK Document 8-2 Filed 04/14/20 Page 47 of 48 Page ID #:158

 An official website of the United States government  
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## Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, April 14, 2020

### **Attorney General William P. Barr Issues Statement on Religious Practice and Social Distancing; Department of Justice Files Statement of Interest in Mississippi Church Case**

Attorney General William P. Barr issued the following statement:

"In light of the COVID-19 pandemic, the President has issued guidelines calling on all Americans to do their part to slow the spread of a dangerous and highly contagious virus. Those measures are important because the virus is transmitted so easily from person to person, and because it all too often has life-threatening consequences for its victims, it has the potential to overwhelm health care systems when it surges.

To contain the virus and protect the most vulnerable among us, Americans have been asked, for a limited period of time, to practice rigorous social distancing. The President has also asked Americans to listen to and follow directions issued by state and local authorities regarding social distancing. Social distancing, while difficult and unfamiliar for a nation that has long prided itself on the strength of its voluntary associations, has the potential to save hundreds of thousands of American lives from an imminent threat. Scrupulously observing these guidelines is the best path to swiftly ending COVID-19's profound disruptions to our national life and resuming the normal economic life of our country. Citizens who seek to do otherwise are not merely assuming risk with respect to themselves, but are exposing others to danger. In exigent circumstances, when the community as a whole faces an impending harm of this magnitude, and where the measures are tailored to meeting the imminent danger, the constitution does allow some temporary restriction on our liberties that would not be tolerated in normal circumstances.

But even in times of emergency, when reasonable and temporary restrictions are placed on rights, the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. Thus, government may not impose special restrictions on religious activity that do not also apply to similar nonreligious activity. For example, if a government allows movie theaters, restaurants, concert halls, and other comparable places of assembly to remain open and unrestricted, it may not order houses of worship to close, limit their congregation size, or otherwise impede religious gatherings. Religious institutions must not be singled out for special burdens.

Today, the Department filed a Statement of Interest in support of a church in Mississippi that allegedly sought to hold parking lot worship services, in which congregants listened to their pastor preach over their car radios, while sitting in their cars in the church parking lot with their windows rolled up. The City of Greenville fined congregants \$500 per person for attending these parking lot services – while permitting citizens to attend nearby drive-in restaurants, even with their windows open.[1] The City appears to have thereby singled churches out as the only essential service (as designated by the state of Mississippi) that may not operate despite following all CDC and state recommendations regarding social distancing.

As we explain in the Statement of Interest, where a state has not acted evenhandedly, it must have a compelling reason to impose restrictions on places of worship and must ensure that those restrictions are narrowly tailored to advance its compelling interest. While we believe that during this period there is a sufficient basis for the social distancing rules that

4/14/2020 Case 5:20-cv-00755-JCB-RK Document 8-2 Filed 04/14/20 Page 48 of 48 Page ID #:199 Attorney General William P. Barr Issues Statement on Religious Practice and Social Distancing Department of Justice Files Statement of...

have been put in place, the scope and justification of restrictions beyond that will have to be assessed based on the circumstances as they evolve.

Religion and religious worship continue to be central to the lives of millions of Americans. This is true more so than ever during this difficult time. The pandemic has changed the ways Americans live their lives. Religious communities have rallied to the critical need to protect the community from the spread of this disease by making services available online and in ways that otherwise comply with social distancing guidelines.

The United States Department of Justice will continue to ensure that religious freedom remains protected if any state or local government, in their response to COVID-19, singles out, targets, or discriminates against any house of worship for special restrictions."

[1] The City has since stated it will drop the fines, but will continue to enforce the order.

---

**Attachment(s):**

[Download Statement of Interest](#)

**Component(s):**

[Office of the Attorney General](#)

**Press Release Number:**

20-380

*Updated April 14, 2020*

# EXHIBIT G

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3 MARK P. MEUSER (SBN: 231335)

4 mmeuser@dhillonlaw.com

5 GREGORY R. MICHAEL (SBN: 306814)

6 gmichael@dhillonlaw.com

7 DHILLON LAW GROUP INC.

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10 Telephone: (415) 433-1700

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12 Attorneys for Plaintiffs

13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**  
 15 **EASTERN DIVISION**

16 **WENDY GISH**, an individual, *et al.*,

17 Plaintiffs,

18 v.

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

21 Defendants.

Case Number: 5:20-cv-00755

22 **DECLARATION OF WENDY**  
 23 **GISH IN SUPPORT OF**  
 24 **PLAINTIFFS' APPLICATION**  
 25 **FOR TEMPORARY**  
 26 **RESTRAINING ORDER**

27 Date: April 14, 2020

28 Judge: Unassigned

1 I, Wendy Gish declare:

2 1. I am a resident of San Bernardino County, California.

3 2. I attend Shield of Faith Family Church located in Fontana, California.

4 3. My sincerely held religious belief is that God commands me, and other  
5 believers, to regularly come together to worship Him. This belief comes directly from  
6 Scripture. In Hebrews 10:25, it says, "Let us not neglect meeting together, as some  
7 have made a habit, but let us encourage one another, and all the more as you see the  
8 Day approaching."

9 4. I regularly attend church services on Sundays and Wednesdays at Shield  
10 of Faith Family Church.

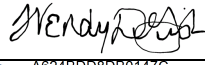
11 5. I believe the Governor's shelter-in-place order and the County's order  
12 burden my ability to practice my faith according to the dictates of my conscience.

13 6. If this temporary restraining order is granted, I will attend in-person  
14 church regularly, as is my sincerely held religious belief, but do so in a manner that is  
15 responsible, adhering to social distancing guidelines—I will wear gloves, a mask, and  
16 sit six feet apart from the next family unit.

17 7. To my knowledge, I have never had or contracted the coronavirus. I do  
18 not believe that I've ever been in close proximity or exposed to it.

19 I declare under penalty of perjury under the laws of the United States of  
20 America that the foregoing is true and correct and is executed this 14th day of April,  
21 2020, at San Bernardino County, California.  
22

23  
24 Dated: April 14, 2020

DocuSigned by:  
  
A624BDD8DB0147C...  
Wendy Gish

# EXHIBIT H



1 HARMEET K. DHILLON (SBN: 207873)

2 harmeet@dhillonlaw.com

3 MARK P. MEUSER (SBN: 231335)

4 mmeuser@dhillonlaw.com

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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **EASTERN DIVISION**

16 **WENDY GISH**, an individual, *et al.*,

17 Plaintiffs,

18 v.

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

21 Defendants.

Case Number: 5:20-cv-00755

22 **DECLARATION OF JAMES**  
23 **MOFFATT IN SUPPORT OF**  
24 **PLAINTIFFS' APPLICATION**  
25 **FOR TEMPORARY**  
26 **RESTRAINING ORDER**

27 Date: April 14, 2020

28 Judge: Unassigned



1 I, James Moffatt, declare:

2 1. I am a resident of Riverside County, California.

3 2. I am the pastor of Church Unlimited in Indio, California.

4 3. It is my sincerely held religious belief that Hebrews 10:25 is a command  
5 from God. I believe that Christians must meet together, in-person, regularly. I also  
6 believe that moving our services to an exclusively online platform would go against  
7 my faith. If my congregation is not allowed to gather in person, we will be in a  
8 situation where we have to decide whether to be obedient to God or to our local  
9 government.

10 4. Upon hearing of the Coronavirus, our church building was immediately  
11 cleaned and disinfected to the best of our ability.

12 5. On April 9, 2020, I was threatened with a fine of \$1,000 for holding a  
13 church service on April 5, 2020, Palm Sunday. During this service, the congregation  
14 adhered to social distancing requirements.

15 6. Two days before being fined, on April 7, 2020, Deputy Counsel Kelly  
16 Moran called me. The conversation was initially cordial. She asked me about our  
17 Palm Sunday service. But her tone quickly changed to threatening insisting that  
18 Church Unlimited stop meeting in person. She threatened me with a civil complaint  
19 explaining that the full force of the government would be against me, "alone."  
20

21 7. I feel like I am being targeted for my faith—for my desire to be obedient  
22 to God. I see retailers open for business, yet my church, and my personal ministry, are  
23 being monitored and shut down by law enforcement, even though we follow the same  
24 social distancing guidelines as "essential" retailers.

25 8. The prohibition of church in-person gatherings, and the subsequent  
26 \$1,000 fine that I received for being obedient to God as a pastor on Palm Sunday, are  
27 a burden on my free exercise of religion.  
28

1           9.     God has called me to a life of service. I served my country in the United  
2 States Army. For more than 15 years I've served as a Correctional Sergeant at the  
3 Riverside County Sheriff's Department. I currently serve incarcerated individuals at  
4 the Riverside County Jail as a Jail Chaplain. I serve others because of Jesus's  
5 example. Mark 10:45 says, "For even the Son of Man did not come to be served, but  
6 to serve..." It is my hope to continue to serve my community, through Church  
7 Unlimited, by sharing with them hope, and faith, and love.

8           10.    If this temporary restraining order is granted, our church will hold in-  
9 person church services adhering to social distancing guidelines. I will continue to  
10 encourage congregants to sit six feet apart, to wash hands, and for those feeling sick to  
11 stay home. I also placed hand sanitizer stations in the lobby so that upon entering our  
12 church building, all congregants can clean their hands.

13           11.    To my knowledge, I have never had or contracted the coronavirus. I do  
14 not believe that I've ever been in close proximity or exposed to it.

15           12.    Prior to the coronavirus, I conducted services on Sundays and  
16 Wednesdays.

17           13.    It is my desire to keep the doors of my church open to the needs of my  
18 community by conducting services each Sundays and Wednesdays.

19           14.    I am aware that history is full of examples of how during the Black  
20 Plague in Europe, religious leaders were essential to helping take care of the needs of  
21 those around them.

22           15.    I believe that as a pastor, it is my duty both towards my God and to my  
23 community to keep the doors of my church open so that I can serve both the physical  
24 and spiritual needs of not only my congregants but also my community.

25           I declare under penalty of perjury under the laws of the United States of  
26 America that the foregoing is true and correct and is executed this 14th day of April,  
27  
28

DocuSign Envelope ID: EDE15D05-6F2C-4CB2-BDE7-801E79363C2E

Case 5:20-cv-00755-JGB-KK Document 8-4 Filed 04/14/20 Page 4 of 4 Page ID #:165

2020, at Riverside County, California.

Dated: April 14, 2020

DocuSigned by:  
*James Moffatt*  
80DF67D5F1C5496...  
James Moffatt

# EXHIBIT I

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12 Attorneys for Plaintiffs

13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**  
15 **EASTERN DIVISION**

16 **WENDY GISH**, an individual, *et al.*,

17 Plaintiffs,

18 v.

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

21 Defendants.

Case Number: 5:20-cv-00755

22 **DECLARATION OF PATRICK**  
23 **SCALES IN SUPPORT OF**  
24 **PLAINTIFFS' APPLICATION**  
25 **FOR TEMPORARY**  
26 **RESTRAINING ORDER**

27 Date: April 14, 2020

28 Judge: Unassigned

1 I, Patrick Scales declare:

2 1. I am a resident of San Bernardino County, California.

3 2. I am the pastor of Shield of Faith Family Church in Fontana, California.

4 3. As a pastor, I believe that I have a duty to God to tend to the spiritual  
5 health of my congregation. This includes meeting in-person regularly where I preach,  
6 pray, and encourage congregants.

7 4. Hebrews 10:25, it says, "Let us not neglect meeting together, as some  
8 have made a habit, but let us encourage one another, and all the more as you see the  
9 Day approaching." I believe the Bible is very clear here; regular in-person church  
10 services are a command from God.

11 5. At Shield of Faith Family Church, we offer services on Sunday morning,  
12 Wednesday evening, and Friday evening.

13 6. I am concerned that my church will no longer be able to exist, under the  
14 prohibitions against communal gatherings. I believe these prohibitions—both on the  
15 state level and county level—have a chilling effect on the exercise of our faith.

16 7. If this temporary restraining order is granted, our church services will  
17 adhere to social distancing guidelines. The congregation will wear gloves. They will  
18 wear masks. And, family units will sit six feet apart. We will also encourage anyone  
19 who is sick, or exhibiting cold or flu symptoms, to stay home.

20 8. To my knowledge, I have never had or contracted the coronavirus. I do  
21 not believe that I've ever been in close proximity or exposed to it.

22 9. I am aware that history is full of examples of how during the Black  
23 Plague in Europe, religious leaders were essential to helping take care of the needs of  
24 those around them.

25 10. I believe that as a pastor, it is my duty both towards my God and to my  
26 community to keep the doors of my church open so that I can serve both the physical  
27  
28



1 and spiritual needs of not only my congregants but also my community.

2 I declare under penalty of perjury under the laws of the United States of  
3 America that the foregoing is true and correct and is executed this 14th day of April,  
4 2020, at San Bernardino County, California.

5  
6 Dated: April 14, 2020

DocuSigned by:

Patrick Scales

14CC6A82B3DB44E...  
Patrick Scales

# EXHIBIT J

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12 Attorneys for Plaintiffs

13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**  
 15 **EASTERN DIVISION**

16 **WENDY GISH**, an individual, *et al.*,

17 Plaintiffs,

18 v.

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

21 Defendants.

Case Number: 5:20-cv-00755

22 **DECLARATION OF BRENDA**  
 23 **WOOD IN SUPPORT OF**  
 24 **PLAINTIFFS' APPLICATION**  
 25 **FOR TEMPORARY**  
 26 **RESTRAINING ORDER**

27 Date: April 14, 2020

28 Judge: Unassigned

1 I, Brenda Wood declare:

2 1. I am a resident of Riverside County, California.

3 2. I am the pastor of Word of Life Ministries International Inc. in Riverside,  
4 California.

5 3. On Sunday mornings, we average between 20 and 30 people in service.

6 4. As a Christian, I believe the Scripture in Hebrews 10:25 tells us to meet  
7 together to encourage one another. This is especially true is days like today where  
8 people desperately need a message of hope.

9 5. I feel intimidated by the state's and county's criminalization of holding a  
10 drive-in church service. I am afraid that I will be fined or put in jail for serving my  
11 church, as pastor, in the manner that I believe God has called me to serve.

12 6. If this temporary restraining order is granted, our church services will  
13 adhere to social distancing guidelines. Services will continue to be made available  
14 online. We will also host drive-in church services that take place in our parking lot.  
15 Cars will be parked six feet apart. Congregants will be encouraged to participate in the  
16 services from their cars. We will use a short-wave radio that can be played through car  
17 stereos. We will also utilize a portable PA system. Communion will be served by a  
18 person wearing a mask and gloves; all of the communion elements are pre-packaged  
19 individually—both the cup and the wafer. The person handing out the individually  
20 packaged communion elements will do so with tongs. To further adhere to social  
21 distancing, we will postpone baptisms.

22 7. To my knowledge, I have never had or contracted the coronavirus. I do  
23 not believe that I've ever been in close proximity or exposed to it.

24 8. I am aware that history is full of examples of how during the Black  
25 Plague in Europe, religious leaders were essential to helping take care of the needs of  
26 those around them.  
27  
28

1           9. I believe that as a pastor, it is my duty both towards my God and to my  
2 community to keep the doors of my church open so that I can serve both the physical  
3 and spiritual needs of not only my congregants but also my community.

4           I declare under penalty of perjury under the laws of the United States of  
5 America that the foregoing is true and correct and is executed this 14th day of April,  
6 2020, at Riverside County, California.

7  
8 Dated: April 14, 2020\_

DocuSigned by:  
*Brenda Wood*  
CD23BCCA9F72418...  
Brenda Wood

# EXHIBIT K

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6 Michelle D. Blakemore, County Counsel (SBN: 110474)  
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11 Attorneys for Defendants

12 COUNTY OF SAN BERNARDINO, DR. ERIN  
 GUSTAFSON, SHERIFF JOHN MCMAHON,  
 13 SUPERVISOR ROBERT A. LOVINGOOD, SUPERVISOR  
 JANICE RUTHERFORD, SUPERVISOR DAWN ROWE,  
 14 SUPERVISOR CURT HAGMAN AND  
 SUPERVISOR JOSIE GONZALES

15 **UNITED STATES DISTRICT COURT**

16 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**

18 WENDY GISH, an individual;  
 19 PATRICK SCALES, an individual;  
 JAMES DEAN MOFFATT, an  
 20 individual; and BRENDA WOOD, an  
 individual,

21 Plaintiffs,

22 v.

23 GAVIN NEWSOM, in his official  
 24 capacity as to Governor of California;  
 XAVIER BECERRA, in his official  
 25 capacity as the Attorney General of  
 California; ERIN GUSTAFSON, in her  
 26 official capacity as the San Bernardino  
 County Acting Public Health Officer;

27 [CONTINUED ON NEXT PAGE]  
 28

Case No. 5:20-cv-00755-JGB-KK

**COUNTY OF SAN BERNARDINO  
 DEFENDANTS' REQUEST FOR  
 JUDICIAL NOTICE IN SUPPORT  
 OF OPPOSITION TO PLAINTIFFS'  
 REQUEST FOR TEMPORARY  
 RESTRAINING ORDER**

Trial Date: None Set



1 JOHN MCMAHON, in his official  
2 capacity as the San Bernardino County  
3 Sheriff; ROBERT A. LOVINGGOOD,  
4 in his official capacity as a San  
5 Bernardino County Supervisor;  
6 JANICE RUTHERFORD, in her  
7 official capacity as a San Bernardino  
8 County Supervisor; DAWN ROWE, in  
9 her official capacity as a San  
10 Bernardino County Supervisor; CURT  
11 HAGMAN in his official capacity as a  
12 San Bernardino County Supervisor;  
13 JOSIE GONZALES, in his official  
14 capacity as a San Bernardino County  
15 Supervisor; CAMERON KAISER, in  
16 his official capacity as the Riverside  
17 County Public Health Officer;  
18 GEORGE JOHNSON in his official  
19 capacity as the Riverside County  
20 Executive Officer and Director of  
21 Emergency Services; CHAD BIANCO,  
22 in his official capacity as the Riverside  
23 County Sheriff; KEVIN JEFFRIES, in  
24 his official capacity as a Riverside  
25 County Supervisor; KAREN SPIEGEL,  
26 in her official capacity as a Riverside  
27 County Supervisor; CHUCK  
28 WASHINGTON, in his official capacity  
as a Riverside County Supervisor; V.  
MANUAL PEREZ, in his official  
capacity as a Riverside County  
Supervisor; and JEFF HEWITT, in his  
official capacity as a Riverside County  
Supervisor,

Defendants.

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 The County of San Bernardino Defendants pursuant to Federal Rules of  
3 Evidence Rule 201, requests that this Court take judicial notice of the following:

4 The County of San Bernardino Defendants respectfully requests the Court  
5 take judicial notice of the following official public documents including:

6 **Exhibit A.** State of California's Proclamation of a Statewide Emergency, from  
7 the Executive Department, State of California, signed by Governor  
8 Gavin Newsom on March 4, 2020;

9 **Exhibit B.** State of California Department – Health and Human Services  
10 Agency, California Department of Public Health, Public Guidance  
11 for the Prevention of COVID-19 Transmission for Gatherings,  
12 dated March 16, 2020;

13 **Exhibit C.** Executive Order N-33-20, from the Executive Department of the  
14 State of California, signed by Governor Gavin Newsom on March  
15 19, 2020;

16 **Exhibit D.** U.S. Department of Homeland Security Advisory Memorandum on  
17 Identification of Essential Critical Infrastructure Workers During  
18 COVID-19 Response, from Director Christopher C. Krebs, dated  
19 March 28, 2020;

20 **Exhibit E.** State of California Public Health Officer Designation of Essential  
21 Critical Infrastructure Workers, dated March 22, 2020;

22 **Exhibit F.** Report/Recommendation to the Board of Supervisors of the County  
23 of San Bernardino and Record of Action to Ratify the Existence of  
24 a Local Health Emergency, dated March 10, 2020;

25 **Exhibit G.** Report/Recommendation to the Board of Supervisors of the County  
26 of San Bernardino and Record of Action to Issue a Proclamation of  
27 a Local State of Emergency, dated March 10, 2020;

28

1 **Exhibit H.** County of San Bernardino Board of Supervisors Proclamation of a  
2 Local Emergency, dated March 10, 2020;

3 **Exhibit I.** Order of the Health Officer of the County of San Bernardino  
4 Cancelling All Gatherings, dated March 17, 2020;

5 **Exhibit J.** Order of the Health Officer of the County of San Bernardino for  
6 the Control of COVID-19 For All to Stay at Home, dated April 7,  
7 2020; and

8 **Exhibit K.** Clarification of the Health Officer of the County of San  
9 Bernardino's for the Control of COVID-19 For All to Stay at  
10 Home, dated April 8, 2020.

11 The County of San Bernardino Defendants respectfully submits that public  
12 documents (Exhibits A-K) are proper for judicial notice as well as for consideration  
13 by this Court with the County of San Bernardino Defendants' Opposition to  
14 Temporary Restraining Order. Courts may take judicial notice of "a fact that is not  
15 subject to reasonable dispute because it... can be accurately and readily determined  
16 from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid.  
17 201(b)(2); *Pac. Gas & Elec. Co. v. Lynch*, No. CV 01-1083RSWLSHX, 2001 WL  
18 840611, at \*6 (C.D. Cal. May 2, 2001) [taking judicial notice of California  
19 Governor Gray Davis's January 17, 2001, Proclamation of a State of Emergency];  
20 *U.S. ex rel. Modglin v. DJO Global Inc.*, 48 F. Supp. 3d 1362, 1381 (C.D. Cal.  
21 2014) ["Under Rule 201, the court can take judicial notice of '[p]ublic records and  
22 government documents available from reliable sources on the Internet,'" such as  
23 websites run by governmental agencies."]; *County of Santa Clara v. Trump*, 250 F.  
24 Supp. 3d 497, 520 (N.D. Cal. 2017) [taking judicial notice of proclamations made  
25 by the U.S. Attorney General Jeff Sessions]; *Merced Irrigation Dist. v. Cnty. of*  
26 *Mariposa*, 941 F. Supp. 2d 1237, 1261–62 (E.D. Cal. 2013) [taking judicial notice of  
27 Board of Supervisors' resolution as matter of public record]; *Catholic League for*  
28 *Religious & Civil Rights v. City & Cnty. of San Francisco*, 567 F.3d 595, 606 (9th

Case 5:20-cv-00755-JGB-KK Document 14-1 Filed 04/17/20 Page 5 of 5 Page ID #:352

1 Cir. 2009), *on reh'g en banc*, 624 F.3d 1043 (9th Cir. 2010) [judicial notice of  
 2 county board of supervisors' actions according to its public resolution]; *Elena Selk*  
 3 *v. Pioneers Mem'l Healthcare Dist.*, No. 13CV0244 DMS (BGS), 2014 WL  
 4 12729166, at \*2 (S.D. Cal. Apr. 7, 2014) [taking judicial notice of date entity was  
 5 established according to board of supervisors' resolution].

6 Here, the attached exhibits are publicly available records whose authenticity  
 7 is not reasonably questionable. As a result, the County of San Bernardino  
 8 Defendants asks that this Court take judicial notice of these documents.

9  
 10 DATED: April 17, 2020

MEYERS, NAVE, RIBACK, SILVER &  
 WILSON

11  
 12  
 13  
 14 By: 

DEBORAH J. FOX  
 MARGARET W. ROSEQUIST  
 Attorneys for Defendants  
 COUNTY OF SAN BERNARDINO, et al

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# EXHIBIT A

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

**WHEREAS** in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

**WHEREAS** the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

**WHEREAS** on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

**WHEREAS** on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

**WHEREAS** the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

**WHEREAS** as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

**WHEREAS** as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

**WHEREAS** for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

**WHEREAS** California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and

**WHEREAS** experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

**WHEREAS** it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

**WHEREAS** if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

**WHEREAS** personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

**WHEREAS** state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

**WHEREAS** I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

**WHEREAS** I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

**WHEREAS** under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.



**IT IS HEREBY ORDERED THAT:**

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

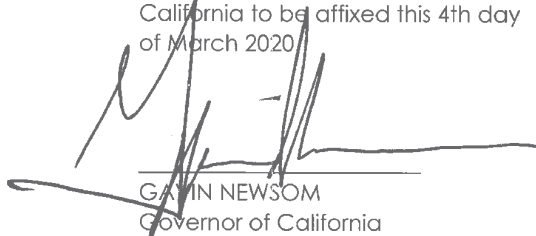
notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.

14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

**I FURTHER DIRECT** that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 4th day  
of March 2020



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

# EXHIBIT B

State of California—Health and Human Services Agency  
**California Department of Public Health**



GAVIN NEWSOM  
 Governor

SONIA Y. ANGELL, MD, MPH  
 State Public Health Officer & Director

**CDPH Guidance for the Prevention of COVID-19 Transmission for  
 Gatherings  
 March 16, 2020**

To protect public health and slow the rate of transmission of COVID-19, gatherings as described below should be postponed or canceled across the state of California until further guidance is issued by the California Department of Public Health.

The California Department of Public Health finds the following:

- All gatherings should be postponed or canceled.
  - This includes gatherings such as concerts, conferences, and professional, college, and school sporting events.
- Gyms, health clubs, and theaters should be closed.
- A “gathering” is any event or convening that brings together people in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, cafeteria, or any other indoor or outdoor space.

This applies to all non-essential professional, social, and community gatherings regardless of their sponsor. Gatherings that do not meet the aforementioned criteria should only be conducted when they are essential—that is, if the activity is essential and could not be postponed or achieved without gathering, meaning that some other means of communication could not be used to conduct the essential function.

**What will this achieve?**

The timely implementation of aggressive strategies that create social distance and those that reduce close contact of people not regularly together, including limiting gatherings, has proven effective in prior pandemics at delaying rates of transmission and reducing illness and death.

By decreasing the prevalence of disease across California we will:

- Reduce the number of Californians who contract COVID-19 before an effective treatment or vaccine is available.

- Protect those most likely to experience severe symptoms, such as older Californians and those with underlying chronic conditions.
- Preserve and protect our health care delivery system, including our health care workforce, so they can care for the least healthy individuals in the community for any medical condition, not just COVID-19.
- Minimize the social and economic impacts of COVID-19 over the long run.

### **How long will these limitations apply?**

This guidance will remain in place until further guidance is released by the California Department of Public Health. As with all guidance that relates to COVID-19 response, authorities will revisit this guidance on a regular basis to evaluate the continued public health need for it and to evaluate if any elements need to be changed. To stay informed, continue to monitor the California Department of Public Health's web page on [COVID-19 guidance](#).

### **Examples of Essential Events this Does Not Apply To**

The goal of this recommendation is to prevent people physically coming together unnecessarily, where people who have the infection can easily spread it to others. This guidance does not apply to activities such as attendance at regular school classes, work, or essential services.

Please see the guidance for schools document for additional information.

Certain activities are essential to the functioning of our state and must continue. Hence, this does not apply to essential public transportation, airport travel, shopping at a store, mall, or farmers' market, or charitable food pantries and distributions. Other specific guidance can be found on the [CDPH website](#) to help people take actions that can protect them in those settings.

This does not apply to congregate living situations, including dormitories and homeless encampments. For more information on what can be done to protect homeless individuals, please see the [Guidance for Homeless Assistance Providers on Novel Coronavirus \(COVID-19\) \(PDF\)](#).

# EXHIBIT C



**EXECUTIVE ORDER N-33-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of March 2020.

  
 \_\_\_\_\_  
 GAVIN NEWSOM  
 Governor of California

**ATTEST:**

\_\_\_\_\_  
 ALEX PADILLA  
 Secretary of State

# EXHIBIT D

U.S. Department of Homeland Security  
Cybersecurity & Infrastructure Security Agency  
*Office of the Director*  
Washington, DC 20528



March 28, 2020

**ADVISORY MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL  
INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE**

FROM: Christopher C. Krebs  
Director  
Cybersecurity and Infrastructure Security Agency (CISA)

A handwritten signature in black ink, appearing to read 'Chris Krebs', is written over the printed name and title of the Director of CISA.

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As the Nation comes together to slow the spread of COVID-19, on March 16<sup>th</sup> the President issued updated Coronavirus Guidance for America that highlighted the importance of the critical infrastructure workforce.

The Cybersecurity and Infrastructure Security Agency (CISA) executes the Secretary of Homeland Security's authorities to secure critical infrastructure. Consistent with these authorities, CISA has developed, in collaboration with other federal agencies, State and local governments, and the private sector, an "Essential Critical Infrastructure Workforce" advisory list. This list is intended to help State, local, tribal and territorial officials as they work to protect their communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security. Decisions informed by this list should also take into consideration additional public health considerations based on the specific COVID-19-related concerns of particular jurisdictions.

**This list is advisory in nature. It is not, nor should it be considered, a federal directive or standard. Additionally, this advisory list is not intended to be the exclusive list of critical infrastructure sectors, workers, and functions that should continue during the COVID-19 response across all jurisdictions. Individual jurisdictions should add or subtract essential workforce categories based on their own requirements and discretion.**

The advisory list identifies workers who conduct a range of operations and services that are typically essential to continued critical infrastructure viability, including staffing operations centers, maintaining and repairing critical infrastructure, operating call centers, working construction, and performing operational functions, among others. It also includes workers who support crucial supply chains and enable functions for critical infrastructure. The industries they support represent, but are not limited to, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement,

and public works.

State, local, tribal, and territorial governments are responsible for implementing and executing response activities, including decisions about access and reentry, in their communities, while the Federal Government is in a supporting role. Officials should use their own judgment in issuing implementation directives and guidance. Similarly, while adhering to relevant public health guidance, critical infrastructure owners and operators are expected to use their own judgement on issues of the prioritization of business processes and workforce allocation to best ensure continuity of the essential goods and services they support. All decisions should appropriately balance public safety, the health and safety of the workforce, and the continued delivery of essential critical infrastructure services and functions. While this advisory list is meant to help public officials and employers identify essential work functions, it allows for the reality that some workers engaged in activity determined to be essential may be unable to perform those functions because of health-related concerns.

CISA will continue to work with our partners in the critical infrastructure community to update this advisory list if necessary as the Nation's response to COVID-19 evolves.

Should you have questions about this list, please contact CISA at [CISA.CAT@cisa.dhs.gov](mailto:CISA.CAT@cisa.dhs.gov).

**Attachment:** "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response Version 2.0"



**CISA**  
CYBER+INFRASTRUCTURE

DEFEND TODAY, SECURE TOMORROW

## **Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response**

Version 2.0 (March 28, 2020)

### **THE IMPORTANCE OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS**

Functioning critical infrastructure is imperative during the response to the COVID-19 emergency for both public health and safety as well as community well-being. Certain critical infrastructure industries have a special responsibility in these times to continue operations.

This advisory guidance and accompanying list are intended to support state, local, tribal, territorial and industry partners in identifying the critical infrastructure sectors and the essential workers needed to maintain the services and functions Americans depend on daily and that need to be able to operate resiliently during the COVID-19 pandemic response.

This document gives advisory guidance on defining essential critical infrastructure workers. Promoting the ability of such workers to continue to work during periods of community restriction, access management, social distancing, or closure orders/directives is crucial to community resilience and continuity of essential functions.

CISA will continually solicit and accept feedback on the list and will evolve the list in response to stakeholder feedback. We will also use our various stakeholder engagement mechanisms to work with partners on how they are using this list and share those lessons learned and best practices broadly. Feedback can be sent to [CISA.CAT@CISA.DHS.GOV](mailto:CISA.CAT@CISA.DHS.GOV).

### **CONSIDERATIONS FOR GOVERNMENT AND BUSINESS**

This list was developed in consultation with federal agency partners, industry experts, and State and local officials, and is based on several key principles:

1. Response efforts to the COVID-19 pandemic are locally executed, state managed, and federally supported.
2. Everyone should follow guidance from the CDC, as well as State and local government officials, regarding strategies to limit disease spread.
3. Workers should be encouraged to work remotely when possible and focus on core business activities. In-person, non-mandatory activities should be delayed until the resumption of normal operations.
4. When continuous remote work is not possible, businesses should enlist strategies to reduce the likelihood of spreading the disease. This includes, but is not necessarily limited to, separating staff by off-setting shift hours or days and/or social distancing. These steps can preserve the workforce and allow operations to continue.
5. All organizations should implement their business continuity and pandemic plans or put plans in place if they do not exist. Delaying implementation is not advised and puts at risk the viability of the business and the

health and safety of the employees.

6. Reliance on technology and just-in-time supply chains means that certain workers must be able to access certain sites, facilities, and assets to ensure continuity of functions.
7. Government employees, such as emergency managers, and the business community need to establish and maintain lines of communication.
8. When government and businesses engage in discussions about essential critical infrastructure workers, they need to consider the implications of business operations beyond the jurisdiction where the asset or facility is located. Businesses can have sizeable economic and societal impacts as well as supply chain dependencies that are geographically distributed.
9. Whenever possible, jurisdictions should align access and movement control policies related to critical infrastructure workers to lower the burden of workers crossing jurisdictional boundaries.

## IDENTIFYING ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS

The following list of identified essential critical infrastructure workers is intended to be overly inclusive reflecting the diversity of industries across the United States.





## HEALTHCARE / PUBLIC HEALTH

- Workers who perform critical clinical research, development, and testing needed for COVID-19 response.
- Healthcare providers and Caregivers including physicians, dentists, psychologists, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacists, physical and occupational therapists and assistants, social workers, optometrists, speech pathologists, chiropractors, and diagnostic and therapeutic technicians and technologists.
- Hospital and laboratory personnel (including accounting, administrative, admitting and discharge, engineering, epidemiological, source plasma and blood donation, food service, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.).
- Workers in other medical and biomedical facilities (including Ambulatory Health and Surgical, Blood Banks, Clinics, Community Mental Health, Comprehensive Outpatient rehabilitation, End Stage Renal Disease, Health Departments, Home Health care, Hospices, Hospitals, Long Term Care, Nursing Care Facilities, Organ Pharmacies, Procurement Organizations, Psychiatric Residential, Rural Health Clinics and Federally Qualified Health Centers, and retail facilities specializing in medical good and supplies).
- Manufacturer workers for health manufacturing (including biotechnology companies), materials and parts suppliers, logistics and warehouse operators, distributors of medical equipment (including those who test and repair), personal protective equipment (PPE), isolation barriers, medical gases, pharmaceuticals (including materials used in radioactive drugs), dietary supplements, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products.
- Public health / community health workers, including those who compile, model, analyze and communicate public health information.
- Blood and plasma donors and the employees of the organizations that operate and manage related activities.
- Workers who manage health plans, billing, and health information, who cannot practically work remotely.
- Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information, who cannot practically work remotely.
- Workers performing information technology and cybersecurity functions at healthcare and public health facilities, who cannot practically work remotely.
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely.
- Pharmacy employees necessary to maintain uninterrupted prescription filling.
- Workers performing mortuary funeral, cremation, burial, cemetery, and related services, including funeral homes, crematoriums, cemetery workers, and coffin makers.
- Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to mental/behavioral health services to the family members, responders, and survivors of an incident.

## **LAW ENFORCEMENT, PUBLIC SAFETY, AND OTHER FIRST RESPONDERS**

- Public, private, and voluntary personnel (front line and management) in emergency management, law enforcement, fire and rescue services, emergency medical services, and private security, to include public and private hazardous material responders, air medical service providers (pilots and supporting technicians), corrections, and search and rescue personnel.
- 911 call center employees and Public Safety Answering Points who can't perform their duties remotely.
- Fusion Center employees.
- Workers – including contracted vendors – who maintain, manufacture, or supply equipment and services supporting law enforcement emergency service and response operations (to include electronic security and life safety security personnel).
- Workers supporting the manufacturing of safety equipment and uniforms for law enforcement, public safety personnel, and first responder.
- Workers supporting the operation of firearm or ammunition product manufacturers, retailers, importers, distributors, and shooting ranges.
- Public agency workers responding to abuse and neglect of children, elders, and dependent adults.
- Workers who support weather disaster / natural hazard mitigation and prevention activities.
- Security staff to maintain building access control and physical security measures.

## **FOOD AND AGRICULTURE**

- Workers supporting groceries, pharmacies, convenience stores, and other retail (including unattended and vending) that sells human food, animal/pet food and pet supply, and beverage products, including retail customer support service and information technology support staff necessary for online orders, pickup and delivery.
- Restaurant carry-out and quick serve food operations, including dark kitchen and food prep centers, and carry-out and delivery food employees.
- Food manufacturer employees and their supplier employees—to include those employed in food ingredient production and processing facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging.
- Farmers, farm workers, and agribusiness support services to include those employed in auction and sales; grain and oilseed handling, processing and distribution; animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically and for export.
- Farmers, farm workers, support service workers, and their supplier employees to include those engaged in producing and harvesting field crops; commodity inspection; fuel ethanol facilities; biodiesel and renewable diesel facilities; storage facilities; and other agricultural inputs.
- Employees and firms supporting the distribution of food, feed, and beverage and ingredients used in these products, including warehouse workers, vendor- managed inventory controllers and blockchain managers.
- Workers supporting the sanitation and pest control of all food manufacturing processes and operations from wholesale to retail.
- Employees in cafeterias used to feed employees, particularly employee populations sheltered against COVID-19.
- Workers in animal diagnostic and food testing laboratories in private industries and in institutions of higher education.

- Government, private, and non-governmental organizations' workers essential for food assistance programs (including school lunch programs) and government payments.
- Employees of companies engaged in the production, storage, transport, and distribution of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including seeds, pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids.
- Animal agriculture workers to include those employed in veterinary health (including those involved in supporting emergency veterinary or livestock services); raising of animals for food; animal production operations; livestock markets; slaughter and packing plants, manufacturers, renderers, and associated regulatory and government workforce.
- Transportation supporting animal agricultural industries, including movement of animal medical and reproductive supplies and materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, live animals, animal by-products, and deceased animals for disposal.
- Workers who support sawmills and the manufacture and distribution of fiber and forest products, including, but not limited to timber, paper, and other wood and fiber products.
- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary for agricultural production and distribution.

## ENERGY

- Workers supporting the energy sector, regardless of the energy source (including but not limited to nuclear, fossil, hydroelectric, or renewable), segment of the system, or infrastructure the worker is involved in, or who are needed to monitor, operate, engineer, and maintain the reliability, safety, environmental health, and physical and cyber security of the energy system.
- Energy/commodity trading/scheduling/marketing functions, who can't perform their duties remotely.
- IT and OT technology for essential energy sector operations including support workers, customer service operations; energy management systems, control systems, and Supervisory Control and Data Acquisition SCADA systems, and energy sector entity data centers; cybersecurity engineers; and cybersecurity risk management.
- Workers supporting the energy sector through renewable energy infrastructure (including, but not limited to wind, solar, biomass, hydrogen, ocean, geothermal, and/or hydroelectric), including those supporting construction, manufacturing, transportation, permitting, operation/maintenance, monitoring, and logistics.
- Workers and security staff involved in nuclear re-fueling operations.
- Providing services related to energy sector fuels (including, but not limited, petroleum (crude oil), natural gas, propane, natural gas liquids, other liquid fuels, nuclear, and coal), supporting the mining, processing, manufacturing, construction, logistics, transportation, permitting, operation/maintenance, security, waste disposal and storage, and monitoring of support for resources.
- Environmental remediation/monitoring, limited to immediate critical needs technicians.
- Manufacturing and distribution of equipment, supplies, and parts necessary to maintain production, maintenance, restoration, and service at energy sector facilities (across all energy sector segments).

### Electricity industry:

- Workers who maintain, ensure, or restore, or are involved in the development, transportation, fuel procurement, expansion, or operation of the generation, transmission, and distribution of electric power, including call centers, utility workers, engineers, retail electricity, constraint maintenance, and fleet maintenance technicians who cannot perform their duties remotely.
- Workers at coal mines, production facilities, and those involved in manufacturing, transportation, permitting, operation/maintenance and monitoring at coal sites which is critical to ensuring the reliability of the electrical system.

- Workers who produce, process, ship and handle coal used for power generation and manufacturing.
- Workers needed for safe and secure operations at nuclear generation to include but not limited to, the broader nuclear supply chain, parts to maintain nuclear equipment, fuel manufacturers and fuel components used in the manufacturing of fuel.
- Workers at renewable energy infrastructure (including, but not limited to wind, solar, biomass, hydrogen, geothermal, and/or hydroelectric), including those supporting construction, manufacturing, transportation, permitting, operation/maintenance, monitoring, and logistics.
- Workers at generation, transmission, and electric black start facilities.
- Workers at Reliability Coordinator, Balancing Authorities, and primary and backup Control Centers, including but not limited to independent system operators, regional transmission organizations, and local distribution control centers.
- Mutual assistance personnel which may include workers from outside of the state or local jurisdiction.
- Vegetation management and traffic control for supporting those crews.
- Environmental remediation/monitoring workers limited to immediate critical need technicians.
- Instrumentation, protection, and control technicians.
- Essential support personnel for electricity operations.
- Generator set support workers such as diesel engineers used in power generation including those providing fuel.

#### **Petroleum industry:**

- Workers for onshore and offshore petroleum drilling operations; platform and drilling construction and maintenance; transportation (including helicopter operations), maritime transportation, supply, and dredging operations; maritime navigation; well stimulation, intervention, monitoring, automation and control, extraction, production; processing; waste disposal, and maintenance, construction, and operations.
- Workers for crude oil, petroleum and petroleum product storage and transportation, including pipeline, marine transport, terminals, rail transport, storage facilities and racks and road transport for use as end-use fuels such as gasoline, diesel fuel, jet fuel, and heating fuels or feedstocks for chemical manufacturing.
- Petroleum and petroleum product security operations center employees and workers who support maintenance and emergency response services.
- Petroleum and petroleum product operations control rooms/centers and refinery facilities.
- Retail fuel centers such as gas stations and truck stops, and the distribution systems that support them.
- Supporting new and existing construction projects, including, but not limited to, pipeline construction.

#### **Natural Gas, Natural Gas Liquids (NGL), Propane, and other liquid fuels**

- Workers who support onshore and offshore drilling operations, platform and drilling construction and maintenance; transportation (including helicopter operations); maritime transportation, supply, and dredging operations; maritime navigation; natural gas and natural gas liquid production, processing, extraction, storage and transportation; well intervention, monitoring, automation and control; waste disposal, and maintenance, construction, and operations.
- Transmission and distribution pipeline workers, including compressor stations and any other required, operations maintenance, construction, and support for natural gas, natural gas liquid, propane, and other liquid fuels.
- Natural gas, propane, natural gas liquids, and other liquid fuel processing plants, including construction, maintenance, and support operations.
- Natural gas processing plants workers, and those that deal with natural gas liquids.
- Workers who staff natural gas, propane, natural gas liquids, and other liquid fuel security operations centers, operations dispatch and control rooms/centers, and emergency response and customer emergencies (including leak calls) operations.
- Drilling, production, processing, refining, and transporting natural gas for use as end-use fuels, feedstocks for

chemical manufacturing, or use in electricity generation.

- Dispatch and control rooms and emergency response and customer emergencies, including propane leak calls.
- Propane gas service maintenance and restoration, including call centers.
- Propane, natural gas liquids, and other liquid fuel distribution centers.
- Propane gas storage, transmission, and distribution centers.
- Supporting new and existing construction projects, including, but not limited to, pipeline construction.
- Ethanol and biofuel production, refining, and distribution.
- Workers in fuel sectors (including, but not limited to nuclear, coal, and gas types and liquid fuels) supporting the mining, manufacturing, logistics, transportation, permitting, operation/maintenance, and monitoring of support for resources.

## **WATER AND WASTEWATER**

Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure, including:

- Operational staff at water authorities.
- Operational staff at community water systems.
- Operational staff at wastewater treatment facilities.
- Workers repairing water and wastewater conveyances and performing required sampling or monitoring, including field staff.
- Operational staff for water distribution and testing.
- Operational staff at wastewater collection facilities.
- Operational staff and technical support for SCADA Control systems.
- Chemical and equipment suppliers to water and wastewater systems and personnel protection.
- Workers who maintain digital systems infrastructure supporting water and wastewater operations.

## **TRANSPORTATION AND LOGISTICS**

- Employees supporting or enabling transportation functions, including truck drivers, bus drivers, dispatchers, maintenance and repair technicians, warehouse workers, truck stop and rest area workers, Department of Motor Vehicle (DMV) employees, towing/recovery services, roadside assistance workers, intermodal transportation personnel, and workers who maintain and inspect infrastructure (including those that require cross-jurisdiction travel).
- Workers supporting the distribution of food, pharmaceuticals (including materials used in radioactive drugs) and other medical materials, fuels, chemicals needed for water or water treatment and energy Maintenance and operation of essential highway infrastructure, including roads, bridges, and tunnels (e.g., traffic operations centers and moveable bridge operators).
- Employees of firms providing services, supplies, and equipment that enable warehouse and operations, including cooling, storing, packaging, and distributing products for wholesale or retail sale or use. Includes cold- and frozen-chain logistics for food and critical biologic products.
- Mass transit workers and providing critical transit services and/or performing critical or routine maintenance to mass transit infrastructure or equipment.
- Employees supporting personal and commercial transportation services – including taxis, delivery services, vehicle rental services, bicycle maintenance and car-sharing services, and transportation network providers.
- Workers responsible for operating and dispatching passenger, commuter and freight trains and maintaining rail infrastructure and equipment.
- Maritime transportation workers, including dredgers, port workers, mariners, ship crewmembers, ship pilots and tug boat operators, equipment operators (to include maintenance and repair, and maritime-specific medical

providers), ship supply, chandler, and repair companies.

- Workers including truck drivers, railroad employees and contractors, maintenance crew, and cleaners supporting transportation of chemicals, hazardous, medical, and waste materials to support critical infrastructure, capabilities, functions, and services, including specialized carriers, crane and rigging industry workers.
- Bus drivers and workers who provide or support intercity, commuter and charter bus service in support of other essential services or functions.
- Automotive repair, maintenance, and transportation equipment manufacturing and distribution facilities (including those who repair and maintain electric vehicle charging stations).
- Transportation safety inspectors, including hazardous material inspectors and accident investigator inspectors.
- Manufacturers and distributors (to include service centers and related operations) of packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations.
- Postal, parcel, courier, last-mile delivery, and shipping and related workers, to include private companies.
- Employees who repair and maintain vehicles, aircraft, rail equipment, marine vessels, bicycles, and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers.
- Air transportation employees, including air traffic controllers and maintenance personnel, ramp workers, aviation and aerospace safety, security, and operations personnel and accident investigations.
- Workers who support the operation, distribution, maintenance, and sanitation, of air transportation for cargo and passengers, including flight crews, maintenance, airport operations, those responsible for cleaning and disinfection, and other on- and off- airport facilities workers.
- Workers supporting transportation via inland waterways such as barge crew, dredging, river port workers for essential goods.
- Workers critical to rental and leasing of vehicles and equipment that facilitate continuity of operations for essential workforces and other essential travel.
- Warehouse operators, including vendors and support personnel critical for business continuity (including HVAC & electrical engineers; security personnel; and janitorial staff) and customer service for essential functions.

## **PUBLIC WORKS AND INFRASTRUCTURE SUPPORT SERVICES**

- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues.
- Workers such as plumbers, electricians, exterminators, builders, contractors, HVAC Technicians, landscapers, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences, businesses and buildings such as hospitals, senior living facilities, any temporary construction required to support COVID-19 response.
- Workers who support, such as road and line clearing, to ensure the availability of and access to needed facilities, transportation, energy and communications.
- Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste, including landfill operations.
- Workers who support the operation, inspection, and maintenance of essential dams, locks and levees.
- Workers who support the inspection and maintenance of aids to navigation, and other government provided services that ensure continued maritime commerce.

## COMMUNICATIONS AND INFORMATION TECHNOLOGY

### Communications:

- Maintenance of communications infrastructure- including privately owned and maintained communication systems- supported by technicians, operators, call -centers, wireline and wireless providers, cable service providers, satellite operations, Internet Exchange Points, Points of Presence, Network Access Points, back haul and front haul facilities, and manufacturers and distributors of communications equipment.
- Government and private sector employees (including government contractors) with work related to undersea cable infrastructure and support facilities, including cable landing sites, beach manhole vaults and covers, submarine cable depots and submarine cable ship facilities.
- Government and private sector employees (including government contractors) supporting Department of Defense internet and communications facilities.
- Workers who support radio, television, and media service, including, but not limited to front-line news reporters, studio, and technicians for newsgathering, and reporting, and publishing news.
- Network Operations staff, engineers and/or technicians to include IT managers and staff, HVAC & electrical engineers, security personnel, software and hardware engineers, and database administrators that manage the network or operate facilities.
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables, buried conduit, small cells, other wireless facilities, and other communications sector-related infrastructure. This includes construction of new facilities and deployment of new technology as these are required to address congestion or customer usage due to unprecedented use of remote services.
- Installation, maintenance and repair technicians that establish, support or repair service as needed.
- Central office personnel to maintain and operate central office, data centers, and other network office facilities, critical support personnel assisting front line employees.
- Customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, logistics, and troubleshooting.
- Workers providing electronic security, fire, monitoring and life safety services, and to ensure physical security, cleanliness and safety of facilities and personnel, including temporary licensing waivers for security personnel to work in other States of Municipalities.
- Dispatchers involved with service repair and restoration.
- Retail customer service personnel at critical service center locations for onboarding customers, distributing and repairing equipment and addressing customer issues in order to support individuals' remote emergency communications needs, supply chain and logistics personnel to ensure goods and products are on-boarded to provision these front-line employees.
- External Affairs personnel to assist in coordinating with local, state and federal officials to address communications needs supporting COVID-19 response, public safety, and national security.

### Information Technology:

- Workers who support command centers, including, but not limited to Network Operations Command Centers, Broadcast Operations Control Centers and Security Operations Command Centers.
- Data center operators, including system administrators, HVAC & electrical engineers, security personnel, IT managers and purchasers, data transfer solutions engineers, software and hardware engineers, and database administrators, for all industries (including financial services).



- Workers who support client service centers, field engineers, and other technicians and workers supporting critical infrastructure, as well as manufacturers and supply chain vendors that provide hardware and software, support services, research and development, and information technology equipment (to include microelectronics and semiconductors), and HVAC and electrical equipment for critical infrastructure, and test labs and certification agencies that qualify such equipment (to include microelectronics, optoelectronics, and semiconductors) for critical infrastructure, including data centers.
- Workers needed to preempt and respond to cyber incidents involving critical infrastructure, including medical facilities, SLTT governments and federal facilities, energy and utilities, and banks and financial institutions, securities/other exchanges, other entities that support the functioning of capital markets, public works, critical manufacturing, food & agricultural production, transportation, and other critical infrastructure categories and personnel, in addition to all cyber defense workers (who can't perform their duties remotely).
- Suppliers, designers, transporters and other workers supporting the manufacture, distribution and provision and construction of essential global, national and local infrastructure for computing services (including cloud computing services and telework capabilities), business infrastructure, financial transactions/services, web-based services, and critical manufacturing.
- Workers supporting communications systems and information technology- and work from home solutions- used by law enforcement, public safety, medical, energy, public works, critical manufacturing, food & agricultural production, financial services, education, and other critical industries and businesses.
- Employees required in person to support Software as a Service businesses that enable remote working, performance of business operations, distance learning, media services, and digital health offerings, or required for technical support crucial for business continuity and connectivity.

## **OTHER COMMUNITY- OR GOVERNMENT-BASED OPERATIONS AND ESSENTIAL FUNCTIONS**

- Workers to ensure continuity of building functions, including but not limited to security and environmental controls (e.g., HVAC), the manufacturing and distribution of the products required for these functions, and the permits and inspections for construction supporting essential infrastructure.
- Elections personnel to include both public and private sector elections support.
- Workers supporting the operations of the judicial system.
- Federal, State, and Local, Tribal, and Territorial employees who support Mission Essential Functions and communications networks.
- Trade Officials (FTA negotiators; international data flow administrators).
- Employees necessary to maintain news and media operations across various media.
- Employees supporting Census 2020.
- Weather forecasters.
- Clergy for essential support.
- Workers who maintain digital systems infrastructure supporting other critical government operations.
- Workers who support necessary credentialing, vetting and licensing operations for critical infrastructure workers.
- Customs and immigration workers who are critical to facilitating trade in support of the national emergency response supply chain.
- Educators supporting public and private K-12 schools, colleges, and universities for purposes of facilitating distance learning or performing other essential functions.
- Staff at government offices who perform title search, notary, and recording services in support of mortgage and real estate services and transactions.

- Residential and commercial real estate services, including settlement services.
- Workers supporting essential maintenance, manufacturing, design, operation, inspection, security, and construction for essential products, services, and supply chain and COVID 19 relief efforts.

## CRITICAL MANUFACTURING

- Workers necessary for the manufacturing of metals (including steel and aluminum), industrial minerals, semiconductors, materials and products needed for medical supply chains, and for supply chains associated with transportation, energy, communications, information technology, food and agriculture, chemical manufacturing, nuclear facilities, wood products, commodities used as fuel for power generation facilities, the operation of dams, water and wastewater treatment, processing and reprocessing of solid waste, emergency services, and the defense industrial base. Additionally, workers needed to maintain the continuity of these manufacturing functions and associated supply chains, and workers necessary to maintain a manufacturing operation in warm standby.
- Workers necessary for the manufacturing of materials and products needed to manufacture medical equipment and personal protective equipment (PPE).
- Workers necessary for mining and production of critical minerals, materials and associated essential supply chains, and workers engaged in the manufacture and maintenance of equipment and other infrastructure necessary for mining production and distribution.
- Workers who produce or manufacture parts or equipment that supports continued operations for any essential services and increase in remote workforce (including computing and communication devices, semiconductors, and equipment such as security tools for Security Operations Centers (SOCs) or data centers).

## HAZARDOUS MATERIALS

- Workers who manage hazardous materials associated with any other essential activity, including but not limited to healthcare waste (medical, pharmaceuticals, medical material production), testing operations (laboratories processing test kits), and energy (nuclear facilities) Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing tests Workers who support hazardous materials response and cleanup.
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations.

## FINANCIAL SERVICES

- Workers who are needed to provide, process and maintain systems for processing, verification, and recording of financial transactions and services, including payment, clearing, and settlement; wholesale funding; insurance services; consumer and commercial lending; and capital markets activities).
- Workers who are needed to maintain orderly market operations to ensure the continuity of financial transactions and services.
- Workers who are needed to provide business, commercial, and consumer access to bank and non-bank financial services and lending services, including ATMs, lending and money transmission, and to move currency, checks, securities, and payments (e.g., armored cash carriers).
- Workers who support financial operations and those staffing call centers, such as those staffing data and security operations centers, managing physical security, or providing accounting services.
- Workers supporting production and distribution of debit and credit cards.
- Workers providing electronic point of sale support personnel for essential businesses and workers.

## CHEMICAL

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, paintings and coatings, textiles, building materials, plumbing, electrical, and paper products.
- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items.
- Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, disinfectants, fragrances, and packaging that prevents the contamination of food, water, medicine, among others essential.
- Workers supporting the operation and maintenance of facilities (particularly those with high risk chemicals and/or sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections.
- Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products, including glass container manufacturing.

## DEFENSE INDUSTRIAL BASE

- Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military. These individuals include, but are not limited to, space and aerospace; mechanical and software engineers (various disciplines), manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers; and sanitary workers who maintain the hygienic viability of necessary facilities.
- Personnel working for companies, and their subcontractors, who perform under contract or sub-contract to the Department of Defense, as well as personnel at government-owned/contractor-operated and government-owned/government-operated facilities, and who provide materials and services to the Department of Defense, including support for weapon systems, software systems and cybersecurity, defense and intelligence communications and surveillance, space systems and other activities in support of our military, intelligence and space forces.

## COMMERCIAL FACILITIES

- Workers who support the supply chain of building materials from production through application/installation, including cabinetry, fixtures, doors, cement, hardware, plumbing, electrical, heating/cooling, refrigeration, appliances, paint/coatings, and employees who provide services that enable repair materials and equipment for essential functions.
- Workers supporting ecommerce through distribution, warehouse, call center facilities, and other essential operational support functions.
- Workers in hardware and building materials stores, consumer electronics, technology and appliances retail, and related merchant wholesalers and distributors - with reduced staff to ensure continued operations.
- Workers distributing, servicing, repairing, installing residential and commercial HVAC systems, boilers, furnaces and other heating, cooling, refrigeration, and ventilation equipment.

## RESIDENTIAL/SHELTER FACILITIES AND SERVICES

- Workers in dependent care services, in support of workers in other essential products and services.

- Workers who support food, shelter, and social services, and other necessities of life for needy groups and individuals, including in-need populations and COVID-19 responders (including travelling medical staff).
- Workers in animal shelters.
- Workers responsible for the leasing of residential properties to provide individuals and families with ready access to available housing.
- Workers responsible for handling property management, maintenance, and related service calls who can coordinate the response to emergency “at-home” situations requiring immediate attention, as well as facilitate the reception of deliveries, mail, and other necessary services.
- Workers performing housing construction related activities to ensure additional units can be made available to combat the nation’s existing housing supply shortage.
- Workers performing services in support of the elderly and disabled populations who coordinate a variety of services, including health care appointments and activities of daily living.
- Workers supporting the construction of housing, including those supporting government functions related to the building and development process, such as inspections, permitting and plan review services that can be modified to protect the public health, but fundamentally should continue and serve the construction of housing (e.g., allow qualified private third-party inspections in case of government shutdown).

## HYGIENE PRODUCTS AND SERVICES

- Workers who produce hygiene products.
- Workers in laundromats, laundry services, and dry cleaners.
- Workers providing personal and household goods repair and maintenance.
- Workers providing disinfection services, for all essential facilities and modes of transportation, and supporting the sanitation of all food manufacturing processes and operations from wholesale to retail.
- Workers necessary for the installation, maintenance, distribution, and manufacturing of water and space heating equipment and its components.
- Support required for continuity of services, including commercial disinfectant services, janitorial/cleaning personnel, and support personnel functions that need freedom of movement to access facilities in support of front-line employees.

# EXHIBIT E

March 22, 2020

On March 19, 2020, Governor Newsom issued Executive Order N-33-20 directing all residents immediately to heed current State public health directives to stay home, except as needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as the State Public Health Officer may designate as critical to protect health and well-being of all Californians.

In accordance with this order, the State Public Health Officer has designated the following list of “Essential Critical Infrastructure Workers” to help state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security.

## HEALTHCARE / PUBLIC HEALTH

### Sector Profile

The Healthcare and Public Health (HPH) Sector is large, diverse, and open, spanning both the public and private sectors. It includes publicly accessible healthcare facilities, research centers, suppliers, manufacturers, and other physical assets and vast, complex public-private information technology systems required for care delivery and to support the rapid, secure transmission and storage of large amounts of HPH data.

### Essential Workforce

- Workers providing COVID-19 testing; Workers that perform critical clinical research needed for COVID-19 response.
- Health care providers and caregivers (e.g., physicians, dentists, psychologists, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacists, physical and occupational therapists and assistants, social workers, speech pathologists and diagnostic and therapeutic technicians and technologists).
- Hospital and laboratory personnel (including accounting, administrative, admitting and discharge, engineering, epidemiological, source plasma and blood donation, food service, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.).
- Workers in other medical facilities (including Ambulatory Health and Surgical, Blood Banks, Clinics, Community Mental Health, Comprehensive Outpatient rehabilitation, End Stage Renal Disease, Health Departments, Home Health care, Hospices, Hospitals, Long Term Care, Organ Pharmacies, Procurement Organizations, Psychiatric, Residential, Rural Health Clinics and Federally Qualified Health Centers, cannabis retailers).
- Manufacturers, technicians, logistics and warehouse operators, and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, [personal care/hygiene products](#), and tissue and paper towel products.

March 22, 2020

- Public health / community health workers, including those who compile, model, analyze and communicate public health information.
- Behavioral health workers (including mental and substance use disorder) responsible for coordination, outreach, engagement, and treatment to individuals in need of mental health and/or substance use disorder services.
- Blood and plasma donors and the employees of the organizations that operate and manage related activities.
- Workers that manage health plans, billing, and health information, who cannot practically work remotely.
- Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information, who cannot practically work remotely.
- Workers who provide support to vulnerable populations to ensure their health and well-being including family care providers
- Workers performing cybersecurity functions at healthcare and public health facilities, who cannot practically work remotely.
- Workers conducting research critical to COVID-19 response.
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely.
- Workers who support food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, such as those residing in shelters.
- Pharmacy employees necessary for filling prescriptions.
- Workers performing mortuary services, including funeral homes, crematoriums, and cemetery workers.
- Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to behavioral health services to the family members, responders, and survivors of an incident.
- Workers supporting veterinary hospitals and clinics

## EMERGENCY SERVICES SECTOR

### Sector Profile

The Emergency Services Sector (ESS) is a community of highly-skilled, trained personnel, along with the physical and cyber resources, that provide a wide range of prevention, preparedness, response, and recovery services during both day-to-day operations and incident response. The ESS includes geographically distributed facilities and equipment in both paid and volunteer capacities organized primarily at the federal, state, local, tribal, and territorial levels of government, such as city police departments and fire stations, county sheriff's offices, Department of Defense police and fire departments, and town public works departments. The ESS also includes private sector resources, such



March 22, 2020

as industrial fire departments, private security organizations, and private emergency medical services providers.

#### **Essential Workforce - Law Enforcement, Public Safety and First Responders**

- Including front line and management, personnel include emergency management, law enforcement, Emergency Management Systems, fire, and corrections, search and rescue, tactical teams including maritime, aviation, and canine units.
- Emergency Medical Technicians
- Public Safety Answering Points and 911 call center employees
- Fusion Center employees
- Fire Mitigation Activities
- Hazardous material responders and hazardous devices teams, from government and the private sector.
- Workers – including contracted vendors -- who maintain digital systems infrastructure supporting law enforcement and emergency service operations.
- Private security, private fire departments, and private emergency medical services personnel.
- County workers responding to abuse and neglect of children, elders and dependent adults.
- [Animal control officers and humane officers](#)

#### **Essential Workforce - Public Works**

- Workers who support the operation, inspection, and maintenance of essential dams, locks and levees
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, [construction material suppliers](#), traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences.
- Support, such as road and line clearing, to ensure the availability of needed facilities, transportation, energy and communications Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste.

## **FOOD AND AGRICULTURE**

### **Sector Profile**

March 22, 2020

The Food and Agricultural (FA) Sector is composed of complex production, processing, and delivery systems and has the capacity to feed people and animals both within and beyond the boundaries of the United States. Beyond domestic food production, the FA Sector also imports many ingredients and finished products, leading to a complex web of growers, processors, suppliers, transporters, distributors, and consumers. This sectors is critical to maintaining and securing our food supply.

#### **Essential Workforce**

- Workers supporting groceries, pharmacies, and other retail that sells food and beverage products, including but not limited to Grocery stores, Corner stores and convenience stores, including liquor stores that sell food, Farmers' markets, Food banks, Farm and produce stands, Supermarkets, Similar food retail establishments, Big box stores that sell groceries and essentials
- Restaurant carry-out and quick serve food operations – including food preparation, carry-out and delivery food employees
- Food manufacturer employees and their supplier employees—to include those employed in food processing (packers, meat processing, cheese plants, milk plants, produce, etc.) facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging
- Farm workers to include those employed in animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically
- Farm workers and support service workers to include those who field crops; commodity inspection; fuel ethanol facilities; storage facilities; and other agricultural inputs
- Employees and firms supporting food, feed, and beverage distribution (including curbside distribution and deliveries), including warehouse workers, vendor-managed inventory controllers, blockchain managers, distribution
- Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail
- Company cafeterias - in-plant cafeterias used to feed employees
- Workers in food testing labs in private industries and in institutions of higher education
- Workers essential for assistance programs and government payments
- Workers supporting cannabis retail and dietary supplement retail
- Employees of companies engaged in the production of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids
- Animal agriculture workers to include those employed in veterinary health; manufacturing and distribution of animal medical materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, etc.; transportation of live animals, animal medical materials; transportation of deceased animals for disposal; raising of animals for food; animal production operations; slaughter and packing plants and associated regulatory and government workforce
- Workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products

March 22, 2020

- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution

## ENERGY

### Sector Profile

The Energy Sector consists of widely-diverse and geographically-dispersed critical assets and systems that are often interdependent of one another. This critical infrastructure is divided into three interrelated segments or subsectors—electricity, oil, and natural gas—to include the production, refining, storage, and distribution of oil, gas, and electric power, except for hydroelectric and commercial nuclear power facilities and pipelines. The Energy Sector supplies fuels to the transportation industry, electricity to households and businesses, and other sources of energy that are integral to growth and production across the Nation. In turn, it depends on the Nation's transportation, information technology, communications, finance, water, and government infrastructures.

#### Essential Workforce - Electricity industry:

- Workers who maintain, ensure, or restore the generation, transmission, and distribution of electric power, including call centers, utility workers, reliability engineers and fleet maintenance technicians
- Workers needed for safe and secure operations at nuclear generation
- Workers at generation, transmission, and electric blackstart facilities
- Workers at Reliability Coordinator (RC), Balancing Authorities (BA), and primary and backup Control Centers (CC), including but not limited to independent system operators, regional transmission organizations, and balancing authorities
- Mutual assistance personnel
- IT and OT technology staff – for EMS (Energy Management Systems) and Supervisory Control and Data
- Acquisition (SCADA) systems, and utility data centers; Cybersecurity engineers; cybersecurity risk management
- Vegetation management crews and traffic workers who support
- Environmental remediation/monitoring technicians
- Instrumentation, protection, and control technicians

#### Essential Workforce - Petroleum workers:

- Petroleum product storage, pipeline, marine transport, terminals, rail transport, road transport
- Crude oil storage facilities, pipeline, and marine transport
- Petroleum refinery facilities
- Petroleum security operations center employees and workers who support emergency response services

March 22, 2020

- Petroleum operations control rooms/centers
- Petroleum drilling, extraction, production, processing, refining, terminal operations, transporting, and retail for use as end-use fuels or feedstocks for chemical manufacturing
- Onshore and offshore operations for maintenance and emergency response
- Retail fuel centers such as gas stations and truck stops, and the distribution systems that support them.

#### **Essential Workforce - Natural and propane gas workers:**

- Natural gas transmission and distribution pipelines, including compressor stations
- Underground storage of natural gas
- Natural gas processing plants, and those that deal with natural gas liquids
- Liquefied Natural Gas (LNG) facilities
- Natural gas security operations center, natural gas operations dispatch and control rooms/centers natural gas emergency response and customer emergencies, including natural gas leak calls
- Drilling, production, processing, refining, and transporting natural gas for use as end-use fuels, feedstocks for chemical manufacturing, or use in electricity generation
- Propane gas dispatch and control rooms and emergency response and customer emergencies, including propane leak calls
- Propane gas service maintenance and restoration, including call centers
- Processing, refining, and transporting natural liquids, including propane gas, for use as end-use fuels or feedstocks for chemical manufacturing
- Propane gas storage, transmission, and distribution centers

## **WATER AND WASTEWATER**

### **Sector Profile**

The Water and Wastewater Sector is a complex sector composed of drinking water and wastewater infrastructure of varying sizes and ownership types. Multiple governing authorities pertaining to the Water and Wastewater Sector provide for public health, environmental protection, and security measures, among others.

### **Essential Workforce**

Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure, including:

- Operational staff at water authorities
- Operational staff at community water systems
- Operational staff at wastewater treatment facilities
- Workers repairing water and wastewater conveyances and performing required sampling or monitoring

March 22, 2020

- Operational staff for water distribution and testing
- Operational staff at wastewater collection facilities
- Operational staff and technical support for SCADA Control systems
- Chemical disinfectant suppliers for wastewater and personnel protection
- Workers that maintain digital systems infrastructure supporting water and wastewater operations

## TRANSPORTATION AND LOGISTICS

### Sector Profile

The Transportation Systems Sector consists of seven key subsectors, or modes:

- Aviation includes aircraft, air traffic control systems, and airports, heliports, and landing strips. Commercial aviation services at civil and joint-use military airports, heliports, and sea plane bases. In addition, the aviation mode includes commercial and recreational aircraft (manned and unmanned) and a wide-variety of support services, such as aircraft repair stations, fueling facilities, navigation aids, and flight schools.
- Highway and Motor Carrier encompasses roadway, bridges, and tunnels. Vehicles include trucks, including those carrying hazardous materials; other commercial vehicles, including commercial motorcoaches and school buses; vehicle and driver licensing systems; taxis, transportation services including Transportation Network Companies, and delivery services including Delivery Network Companies; traffic management systems; AND cyber systems used for operational management.
- Maritime Transportation System consists of coastline, ports, waterways, and intermodal landside connections that allow the various modes of transportation to move people and goods to, from, and on the water.
- Mass Transit and Passenger Rail includes terminals, operational systems, and supporting infrastructure for passenger services by transit buses, trolleybuses, monorail, heavy rail—also known as subways or metros—light rail, passenger rail, and vanpool/rideshare.
- Pipeline Systems consist of pipelines carrying natural gas hazardous liquids, as well as various chemicals. Above-ground assets, such as compressor stations and pumping stations, are also included.
- Freight Rail consists of major carriers, smaller railroads, active railroad, freight cars, and locomotives.
- Postal and Shipping includes large integrated carriers, regional and local courier services, mail services, mail management firms, and chartered and delivery services.

### Essential Workforce

7

March 22, 2020

- Employees supporting or enabling transportation functions, including dispatchers, maintenance and repair technicians, warehouse workers, truck stop and rest area workers, and workers that maintain and inspect infrastructure (including those that require cross-border travel)
- Employees of firms providing services that enable logistics operations, including cooling, storing, packaging, and distributing products for wholesale or retail sale or use.
- Mass transit workers
- Taxis, transportation services including Transportation Network Companies, and delivery services including Delivery Network Companies
- Workers responsible for operating dispatching passenger, commuter and freight trains and maintaining rail infrastructure and equipment
- Maritime transportation workers - port workers, mariners, equipment operators
- Truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services
- Automotive repair and maintenance facilities
- Manufacturers and distributors (to include service centers and related operations) of packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations
- Postal and shipping workers, to include private companies
- Employees who repair and maintain vehicles, aircraft, rail equipment, marine vessels, and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers
- Air transportation employees, including air traffic controllers, ramp personnel, aviation security, and aviation management
- Workers who support the maintenance and operation of cargo by air transportation, including flight crews, maintenance, airport operations, and other on- and off- airport facilities workers

## COMMUNICATIONS AND INFORMATION TECHNOLOGY

### Sector Profile

The Communications Sector provides products and services that support the efficient operation of today's global information-based society. Communication networks enable people around the world to contact one another, access information instantly, and communicate from remote areas. This involves creating a link between a sender (including voice signals) and one or more recipients using technology (e.g., a telephone system or the Internet) to transmit information from one location to another. Technologies are changing at a rapid pace, increasing the number of products, services, service providers, and communication options. The national communications architecture is a complex collection of networks that are owned and operated by individual service providers. Many of this sector's products and services are foundational or necessary for the operations and services provided by other critical infrastructure sectors. The nature of communication networks involve both physical infrastructure (buildings, switches, towers, antennas, etc.) and cyber infrastructure (routing and

March 22, 2020

switching software, operational support systems, user applications, etc.), representing a holistic challenge to address the entire physical-cyber infrastructure.

The IT Sector provides products and services that support the efficient operation of today's global information-based society and are integral to the operations and services provided by other critical infrastructure Sectors. The IT Sector is comprised of small and medium businesses, as well as large multinational companies. Unlike many critical infrastructure Sectors composed of finite and easily identifiable physical assets, the IT Sector is a functions-based Sector that comprises not only physical assets but also virtual systems and networks that enable key capabilities and services in both the public and private sectors.

#### **Essential Workforce - Communications:**

- Maintenance of communications infrastructure- including privately owned and maintained communication systems- supported by technicians, operators, call-centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, Internet Exchange Points, and manufacturers and distributors of communications equipment
- Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and/or technicians to manage the network or operate facilities
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables
- Installation, maintenance and repair technicians that establish, support or repair service as needed
- Central office personnel to maintain and operate central office, data centers, and other network office facilities
- Customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, and troubleshooting
- Dispatchers involved with service repair and restoration

#### **Essential Workforce - Information Technology:**

- Workers who support command centers, including, but not limited to Network Operations Command Center, Broadcast Operations Control Center and Security Operations Command Center
- Data center operators, including system administrators, HVAC & electrical engineers, security personnel, IT managers, data transfer solutions engineers, software and hardware engineers, and database administrators
- Client service centers, field engineers, and other technicians supporting critical infrastructure, as well as manufacturers and supply chain vendors that provide hardware and software, and



March 22, 2020

information technology equipment (to include microelectronics and semiconductors) for critical infrastructure

- Workers responding to cyber incidents involving critical infrastructure, including medical facilities, SLTT governments and federal facilities, energy and utilities, and banks and financial institutions, and other critical infrastructure categories and personnel
- Workers supporting the provision of essential global, national and local infrastructure for computing services (incl. cloud computing services), business infrastructure, web-based services, and critical manufacturing
- Workers supporting communications systems and information technology used by law enforcement, public safety, medical, energy and other critical industries
- Support required for continuity of services, including janitorial/cleaning personnel

## OTHER COMMUNITY-BASED GOVERNMENT OPERATIONS AND ESSENTIAL FUNCTIONS

### Essential Workforce

- Critical government workers, as defined by the employer and consistent with Continuity of Operations Plans and Continuity of Government plans.
- County workers responsible for determining eligibility for safety net benefits
- The Courts, consistent with [guidance](#) released by the California Chief Justice
- Workers to ensure continuity of building functions
- Security staff to maintain building access control and physical security measures
- Elections personnel
- Federal, State, and Local, Tribal, and Territorial employees who support Mission Essential Functions and communications networks
- Trade Officials (FTA negotiators; international data flow administrators)
- Weather forecasters
- Workers that maintain digital systems infrastructure supporting other critical government operations
- Workers at operations centers necessary to maintain other essential functions
- Workers who support necessary credentialing, vetting and licensing operations for transportation workers
- Workers who are critical to facilitating trade in support of the national, state, and local emergency response supply chain
- Workers supporting public and private childcare establishments, pre-K establishments, K-12 schools, colleges, and universities for purposes of distance learning, provision of school meals, or care and supervision of minors to support essential workforce across all sectors

March 22, 2020

- Workers and instructors supporting academies and training facilities and courses for the purpose of graduating students and cadets that comprise the essential workforce for all identified critical sectors
- Hotel Workers where hotels are used for COVID-19 mitigation and containment measures, including measures to protect homeless populations.
- Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction)
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, [construction material sources](#), and essential operation of construction sites and construction projects (including those that support such projects to ensure the availability of needed facilities, transportation, energy and communications; and support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste)
- Commercial Retail Stores, that supply essential sectors, including convenience stores, pet supply stores, auto supplies and repair, hardware and home improvement, and home appliance retailers
- Workers supporting the entertainment industries, studios, and other related establishments, provided they follow covid-19 public health guidance around social distancing.
- Workers critical to operating Rental Car companies that facilitate continuity of operations for essential workforces, and other essential travel
- Workers that provide or determine eligibility for food, shelter, in-home supportive services, child welfare, adult protective services and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals (including family members)
- Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities and critical sector services
- Faith based services that are provided through streaming or other technology
- Laundromats and laundry services
- [Workers at animal care facilities that provide food, shelter, veterinary and/or routine care and other necessities of life for animals.](#)

## CRITICAL MANUFACTURING

### Sector Profile

The Critical Manufacturing Sector identifies several industries to serve as the core of the sector: Primary Metals Manufacturing, Machinery Manufacturing, Electrical Equipment, Appliance, and Component Manufacturing, Transportation Equipment Manufacturing Products made by these manufacturing industries are essential to many other critical infrastructure sectors.

### Essential Workforce

March 22, 2020

- Workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.

## HAZARDOUS MATERIALS

### Essential Workforce

- Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits
- Workers who support hazardous materials response and cleanup
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations

## FINANCIAL SERVICES

### Sector Profile

The Financial Services Sector includes thousands of depository institutions, providers of investment products, insurance companies, other credit and financing organizations, and the providers of the critical financial utilities and services that support these functions. Financial institutions vary widely in size and presence, ranging from some of the world's largest global companies with thousands of employees and many billions of dollars in assets, to community banks and credit unions with a small number of employees serving individual communities. Whether an individual savings account, financial derivatives, credit extended to a large organization, or investments made to a foreign country, these products allow customers to: Deposit funds and make payments to other parties; Provide credit and liquidity to customers; Invest funds for both long and short periods; Transfer financial risks between customers.

### Essential Workforce

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities)
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers)
- Workers who support financial operations, such as those staffing data and security operations centers

March 22, 2020

## CHEMICAL

### Sector Profile

The Chemical Sector—composed of a complex, global supply chain—converts various raw materials into diverse products that are essential to modern life. Based on the end product produced, the sector can be divided into five main segments, each of which has distinct characteristics, growth dynamics, markets, new developments, and issues: Basic chemicals; Specialty chemicals; Agricultural chemicals; Pharmaceuticals; Consumer products

### Essential Workforce

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, textiles, and paper products.
- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items
- Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, and packaging that prevents the contamination of food, water, medicine, among others essential products
- Workers supporting the operation and maintenance of facilities (particularly those with high risk chemicals and/ or sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections
- Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products, including glass container manufacturing

## DEFENSE INDUSTRIAL BASE

### Sector Profile

The Defense Industrial Base Sector is the worldwide industrial complex that enables research and development, as well as design, production, delivery, and maintenance of military weapons systems, subsystems, and components or parts, to meet U.S. military requirements. The Defense Industrial Base partnership consists of Department of Defense components, Defense Industrial Base companies and their subcontractors who perform under contract to the Department of Defense, companies providing

13

March 22, 2020

incidental materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities. Defense Industrial Base companies include domestic and foreign entities, with production assets located in many countries. The sector provides products and services that are essential to mobilize, deploy, and sustain military operations.

**Essential Workforce**

- Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military. These individuals, include but are not limited to, aerospace; mechanical and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers
- Personnel working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities

# EXHIBIT F

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SAN BERNARDINO  
AND RECORD OF ACTION**

March 10, 2020

**FROM**

**GARY McBRIDE, Chief Executive Officer, County Administrative Office**

**SUBJECT**

Ratify Declaration of Local Health Emergency

**RECOMMENDATION(S)**

Find that there is an urgent need to ratify the proclamation of a local health emergency (Attachment A) within San Bernardino County resulting from the worldwide health threat related to the Novel Coronavirus.

(Presenter: Trudy Raymundo, Director of Public Health, 387-9146)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

**FINANCIAL IMPACT**

Approval of this item will not require the use of additional Discretionary General Funding (Net County Cost) as there is no cost or financial impact associated with the proclamation or continuing this local emergency. However, the County could incur significant costs resulting from this emergency. These costs, which are not fully determined at this time, could potentially require the use of additional Discretionary General Funding. Should this occur, a future item will be submitted to the Board of Supervisors (Board) for approval of additional Discretionary General Funding.

**BACKGROUND INFORMATION**

The Novel Coronavirus (COVID-19) originated in Wuhan, China in late 2019 and began spreading, initially, within China and then to other countries. On January 30, 2020, the World Health Organization declared the outbreak to be a "public health emergency of international concern". This was followed on January 31, 2020 by the United States Human Services Secretary declaring a public health emergency. Cases internationally, within the US and within California (as evidenced by the Governor's Proclamation) continue to rise.

There currently exists a threat of a local emergency due to the worldwide spread of COVID-19, which causes infectious disease resulting in symptoms of fever, coughing and shortness of breath with outcomes ranging from mild to severe illness and in some cases, death.

The San Bernardino County Operational Area, which coordinates emergency management provisions within the County, has begun the complex process of assessing the effects of COVID-19. The County of San Bernardino has a population of 2,153,203 and is the 5<sup>th</sup> largest county in California, has a high volume airport within its jurisdiction, which has the potential to result in significant spreading of the disease, has a homeless population that increased 23% in



**Ratify Declaration of Local Health Emergency  
March 10, 2020**

2019 and the potential for an outbreak among the unsheltered population is of increasing concern among public health officials.

As a result of the spread of the disease in California, the Governor issued a Proclamation of a State of Emergency (Governor's Proclamation) on March 4, 2020 in order to deal with the cases in California. Other local agencies have also declared a local public health emergency in an attempt to marshal the resources necessary to prevent or contain the spread of the disease.

Pursuant to the Governor's Proclamation, the 30-day time period in Health and Safety Code section 101080, within which a local agency must renew a local health emergency, has been waived. However, the initial ratification by the local agency of the declaration of a public health emergency was not waived and as a result, the Declaration by the Public Health Officer would expire within seven days, at a time when the Board will not be in session. Once the Declaration is ratified, it would be in effect until the Board terminates the local health emergency.

**PROCUREMENT**

N/A

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Michelle Blakemore, County Counsel, 387-5455) on March 10, 2020; County Administrative Office (Stephenie Shea, Administrative Analyst, 387-4919) on March 10, 2020; and Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on March 10, 2020.

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Case 5:20-cv-00755-JGB-KK Document 14-2 Filed 04/17/20 Page 47 of 67 Page ID #:399

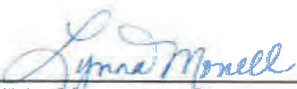
**Ratify Declaration of Local Health Emergency  
March 10, 2020**Record of Action of the Board of Supervisors  
County of San Bernardino**APPROVED**

Moved: Josie Gonzales Seconded: Janice Rutherford

Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

Lynna Monell, CLERK OF THE BOARD

BY

  
DATED: March 10, 2020cc: File - Emergency/COVID-19 w/ attach  
jm 03/24/2020

# EXHIBIT G

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SAN BERNARDINO  
AND RECORD OF ACTION**

**March 10, 2020**

**FROM**

**GARY McBRIDE, Chief Executive Officer, County Administrative Office**

**SUBJECT**

Issue Proclamation of a Local State Of Emergency

**RECOMMENDATION(S)**

Find that there is an urgent need to proclaim the existence of a local emergency within San Bernardino County resulting from the worldwide health threat related to the Novel Coronavirus. (Presenter: Daniel Munoz, Emergency Services Manager, 356-3998)

**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

**FINANCIAL IMPACT**

Approval of this item will not require the use of additional Discretionary General Funding (Net County Cost) as there is no cost or financial impact associated with the proclamation or continuing this local emergency. However, the County could incur significant costs resulting from this emergency. These costs, which are not fully determined at this time, could potentially require the use of additional Discretionary General Funding. Should this occur, a future item will be submitted to the Board of Supervisors (Board) for approval of additional Discretionary General Funding.

**BACKGROUND INFORMATION**

The Novel Coronavirus (COVID-19) originated in Wuhan, China in late 2019 and began spreading, initially, within China and then to other countries. On January 30, 2020, the World Health Organization declared the outbreak to be a "public health emergency of international concern". This was followed on January 31, 2020 by the United States Human Services Secretary declaring a public health emergency. Cases internationally, within the US and within California (as evidenced by the Governor's Proclamation) continue to rise.

There currently exists a threat of a local emergency due to COVID-19, which causes infectious disease resulting in symptoms of fever, coughing and shortness of breath with outcomes ranging from mild to severe illness and in some cases, death.

The San Bernardino County Operational Area, which coordinates emergency management provisions within the County, has begun the complex process of assessing the effects of COVID-19. The County of San Bernardino has a population of 2,153,203 and is the fifth largest county in California, has a high volume airport within its jurisdiction, which has the potential to result in significant spreading of the disease, has a homeless population that increased 23% in

**Issue Resolution Proclaiming the Existence of a Local State Of  
Emergency  
March 10, 2020**

2019 and the potential for an outbreak among the unsheltered population is of increasing concern among public health officials.

The governor issued a Proclamation of a State of Emergency (Governor's Proclamation) on March 4, 2020 in order to deal with the COVID-19 cases within California. Other local public agencies have also declared a local emergency in an attempt to marshal the resources necessary to prevent the spread of the disease. Pursuant to the governor's Proclamation, the 60-day time period in Government Code section 8630, within which a local agency must renew a local emergency, has been waived. Any local emergency proclaimed will remain in effect until terminated by the Board of Supervisors.

**PROCUREMENT**

N/A

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Michelle Blakemore, County Counsel, 387-5455) on March 10, 2020; County Administrative Office (Stephenie Shea, Administrative Analyst, 387-4919) on March 10, 2020; and Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on March 10, 2020.

Case 5:20-cv-00755-JGB-KK Document 14-2 Filed 04/17/20 Page 51 of 67 Page ID #:403

**Issue Resolution Proclaiming the Existence of a Local State Of  
Emergency  
March 10, 2020**

Record of Action of the Board of Supervisors  
County of San Bernardino

**APPROVED**

Moved: Josie Gonzales Seconded: Janice Rutherford

Ayes: Robert A. Lovingood, Janice Rutherford, Dawn Rowe, Curt Hagman, Josie Gonzales

---

Lynna Monell, CLERK OF THE BOARD

BY

  
DATED: March 10, 2020



cc: County Counsel - Blakemore w/attach  
CAO/Finance - Shea w/attach  
OES - Munoz w/attach  
File: Emergency/COVID-19 w/attach

KS 03/10/2020

# EXHIBIT H



COUNTY OF SAN BERNARDINO

STATE OF CALIFORNIA

PROCLAMATION OF EXISTENCE OF A LOCAL EMERGENCY

(By: Board of Supervisors)

WHEREAS, California Government Code section 8630 empowers the Board of Supervisors (Board) (or in the Board is not in session, the Chief Executive Officer or event of his or her absence, certain other designated officers as specified in the San Bernardino County Code section 21.0101 et seq.) to proclaim the existence or threatened existence of a local emergency when San Bernardino County is affected or likely to be affected by a public calamity and

WHEREAS, the Board of Supervisors of the County of San Bernardino does hereby find:

WHEREAS, a Novel Coronavirus, COVID-19, which causes infectious disease resulting in symptoms of fever, coughing and shortness of breath with outcomes ranging from mild to severe illness and in some cases death, has arisen in China and spread to numerous other countries including the United States and there are reported cases in California; and

WHEREAS, the Centers for Disease Control and Prevention has determined the virus to be a very serious public health threat, yet the method and efficacy of transmission of the virus is not yet fully understood and no vaccine currently exists; and

WHEREAS, the County of San Bernardino has a population of 2,153,203 and is the 5<sup>th</sup> largest county in California, has a high volume airport within its jurisdiction, which has the potential to result in significant spreading of the disease, has a homeless population that increased 23% in 2019 and the potential for an outbreak among the unsheltered population is of increasing concern among public health officials; and

WHEREAS, the Health Officer of the County of San Bernardino has determined that the County is preparing for an imminent and proximate threat to public health from the virus; and

WHEREAS, the above described events are creating a condition of extreme peril to the safety of persons and property within the territorial limits of the County of San Bernardino which conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the County of San Bernardino, and require the combined forces, a mutual aid region or regions of other political subdivisions to appropriately respond to and combat the spread and treatment of COVID-19; and

WHEREAS, on March 4, 2020, the Governor proclaimed a state of emergency as a result of the increasing number of cases of COVID-19 in the State in order to promptly respond to the emergency for the protection of public health.

NOW, THEREFORE, IT IS HEREBY PROCLAIMED that a local emergency exists throughout said County as described herein; and

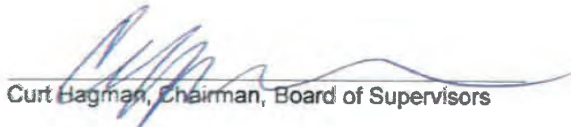
IT IS FURTHER PROCLAIMED AND ORDERED that during the existence of said local emergency, the powers and duties of the emergency organization of the County shall be those prescribed by State law, by charter, ordinances, and resolutions of this County, and by the current County of San Bernardino Emergency Plan, as approved by the Board of Supervisors.

IT IS FURTHER PROCLAIMED AND ORDERED that said local emergency shall be deemed to continue to exist until its termination is proclaimed by the Board of Supervisors or it is terminated by operation of law.

IT IS FURTHER PROCLAIMED AND ORDERED that a copy of this proclamation be forwarded to the Director of the California Governor's Office of Emergency Services, requesting that the Director find it acceptable in accordance with State law; that the Governor of California, pursuant to the Emergency Services Act, that the Governor waive regulations that may hinder response and recovery efforts; that the Governor make all relevant funds available to the County of San Bernardino and all eligible community members and businesses, including, but not limited to, California Disaster Assistance Funds Act funds and State Private Nonprofit Organizations Assistance Program funds, and that the Governor request that the President of the United States make a Presidential Declaration of Emergency in and for the County of San Bernardino and make all relevant funds available to the County of San Bernardino and all eligible community members and businesses, including, but not limited to, aid provided by the Small Business Administration.

Dated: March 10, 2020

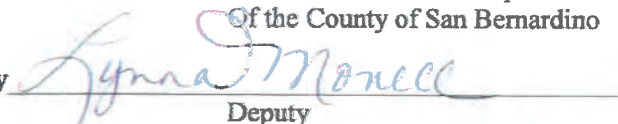
COUNTY OF SAN BERNARDINO

  
Curt Hagman, Chairman, Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell  
Clerk of the Board of Supervisors  
Of the County of San Bernardino

By

  
Deputy

# EXHIBIT I

351 N. Mountain View Ave., San Bernardino, CA 92415 | Phone: 909.387.9146 | Fax: 909.387.6228

**SAN BERNARDINO  
COUNTY**

**Public Health**

**Trudy Raymundo**  
Director

**Corwin Porter**  
Assistant Director

**Maxwell Ohikhuare, M.D.**  
Health Officer

**Erin Gustafson, M.D., MPH**  
Acting Health Officer

**ORDER OF THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO**

**CANCELLING ALL GATHERINGS**

**DATE OF ORDER: MARCH 17, 2020**

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295; County Code Section 31.0101 Et. Seq.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, AND SAN BERNARDINO COUNTY CODE SECTION 31.0101 ET. SEQ., THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO ("HEALTH OFFICER") ORDERS:

1. This Order revokes and replaces the Order originally issued on March 12, 2020. That order is no longer in effect as of the effective date and time of this Order.
2. Effective as of 12:01 a.m. on March 18, 2020 and continuing until 11:59 p.m. on April 6, 2020, public or private Gatherings, as defined in this Order, are hereby prohibited in the County. A "gathering" is any event or convening that brings together people in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, cafeteria, or any other indoor or outdoor space. Nothing in this Order prohibits the gathering of members of a household or living unit.
3. This Order does not apply to activities such as attendance at regular school classes, work, or essential services. Certain activities are essential to the functioning of our state and must continue. Hence, this Order does not apply to essential public transportation, airport travel, grocery stores or charitable food distribution, certified farmers' markets, and shopping at a store or mall. This Order also does not apply to congregate living situations, including dormitories and homeless encampments.
4. All bars, adult entertainment establishments, and other business establishments that serve alcohol and do not serve food, shall close. All movie theatres, gyms, and health clubs shall close. Food and beverage establishments are required to follow guidance released from the California Department of Public Health on March 16, 2020 ([www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-](http://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-)

**BOARD OF SUPERVISORS**

**ROBERT A. LOVINGOOD**  
First District

**JANICE RUTHERFORD**  
Second District

**DAWN ROWE**  
Third District

**CURT HAGMAN**  
Chairman, Fourth District

**JOSIE GONZALES**  
Vice Chair, Fifth District

**COSB RFJN - PAGE 059**

19/Coronavirus%20Disease%202019%20and%20Food%20Beverage%20Other%20Services%20-%20AOL.pdf).

5. The Health Officer strongly cautions that persons aged 65 years and older and person of any age with certain underlying health conditions are at increased risk should they contract COVID-19, and are encouraged to self-quarantine.
6. This Order is issued as a result of the worldwide epidemic of COVID-19 disease, also known as “novel coronavirus,” which has infected at least 118,000 individuals worldwide in 115 countries and is implicated in over 4,200 worldwide deaths.
7. This Order is issued based on evidence of increasing transmission of COVID-19 within the County, in the state of California, and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19.
8. This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. This Order will help to reduce the number of Californians who contract COVID-19 before an effective treatment or vaccine is available; protect those most likely to experience severe symptoms, such as older Californians and those with underlying chronic conditions; preserve and protect our healthcare delivery system; and minimize the social and economic impacts of COVID-19 over the long run.
9. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 10, 2020 Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in San Bernardino County; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino proclaiming the existence of a Local Emergency in the County of San Bernardino regarding COVID-19; and the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino ratifying and extending the Declaration of Local Health Emergency due to COVID-19.
10. This Order comes after the release of guidance from the California Department of Public Health (CDPH) to cancel all gatherings to fight the spread of COVID-19 ([www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/cdph-guidance-gatherings-covid19-transmission-prevention-03-16-2020.pdf](http://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/cdph-guidance-gatherings-covid19-transmission-prevention-03-16-2020.pdf)).
11. This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101030, et seq.; Health and Safety Code sections 120100, et seq.; and Title 17 of the California Code of Regulations section 2501.
12. This Order shall not supersede any conflicting or more restrictive orders issued by the State of California or Federal governments, including any requirements regarding child care. If any portion of this Order or the application thereof to any person or circumstance is held to be invalid the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

13. To the extent necessary, pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, this order is enforceable by the Sheriff and all Chiefs of Police in the County. The violation of any provision of this Order constitutes an imminent threat to public health.

Copies of this Order shall promptly be: (1) made available at the County of San Bernardino Health Administration office located at 351 N. Mountain View Ave., #303, San Bernardino, CA 92415; (2) posted on the County of San Bernardino Public Health Department's website ([wp.sbcounty.gov/dph](http://wp.sbcounty.gov/dph)); and (3) provided to any member of the public requesting a copy of this Order.

**IT IS SO ORDERED:**

 MR MPH

Dated: March 17, 2020

Dr. Erin Gustafson, MD, MPH  
Acting Public Health Officer  
County of San Bernardino

Approved as to form and legality:



Dated: March 17, 2020

Adam Ebright  
County Counsel  
County of San Bernardino

# EXHIBIT J



[www.SBCounty.gov](http://www.SBCounty.gov)Trudy Raymundo  
DirectorCorwin Porter  
Assistant DirectorMaxwell Ohikhuare, M.D.  
Health OfficerErin Gustafson, M.D., MPH  
Acting Health Officer

## Public Health

**ORDER OF THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO****FOR THE CONTROL OF COVID-19****DATE OF ORDER: April 7, 2020**

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295; County Code Section 31.0101 Et. Seq.)

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, TITLE 17 CALIFORNIA CODE OF REGULATIONS SECTION 2501, AND SAN BERNARDINO COUNTY CODE SECTION 31.0101 ET. SEQ., THE HEALTH OFFICER OF THE COUNTY OF SAN BERNARDINO ("HEALTH OFFICER") ORDERS:

**Effective 12:00 a.m. on Wednesday, April 8, 2020, and continuing until rescinded,** pending further Order of the Public Health Officer, the following will be in effect for the County of San Bernardino (hereinafter the "County"):

1. The Orders of the San Bernardino County Health Officer issued on March 17, 2020 and March 27, 2020, Governor Newsom's Executive Order N-22-20 and order of the California State Public Health Officer issued on March 19, 2020, requiring all persons residing in the State to remain in their homes or places of residence, except as needed to maintain the continuity of operations for critical infrastructure (the "Stay-at-Home Order") remain in effect until the Governor's Executive Order N-22-20, and the Orders of the San Bernardino County Health Officer remain in effect until they are rescinded.
2. Under the Orders of the San Bernardino County Health Officer, the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, all individuals living in the State of California are ordered to stay home or at their place of residence except as need to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>. This guidance does allow faith based services that are provided through streaming or other technology, while individuals remain in their homes, but does not allow individuals to leave their homes for driving parades or drive-up services, or for picking up non-essential items.

**BOARD OF SUPERVISORS**ROBERT A. LOVINGOOD  
First DistrictJANICE RUTHERFORD  
Second DistrictDAWN ROWE  
Third DistrictCURT HAGMAN  
Chairman, Fourth DistrictJOSE GONZALES  
Vice Chair, Fifth DistrictGary McBride  
Chief Executive Officer

COSB RFJN - PAGE 063

3. All non-essential businesses that do not fall under the Essential Critical Infrastructure referenced above are ordered to remain closed. All essential businesses that remain in operation in accordance with the above referenced Orders of the San Bernardino County Health Officer, the Order of the California State Public Health Officer, and Governor Newsom's Executive Order N-22-20, shall follow the Social Distancing and Infection Control Guidelines published by the CDC and California Department of Public Health. All essential businesses must ensure all required measures are implemented and must identify and require measures necessary to implement social distancing and sanitation at that particular facility. If the measures identified and implemented are not effective in maintaining proper social distancing and sanitation, additional measures shall be identified and implemented or the facility shall be closed.
4. All persons, including Essential Workers shall wear face coverings, such as scarves (dense fabric, without holes), bandanas, neck gaiters, or other fabric face coverings, when they leave their homes or places of residence for essential activities. All persons, including **non-medical** Essential Workers are discouraged from using Personal Protective Equipment (PPE), such as N95 masks, for **non-medical reasons**. Staff working at facilities listed in Attachment A at <http://wp.sbcounty.gov/dph/wp-content/uploads/sites/7/2020/04/Attachment-A-and-B.pdf> must follow the Order of the San Bernardino County Public Health Officer issued on April 6, 2020, requiring staff at these facilities to wear a surgical mask at all times while in the facility.
5. All essential businesses shall make every effort to use telecommuting for its workforce.
6. Government entities shall enforce social distancing requirements at all parks and trails. If a government entity is unable to enforce social distancing at a park or trail, it shall be closed to the public. Parking lots at all parks and/or trails shall be closed and shall be accessible only by members of the public within walking distance of the parks and/or trails. Said parks and/or trails shall be used solely for walking, hiking, equestrian or bicycle riding. The public shall not congregate or participate in group sporting activities at such parks and/or trails.
7. A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home.
8. Hospitals and healthcare providers shall take measures to preserve and prioritize resources including delaying non-emergent or elective surgeries or procedures where feasible.
9. All persons arriving in the county from international locations identified on the Centers for Disease Control and Prevention (CDC) Warning Level 2 or 3 Travel Advisory (available at: <https://wwwnc.cdc.gov/travel/notices>) shall be subject to 14-day home quarantine, self-monitoring.
10. A strong recommendation is made for persons exhibiting mild to moderate symptoms of COVID-19 to self-isolate in their place of residence unless seeking medical treatment. A guide to symptoms is found here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.
11. This Order is issued based on evidence of increasing transmission of COVID-19 within the County, in the state of California, and worldwide, scientific evidence regarding the most effective approach to slow transmission of communicable diseases generally and COVID-19 specifically, as well as

best practices as currently known and available to protect the public from the risk of spread of or exposure to COVID-19. The virus that causes COVID-19 (known as SARS-CoV2) has infected over one million individuals worldwide in over 180 countries and is implicated in over 76,000 worldwide deaths, including at least 530 cases and 16 deaths in San Bernardino County. These numbers increase significantly every day.

12. This Order is intended to reduce the likelihood of exposure to COVID-19, thereby slowing the spread of COVID-19 in communities worldwide. This Order will help to reduce the number of Californians who contract COVID-19 before an effective treatment or vaccine is available; protect those most likely to experience severe symptoms, such as older Californians and those with underlying chronic conditions; preserve and protect our healthcare delivery system; and minimize the social and economic impacts of COVID-19 over the long run.
13. This Order is issued in accordance with, and incorporates by reference, the: March 4, 2020 Proclamation of a State Emergency issued by Governor Gavin Newsom; the March 10, 2020 Declaration of Local Health Emergency based on an imminent and proximate threat to public health from the introduction of novel COVID-19 in San Bernardino County; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino proclaiming the existence of a Local Emergency in the County of San Bernardino regarding COVID-19; the March 10, 2020 Resolution of the Board of Supervisors of the County of San Bernardino ratifying and extending the Declaration of Local Health Emergency due to COVID-19; and Executive Order N-22-20 of the Governor of California and Order of the State Public Health Officer issued on March 19, 2020.
14. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the Centers for Disease Control and Prevention, and other public health officials throughout the United States and around the world, including but not limited to, the Centers for Disease Control and Prevention's "Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes", the California Department of Public Health Face Covering Guidance issued on April 1, 2020, and Recommendation Regarding the Use of Cloth Face Coverings from the Centers for Disease Control and Prevention issued on April 3, 2020.
15. This Order is made in accordance with all applicable State and Federal laws, including but not limited to: Health and Safety Code sections 101030, et seq.; Health and Safety Code sections 120100, et seq.; and Title 17 of the California Code of Regulations section 2501.
16. This Order shall not supersede any conflicting or more restrictive orders issued by the State of California or Federal governments, including any requirements regarding child care. If any portion of this Order or the application thereof to any person or circumstance is held to be invalid the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.
17. To the extent necessary, pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029, this order is enforceable by the Sheriff and all Chiefs of Police in the County. The violation of any provision of this Order constitutes an imminent threat to public health.

Copies of this Order shall promptly be: (1) made available at the County of San Bernardino Health Administration office located at 351 N. Mountain View Ave., #303, San Bernardino, CA 92415; (2) posted on the County of San Bernardino Public Health Department's website ([wp.sbcounty.gov/dph](http://wp.sbcounty.gov/dph)); and (3) provided to any member of the public requesting a copy of this Order.

**IT IS SO ORDERED:**



Dated: April 7, 2020

Dr. Erin Gustafson, MD, MPH  
Acting Public Health Officer  
County of San Bernardino

Approved as to form and legality:



Dated: April 7, 2020

Adam Ebright  
County Counsel  
County of San Bernardino

# EXHIBIT K



4/15/2020 Case 5:20-cv-00755-JCB-RK Document 14-2 Filed 04/17/20 Page 65 of 67 Page ID #:417

	Home	Countywide Vision	Services A-Z	Visiting	Living	Working	Contacts	Translate: Email Subscrip	Select Language ▼
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- [SBCounty Home](#)
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« [Public Health officer orders face covering, electronic-only religious services](#)  
[San Bernardino County mountains closed to snow play.](#) »

## Clarification of religious services and face-coverings order

Published April 8, 2020 | By [County of San Bernardino](#)



The need has arisen for clarification of a Public Health Order and subsequent guidance issued Tuesday regarding religious services and face coverings.

The County acknowledges the manner in which the order and guidance were created and disseminated created unintended consequences and hardships. The County has taken steps to ensure appropriate notice and coordination will occur in the future as we address the complicated and fast-moving crisis faced by our community and the entire world.

“We recognize the need to act quickly to slow the spread of COVID-19 throughout San Bernardino County,” said Board of Supervisors Chairman Curt Hagman. “But we also recognize that we must take into consideration the myriad of impacts that can be felt in a large and diverse county, and be willing to provide clarification and make adjustments while keeping our communities safe and healthy.”

The specific references to drive-in religious services so close to major religious observances taking place during the next four days, for which organizations had already conducted considerable planning and incurred expenses, are clarified as follows: Organizations that have planned such services for the coming weekend should proceed with those services if they choose to do so and make every effort to prevent contact between congregants.

Regarding the use of face-coverings while driving, there is no need for drivers traveling alone or with members of their households to wear face coverings unless they must lower their windows to interact with first responders, food service workers, or others who are not members of their households.

Other clarifying guidance will be forthcoming.

On the subject of enforcement, the public is advised that although violation of a health order is a violation of the California Health and Safety Code, the County does not expect law enforcement to broadly impose citations on violators. The expectation is that law enforcement will rely upon community members to use good judgment, common sense, and act in the best interests of their own health and the health of their loved ones and the community at large. The imposition of penalties on members of the public who willfully and grossly disregard public health orders by putting others at risk of exposure to this infectious disease is meant as a tool for law enforcement to use as a deterrent.

4/15/2020 Case 5:20-cv-00755-JGB-RK Document 14-2 Filed 04/17/20 Page 66 of 67 Page ID #:418

San Bernardino County has 547 confirmed cases of COVID-19 and the deaths of 17 county residents have been associated with the disease.

Various appropriate County departments and agencies have been working together since Jan. 25 to protect the community from the COVID-19 pandemic.

For information about the coronavirus crisis, visit the County's coronavirus website at [sbccovid19.com](https://sbccovid19.com). New information and resources are updated daily. The public can also contact the COVID-19 hotline from 9 a.m. to 5 p.m., Monday through Friday at (909) 387-3911, or email the County at [coronavirus@dph.sbcounty.gov](mailto:coronavirus@dph.sbcounty.gov).

### **Aclaración de servicios religiosos y orden de cobertura de la cara.**

Ha surgido la necesidad de aclaración de una Orden de Salud Pública y posterior orientación emitida el martes en relación con los servicios religiosos y cobertura de la cara.

El Condado reconoce la manera en que la orden y la orientación fueron creados y difundidos creando consecuencias y dificultades no deseadas. El Condado ha tomado medidas para asegurar que el aviso y la coordinación apropiada ocurran en el futuro a medida mientras dirigimos la crisis complicada y de rápido movimiento que enfrenta nuestra comunidad y el mundo entero.

“Reconocemos la necesidad de actuar rápidamente para frenar la propagación de COVID-19 en todo el condado de San Bernardino”, dijo el Presidente de la Junta de Supervisores, Curt Hagman. “Pero también reconocemos que debemos tener en cuenta la infinidad de impactos que se pueden sentir en un condado grande y diverso, y estar dispuestos a proporcionar aclaraciones y hacer ajustes mientras mantenemos a nuestras comunidades seguras y saludables”.

Las referencias específicas a los servicios religiosos tan cercanos a las principales celebraciones religiosas que se llevarán a cabo durante los próximos cuatro días, por los cuales las organizaciones ya habían llevado a cabo una planificación considerable y gastos incurridos, se aclaran de la siguiente manera: Las organizaciones que han planificado dichos servicios para el próximo fin de semana deben proceder con esos servicios si así lo deciden y hacer todo lo posible para evitar el contacto entre los congregantes.

Con respeto al uso de coberturas faciales mientras conducen, no hay necesidad de que los conductores que viajen solos o con miembros de sus hogares usen cubiertas faciales a menos que deban bajar las ventanas para interactuar con los socorristas, los trabajadores de servicios de alimentos u otras personas que no son miembros de sus hogares.

Se presentarán otras orientaciones de clarificación.

En cuanto a la aplicación de la ley, se informa al público que aunque la violación de una orden de salud es una violación del Código de Salud y Seguridad de California, el Condado no espera que Agencias de aplicación de la ley impongan ampliamente citas a los infractores. La expectativa es que Agencias de aplicación de la ley confíen en los miembros de la comunidad que utilicen el buen juicio, el sentido común y actúen en el mejor interés de su propia salud y la salud de sus seres queridos y de la comunidad en general. La imposición de sanciones a los miembros del público que descuidan deliberadamente las órdenes de salud pública poniendo a otros en riesgo de exposición a esta enfermedad infecciosa se entiende como una herramienta para que Agencias de aplicación de la ley la utilicen como elemento disuasorio.

El condado de San Bernardino tiene 547 casos confirmados de COVID-19 y la muerte de 17 residentes del condado se ha asociado con la enfermedad.

Varios departamentos y agencias del Condado han estado trabajando juntos desde el 25 de enero para proteger a la comunidad de la pandemia COVID-19.



4/15/2020 Case 5:20-cv-00755-JGB-RK Document 14-2 Filed 04/17/20 Page 67 of 67 Page ID #:419

Para obtener información sobre la crisis del coronavirus, visite el sitio web del coronavirus del Condado en sbcovid19.com. La nueva información y los recursos se actualizan diariamente. El público también puede comunicarse con la línea directa COVID-19 de 9 a.m. a 5 p.m., de lunes a viernes al (909) 387-3911, o enviar un correo electrónico al Condado al [coronavirus@dph.sbcounty.gov](mailto:coronavirus@dph.sbcounty.gov).

## Leave a Reply

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- [Homeless sheltering effort to protect all county residents gets underway](#)
- [Specimen collection for COVID-19 testing to be held in Montclair](#)
- [County, partners provide more locations for drive-up COVID-19 testing](#)
- [County launches COVID-19 "Stay Home, Stay Safe" billboard campaign](#)

### Recent Comments

- [County of San Bernardino](#) on [County orders cancellation of all gatherings; Third case confirmed](#)
- [County of San Bernardino](#) on [Comments or Questions](#)
- [County of San Bernardino](#) on [Second case of novel coronavirus recorded within county](#)
- [County of San Bernardino](#) on [County orders cancellation of all gatherings; Third case confirmed](#)
- [County of San Bernardino](#) on [Second case of novel coronavirus recorded within county](#)

# EXHIBIT L

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 Supervising Deputy Attorney General  
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*capacity as Governor of California, and Xavier*  
 9 *Becerra, in his official capacity as Attorney*  
*General of California*

10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 12 EASTERN DIVISION  
 13

14  
15 **WENDY GISH, et al.,**

16 Plaintiffs,

17 v.

18 **GAVIN NEWSOM, in his official**  
**capacity as Governor of California, et**  
 19 **al,**

20 Defendants.

5:20-cv-00755-JGB-KK

**DECLARATION OF TODD**  
**GRABARSKY IN SUPPORT OF**  
**OPPOSITION OF DEFENDANTS**  
**GOVERNOR GAVIN NEWSOM**  
**AND ATTORNEY GENERAL**  
**XAVIER BECERRA TO**  
**PLAINTIFFS' APPLICATION FOR**  
**TEMPORARY RESTRAINING**  
**ORDER**

21 Judge: The Honorable Jesus G.  
 22 Bernal  
 Action Filed: April 13, 2020  
 23  
 24  
 25  
 26  
 27  
 28

**DECLARATION OF TODD GRABARSKY**

I, Todd Grabarsky, declare:

1. I am a Deputy Attorney General at the Office of the California Attorney General. I serve as counsel to Defendants California Governor Gavin Newsom and Attorney General Xavier Becerra in the above-captioned matter.

2. I make this declaration of my own personal knowledge and experience and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

3. Attached as **Exhibit 1** is a true and correct copy of Governor Newsom's Proclamation declaring a State of Emergency. The proclamation is also available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

4. Attached as **Exhibit 2** is a true and correct copy of Governor Newsom's March 4, 2020 press release titled "Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19." The press release is also available at <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19>.

5. Attached as **Exhibit 3** is a true and correct copy of Executive Order N-33-20. A copy of Executive Order N-33-20 is also available at <https://covid19.ca.gov/img/N-33-20.pdf>.

6. Attached as **Exhibit 4** is a true and correct copy of the State Public Health Officer's designation of "Essential Critical Infrastructure Workers" published on March 22, 2020. A copy of the list is also available at <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>.

7. Attached as **Exhibit 5** is a true and correct copy of the Advisory Memorandum on Identification of Essential Critical Infrastructure Workers During Covid-19 Response issued by the federal Cybersecurity and Infrastructure Security Agency updated on March 19, 2020. A copy of that Memorandum is also available

1 at [https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-](https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf)  
2 [Essential-Critical-Infrastructure-Workers-1-20-508c.pdf](https://www.cisa.gov/sites/default/files/publications/CISA-Guidance-on-Essential-Critical-Infrastructure-Workers-1-20-508c.pdf).

3 8. Attached as **Exhibit 6** is a true and correct copy of an Order Granting in  
4 Part and Denying in Part the County of Riverside's Ex Parte Application for  
5 Temporary Restraining Order in the case, *County of Riverside v. Church Unlimited*,  
6 No. PSC2002064 (Riverside Cty. Sup. Ct., Apr. 8, 2020). This document is  
7 judicially noticeable under Federal Rule of Evidence 201(b) because "[f]ederal  
8 courts may 'take notice of proceedings in other courts, both within and without the  
9 federal judicial system, if those proceedings have a direct relation to the matters at  
10 issue.'" *United States v. S. Cal. Edison*, 300 F. Supp. 2d 964, 973 (E.D. Cal. 2004)  
11 (quoting *U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d  
12 244, 248 (9th Cir.1992)).

13 9. Attached as **Exhibit 7** are true and correct copies of the following  
14 documents in the case *Abiding Place Ministries v. Wooten*, No. 3:20-cv-00683-  
15 BAS-AHG (C.D. Cal.): Plaintiff's Ex Parte Motion for Temporary Restraining  
16 Order; Defendants' Opposition to Plaintiff's Ex Parte Application for Temporary  
17 Restraining Order; and the electronic docket listing of that case obtained from  
18 LexisNexis CourtLink on April 15, 2020. These documents are also judicially  
19 noticeable under Rule 201(b) as court filings.

20 I declare under penalty of perjury that the foregoing is true and correct.

21  
22 Executed on April 17, 2020

/s/ Todd Grabarsky

23  
24 TODD GRABARSKY  
25 Deputy Attorney General  
26  
27  
28

# EXHIBIT 1

EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

**PROCLAMATION OF A STATE OF EMERGENCY**

**WHEREAS** in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

**WHEREAS** the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

**WHEREAS** on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

**WHEREAS** on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

**WHEREAS** the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

**WHEREAS** as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

**WHEREAS** as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

**WHEREAS** for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

**WHEREAS** California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and



**WHEREAS** experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

**WHEREAS** it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

**WHEREAS** if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

**WHEREAS** personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

**WHEREAS** state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

**WHEREAS** I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

**WHEREAS** I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

**WHEREAS** under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

**IT IS HEREBY ORDERED THAT:**

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

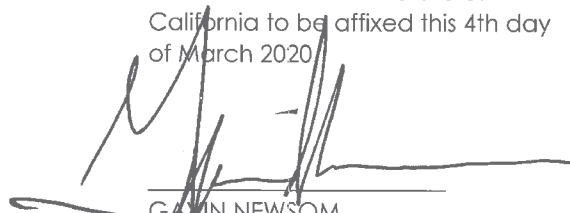
notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.

14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

**I FURTHER DIRECT** that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 4th day  
of March 2020.

  
\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

# **EXHIBIT 2**

*Emergency proclamation builds on work already underway across state government to protect public health and safety*

*includes increased protections against price gouging, offers more assistance to local governments and allows health care workers from out of state*

*All levels of state government are being deployed to tackle this evolving situation*

– As part of the state’s response to address the global COVID-19 outbreak, Governor Gavin Newsom today declared a State of Emergency, mobilize all resources available, formalize emergency actions already underway across multiple state agencies and departments, and limit the further spread of COVID-19. The proclamation comes as the number of positive California cases rises and following one official

information that the state’s emergency proclamation builds on work already underway by the California Department of Public Health, California Health and Human Services, the California State Office of Emergency Services and other agencies which have been on the front lines of the state’s response to COVID-19 since January.

“California is deploying every level of government to help identify cases and slow the spread of this coronavirus,” said Governor Newsom. “This emergency proclamation will help the state further prepare our communities and our health care system in the event it spreads more widely.”

The proclamation includes provisions that protect consumers against price gouging, allow for health care workers to come from out of state to work in health care facilities, and give health care facilities the flexibility to plan and adapt to accommodate incoming patients.

Governor Newsom announced the release of millions of [N95 masks](#) to address shortages caused by COVID-19. Today’s action also builds on the state’s earlier this week that the state has secured the [capacity to test](#) thousands of specimens from the federal Centers for Disease Control and Prevention to expedite testing.

For more information on the state’s COVID-19 preparedness and response, visit [cdph.ca.gov](https://cdph.ca.gov).

The state’s emergency proclamation can be found [here](#).

###

# EXHIBIT 3



**EXECUTIVE ORDER N-33-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

App.620

The federal government has identified 16 critical infrastructure sectors

that Californians working in these so-called infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 19th day  
of March 2020.

  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

# EXHIBIT 4

March 22, 2020

On March 19, 2020, Governor Newsom issued Executive Order N-33-20 directing all residents immediately to heed current State public health directives to stay home, except as needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as the State Public Health Officer may designate as critical to protect health and well-being of all Californians.

In accordance with this order, the State Public Health Officer has designated the following list of “Essential Critical Infrastructure Workers” to help state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security.

## HEALTHCARE / PUBLIC HEALTH

### Sector Profile

The Healthcare and Public Health (HPH) Sector is large, diverse, and open, spanning both the public and private sectors. It includes publicly accessible healthcare facilities, research centers, suppliers, manufacturers, and other physical assets and vast, complex public-private information technology systems required for care delivery and to support the rapid, secure transmission and storage of large amounts of HPH data.

### Essential Workforce

- Workers providing COVID-19 testing; Workers that perform critical clinical research needed for COVID-19 response.
- Health care providers and caregivers (e.g., physicians, dentists, psychologists, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacists, physical and occupational therapists and assistants, social workers, speech pathologists and diagnostic and therapeutic technicians and technologists).
- Hospital and laboratory personnel (including accounting, administrative, admitting and discharge, engineering, epidemiological, source plasma and blood donation, food service, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.).
- Workers in other medical facilities (including Ambulatory Health and Surgical, Blood Banks, Clinics, Community Mental Health, Comprehensive Outpatient rehabilitation, End Stage Renal Disease, Health Departments, Home Health care, Hospices, Hospitals, Long Term Care, Organ Pharmacies, Procurement Organizations, Psychiatric, Residential, Rural Health Clinics and Federally Qualified Health Centers, cannabis retailers).
- Manufacturers, technicians, logistics and warehouse operators, and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, [personal care/hygiene products](#), and tissue and paper towel products.

March 22, 2020

- Public health / community health workers, including those who compile, model, analyze and communicate public health information.
- Behavioral health workers (including mental and substance use disorder) responsible for coordination, outreach, engagement, and treatment to individuals in need of mental health and/or substance use disorder services.
- Blood and plasma donors and the employees of the organizations that operate and manage related activities.
- Workers that manage health plans, billing, and health information, who cannot practically work remotely.
- Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information, who cannot practically work remotely.
- Workers who provide support to vulnerable populations to ensure their health and well-being including family care providers
- Workers performing cybersecurity functions at healthcare and public health facilities, who cannot practically work remotely.
- Workers conducting research critical to COVID-19 response.
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely.
- Workers who support food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, such as those residing in shelters.
- Pharmacy employees necessary for filling prescriptions.
- Workers performing mortuary services, including funeral homes, crematoriums, and cemetery workers.
- Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to behavioral health services to the family members, responders, and survivors of an incident.
- Workers supporting veterinary hospitals and clinics

## EMERGENCY SERVICES SECTOR

### Sector Profile

The Emergency Services Sector (ESS) is a community of highly-skilled, trained personnel, along with the physical and cyber resources, that provide a wide range of prevention, preparedness, response, and recovery services during both day-to-day operations and incident response. The ESS includes geographically distributed facilities and equipment in both paid and volunteer capacities organized primarily at the federal, state, local, tribal, and territorial levels of government, such as city police departments and fire stations, county sheriff's offices, Department of Defense police and fire departments, and town public works departments. The ESS also includes private sector resources, such

March 22, 2020

as industrial fire departments, private security organizations, and private emergency medical services providers.

#### **Essential Workforce - Law Enforcement, Public Safety and First Responders**

- Including front line and management, personnel include emergency management, law enforcement, Emergency Management Systems, fire, and corrections, search and rescue, tactical teams including maritime, aviation, and canine units.
- Emergency Medical Technicians
- Public Safety Answering Points and 911 call center employees
- Fusion Center employees
- Fire Mitigation Activities
- Hazardous material responders and hazardous devices teams, from government and the private sector.
- Workers – including contracted vendors -- who maintain digital systems infrastructure supporting law enforcement and emergency service operations.
- Private security, private fire departments, and private emergency medical services personnel.
- County workers responding to abuse and neglect of children, elders and dependent adults.
- [Animal control officers and humane officers](#)

#### **Essential Workforce - Public Works**

- Workers who support the operation, inspection, and maintenance of essential dams, locks and levees
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, [construction material suppliers](#), traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences.
- Support, such as road and line clearing, to ensure the availability of needed facilities, transportation, energy and communications Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste.

## **FOOD AND AGRICULTURE**

### **Sector Profile**



March 22, 2020

The Food and Agricultural (FA) Sector is composed of complex production, processing, and delivery systems and has the capacity to feed people and animals both within and beyond the boundaries of the United States. Beyond domestic food production, the FA Sector also imports many ingredients and finished products, leading to a complex web of growers, processors, suppliers, transporters, distributors, and consumers. This sectors is critical to maintaining and securing our food supply.

### **Essential Workforce**

- Workers supporting groceries, pharmacies, and other retail that sells food and beverage products, including but not limited to Grocery stores, Corner stores and convenience stores, including liquor stores that sell food, Farmers' markets, Food banks, Farm and produce stands, Supermarkets, Similar food retail establishments, Big box stores that sell groceries and essentials
- Restaurant carry-out and quick serve food operations – including food preparation, carry-out and delivery food employees
- Food manufacturer employees and their supplier employees—to include those employed in food processing (packers, meat processing, cheese plants, milk plants, produce, etc.) facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging
- Farm workers to include those employed in animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically
- Farm workers and support service workers to include those who field crops; commodity inspection; fuel ethanol facilities; storage facilities; and other agricultural inputs
- Employees and firms supporting food, feed, and beverage distribution (including curbside distribution and deliveries), including warehouse workers, vendor-managed inventory controllers, blockchain managers, distribution
- Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail
- Company cafeterias - in-plant cafeterias used to feed employees
- Workers in food testing labs in private industries and in institutions of higher education
- Workers essential for assistance programs and government payments
- Workers supporting cannabis retail and dietary supplement retail
- Employees of companies engaged in the production of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids
- Animal agriculture workers to include those employed in veterinary health; manufacturing and distribution of animal medical materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, etc.; transportation of live animals, animal medical materials; transportation of deceased animals for disposal; raising of animals for food; animal production operations; slaughter and packing plants and associated regulatory and government workforce
- Workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products



March 22, 2020

- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution

## ENERGY

### Sector Profile

The Energy Sector consists of widely-diverse and geographically-dispersed critical assets and systems that are often interdependent of one another. This critical infrastructure is divided into three interrelated segments or subsectors—electricity, oil, and natural gas—to include the production, refining, storage, and distribution of oil, gas, and electric power, except for hydroelectric and commercial nuclear power facilities and pipelines. The Energy Sector supplies fuels to the transportation industry, electricity to households and businesses, and other sources of energy that are integral to growth and production across the Nation. In turn, it depends on the Nation's transportation, information technology, communications, finance, water, and government infrastructures.

### Essential Workforce - Electricity industry:

- Workers who maintain, ensure, or restore the generation, transmission, and distribution of electric power, including call centers, utility workers, reliability engineers and fleet maintenance technicians
- Workers needed for safe and secure operations at nuclear generation
- Workers at generation, transmission, and electric blackstart facilities
- Workers at Reliability Coordinator (RC), Balancing Authorities (BA), and primary and backup Control Centers (CC), including but not limited to independent system operators, regional transmission organizations, and balancing authorities
- Mutual assistance personnel
- IT and OT technology staff – for EMS (Energy Management Systems) and Supervisory Control and Data
- Acquisition (SCADA) systems, and utility data centers; Cybersecurity engineers; cybersecurity risk management
- Vegetation management crews and traffic workers who support
- Environmental remediation/monitoring technicians
- Instrumentation, protection, and control technicians

### Essential Workforce - Petroleum workers:

- Petroleum product storage, pipeline, marine transport, terminals, rail transport, road transport
- Crude oil storage facilities, pipeline, and marine transport
- Petroleum refinery facilities
- Petroleum security operations center employees and workers who support emergency response services

March 22, 2020

- Petroleum operations control rooms/centers
- Petroleum drilling, extraction, production, processing, refining, terminal operations, transporting, and retail for use as end-use fuels or feedstocks for chemical manufacturing
- Onshore and offshore operations for maintenance and emergency response
- Retail fuel centers such as gas stations and truck stops, and the distribution systems that support them.

#### **Essential Workforce - Natural and propane gas workers:**

- Natural gas transmission and distribution pipelines, including compressor stations
- Underground storage of natural gas
- Natural gas processing plants, and those that deal with natural gas liquids
- Liquefied Natural Gas (LNG) facilities
- Natural gas security operations center, natural gas operations dispatch and control rooms/centers natural gas emergency response and customer emergencies, including natural gas leak calls
- Drilling, production, processing, refining, and transporting natural gas for use as end-use fuels, feedstocks for chemical manufacturing, or use in electricity generation
- Propane gas dispatch and control rooms and emergency response and customer emergencies, including propane leak calls
- Propane gas service maintenance and restoration, including call centers
- Processing, refining, and transporting natural liquids, including propane gas, for use as end-use fuels or feedstocks for chemical manufacturing
- Propane gas storage, transmission, and distribution centers

## **WATER AND WASTEWATER**

### **Sector Profile**

The Water and Wastewater Sector is a complex sector composed of drinking water and wastewater infrastructure of varying sizes and ownership types. Multiple governing authorities pertaining to the Water and Wastewater Sector provide for public health, environmental protection, and security measures, among others.

### **Essential Workforce**

Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure, including:

- Operational staff at water authorities
- Operational staff at community water systems
- Operational staff at wastewater treatment facilities
- Workers repairing water and wastewater conveyances and performing required sampling or monitoring

March 22, 2020

- Operational staff for water distribution and testing
- Operational staff at wastewater collection facilities
- Operational staff and technical support for SCADA Control systems
- Chemical disinfectant suppliers for wastewater and personnel protection
- Workers that maintain digital systems infrastructure supporting water and wastewater operations

## TRANSPORTATION AND LOGISTICS

### Sector Profile

The Transportation Systems Sector consists of seven key subsectors, or modes:

- Aviation includes aircraft, air traffic control systems, and airports, heliports, and landing strips. Commercial aviation services at civil and joint-use military airports, heliports, and sea plane bases. In addition, the aviation mode includes commercial and recreational aircraft (manned and unmanned) and a wide-variety of support services, such as aircraft repair stations, fueling facilities, navigation aids, and flight schools.
- Highway and Motor Carrier encompasses roadway, bridges, and tunnels. Vehicles include trucks, including those carrying hazardous materials; other commercial vehicles, including commercial motorcoaches and school buses; vehicle and driver licensing systems; taxis, transportation services including Transportation Network Companies, and delivery services including Delivery Network Companies; traffic management systems; AND cyber systems used for operational management.
- Maritime Transportation System consists of coastline, ports, waterways, and intermodal landside connections that allow the various modes of transportation to move people and goods to, from, and on the water.
- Mass Transit and Passenger Rail includes terminals, operational systems, and supporting infrastructure for passenger services by transit buses, trolleybuses, monorail, heavy rail—also known as subways or metros—light rail, passenger rail, and vanpool/rideshare.
- Pipeline Systems consist of pipelines carrying natural gas hazardous liquids, as well as various chemicals. Above-ground assets, such as compressor stations and pumping stations, are also included.
- Freight Rail consists of major carriers, smaller railroads, active railroad, freight cars, and locomotives.
- Postal and Shipping includes large integrated carriers, regional and local courier services, mail services, mail management firms, and chartered and delivery services.

### Essential Workforce

March 22, 2020

- Employees supporting or enabling transportation functions, including dispatchers, maintenance and repair technicians, warehouse workers, truck stop and rest area workers, and workers that maintain and inspect infrastructure (including those that require cross-border travel)
- Employees of firms providing services that enable logistics operations, including cooling, storing, packaging, and distributing products for wholesale or retail sale or use.
- Mass transit workers
- Taxis, transportation services including Transportation Network Companies, and delivery services including Delivery Network Companies
- Workers responsible for operating dispatching passenger, commuter and freight trains and maintaining rail infrastructure and equipment
- Maritime transportation workers - port workers, mariners, equipment operators
- Truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services
- Automotive repair and maintenance facilities
- Manufacturers and distributors (to include service centers and related operations) of packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations
- Postal and shipping workers, to include private companies
- Employees who repair and maintain vehicles, aircraft, rail equipment, marine vessels, and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers
- Air transportation employees, including air traffic controllers, ramp personnel, aviation security, and aviation management
- Workers who support the maintenance and operation of cargo by air transportation, including flight crews, maintenance, airport operations, and other on- and off- airport facilities workers

## COMMUNICATIONS AND INFORMATION TECHNOLOGY

### Sector Profile

The Communications Sector provides products and services that support the efficient operation of today's global information-based society. Communication networks enable people around the world to contact one another, access information instantly, and communicate from remote areas. This involves creating a link between a sender (including voice signals) and one or more recipients using technology (e.g., a telephone system or the Internet) to transmit information from one location to another. Technologies are changing at a rapid pace, increasing the number of products, services, service providers, and communication options. The national communications architecture is a complex collection of networks that are owned and operated by individual service providers. Many of this sector's products and services are foundational or necessary for the operations and services provided by other critical infrastructure sectors. The nature of communication networks involve both physical infrastructure (buildings, switches, towers, antennas, etc.) and cyber infrastructure (routing and

March 22, 2020

switching software, operational support systems, user applications, etc.), representing a holistic challenge to address the entire physical-cyber infrastructure.

The IT Sector provides products and services that support the efficient operation of today's global information-based society and are integral to the operations and services provided by other critical infrastructure Sectors. The IT Sector is comprised of small and medium businesses, as well as large multinational companies. Unlike many critical infrastructure Sectors composed of finite and easily identifiable physical assets, the IT Sector is a functions-based Sector that comprises not only physical assets but also virtual systems and networks that enable key capabilities and services in both the public and private sectors.

#### **Essential Workforce - Communications:**

- Maintenance of communications infrastructure- including privately owned and maintained communication systems- supported by technicians, operators, call-centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, Internet Exchange Points, and manufacturers and distributors of communications equipment
- Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and/or technicians to manage the network or operate facilities
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables
- Installation, maintenance and repair technicians that establish, support or repair service as needed
- Central office personnel to maintain and operate central office, data centers, and other network office facilities
- Customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, and troubleshooting
- Dispatchers involved with service repair and restoration

#### **Essential Workforce - Information Technology:**

- Workers who support command centers, including, but not limited to Network Operations Command Center, Broadcast Operations Control Center and Security Operations Command Center
- Data center operators, including system administrators, HVAC & electrical engineers, security personnel, IT managers, data transfer solutions engineers, software and hardware engineers, and database administrators
- Client service centers, field engineers, and other technicians supporting critical infrastructure, as well as manufacturers and supply chain vendors that provide hardware and software, and

March 22, 2020

information technology equipment (to include microelectronics and semiconductors) for critical infrastructure

- Workers responding to cyber incidents involving critical infrastructure, including medical facilities, SLTT governments and federal facilities, energy and utilities, and banks and financial institutions, and other critical infrastructure categories and personnel
- Workers supporting the provision of essential global, national and local infrastructure for computing services (incl. cloud computing services), business infrastructure, web-based services, and critical manufacturing
- Workers supporting communications systems and information technology used by law enforcement, public safety, medical, energy and other critical industries
- Support required for continuity of services, including janitorial/cleaning personnel

## OTHER COMMUNITY-BASED GOVERNMENT OPERATIONS AND ESSENTIAL FUNCTIONS

### Essential Workforce

- Critical government workers, as defined by the employer and consistent with Continuity of Operations Plans and Continuity of Government plans.
- County workers responsible for determining eligibility for safety net benefits
- The Courts, consistent with [guidance](#) released by the California Chief Justice
- Workers to ensure continuity of building functions
- Security staff to maintain building access control and physical security measures
- Elections personnel
- Federal, State, and Local, Tribal, and Territorial employees who support Mission Essential Functions and communications networks
- Trade Officials (FTA negotiators; international data flow administrators)
- Weather forecasters
- Workers that maintain digital systems infrastructure supporting other critical government operations
- Workers at operations centers necessary to maintain other essential functions
- Workers who support necessary credentialing, vetting and licensing operations for transportation workers
- Workers who are critical to facilitating trade in support of the national, state, and local emergency response supply chain
- Workers supporting public and private childcare establishments, pre-K establishments, K-12 schools, colleges, and universities for purposes of distance learning, provision of school meals, or care and supervision of minors to support essential workforce across all sectors

March 22, 2020

- Workers and instructors supporting academies and training facilities and courses for the purpose of graduating students and cadets that comprise the essential workforce for all identified critical sectors
- Hotel Workers where hotels are used for COVID-19 mitigation and containment measures, including measures to protect homeless populations.
- Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing construction)
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, [construction material sources](#), and essential operation of construction sites and construction projects (including those that support such projects to ensure the availability of needed facilities, transportation, energy and communications; and support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste)
- Commercial Retail Stores, that supply essential sectors, including convenience stores, pet supply stores, auto supplies and repair, hardware and home improvement, and home appliance retailers
- Workers supporting the entertainment industries, studios, and other related establishments, provided they follow covid-19 public health guidance around social distancing.
- Workers critical to operating Rental Car companies that facilitate continuity of operations for essential workforces, and other essential travel
- Workers that provide or determine eligibility for food, shelter, in-home supportive services, child welfare, adult protective services and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals (including family members)
- Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities and critical sector services
- Faith based services that are provided through streaming or other technology
- Laundromats and laundry services
- [Workers at animal care facilities that provide food, shelter, veterinary and/or routine care and other necessities of life for animals.](#)

## CRITICAL MANUFACTURING

### Sector Profile

The Critical Manufacturing Sector identifies several industries to serve as the core of the sector: Primary Metals Manufacturing, Machinery Manufacturing, Electrical Equipment, Appliance, and Component Manufacturing, Transportation Equipment Manufacturing Products made by these manufacturing industries are essential to many other critical infrastructure sectors.

### Essential Workforce



March 22, 2020

- Workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.

## HAZARDOUS MATERIALS

### Essential Workforce

- Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits
- Workers who support hazardous materials response and cleanup
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations

## FINANCIAL SERVICES

### Sector Profile

The Financial Services Sector includes thousands of depository institutions, providers of investment products, insurance companies, other credit and financing organizations, and the providers of the critical financial utilities and services that support these functions. Financial institutions vary widely in size and presence, ranging from some of the world's largest global companies with thousands of employees and many billions of dollars in assets, to community banks and credit unions with a small number of employees serving individual communities. Whether an individual savings account, financial derivatives, credit extended to a large organization, or investments made to a foreign country, these products allow customers to: Deposit funds and make payments to other parties; Provide credit and liquidity to customers; Invest funds for both long and short periods; Transfer financial risks between customers.

### Essential Workforce

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities)
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers)
- Workers who support financial operations, such as those staffing data and security operations centers

March 22, 2020

## CHEMICAL

### Sector Profile

The Chemical Sector—composed of a complex, global supply chain—converts various raw materials into diverse products that are essential to modern life. Based on the end product produced, the sector can be divided into five main segments, each of which has distinct characteristics, growth dynamics, markets, new developments, and issues: Basic chemicals; Specialty chemicals; Agricultural chemicals; Pharmaceuticals; Consumer products

### Essential Workforce

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, textiles, and paper products.
- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items
- Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, and packaging that prevents the contamination of food, water, medicine, among others essential products
- Workers supporting the operation and maintenance of facilities (particularly those with high risk chemicals and/ or sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections
- Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products, including glass container manufacturing

## DEFENSE INDUSTRIAL BASE

### Sector Profile

The Defense Industrial Base Sector is the worldwide industrial complex that enables research and development, as well as design, production, delivery, and maintenance of military weapons systems, subsystems, and components or parts, to meet U.S. military requirements. The Defense Industrial Base partnership consists of Department of Defense components, Defense Industrial Base companies and their subcontractors who perform under contract to the Department of Defense, companies providing

March 22, 2020

incidental materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities. Defense Industrial Base companies include domestic and foreign entities, with production assets located in many countries. The sector provides products and services that are essential to mobilize, deploy, and sustain military operations.

**Essential Workforce**

- Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military. These individuals, include but are not limited to, aerospace; mechanical and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers
- Personnel working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities

# EXHIBIT 5

U.S. Department of Homeland Security  
Cybersecurity & Infrastructure Security Agency  
Office of the Director  
Washington, DC 20528



**CISA**  
CYBER+INFRASTRUCTURE

March 19, 2020

**MEMORANDUM ON IDENTIFICATION OF ESSENTIAL CRITICAL  
INFRASTRUCTURE WORKERS DURING COVID-19 RESPONSE**

FROM: Christopher C. Krebs  
Director  
Cybersecurity and Infrastructure Security Agency (CISA)

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As the Nation comes together to slow the spread of COVID-19, on March 16<sup>th</sup>, the President issued updated Coronavirus Guidance for America. This guidance states that:

*"If you work in a critical infrastructure industry, as defined by the Department of Homeland Security, such as healthcare services and pharmaceutical and food supply, you have a special responsibility to maintain your normal work schedule."*

The Cybersecurity and Infrastructure Security Agency (CISA) executes the Secretary of Homeland Security's responsibilities as assigned under the Homeland Security Act of 2002 to provide strategic guidance, promote a national unity of effort, and coordinate the overall federal effort to ensure the security and resilience of the Nation's critical infrastructure. CISA uses trusted partnerships with both the public and private sectors to deliver infrastructure resilience assistance and guidance to a broad range of partners.

In accordance with this mandate, and in collaboration with other federal agencies and the private sector, CISA developed an initial list of "Essential Critical Infrastructure Workers" to help State and local officials as they work to protect their communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security. The list can also inform critical infrastructure community decision-making to determine the sectors, sub-sectors, segments, or critical functions that should continue normal operations, appropriately modified to account for Centers for Disease Control (CDC) workforce and customer protection guidance.

The attached list identifies workers who conduct a range of operations and services that are essential to continued critical infrastructure viability, including staffing operations centers, maintaining and repairing critical infrastructure, operating call centers, working construction, and performing management functions, among others. The industries they support represent, but are not necessarily limited to, medical and healthcare, telecommunications, information technology systems, defense, food and agriculture, transportation and logistics, energy, water and wastewater, law enforcement, and public works.

We recognize that State, local, tribal, and territorial governments are ultimately in charge of implementing and executing response activities in communities under their jurisdiction, while the Federal Government is in a supporting role. As State and local communities consider COVID-19-related restrictions, CISA is offering this list to assist prioritizing activities related to continuity of operations and incident response, including the appropriate movement of critical infrastructure workers within and between jurisdictions.

**Accordingly, this list is advisory in nature. It is not, nor should it be considered to be, a federal directive or standard in and of itself.**

In addition, these identified sectors and workers are not intended to be the authoritative or exhaustive list of critical infrastructure sectors and functions that should continue during the COVID-19 response. Instead, State and local officials should use their own judgment in using their authorities and issuing implementation directives and guidance. Similarly, critical infrastructure industry partners will use their own judgment, informed by this list, to ensure continued operations of critical infrastructure services and functions. All decisions should appropriately balance public safety while ensuring the continued delivery of critical infrastructure services and functions.

CISA will continue to work with you and our partners in the critical infrastructure community to update this list as the Nation's response to COVID-19 evolves. We also encourage you to submit how you might use this list so that we can develop a repository of use cases for broad sharing across the country.

Should you have questions about this list, please contact CISA at [CISA.CAT@cisa.dhs.gov](mailto:CISA.CAT@cisa.dhs.gov).

**Attachment:** "Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response"



**CISA**  
CYBER+INFRASTRUCTURE

DEFEND TODAY, SECURE TOMORROW

# Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response

Version 1.0 (March 19, 2020)

## THE IMPORTANCE OF ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS

Functioning critical infrastructure is imperative during the response to the COVID-19 emergency for both public health and safety as well as community well-being. Certain critical infrastructure industries have a special responsibility in these times to continue operations.

This guidance and accompanying list are intended to support State, Local, and industry partners in identifying the critical infrastructure sectors and the essential workers needed to maintain the services and functions Americans depend on daily and that need to be able to operate resiliently during the COVID-19 pandemic response.

This document gives guidance to State, local, tribal, and territorial jurisdictions and the private sector on defining essential critical infrastructure workers. Promoting the ability of such workers to continue to work during periods of community restriction, access management, social distancing, or closure orders/directives is crucial to community resilience and continuity of essential functions.

## CONSIDERATIONS FOR GOVERNMENT AND BUSINESS

This list was developed in consultation with federal agency partners, industry experts, and State and local officials, and is based on several key principles:

1. Response efforts to the COVID-19 pandemic are locally executed, State managed, and federally supported
2. Everyone should follow guidance from the CDC, as well as State and local government officials, regarding strategies to limit disease spread.
3. Workers should be encouraged to work remotely when possible and focus on core business activities. In-person, non-mandatory activities should be delayed until the resumption of normal operations.
4. When continuous remote work is not possible, businesses should enlist strategies to reduce the likelihood of spreading the disease. This includes, but is not necessarily limited to, separating staff by off-setting shift hours or days and/or social distancing. These steps can preserve the workforce and allow operations to continue.

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5. All organizations should implement their business continuity and pandemic plans, or put plans in place if they do not exist. Delaying implementation is not advised and puts at risk the viability of the business and the health and safety of the employees.
6. In the modern economy, reliance on technology and just-in-time supply chains means that certain workers must be able to access certain sites, facilities, and assets to ensure continuity of functions.
7. Government employees, such as emergency managers, and the business community need to establish and maintain lines of communication.
8. When government and businesses engage in discussions about critical infrastructure workers, they need to consider the implications of business operations beyond the jurisdiction where the asset or facility is located. Businesses can have sizeable economic and societal impacts as well as supply chain dependencies that are geographically distributed.
9. Whenever possible, jurisdictions should align access and movement control policies related to critical infrastructure workers to lower the burden of workers crossing jurisdictional boundaries.

## IDENTIFYING ESSENTIAL CRITICAL INFRASTRUCTURE WORKERS

The following list of sectors and identified essential critical infrastructure workers are an initial recommended set and are intended to be overly inclusive reflecting the diversity of industries across the United States. CISA will continually solicit and accept feedback on the list (both sectors/sub sectors and identified essential workers) and will evolve the list in response to stakeholder feedback. We will also use our various stakeholder engagement mechanisms to work with partners on how they are using this list and share those lessons learned and best practices broadly. We ask that you share your feedback, both positive and negative on this list so we can provide the most useful guidance to our critical infrastructure partners. **Feedback can be sent to [CISA.CAT@CISA.DHS.GOV](mailto:CISA.CAT@CISA.DHS.GOV).**



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## HEALTHCARE / PUBLIC HEALTH

- Workers providing COVID-19 testing; Workers that perform critical clinical research needed for COVID-19 response
- Caregivers (e.g., physicians, dentists, psychologists, mid-level practitioners, nurses and assistants, infection control and quality assurance personnel, pharmacists, physical and occupational therapists and assistants, social workers, speech pathologists and diagnostic and therapeutic technicians and technologists)
- Hospital and laboratory personnel (including accounting, administrative, admitting and discharge, engineering, epidemiological, source plasma and blood donation, food service, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians, respiratory therapists, etc.)
- Workers in other medical facilities (including Ambulatory Health and Surgical, Blood Banks, Clinics, Community Mental Health, Comprehensive Outpatient rehabilitation, End Stage Renal Disease, Health Departments, Home Health care, Hospices, Hospitals, Long Term Care, Organ Pharmacies, Procurement Organizations, Psychiatric Residential, Rural Health Clinics and Federally Qualified Health Centers)
- Manufacturers, technicians, logistics and warehouse operators, and distributors of medical equipment, personal protective equipment (PPE), medical gases, pharmaceuticals, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, and tissue and paper towel products
- Public health / community health workers, including those who compile, model, analyze and communicate public health information
- Blood and plasma donors and the employees of the organizations that operate and manage related activities
- Workers that manage health plans, billing, and health information, who cannot practically work remotely
- Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information, who cannot practically work remotely
- Workers performing cybersecurity functions at healthcare and public health facilities, who cannot practically work remotely
- Workers conducting research critical to COVID-19 response
- Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions, who cannot practically work remotely
- Workers who support food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, such as those residing in shelters
- Pharmacy employees necessary for filling prescriptions
- Workers performing mortuary services, including funeral homes, crematoriums, and cemetery workers
- Workers who coordinate with other organizations to ensure the proper recovery, handling, identification, transportation, tracking, storage, and disposal of human remains and personal effects; certify cause of death; and facilitate access to mental/behavioral health services to the family members, responders, and survivors of an incident

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## LAW ENFORCEMENT, PUBLIC SAFETY, FIRST RESPONDERS

- Personnel in emergency management, law enforcement, Emergency Management Systems, fire, and corrections, including front line and management
- Emergency Medical Technicians
- 911 call center employees
- Fusion Center employees
- Hazardous material responders from government and the private sector.
- Workers – including contracted vendors – who maintain digital systems infrastructure supporting law enforcement and emergency service operations.

## FOOD AND AGRICULTURE

- Workers supporting groceries, pharmacies and other retail that sells food and beverage products
- Restaurant carry-out and quick serve food operations - Carry-out and delivery food employees
- Food manufacturer employees and their supplier employees—to include those employed in food processing (packers, meat processing, cheese plants, milk plants, produce, etc.) facilities; livestock, poultry, seafood slaughter facilities; pet and animal feed processing facilities; human food facilities producing by-products for animal food; beverage production facilities; and the production of food packaging
- Farm workers to include those employed in animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport; farm and fishery labor needed to produce our food supply domestically
- Farm workers and support service workers to include those who field crops; commodity inspection; fuel ethanol facilities; storage facilities; and other agricultural inputs
- Employees and firms supporting food, feed, and beverage distribution, including warehouse workers, vendor-managed inventory controllers and blockchain managers
- Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail
- Company cafeterias - in-plant cafeterias used to feed employees
- Workers in food testing labs in private industries and in institutions of higher education
- Workers essential for assistance programs and government payments
- Employees of companies engaged in the production of chemicals, medicines, vaccines, and other substances used by the food and agriculture industry, including pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids
- Animal agriculture workers to include those employed in veterinary health; manufacturing and distribution of animal medical materials, animal vaccines, animal drugs, feed ingredients, feed, and bedding, etc.; transportation of live animals, animal medical materials; transportation of deceased animals for disposal; raising of animals for food; animal production operations; slaughter and packing plants and associated regulatory and government workforce
- Workers who support the manufacture and distribution of forest products, including, but not limited to timber, paper, and other wood products
- Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution

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## ENERGY

### Electricity industry:

- Workers who maintain, ensure, or restore the generation, transmission, and distribution of electric power, including call centers, utility workers, reliability engineers and fleet maintenance technicians
- Workers needed for safe and secure operations at nuclear generation
- Workers at generation, transmission, and electric blackstart facilities
- Workers at Reliability Coordinator (RC), Balancing Authorities (BA), and primary and backup Control Centers (CC), including but not limited to independent system operators, regional transmission organizations, and balancing authorities
- Mutual assistance personnel
- IT and OT technology staff – for EMS (Energy Management Systems) and Supervisory Control and Data Acquisition (SCADA) systems, and utility data centers; Cybersecurity engineers; cybersecurity risk management
- Vegetation management crews and traffic workers who support
- Environmental remediation/monitoring technicians
- Instrumentation, protection, and control technicians

### Petroleum workers:

- Petroleum product storage, pipeline, marine transport, terminals, rail transport, road transport
- Crude oil storage facilities, pipeline, and marine transport
- Petroleum refinery facilities
- Petroleum security operations center employees and workers who support emergency response services
- Petroleum operations control rooms/centers
- Petroleum drilling, extraction, production, processing, refining, terminal operations, transporting, and retail for use as end-use fuels or feedstocks for chemical manufacturing
- Onshore and offshore operations for maintenance and emergency response
- Retail fuel centers such as gas stations and truck stops, and the distribution systems that support them

### Natural and propane gas workers:

- Natural gas transmission and distribution pipelines, including compressor stations
- Underground storage of natural gas
- Natural gas processing plants, and those that deal with natural gas liquids
- Liquefied Natural Gas (LNG) facilities
- Natural gas security operations center, natural gas operations dispatch and control rooms/centers natural gas emergency response and customer emergencies, including natural gas leak calls
- Drilling, production, processing, refining, and transporting natural gas for use as end-use fuels, feedstocks for chemical manufacturing, or use in electricity generation
- Propane gas dispatch and control rooms and emergency response and customer emergencies, including propane leak calls
- Propane gas service maintenance and restoration, including call centers

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- Processing, refining, and transporting natural liquids, including propane gas, for use as end-use fuels or feedstocks for chemical manufacturing
- Propane gas storage, transmission, and distribution centers

## WATER AND WASTEWATER

Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure, including:

- Operational staff at water authorities
- Operational staff at community water systems
- Operational staff at wastewater treatment facilities
- Workers repairing water and wastewater conveyances and performing required sampling or monitoring
- Operational staff for water distribution and testing
- Operational staff at wastewater collection facilities
- Operational staff and technical support for SCADA Control systems
- Chemical disinfectant suppliers for wastewater and personnel protection
- Workers that maintain digital systems infrastructure supporting water and wastewater operations

## TRANSPORTATION AND LOGISTICS

- Employees supporting or enabling transportation functions, including dispatchers, maintenance and repair technicians, warehouse workers, truck stop and rest area workers, and workers that maintain and inspect infrastructure (including those that require cross-border travel)
- Employees of firms providing services that enable logistics operations, including cooling, storing, packaging, and distributing products for wholesale or retail sale or use.
- Mass transit workers
- Workers responsible for operating dispatching passenger, commuter and freight trains and maintaining rail infrastructure and equipment
- Maritime transportation workers - port workers, mariners, equipment operators
- Truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services
- Automotive repair and maintenance facilities
- Manufacturers and distributors (to include service centers and related operations) of packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations
- Postal and shipping workers, to include private companies
- Employees who repair and maintain vehicles, aircraft, rail equipment, marine vessels, and the equipment and infrastructure that enables operations that encompass movement of cargo and passengers
- Air transportation employees, including air traffic controllers, ramp personnel, aviation security, and aviation management
- Workers who support the maintenance and operation of cargo by air transportation, including flight crews, maintenance, airport operations, and other on- and off- airport facilities workers

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## PUBLIC WORKS

- Workers who support the operation, inspection, and maintenance of essential dams, locks and levees
- Workers who support the operation, inspection, and maintenance of essential public works facilities and operations, including bridges, water and sewer main breaks, fleet maintenance personnel, construction of critical or strategic infrastructure, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues
- Workers such as plumbers, electricians, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences
- Support, such as road and line clearing, to ensure the availability of needed facilities, transportation, energy and communications
- Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste

## COMMUNICATIONS AND INFORMATION TECHNOLOGY

### Communications:

- Maintenance of communications infrastructure- including privately owned and maintained communication systems- supported by technicians, operators, call-centers, wireline and wireless providers, cable service providers, satellite operations, undersea cable landing stations, Internet Exchange Points, and manufacturers and distributors of communications equipment
- Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering and reporting
- Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and/or technicians to manage the network or operate facilities
- Engineers, technicians and associated personnel responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables
- Installation, maintenance and repair technicians that establish, support or repair service as needed
- Central office personnel to maintain and operate central office, data centers, and other network office facilities
- Customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, and troubleshooting
- Dispatchers involved with service repair and restoration

### Information Technology:

- Workers who support command centers, including, but not limited to Network Operations Command Center, Broadcast Operations Control Center and Security Operations Command Center
- Data center operators, including system administrators, HVAC & electrical engineers, security personnel, IT managers, data transfer solutions engineers, software and hardware engineers, and database administrators
- Client service centers, field engineers, and other technicians supporting critical infrastructure, as well as

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manufacturers and supply chain vendors that provide hardware and software, and information technology equipment (to include microelectronics and semiconductors) for critical infrastructure

- Workers responding to cyber incidents involving critical infrastructure, including medical facilities, SLTT governments and federal facilities, energy and utilities, and banks and financial institutions, and other critical infrastructure categories and personnel
- Workers supporting the provision of essential global, national and local infrastructure for computing services (incl. cloud computing services), business infrastructure, web-based services, and critical manufacturing
- Workers supporting communications systems and information technology used by law enforcement, public safety, medical, energy and other critical industries
- Support required for continuity of services, including janitorial/cleaning personnel

## OTHER COMMUNITY-BASED GOVERNMENT OPERATIONS AND ESSENTIAL FUNCTIONS

- Workers to ensure continuity of building functions
- Security staff to maintain building access control and physical security measures
- Elections personnel
- Federal, State, and Local, Tribal, and Territorial employees who support Mission Essential Functions and communications networks
- Trade Officials (FTA negotiators; international data flow administrators)
- Weather forecasters
- Workers that maintain digital systems infrastructure supporting other critical government operations
- Workers at operations centers necessary to maintain other essential functions
- Workers who support necessary credentialing, vetting and licensing operations for transportation workers
- Customs workers who are critical to facilitating trade in support of the national emergency response supply chain
- Educators supporting public and private K-12 schools, colleges, and universities for purposes of facilitating distance learning or performing other essential functions, if operating under rules for social distancing
- Hotel Workers where hotels are used for COVID-19 mitigation and containment measures

## CRITICAL MANUFACTURING

- Workers necessary for the manufacturing of materials and products needed for medical supply chains, transportation, energy, communications, food and agriculture, chemical manufacturing, nuclear facilities, the operation of dams, water and wastewater treatment, emergency services, and the defense industrial base.

## HAZARDOUS MATERIALS

- Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits
- Workers who support hazardous materials response and cleanup
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations

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## FINANCIAL SERVICES

- Workers who are needed to process and maintain systems for processing financial transactions and services (e.g., payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities)
- Workers who are needed to provide consumer access to banking and lending services, including ATMs, and to move currency and payments (e.g., armored cash carriers)
- Workers who support financial operations, such as those staffing data and security operations centers

## CHEMICAL

- Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, textiles, and paper products.
- Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items
- Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, and packaging that prevents the contamination of food, water, medicine, among others essential products
- Workers supporting the operation and maintenance of facilities (particularly those with high risk chemicals and/or sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections
- Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products, including glass container manufacturing

## DEFENSE INDUSTRIAL BASE

- Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military. These individuals, include but are not limited to, aerospace; mechanical and software engineers, manufacturing/production workers; IT support; security staff; security personnel; intelligence support, aircraft and weapon system mechanics and maintainers
- Personnel working for companies, and their subcontractors, who perform under contract to the Department of Defense providing materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities

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# EXHIBIT 6

(Exempt from Filing Fees  
Pursuant to Govt. Code § 6103)

GREGORY P. PRIAMOS, County Counsel (SBN 136766)  
 JAMES E. BROWN, Assistant County Counsel (SBN 162579)  
 KIRSTEN B. SHEA (SBN 241479)  
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**FILED**  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF RIVERSIDE

APR 09 2020

R. Gonzalez

Attorneys for Plaintiff, COUNTY OF RIVERSIDE

## SUPERIOR COURT OF THE STATE OF CALIFORNIA

## COUNTY OF RIVERSIDE

COUNTY OF RIVERSIDE;

Plaintiff,

vs.

CHURCH UNLIMITED, a religious non-profit  
 organization; JAMES MOFFATT, an  
 individual; DOES 1 THROUGH 100,

Defendants.

Case No. PSC2002064

**~~PROPOSED~~ ORDER GRANTING IN PART  
 AND DENYING IN PART THE COUNTY OF  
 RIVERSIDE'S EX PARTE APPLICATION  
 FOR TEMPORARY RESTRAINING  
 ORDER**

DATE: April 9, 2020

TIME: 8:30 a.m.

DEPARTMENT: 32

Complaint Filed: April 8, 2020

**TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

Plaintiff COUNTY OF RIVERSIDE's Ex Parte Application came on for hearing on April 9, 2020 at 9:30 a.m. in Department 32 before the Honorable Presiding Judge John Vineyard, presiding in the above-entitled court, located at 4100 Main Street, Riverside, California 92501. Kelly A. Moran appeared telephonically on behalf of the Plaintiff, COUNTY OF RIVERSIDE. Pastor James Moffatt appeared telephonically on behalf of Defendants, CHURCH UNLIMITED and JAMES MOFFATT. Due to the

**~~PROPOSED~~ ORDER GRANTING IN PART AND DENYING IN PART THE COUNTY OF RIVERSIDE'S EX PARTE  
 APPLICATION FOR TEMPORARY RESTRAINING ORDER**



1 urgent nature of the hearing, the Court permitted the special appearance by non-lawyer, Pastor James  
2 Moffatt, on behalf of both Defendants.

3 Having considered the County of Riverside's ("County") Ex Parte Application, Memorandum of  
4 Points and Authorities in support thereof, Declaration of Kelly Moran, the written Opposition of Pastor  
5 James Moffatt Ordered filed on April 9, 2020, the arguments and representations of all counsel and parties  
6 at the hearing on the matter, and good cause appearing herein,

7 **THE FOLLOWING IS HEREBY ORDERED:**

8 1. The Court accepts the representations of Pastor James Moffatt that CHURCH UNLIMITED  
9 will not host in-person church services, including but not limited to on Easter Sunday, April 12, 2020. The  
10 Court notes that an in-person church service would be a violation of the Orders of the County's Public  
11 Health Officer and would pose a threat to public health.

12 2. Based upon the aforementioned representations of Pastor James Moffatt, and based upon the  
13 fact that the Orders of the County's Public Health Officer are valid and enforceable in their own right, the  
14 Court **denies** as moot the County's Ex Parte Application for a Temporary Restraining Order.

15 3. The County and its personnel or hired vendors, including employees of the Sheriff's  
16 Department, City Police Departments, Code Enforcement Departments, Department of Public Health, the  
17 Fire Department and other applicable governmental agencies are hereby authorized to: enter onto the  
18 property at 45520 Clinton Street, Indio, California 92201, to post notice of the April 6<sup>th</sup> Order of the Public  
19 Health Officer, and any other applicable public health orders, in visible locations on said Property,  
20 including, but limited to, on exterior fences, gates, structures, doors or any other structure thereupon and to  
21 distribute this Order to Defendants and/or any other persons present on the Property.

22 4. A gathering of no more than ten (10) persons, strictly adhering to social distancing  
23 guidelines, is permitted at Church Unlimited for the limited purpose of broadcasting or streaming church  
24 services, including but not limited to on Easter Sunday, April 12, 2020.

25 **IT IS SO ORDERED.**

26  
27 Dated: 4/9/2020

By: 

Judge of the Superior Court

# EXHIBIT 7

Jeremiah D. Graham, CA Bar No. 313206  
11956 Bernardo Plaza Dr., Pmb 20968  
San Diego, CA 92128  
TELEPHONE: 619.633.5110  
FASCIMILE: 619.330.4579

**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF CALIFORNIA**

ABIDING PLACE MINISTRIES, a Church;  
Plaintiff,

v.

WILMA J. WOOTEN, Public Health Officer  
for San Diego County, in her official capacity;  
the COUNTY OF SAN DIEGO; and DOES 1  
through 100, inclusive,

Defendants.

CASE NO. '20CV0683 BAS AHG

**PLAINTIFF'S *EX PARTE* MOTION FOR  
TEMPORARY RESTRAINING ORDER;  
MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER;  
[PROPOSED] TEMPORARY  
RESTRAINING ORDER; CERTIFICATE  
OF SERVICE**

Pursuant to Rules 7 and 65 of the Federal Rules of Civil Procedure, Plaintiff ABIDING PLACE MINISTRIES, and its members (Hereinafter, the "Church"), by and through its counsel, moves this Honorable Court for a temporary restraining order prohibiting Defendants from enforcing and implementing the "Order of the Health Officer and Emergency Regulations" promulgated by the Defendants on April 8, 2020 (hereinafter, the "Order," attached to the Verified Complaint as Exhibit 1), which brings a sweeping ban on Assembly, and especially Religious Assembly, that (1) exceeds statutory authority, (2) is unconstitutional on-its-face and as applied, and (3) is arbitrary, unreasonable and oppressive.

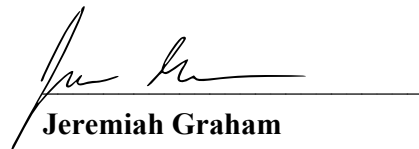
The provisions of the Order will cause irreparable harm to the Church unless restrained before this Sunday, as it will either prevent or disrupt the lawful assembly and free exercise of the Church, or unjustly cause the Church, and its members and Pastor, to suffer criminal charges and arrest for exercising their Constitutional Rights. As an immediate remedy, and to maintain

1 the status quo while more permanent solutions may be considered, Plaintiff respectfully requests  
2 the Court to enter a temporary restraining order enjoining Defendants from enforcing the Order  
3 against the Plaintiff at this Sunday's meeting.

4 This motion is supported by the attached Memorandum in Support of Plaintiff's Motion  
5 for Temporary Restraining Order, the concurrently filed Verified Complaint, accompanying  
6 declarations, and the records and files in this action, as well as any additional submissions that  
7 may be requested or considered by the Court.

8  
9 *Respectfully Submitted,*

10  
11 DATED: 4/9/20  
12 San Diego, CA

  
**Jeremiah Graham**

11956 Bernardo Plaza Dr., Pmb 20968

San Diego, CA 92128

T: (619) 633-5110

jeremiahdgraham@gmail.com

*Attorney for Plaintiff*

*ABIDING PLACE MINISTRIES*



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**UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF CALIFORNIA**

ABIDING PLACE MINISTRIES, a Church;  
Plaintiff,

v.

WILMA J. WOOTEN, Public Health Officer  
for San Diego County, in her official capacity;  
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through 100, inclusive,

Defendants.

CASE NO. '20CV0683 BAS AHG

**PLAINTIFF'S *EX PARTE* MOTION FOR  
TEMPORARY RESTRAINING ORDER;  
MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER;  
[PROPOSED] TEMPORARY  
RESTRAINING ORDER; CERTIFICATE  
OF SERVICE**

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S  
MOTION FOR TEMPORARY RESTRAINING ORDER**

**INTRODUCTION**

On April 8, 2020, the Public Health Officer for the County of San Diego promulgated and caused to be served on the Plaintiff an order titled "Order of the Health Officer and Emergency Regulations" promulgated by the Defendants on April 8, 2020 (hereinafter, the "Order," attached to the Verified Complaint as Exhibit 1), which brings a sweeping ban on Assembly, and especially Religious Assembly, that (1) exceeds statutory authority, (2) is unconstitutional on-its-face and as applied, and (3) is arbitrary, unreasonable and oppressive.

The Plaintiff, which is a Church, suing on its own behalf and to protect the interest of its members, respectfully asks this Court to issue a temporary restraining order to prevent irreparable harm that would otherwise occur on Easter Sunday, April 12, 2020, through this unlawful Order.

1 They request that the Court restore the rights that the laws and the Constitution afford them,  
2 protect their institution and their dignity, and enjoin this illegal and unconstitutional order.

3 At the outset of this memorandum, Plaintiff's Counsel asks the Court to take judicial  
4 notice of the fact that Plaintiff and its counsel were made aware of this Order via e-mail at 6:19  
5 p.m. on April 8, 2020, and due to the emergency and irreparable harm that would suffer from  
6 allowing it to stand unchallenged, Plaintiff's Counsel has had to work through the night to prepare  
7 this Verified Complaint and all other components of this Motion for a Temporary Restraining  
8 Order.

### 9 **FACTUAL BACKGROUND**

10 As set forth in Plaintiff's Verified Complaint, Plaintiff ABIDING PLACE MINISTRIES  
11 is a Church (Hereinafter, the "Church"), which was founded and duly organized under the laws  
12 of the State of California on February 21, 1986, and has ever since assembled as a Church in San  
13 Diego County on every Sunday, without exception. Furthermore, the Church holds real and  
14 sincere religious beliefs that it must physically assemble in one place on the Lord's day,  
15 commonly referred to as Sunday, and that failure to assemble is an unconscionable violation of  
16 God's commands.

17 The Church is a small congregation, normally having less than one hundred (100) persons  
18 at its Sunday meeting. The Church considers itself to be a family, and all its members work in  
19 close proximity with all other members during the week, being employed in essential sectors on  
20 their mission base and around the County.

21 In response to Covid-19, the Public Health Officer for the County of San Diego  
22 promulgated the Order, after repeated efforts by the Church to find a way to hold an assembly  
23 while advancing the Government's interests. The Church has made it clear that they only seek to  
24 worship God freely but are willing to go to great lengths to enact measures that advance the  
25 government interests reflected in the Order.

26 However, despite these efforts, the Public Health Officer for the County of San Diego,  
27 and the County of San Diego, have informed the Church that if they assemble, no matter what  
28 precautions they take, they will be in violation of the Order, and the Order will be enforced against

1 them, including misdemeanor charges, and possible arrest, fine and imprisonment. The Public  
2 Health Officer and the County of San Diego have refused to meet with the Church to discuss  
3 possible alternatives, and have refused to consider extreme social distancing measures that the  
4 Church is willing to enact in order to uphold their supreme duty to obey God's command to  
5 assemble.

6 This is a profound harm and goes to the heart of the First Amendment, as it is a prohibition  
7 of the Free Exercise of Religion and an abridgement of the right to peacefully assemble. Not only  
8 does the order impeded the Church's right to freely exercise their religion, on its face or as applied  
9 it also seeks to shame the Church for seeking to act according to the dictates of their conscience.  
10 It prevents the Church from conducting its assembly in any manner, and comes into effect and is  
11 directed right at the most important assembly of the year: Resurrection Sunday, commonly  
12 referred to as Easter, which is the anniversary of the resurrection of Jesus Christ, and a time where  
13 the Church must assemble to rededicate their lives to God.

14 The Church has made three explicit proposals to the Public Health Officer, and a number  
15 of ancillary proposals, including enforcing social distancing at its services, requiring congregants  
16 to wear protective gear (including hazmat suits), assembling in vehicles, assembling by family  
17 units spread out over a large area and not permitted to interact with any other family units. The  
18 three specific proposals are attached to the Verified Complaint as Exhibits 3, 4 and 5. The Church  
19 is not seeking to be allowed to meet in reckless disregard of the government's interest in slowing  
20 the spread of Covid-19, but rather with the willingness to go to great lengths to comport with that  
21 interest.

22 All other relevant facts and documentary exhibits are included with the Verified  
23 Complaint, and concurrently filed with this motion. Suffice it to say, the Church is challenging  
24 this Order now, which was sent to them via e-mail late yesterday evening (at 6:19 p.m. on April  
25 8, 2020) because of the extraordinary harm that would result if a temporary restraining order does  
26 not issue before this Sunday's service.

27 ///

28 ///

## ARGUMENT

To obtain a temporary restraining order (“TRO”) or a preliminary injunction, Plaintiff must show that (1) it “is likely to succeed on the merits;” (2) it “is likely to suffer irreparable harm in the absence of preliminary relief;” (3) “the balance of equities tips in [its] favor; and” (4) “an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Plaintiff can show that his challenge readily rises to this standard.

### **A. Plaintiffs are Likely to Succeed on the Merits of their Claims.**

#### **1. The Order violates the Health and Safety Code, because it exceeds the authority given to the Public Health Officer under the sections of that code which are cited to justify its existence.**

The order states that it is made by the Public Health Officer pursuant to Health and Safety Code sections 101040, 120175, and 120175.5(b). However, a reading of those sections of that Code shows that this type of order is far outside the scope of the authority given to the Public Health Officer.

Code Section 101040 states, in relevant part: “(a) The local health officer may take any preventative measure that may be necessary to protect and preserve the public from any public health hazard during any... ‘state of emergency...’ (b) ‘Preventative measure’ means **abatement, correction, removal or any other protective step that may be taken against any public health hazard...**” (emphasis added). Abatement is governed by Health and Safety Code §§ 2060 – 2067, and requires notice of a public nuisance and direction to abate the nuisance within a specified time. Correction and removal similarly require the existence of some readily defined public health threat that can be corrected and removed and is provided for by statute. As abatement, correction and removal are defined and limited by provisions of the Health and Safety Code, and ordinarily exercised by a board of trustees, but in case of emergency allowed to be exercised by the Public Health Officer, “other protective steps” must also be provided by statute.

Similarly, Code Section 120175 allows the Public Health Officer to take “measures... necessary... to prevent...” Those are the same words as “preventative measure that may be necessary,” which is already defined in Section 101040(b), and described above. Neither of these

two sections give the Public Health Officer the authority to promulgate countywide rules that affect a vast number of persons who have had no exposure to disease at all.

Finally, then, we must look to section 120175.5(b), the last section cited, which states: “...the local health officer may issue orders **to other governmental entities** within the local health officer’s jurisdiction to take any action the local health officer deems necessary to control the spread of communicable disease” (**emphasis added**). This section cannot be read to grant the local health officer the authority to issue orders to every person in the County, which is the scope of the order challenged in this motion.

Therefore, the Public Health Officer has exceeded the authority of the statutes given to justify the Order, and the Order must be temporarily restrained.

**2. The Order, on its face or as applied, violates the First Amendment Free Exercise and Assembly Clauses, and the Fifth Amendment Due Process.**

*i. Free Exercise*

Neutral laws of general applicability can burden the Free Exercise Right only when they are actually neutral, actually general, and do not implicate other fundamental Constitutional rights. *See Employment Division v. Smith*, 494 U.S. 872 (1990). If they are not neutral, not general, and/or implicate other fundamental Constitutional rights, then strict scrutiny applies, and the government must show that its actions are narrowly tailored and the least restrictive means to achieve a compelling objective. *Id.*; *See also, Sherbert v. Verner*, 374 U.S. 398 (1963).

The Order is not neutral because it singles out religious activity for special treatment. While allowing every other category of essential activity to be conducted with the simple requirements that they enact social distancing and increased sanitation standards, and having far more than one-hundred-and-fifty (150) other categories of exemptions, the Order singles out “faith based services” and only allows them to be provided “via streaming or other technology.” That is not neutral.

The Order is not generally applicable because, as was just stated, there are over one-hundred-and-fifty (150) broad categories of exemptions where gatherings are allowed with only two restrictions: (1) the ability to enact social distancing, and (2) increased sanitation standards.

1 The Church has shown in its Verified Complaint, and the attached exhibits, that it can enact social  
2 distancing and sanitation standards that go beyond what is required of any other business.

3 Even if the Order were neutral and generally applicable, which it is not, the Supreme Court  
4 has held that “the First Amendment bars application of a neutral generally applicable law to  
5 religiously motivated conduct... on the ground that... not the Free Exercise Clause alone, but that  
6 Clause in conjunction with other constitutional protections.” *Employment Division v. Smith*,  
7 *supra*, at 881. Here, as shown below, there are other constitutional protections implicated,  
8 especially considering that the Order singles out “gatherings,” which in themselves are protected  
9 by the Assembly Clause of the First Amendment, and Article I, §3(a) of the California  
10 Constitution. That brings us back to the less restrictive means test announced set forth *Sherbert*.

11 Here, the Plaintiff has proposed several means that accomplish the government’s interest  
12 and are less restrictive on their Constitutional Rights. As such, they are likely to succeed on the  
13 merits.

14 *ii. Assembly*

15 The right of the citizens of the United States of America to peacefully assemble cannot be  
16 abridged. And, the citizens of California have a right to freely assemble. This Order abridges that  
17 right by prohibiting all “gatherings” or one or more people. While the Supreme Court has allowed  
18 time, place and manner restrictions for gatherings on public property, it has held that those  
19 restrictions must be (1) content neutral, (2) narrowly tailored, and (3) leave open “ample  
20 alternative channels.” *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (internal  
21 citations omitted).

22 Here, the prohibition on gathering is not content neutral, as the Order arbitrarily decides  
23 what types of gatherings are “essential” and what type are “not essential,” and then arbitrarily  
24 decides that “faith based” gatherings are “not essential,” without clearly declaring the standard  
25 for that decision, and despite the fact that they should be entitled to a higher degree of protection  
26 because of the First Amendment Free Exercise Clause.

27 Furthermore, the prohibition is not narrowly tailored, because it broadly bans all  
28 “gatherings,” and does not provide a less restrictive alternative for “gatherings” that are able to

1 protect and advance the government's interest through alternative means, as were proposed by  
 2 Plaintiff in this case. Furthermore, it broadly exempts over one-hundred-and-fifty (150) broad  
 3 bulleted categories of assemblies.

4 Finally, there is no alternative channel left open, as the ability to assemble for the purposes  
 5 of Church is completely prohibited, whether the assembly takes place on private property, in an  
 6 open field, or with all members confined to their vehicles. As set forth in the Verified Complaint,  
 7 the Public Health Officer was unwilling to consider any kind of alternatives to an outright ban on  
 8 the Church's Assembly.

9 *iii. Due Process*

10 Finally, for the section on its unconstitutionality, this order is a violation of the Church's  
 11 Fifth Amendment Right to Due Process.

12 Due to a scarcity of time, Counsel cannot fully brief this or the other issues preceding and  
 13 following this but asks the Court to look at the Verified Complaint and see that a number of Due  
 14 Process rights are implicated by this Order. Furthermore, when asked to meet with the Church  
 15 and its Pastor to discuss alternatives, the Public Health Officer and County Counsel outright  
 16 refused. There was no opportunity for a hearing before the deprivation of these rights, just an  
 17 impermissible executive fiat. Counsel wishes to remind the Court that public safety has always  
 18 been the justification for acts considered repugnant to the Constitution, including the incarceration  
 19 of an entire race in *Korematsu v. United States*, 323 U.S. 214 (1944) (overruled by dicta in *Trump*  
 20 *v. Hawaii*, 585 U.S. \_\_ [2018]).

21 **3. The Order, on its face or as applied, is arbitrary, unreasonable and oppressive.**

22 Consider the following hypotheticals:

23 Under the Order, on its face or as applied, an individual who is asymptomatic, but a  
 24 potential Covid-19 carrier, who lives on one end of the County can travel across the County to  
 25 pick up an item in stock at a home improvement store on the other side of the County, stopping  
 26 to pick up food from a restaurant in one city, pumping gas at a fuel station and purchasing  
 27 refreshments from a convenience store in another, then gather at his relative's house in even  
 28 another part of the County, and then return home, stopping at the grocery store on his way, and



1 although he has gathered and spread germs far and wide, he is not in violation of the Order,  
2 because all of his activities are exempted from the order even though none of his activities are  
3 explicitly protected by the Constitution.

4 Under the Order, on its face or as applied, another man who is asymptomatic, but a  
5 potential Covid-19 carrier, can drop his clothes off at a public laundromat in the morning, go to  
6 work at an “essential” job selling cannabis at a cannabis retail distributor, alongside coworkers  
7 from other parts of the County, interacting with germs from a large number of customers arriving  
8 from different parts of the County, and then go for a walk in a public park near his home, before  
9 returning to the public laundromat, picking up and spreading germs at all of these places, and he  
10 is not in violation of the Order, because all of his activities are exempted from the order even  
11 though none of his activities are explicitly protected by the Constitution.

12 Under the Order, on its face or as applied, an individual who is asymptomatic, but a  
13 potential Covid-19 carrier, can take public transportation around the County, go to a group therapy  
14 session, stop on her way home to donate blood, drop a prescription off at a pharmacy, step into a  
15 bank to open a new account, stop off at the post office to mail a package, and then start a job  
16 providing cleaning services to houses all around the County, picking up and spreading germs at  
17 all of these places, and she is not in violation of the Order, because all of her activities are  
18 exempted from the order even though none of her activities are explicitly protected by the  
19 Constitution.

20 However, a woman who otherwise remains in her home cannot exercise her  
21 Constitutionally protected right to Free Exercise of Religion by attending Church (as demanded  
22 by her conscience), even if she maintains the strictest standards of social distancing and  
23 sanitization, including remaining in her vehicle during Church, or wearing a hazmat suit, and  
24 spreading her germs as little as possible.

25 **B. The Church is likely to suffer irreparable harm unless a temporary restraining order**  
26 **is issued as quickly as possible.**

27 Resurrection Sunday, commonly referred to as “Easter,” only happens once per year, and  
28 is considered the most important Assembly date by the Church. Unless a temporary restraining

1 order is issued, the Church's Constitutional Right to Assemble and Freely Exercise their Religion  
2 will be violated, by an executive order that provides little notice and no possible alternatives.  
3 Among other things, the Order will hurt the Church and its members, prevent or disrupt them  
4 from acting according to the dictates of their conscience, not allow them to go to extraordinary  
5 lengths to protect the public interest in the exercise of the dictates of their conscience, interfere  
6 with a High Holy Day, Holy Convocation, and Sacred Ceremony when there are several less  
7 restrictive means of achieving the government's interest, and allow an unlawful, overbroad, vague  
8 and excessive administrative action to be enforced against the highest form of Constitutionally  
9 protected activities.

10 These harms cannot be remedied through damages.

11 **C. The balance of equities weighs in the Church's favor because they have gone to great**  
12 **lengths trying to work out a solution with the County before being forced into**  
13 **seeking this temporary restraining order.**

14 The Church has done everything possible to avoid having to seek a temporary restraining  
15 order, even being willing to allow the County Health Officer to place any manner of restrictions  
16 on their assembly, and mere days before the planned Assembly, in the late evening hours, when  
17 any chance of relief was almost entirely extinguished, the County Health Officer promulgated a  
18 new order that seems to have been crafted as a response to the Church's proposals. Where the  
19 Church proposed to meet in socially distanced family units of less than ten (10), in accordance  
20 with the Public Health Officer's prior order, the Public Health Officer reduced the number  
21 allowed in a gathering to one. Where the Church proposed to meet in vehicles, the Public Health  
22 Officer explicitly forbade meetings in vehicles.

23 While this might be coincidental, it does not change the fact that the Church has gone to  
24 extraordinary lengths, including extended negotiations with the Sheriff's Office prior to receiving  
25 their first communication from the Public Health Officer.

26 And, on top of all of that, the Public Health Officer is likely overstepping her authority as  
27 provided by the statutes she cites justifying the Order, and the Church is seeking to uphold the  
28 highest type of constitutional right, two explicitly protected rights.

**D. An injunction is in the public interest because it upholds the rights protected by the Constitution and prevents an unconstitutional and unlawful overreach by a Public Health Officer.**

“[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *See Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012). And, the Government’s interest in slowing the spread of Covid-19 can be achieved through the same types of restrictions placed on other businesses and activities they exempt – businesses and activities that include “gatherings,” but are by and large not otherwise protected by the Constitution.

**CONCLUSION**

For the foregoing reasons, and others that should be obvious to the Court and flow as the natural and apparent out currents from the foregoing reasons, the Court should grant Plaintiff’s application for a temporary restraining order.

*Respectfully Submitted,*

DATED: 4/9/20  
San Diego, CA

\_\_\_\_\_  
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 official capacity; COUNTY OF SAN DIEGO

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ABIDING PLACE MINISTRIES, a  
 Church,

Plaintiff,

v.

WILMA J. WOOTEN, Public Health  
 Officer for San Diego County, in her  
 official capacity; the COUNTY OF SAN  
 DIEGO; and DOES 1 through 100,  
 inclusive.

Defendants.

No. 20-cv-00683-BAS-AHG

**DEFENDANTS' OPPOSITION TO  
 PLAINTIFF'S EX PARTE  
 APPLICATION FOR TEMPORARY  
 RESTRAINING ORDER**

Judge: Hon. Cynthia Bashant  
 Magistrate Judge: Hon. Allison H. Goddard

Action Filed: April 9, 2020  
 Trial Date: None Set

## Table of Contents

Table of Authorities .....	iii
I. Introduction .....	1
II. Relevant Background .....	3
A. Relevant State and County Public Health Orders and Regulations .....	3
1. State Orders .....	3
2. County’s Local Health Officer Order .....	4
B. Plaintiff’s Violations of the State and Local Stay-at-Home Orders .....	5
III. Plaintiff is Not Entitled to a TRO.....	7
A. Standard for Issuing a TRO.....	7
B. Likelihood of Success on the Merits.....	8
1. The County’s Public Health Order Is Valid.....	8
2. Free Exercise Clause .....	9
3. Freedom to Assemble.....	12
4. Fifth Amendment Due Process Clause .....	13
C. Other TRO Factors .....	13

**Table of Authorities**

<b>Cases</b>	<b>Page(s)</b>
<i>Am. Trucking Ass'ns v. City of L.A.</i> , 559 F.3d 1046 (9th Cir. 2009) .....	7
<i>Cantwell v. Conn.</i> , 310 U.S. 296 (1940) .....	10
<i>Church of Lukumi Babalu Aye v. City of Hialeah</i> , 508 U.S. 520 (1993) .....	10, 11
<i>Doe v. McAleenan</i> , 415 F. Supp. 3d 971 (S.D. Cal. 2019) .....	7
<i>Emp't Div. v. Smith</i> , 494 U.S. 872 (1990) .....	10
<i>FCC v. Beach Commc'ns</i> , 508 U.S. 307 (1993) .....	12
<i>Garcia v. Google, Inc.</i> , 786 F.3d 733 (9th Cir. 2015) .....	8, 13
<i>Granny Goose Foods v. Bhd. of Teamsters &amp; Auto Truck Drivers</i> , 415 U.S. 423 (1974) .....	7
<i>Guenther v. Commissioner</i> , 889 F.2d 882 (9th Cir. 1989) .....	13
<i>Heller v. Doe</i> , 509 U.S. 312 (1993) .....	12
<i>Lee v. City of L.A.</i> , 250 F.3d 668 (9th Cir. 2001) .....	13
<i>Lockheed Missile &amp; Space Co. v. Hughes Aircraft Co.</i> , 887 F. Supp. 1320 (N.D. Cal. 1995) .....	7
<i>Parents for Privacy v. Barr</i> , 949 F.3d 1210 (9th Cir. 2020) .....	10, 11, 12
<i>Sanchez v. City of Fresno</i> , 914 F. Supp. 2d 1079 (E.D. Cal. 2012) .....	13

1	<i>Stormans, Inc. v. Selecky</i> ,	
2	586 F.3d 1109 (9th Cir. 2009) .....	10, 12
3	<i>Stormans, Inc. v. Wiesman</i> ,	
4	794 F.3d 1064 (9th Cir. 2015) .....	10
5	<i>Victoria v. City of San Diego</i> ,	
6	326 F. Supp. 3d 1003 (S.D. Cal. 2018) .....	1, 3
7	<i>Ward v. Rock Against Racism</i> ,	
8	491 U.S. 781 (1989) .....	12-13
9	<i>Winter v. NRDC, Inc.</i> ,	
10	555 U.S. 7 (2008) .....	7, 8
11	<b>State Statutes</b>	
12	Cal. Health & Safety Code § 8665 .....	4
13	Cal. Health & Safety Code § 101029 .....	9
14	Cal. Health & Safety Code § 101040 .....	8
15	Cal. Health & Safety Code § 120175 .....	9



1 Plaintiff Abiding Place Ministries' ex parte application [ECF 2] for a temporary  
2 restraining order ("TRO") should be denied.

### 3 **I. Introduction**

4 Defendant County of San Diego ("County"),<sup>1</sup> like much of the world, is trying to  
5 contain a once-in-a-lifetime public health emergency: the global COVID-19 pandemic.  
6 The State of California ("State") and the County have issued numerous public health  
7 orders<sup>2</sup> in an effort to stem the spread of the virus and to slow the growth rate of the  
8 number of people infected and hospitalized, in order to avoid hospitals being  
9 overwhelmed by demand (i.e., trying to "flatten the curve").

10 These stay-at-home orders are laws of *general applicability*; they apply to all  
11 residents and visitors in the State and this County. Neither Plaintiff's church services, nor  
12 religious gatherings in general, are singled out or otherwise treated unfavorably under the  
13 orders. In fact, as Dr. Wooten informed Plaintiff in an April 8, 2020 letter (ECF 1-10, at  
14 1), the California Department of Public Health designated faith-based services as  
15 essential businesses to the extent the services "are provided through streaming or other  
16 technology." Accordingly, Dr. Wooten communicated to Plaintiff that it could have staff  
17 physically on site to the extent they are "essential for the operation of equipment  
18 necessary to support the streaming" of the church's services. [ECF 1-10, at 1.]

19 While certain businesses and services essential to health and safety (such as  
20 grocery stores and pharmacies) are permitted to continue offering in-person services  
21 under strict public-health requirements (customers and staff maintaining at least six feet  
22 distance between each other, staff wearing face masks, etc.), all other in-person

---

23 <sup>1</sup> The County's Public Health Officer, Wilma J. Wooten, M.D. ("Dr. Wooten"), is  
24 sued in her official capacity only. Accordingly, defendants are at times referred to  
25 collectively as the "County." [See *Victoria v. City of San Diego*, 326 F. Supp. 3d 1003,  
1014 (S.D. Cal. 2018) ("An official-capacity suit is, in all respects other than name, to be  
treated as a suit against the entity.").]

26 <sup>2</sup> These orders include, but are not limited to, the current version of the County's  
27 "Order of the Health Officer and Emergency Regulations" order (see ECF 1-3, signed by  
28 Dr. Wooten on April 8, 2020, and effective April 9, 2020), and the State's Executive  
Order N-33-20, signed by Governor Newsom on March 19, 2020 which is attached as  
Exhibit A to the Declaration of Tim White filed herewith.

1 businesses, social gatherings, and activities away from one's home have been *temporarily*  
2 banned, in order to flatten the curve. Under the health orders, individuals are prohibited  
3 from leaving their homes, except under specific circumstances. These emergency public-  
4 health measures are necessary because, in California (and San Diego County in  
5 particular), universal compliance with the stay-at-home orders *is especially critical over*  
6 *the next three weeks*. [4/10/20 Decl. of Dr. Wooten, ¶ 7; *see also*, Taryn Luna,  
7 *California's coronavirus curve is 'bending,' but tougher days are ahead*, Gov. Newsom  
8 *says*. L.A. Times, Apr. 7, 2020, [https://www.latimes.com/california/story/2020-04-](https://www.latimes.com/california/story/2020-04-07/california-coronavirus-curve-bending-gavin-newsom)  
9 [07/california-coronavirus-curve-bending-gavin-newsom](https://www.latimes.com/california/story/2020-04-07/california-coronavirus-curve-bending-gavin-newsom).]

10 The County's public health division and Sheriff's Department thus have a daunting  
11 task: ensuring universal compliance with these stay-at-home orders in a County with  
12 more than 3 million residents. There simply are not enough resources to enforce the  
13 orders if exceptions are made for individual businesses, civic organizations, houses of  
14 worship, and other groups, because (1) granting exceptions will beget more requests for  
15 exceptions, (2) if the public observes groups engaging in otherwise-prohibited activities,  
16 it will encourage them not to comply with the orders, and (3) law enforcement – already  
17 stretched thin by around-the-clock emergency response needs – lacks the additional  
18 personnel to monitor gatherings (like Plaintiff's proposed, drive-in church service) to  
19 ensure that necessary social-distancing and other public health requirements are strictly  
20 complied with (which itself would raise a host of thorny issues with respect to  
21 government officials monitoring entire church services and, for example, being expected  
22 to step in during the middle of a service to enforce social distancing).

23 Plaintiff's request, if granted, would substantially harm the County's ability to  
24 protect the community's health during this unprecedented public-health crisis. The  
25 County is not an island: COVID-19 has spread rapidly between people, local  
26 communities, states, and even nations. The 3.3 million residents of this County are  
27 dependent on each other to protect the community by staying at home. The shared  
28 sacrifice of the entire community can and will save lives by avoiding this pandemic's

1 worst-case scenarios. Accordingly, the request for a TRO should be denied.

2 **II. Relevant Background**

3 **A. Relevant State and County Public Health Orders and Regulations**

4 The State and County public health orders and regulations relevant to this action  
5 are as follows:

6 **1. State Orders**

7 Governor Newsom, in his roles as Governor of California, the State Public  
8 Health Officer, and the Director of the California Department of Public Health, issued  
9 Executive Order N-33-20 on March 19, 2020. Ex. A to White declaration. The Executive  
10 Order noted that the Governor had proclaimed a State of Emergency on March 4, 2020 as  
11 a result of the threat of COVID-19. Further, the Executive Order itself contained the  
12 Governor's State Public Health Officer Order. [*Id.*]

13 As the State Health Officer, Governor Newsom ordered "all individuals living in  
14 the State of California to stay at home or at their place of residence except as needed to  
15 maintain continuity of operations of the federal critical infrastructure sectors." [Ex. A at 1  
16 (underscore added).] The referenced "federal critical infrastructure sectors" are listed at  
17 the following website, and were updated on March 28, 2020:  
18 [www.cisa.gov/sites/default/files/publications/CISA\\_Guidance\\_on\\_the\\_Essential\\_Critical](http://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf)  
19 [\\_Infrastructure\\_Workforce\\_Version\\_2.0\\_Updated.pdf](http://www.cisa.gov/sites/default/files/publications/CISA_Guidance_on_the_Essential_Critical_Infrastructure_Workforce_Version_2.0_Updated.pdf). The federal critical infrastructure  
20 designation includes "Clergy for essential support." [*Id.* at 12.]

21 Further, the State Health Officer Order (contained in the Executive Order) states:  
22 "I may designate additional sectors as critical in order to protect the health and well-being  
23 of all Californians." [Executive Order N-33-20, at 1.] Governor Newsom did so, and the  
24 expanded list of California's designated "critical infrastructure sectors" is published at:  
25 <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>. [ECF 1-4.] Of  
26 relevance to this case, the State Health Officer Order added to the federal designation the  
27 following category of critical services: "Faith based services that are provided through  
28 streaming or other technology." [ECF 1-4, at 11.]

1 The legal authority for the State Health Officer Order (contained in Governor  
2 Newsom's Executive Order) is: California Health and Safety Code sections 120125,  
3 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150. And the legal  
4 authority for the Governor's Executive Order is Government Code sections 8567, 8627,  
5 and 8665. Further, as Governor Newsom noted therein, his Executive Order is  
6 enforceable pursuant to Government Code section 8665, following the proclamation of a  
7 state of emergency on March 4, 2020.

## 8 **2. County's Local Health Officer Order**

9 While the County's Public Health Officer (Dr. Wooten) has issued several  
10 orders in response to the COVID-19 public-health emergency, those prior versions have  
11 been superseded by her most recent order, which became effective April 9, 2020. [See  
12 4/8/20 Order, eff. 4/9/20, at ECF 1-3.] The County's order provides that: "All public or  
13 private 'gatherings,' as defined in section 17b [of the order] below, are prohibited." [ECF  
14 1-3, at 1.] "Gathering" is defined as "any event or convening that brings together more  
15 than one person in a single room or single indoor or outdoor space at the same time,  
16 including people in multiple vehicles in one location," but the definition goes on to  
17 provide that a "gathering does not include:

- 18 i. A gathering consisting only of members of a single family or household.
- 19 ii. Operations at airports, public transportation or other spaces where persons in  
20 transit are able to practice social distancing.
- 21 iii. Operations at essential businesses as defined in section 17a above and where  
22 the other requirements set forth in this Order are followed."

23 [ECF 1-3, at 4.]

24 This local order defines "essential businesses" (which are allowed types of  
25 "gatherings") to include the "essential critical infrastructure workers" designated by the  
26 State Public Health Officer, as referenced in the Governor's Executive Order N-33-20.  
27 [ECF 1-3, at 3.] Accordingly, the County's public health order adopts the State's  
28 designation of "Faith based services that are provided through streaming or other

1 technology” as essential critical infrastructure services that are permitted gatherings.  
2 [ECF 1-4, at 11.]

3 Section 22 of the County’s operative order provides the justification for the  
4 restrictions: “This Order is issued to prevent circumstances often present in gatherings  
5 that may exacerbate the spread of COVID-19, such as: 1) the increased likelihood that  
6 gatherings will attract people from a broad geographic area; 2) the prolonged time period  
7 in which large numbers of people are in close proximity; 3) the difficulty in tracing  
8 exposure when large numbers of people attend a single event or are at a single location;  
9 and 4) the inability to ensure that such persons follow adequate hygienic practices.” [ECF  
10 1-3, at 5.]

11 And Section 21 of the County’s order incorporates by reference Executive Order  
12 N-25-20 issued by Governor Newsom on March 12, 2020, which required that: “All  
13 residents are to heed any orders and guidance of state and local health officials, including  
14 but not limited to the imposition of social distancing measures, to control COVID-19.”  
15 [ECF 1-3, at 5 (underscore added).]

16 **B. Plaintiff’s Violations of the State and Local Stay-at-Home Orders**

17 Plaintiff is a church that gathers for services in Campo, in the unincorporated area  
18 of the County. [4/10/20 declaration of Deputy William Uelen, filed herewith, ¶¶ 2-3.]  
19 Plaintiff represents that its weekly services (usually held on Sundays) are typically  
20 attended by fewer than 100 persons. [ECF 2-1 at 2] Since the population of Campo is  
21 small, presumably many of the attendees travel to the church from other communities in  
22 the County, and return to those communities once the service ends. And while Plaintiff  
23 has represented to this Court that it is prepared to hold its church services on site, but  
24 with the congregation remaining in their respective vehicles (with the service broadcast  
25 over the cars’ radios ), church members and/or staff have been observed violating the  
26 State and County stay-at-home and social-distancing orders on the last two Sundays.  
27 [Deputy Uelen Decl., ¶¶ 2-4 and Ex. 1 thereto.]

28 For example, on Sunday, March 29, 2020, Plaintiff was holding church services at

its Campo location. Local residents called the San Diego County Sheriff's Department to request enforcement of the social-distancing orders. [Deputy Uelen Decl., ¶¶ 2-3 and Ex. 1 thereto.] Deputy Phillips of the Sheriff's Department's Rural Enforcement division responded to the scene and observed over 20 cars on the property and 50-60 parishioners attending the service. The parishioners were seated next to each other in chairs under a tent (the chairs were, "at best," 2-3 feet apart), while another individual was on stage, presumably delivering a sermon. [Ex. 1 to Deputy Uelen Decl.] Deputy Phillips issued a warning to Plaintiff's staff members that the County's stay-at-home and social-distancing orders were being violated, but Plaintiff refused to end its service. [Ex. 1 to Deputy Uelen Decl.] (The staff members who received and rejected the warning include Jeremiah Graham, Plaintiff's counsel of record who identified himself as the church's Secretary.) [Deputy Uelen Decl., ¶ 3 and Ex. 1 thereto]

The following Sunday, April 5, 2020, Plaintiff's staff and church members once again congregated at their Campo location for a Sunday service. [Deputy Uelen Decl., ¶¶ 2-3] A Sheriff's Deputy – William Uelen – arrived at the location to patrol for non-compliance with the County's COVID-19 Public Health Order, in light of the complaints and encounter from the previous week. [*Id.* at ¶ 2] When Deputy Uelen reached the electronic gate at the property's entrance around 11:00 a.m., he was met by attorney Graham. [*Id.* at ¶ 3] As parishioners arrived by vehicle, Mr. Graham greeted them and explained to them that the church service would be a drive-in movie style service that Sunday, and that they should park and remain in their vehicles to hear a broadcast of the service, but that they could leave their cars to use the restroom. [*Id.*]

Deputy Uelen left the area before the service began, and returned around three hours later. [Deputy Uelen Decl., at ¶ 4] While most of the vehicles and parishioners had left, Deputy Uelen saw 6-7 people standing together near a tent, less than six feet apart. [*Id.* at ¶ 4] Upon seeing the Deputy, these individuals walked away from each other, entered two vehicles, and drove towards the exit. [*Id.*] Upon reaching the exit, one of the vehicles stopped and Mr. Graham got out and told Deputy Uelen that church had ended



1 an hour earlier, and that 10-12 people had stayed to break down the stage in anticipation  
2 of inclement weather. [*Id.*]

3 Over the last week, Attorney Graham (on behalf of Plaintiff) and the County have  
4 exchanged correspondence and otherwise communicated regarding Plaintiff's request that  
5 its staff and parishioners be excused from complying with the County's stay-at-home  
6 order. [*See* ECF Nos. 1-5 through 1-10; *see also*, 4/10/20 Declaration of Dr. Wooten, at ¶  
7 3] The County has not agreed to Plaintiffs' various proposals in support of an exemption  
8 from the County's Public Health Order, as the order is one of general applicability to the  
9 community and is a necessary and critical tool to prevent a public health catastrophe.  
10 [Dr. Wooten Decl., ¶¶ 3-7; *see also*, County's April 4 and April 8, 2020 letters to  
11 Plaintiff, at ECF 1-8 and 1-10.]

### 12 **III. Plaintiff is Not Entitled to a TRO**

#### 13 **A. Standard for Issuing a TRO**

14 "The purpose of a TRO is to preserve the status quo before a preliminary  
15 injunction hearing may be held; its provisional remedial nature is designed merely to  
16 prevent irreparable loss of rights prior to judgment." [*Doe v. McAleenan*, 415 F. Supp. 3d  
17 971, 976 (S.D. Cal. 2019), citing *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*  
18 *& Auto Truck Drivers*, 415 U.S. 423, 439 (1974).] "The standard for issuing a temporary  
19 restraining order is identical to the standard for issuing a preliminary injunction.  
20 *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323  
21 (N.D. Cal. 1995)." [*Id.*] "Injunctive relief is an 'extraordinary remedy that may only be  
22 awarded upon a clear showing that the plaintiff is entitled to such relief.'" [*Id.*,  
23 quoting *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008).] To meet that showing, Plaintiff  
24 "must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer  
25 irreparable harm in the absence of preliminary relief, that the balance of equities tips in  
26 [its] favor, and that an injunction is in the public interest." [*Am. Trucking Ass'ns v. City of*  
27 *Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009), quoting *Winter*, *supra*, 555 U.S. at 20;  
28 *see also*, Fed. R. Civ. P. 65(b).]



**B. Likelihood of Success on the Merits**

“The first factor under *Winter* is the most important – likely success on the merits.” [Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015).] A TRO is an “extraordinary remedy that may only be awarded upon a *clear showing* that the plaintiff is entitled to such relief.” [Winter, supra, 555 U.S. at 22 (italics added).] Plaintiff has not satisfied this heavy burden, and in fact it is unlikely that Plaintiff’s claims will succeed on the merits. Accordingly, Plaintiff’s request for a TRO should be denied.

**1. The County’s Public Health Order Is Valid**

Plaintiff first claims that the County exceeded its authority under state law when it issued its operative April 9, 2020 public health order (ECF 1-3). [ECF 2-1, at 4-5.] But the County’s order in response to the current pandemic is well supported by California law. Plaintiff’s argument lacks merit and cannot support a TRO.

The general statutory authority for the County’s public health order is California Health and Safety Code sections 101040 and 120175. Section 101040 allows “local health officers” to take certain actions under proclaimed “local emergencies.” With respect to COVID-19, the County proclaimed a local emergency on February 14, 2020. [Exhibits B, C and D to White Decl.]

Importantly, Section 101040 provides that:

(a) The local health officer may take any preventive measure that may be necessary to protect and preserve the public health from any public health hazard during any “state of war emergency,” “state of emergency,” or “local emergency,” as defined by Section 8558 of the Government Code, within his or her jurisdiction.

(b) “Preventive measure” means abatement, correction, removal or any other protective step that may be taken against any public health hazard that is caused by a disaster and affects the public health. Funds for these measures may be allowed pursuant to Sections 29127 to 29131, inclusive, and 53021 to 53023, inclusive, of the Government Code and from any other money appropriated by a county board of supervisors or a city governing body to carry out the purposes of this section.

[Cal. Health & Safety Code § 101040 (underscore added).] The authority granted by this statute is broad, yet Plaintiff focuses its attention on the remedy of “abatement.” [ECF 2-

1, at 4.]

Section 120175, *in text Plaintiff omits* (ECF 2-1, at 4), is similarly broad:

Each health officer knowing or having reason to believe that any case of the diseases made reportable by regulation of the department, or any other contagious, infectious or communicable disease exists, or has recently existed, within the territory under his or her jurisdiction, shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases.

[Cal. Health & Safety Code § 120175 (underscore added).]

Lastly, Section 101029 clearly contemplates the issuance and enforcement of local public health orders aimed at stopping the spread of contagions:

The sheriff of each county, or city and county, may enforce within the county, or the city and county, all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease. Every peace officer of every political subdivision of the county, or city and county, may enforce within the area subject to his or her jurisdiction all orders of the local health officer issued for the purpose of preventing the spread of any contagious, infectious, or communicable disease. This section is not a limitation on the authority of peace officers or public officers to enforce orders of the local health officer . . . .

[Cal. Health & Safety Code § 101029 (underscore added).]

In sum, the authority of the County and County officials – including Public Health Officer Dr. Wooten, the Director of Emergency Services, and the Sheriff’s Department – to issue and enforce public health orders to protect the community from a once-in-a-lifetime pandemic, is well established. Plaintiff’s claim to the contrary fails.

## 2. Free Exercise Clause

Second, Plaintiff claims that the County’s 4/9/10 public health order (ECF 1-3), and in particular the order’s stay-at-home requirements, violates Plaintiff’s First Amendment right to the free exercise of religion. [ECF 2-1, at 5-6] This claim also fails, because the County’s emergency public health order is a *valid and neutral law of general applicability* that does not target Plaintiff’s exercise of religion.

“The Free Exercise Clause, applicable to the states through the Fourteenth

Amendment, provides that ‘Congress shall make no law . . . prohibiting the free exercise [of religion],’ U.S. Const., amend. I.” [*Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (*Selecky*) (internal citation omitted).] “The right to freely exercise one’s religion, however, ‘does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes).’” [*Id.*, quoting *Employment Div., Dep’t of Human Res. of Or. v. Smith*, 494 U.S. 872, 879 (1990) (*Smith*) (internal quotation omitted).]

“Underlying the Supreme Court’s jurisprudence is the principle that the Free Exercise Clause ‘embraces two concepts – freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.’” [*Selecky*, at 1128, quoting *Cantwell v. State of Conn.*, 310 U.S. 296, 303-304 (1940) (underscore added).] “Under the governing standard, ‘a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.’” [*Id.* at 1127-1128, quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 53 (1993) (*Lukumi*).]

“In assessing neutrality and general applicability, courts evaluate both ‘the text of the challenged law as well as the effect . . . in its real operation.’” [*Parents for Privacy v. Barr*, 949 F.3d 1210, 1234 (9th Cir. 2020) (*Parents for Privacy*), quoting *Selecky*, supra, 794 F.3d at 1076 (ellipsis in original).] “[T]he two tests for whether a law is neutral and generally applicable focus on whether a law specifically targets or singles out religion.” [*Id.* at 1234-1235.] The County’s challenged public health order (the 4/9/20 order, at ECF 1-3) passes both tests.

The first test asks whether the law is “neutral” with respect to religion. “If the object of a law is to infringe upon or restrict practices *because of* their religious motivation, the law is not neutral.” [*Parents for Privacy*, supra, 949 F.3d at 1235 (internal citation omitted).] Here, Plaintiff neither argues nor presents any evidence that the

County issued its emergency public health orders out of any desire or intent to target Plaintiff's gatherings (or religious gatherings in general) because of the gatherings' religious nature or motivation. The County's stay-at-home order applies generally countywide, and has required the temporary closure of myriad businesses, events, and areas where people gather, without respect to the secular or religious nature of any such establishment or gathering.

The second test asks whether the challenged law has "general applicability" – that is, "whether a law treats religious observers unequally." [*Parents for Privacy*, supra, 949 F.3d at 1235, citing *Lukumi*, supra, 508 at 542.] As the Supreme Court has noted, "inequality results when a legislature decides that the governmental interests it seeks to advance are worthy of being pursued *only* against conduct with a religious motivation." [*Lukumi*, supra, at 542-543 (italics added).] "Thus, a law is not generally applicable if its prohibitions substantially underinclude non-religiously motivated conduct that might endanger the same governmental interest that the law is designed to protect." [*Parents for Privacy*, supra, 949 F.3d at 1235 (internal citations omitted).]

"In other words, if a law pursues the government's interest '*only against conduct motivated by religious belief*,' but fails to include in its prohibitions substantial, comparable secular conduct that would similarly threaten the government's interest, then the law is not generally applicable." [*Parents for Privacy*, supra, 949 F.3d at 1235, quoting *Lukumi*, 508 U.S. at 545.] "For example, in *Lukumi*, the Court concluded that the challenged ordinances were not generally applicable because they 'pursue[d] the city's governmental interests only against conduct motivated by religious belief' and 'fail[ed] to prohibit nonreligious conduct that endanger[ed] these interests in a similar or greater degree than Santeria sacrifice<sup>3</sup> does.'" [*Id.*, quoting *Lukumi*, 508 U.S. at 543, 545.]

Here, the County's challenged public health in no way places "demands exclusively (or even principally) on religious persons or conduct." [*Parents for Privacy*,

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<sup>3</sup> "Santeria sacrifice" refers to the practice in the Santeria religion of sacrificing animals.

supra, 949 F.3d at 1235.] The stay-at-home order instead applies generally to all residents, businesses, and other gatherings of people in the County, except for a limited number of businesses in “critical infrastructure sectors” designated by the federal and State governments as necessary to protect the health and safety of the community while people hunker down and engage in the extreme social distancing needed to flatten the curve by stemming and slowing the transmission of the virus.

Because the challenged County public health order “qualifies as neutral and generally applicable, it is not subject to strict scrutiny.” [*Parents for Privacy*, supra, 949 F.3d at 1236, citing *Selecky*, 586 F.3d at 1129 (“[A] neutral law of general applicability will not be subject to strict scrutiny review.”).] Instead, the County’s order is reviewed “for a rational basis, which means that the [order] must be upheld if it is rationally related to a legitimate governmental purpose.” [*Id.* at 1238; *see also Selecky*, 586 F.3d at 1127-1128 (“Under the governing standard, ‘a law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.’”).]

Under rational basis review, Plaintiff has the burden to negate “every conceivable basis which might support” the County’s order. [*F.C.C. v. Beach Communs., Inc.*, 508 U.S. 307, 315 (1993) (underscore added).] And Plaintiff’s duty to negate every rational basis supporting the order exists “whether or not the basis has a foundation in the record.” [*Heller v. Doe by Doe*, 509 U.S. 312, 320-321 (1993).] In its application, Plaintiff made no attempt to negate every conceivable basis that might support the County’s stay-at-home order. And although the County is not required to do so, it points to ample evidence in the record supporting the stay-at-home order’s rational basis. [*See*, Decl. of Dr. Wooten, at ¶¶ 3-7; *see also*, 4/9/20 Order, ECF 1-3, at 5-6, §§ 18-23.]

### 3. Freedom to Assemble

Plaintiff does not have a likelihood of prevailing on its First Amendment freedom to assemble claim, as the County’s temporary stay-at-home order is a valid “time, place, and manner” restriction under *Ward v. Rock Against Racism*, 491 U.S. 781,

791 (1988). The County’s order is content neutral, as it does not depend on Plaintiff’s (or any other group’s or individual’s) speech or beliefs, but instead applies broadly to all residents, businesses, and other groups of people in the County, while excepting a narrow class of individual and businesses providing specified critical health-and-safety *services* (such as the sale of groceries/food, or the provision of medical care). Further, the County’s order is narrowly tailored (taking into account the unique need for near-universal compliance with a temporary stay-at-home order to combat a global pandemic), and provides Plaintiff “ample alternative channels” of communication, in light of the order’s express allowance for religious services to be broadcast by streaming or other technology during the temporary stay-at-home orders.

#### 4. Fifth Amendment Due Process Clause

Plaintiff does not have a likelihood of prevailing on its Fifth Amendment due process claim against the County, “because the due process and equal protection components of the Fifth Amendment apply only to the federal government.” [*Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1098 (E.D. Cal. 2012), citing *Lee v. City of Los Angeles*, 250 F.3d 668, 687 (9th Cir.2001).] Even if Plaintiff had brought its claim under the Fourteenth Amendment, it would not likely succeed. “Notice and an opportunity to be heard are the hallmarks of procedural due process.” [*Guenther v. Comm’r*, 889 F.2d 882, 884 (9th Cir. 1989).] The County has published all its orders online<sup>4</sup>, each has received considerable local news coverage, and Plaintiff has received timely notice of the orders (as evidenced by its instant challenge to even the most recent order). Plaintiff has received due process.

#### C. Other TRO Factors

As the first factor under *Winter* – the likelihood of success on the merits – is the most important, and as Plaintiff is not likely to succeed on its claims, the application should be denied. [*Garcia*, *supra*, 786 F.3d at 740.] Likewise, the other factors do not

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<sup>4</sup> See, e.g., [https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community\\_epidemiology/dc/2019-nCoV/health-order.html](https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/2019-nCoV/health-order.html)



1 support issuance of a TRO.

2 While Plaintiff claims it will be irreparably harmed if the TRO is not issued, it has  
3 not made a “clear showing” that this is so. Plaintiff has offered to hold a drive-in style  
4 service with all parishioners remaining in their vehicles and listening to a service  
5 transmitted over their car radios, and there is evidence that Plaintiff may have attempted  
6 an in-vehicle service format last Sunday. [ECF 1-7, at 1; Deputy Uelen Decl., at ¶ 3]  
7 Plaintiff has not shown – much less *clearly shown* – that in light of its willingness to  
8 accept radio transmission of Sunday messages during the *temporary* stay-at-home order,  
9 it would suffer irreparable harm if its members instead listened to – or watched – the  
10 messages live from their homes, either through a radio broadcast or via an online audio or  
11 video feed.

12 With respect to the final two TRO factors, the balance of the equities and the  
13 public interest heavily support denial of the TRO. The *world* is experiencing a pandemic  
14 unprecedented in our lifetime. Most states in this nation, including of course California,  
15 are under mandatory stay-at-home orders, in an effort to flatten the curve and avoid the  
16 needless death and suffering caused by an exponential growth in infections and  
17 hospitalizations (including the lack of ventilators). For California in general, and the  
18 County in particular, the next few weeks are *critical* for flattening the curve, requiring all  
19 County residents to share in the sacrifice by staying at home in an effort to stem the  
20 spread of the virus. [Decl. of Dr. Wooten, ¶¶ 3-7.]

21 In a County of 3.3 million people, there simply are not enough law enforcement  
22 personnel and resources to enforce the public health order if there is an increase in people  
23 violating the order (either willfully or because they see another group receiving an  
24 exemption from the order and thus assume that they are now allowed to leave home as  
25 well). Likewise, the County does not have the resources to monitor multiple churches and  
26 other gatherings to enforce social-distancing and other requirements, if multiple groups  
27 seek and are granted an exemption from the generally-applicable stay-at-home order.  
28 Further, the County should not be in the position of granting one religious group an



1 exemption while denying it to others. Exempting one such group from the temporary  
 2 stay-at-home order may lead to multiple other groups demanding similar exemptions,  
 3 which would seriously undermine the effectiveness of the stay-at-home order's ability to  
 4 flatten the curve. Lastly, the County's Public Health Officer, Dr. Wooten, explains in her  
 5 declaration why Plaintiff's proposal for its parishioners to drive from their communities  
 6 to Campo, and back, and to remain in their vehicles while parked together in Campo  
 7 (with church members exiting their cars to use a common restroom), is not consistent  
 8 with the County's critical, current efforts to combat the virus. [Dr. Wooten Decl., at ¶¶ 5-  
 9 6.]

10 For the foregoing reasons, Plaintiff's request for a TRO should be denied.

11  
 12 DATED: April 10, 2020

THOMAS E. MONTGOMERY, County Counsel

13 By s/Timothy M. White

14 TIMOTHY M. WHITE, Senior Deputy  
 15 Attorneys for WILMA J. WOOTEN, Public Health  
 16 Officer for San Diego County, in her official  
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Attorneys for WILMA J. WOOTEN, Public Health Officer for San Diego County, in her  
official capacity; COUNTY OF SAN DIEGO

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ABIDING PLACE MINISTRIES, a  
Church,

Plaintiff,

v.

WILMA J. WOOTEN, Public Health  
Officer for San Diego County, in her  
official capacity; the COUNTY OF SAN  
DIEGO; and DOES 1 through 100,  
inclusive.

Defendants.

No. 20-cv-00683-BAS-AHG

DECLARATION OF TIMOTHY M.  
WHITE IN SUPPORT OF OPPOSITION  
TO PLAINTIFF'S EX PARTE MOTION  
FOR TEMPORARY RESTRAINING  
ORDER

Judge: Hon. Cynthia Bashant  
Magistrate Judge: Hon. Allison H. Goddard

Action Filed: April 9, 2020  
Trial Date: None Set

I, Timothy M. White, declare and state as follows:

1. I am an attorney licensed to practice law in the State of California and a  
Senior Deputy with the Office of San Diego County Counsel. I make this declaration  
based on my own personal knowledge.

2. Attached to this declaration as Exhibit A is a true and correct copy of  
Executive Order N-33-20 issued by California Governor Gavin Newsom on March 19,  
2020.

1           3. Attached to this declaration as Exhibit B is a true and correct copy of the  
2 County of San Diego's Proclamation of Existence of a County-Wide Local Emergency  
3 issued on February 14, 2020 by the County's Chief Administrative Officer and Director  
4 of Emergency Services.

5           4. Attached to this declaration as Exhibit C is a true and correct copy of the  
6 County Public Health Officer's Declaration of Local Health Emergency.

7           5. Attached to this declaration as Exhibit D is a true and correct copy of the  
8 San Diego County Board of Supervisor's February 19, 2020 Minute Order ratifying the  
9 Chief Administrative Officer's Proclamation of Existence of a County-Wide Local  
10 Emergency and the County Public Health Officer's Declaration of Local Health  
11 Emergency.

12           6. As of the time this declaration was signed, Defendants Dr. Wooten and  
13 County of San Diego have not been served with Summons or complaint.

14           I declare under penalty of perjury that the foregoing is true and correct. Executed  
15 on April 10, 2020.



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Timothy M. White

# EXHIBIT A

**EXECUTIVE ORDER N-33-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors

that Californians working in these so-called infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 19th day  
of March 2020.

  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

# EXHIBIT B



**PROCLAMATION OF  
EXISTENCE OF A COUNTY-WIDE LOCAL EMERGENCY  
(UNINCORPORATED AND INCORPORATED AREAS  
OF SAN DIEGO COUNTY)  
AND  
REQUEST TO THE GOVERNOR OF THE STATE OF  
CALIFORNIA  
TO PROCLAIM A STATE OF EMERGENCY  
AND TAKE OTHER SPECIFIED ACTIONS**

**RECITALS**

**R1.** The California Emergency Services Act, including but not limited to Government Code section 8630 and the County of San Diego Emergency Services Organization Ordinance (Code of Regulatory Ordinances, sections 31.101 *et seq.*) empower the Chief Administrative Officer of the County of San Diego as Director of Emergency Services, to proclaim the existence or threatened existence of a local emergency when said County is affected or likely to be affected by a public calamity and the Board of Supervisors is not in session; and

**R2.** The Chief Administrative Officer of the County of San Diego as Director of Emergency Services, does hereby find that on February 14, 2020, conditions of extreme peril to the safety of persons and property have arisen within San Diego County. A novel coronavirus, COVID-19, causes infectious disease and was first detected in Wuhan City, Hubei Province, China in December 2019. Symptoms of COVID-19 include fever, cough, and shortness of breath; outcomes have ranged from mild to severe illness, and in some cases death. The Centers for Disease Control and Prevention considers the virus to be a very serious public health threat. Chinese health officials have reported tens of thousands of cases of COVID-19 in China, with the virus reportedly spreading from person to person. COVID-19 illnesses, most of them associated with travel from Wuhan, also are being reported in a growing number of international locations, including the United States. On January 30, 2020, the World Health Organization declared the outbreak a “public health emergency of international concern.” On January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation’s healthcare community in responding to COVID-19. On February 2, 2020, the United States government suspended entry of foreign nationals who have been in China within the past 14 days. United States citizens, residents, and their immediate family members who were in the Hubei province and other parts of mainland China are screened upon their entry into the United States. Those without symptoms who were not in Hubei province are allowed to continue to their final destination, but are requested to self-quarantine in coordination with local public health officials for up to fourteen days. Quarantine of some such individuals returning from Wuhan is presently occurring in Marine Corps Air Station (MCAS) Miramar. There are currently two confirmed cases of COVID-19 in San Diego County. Although these two cases are part of a federal quarantine at MCAS Miramar, due to the large population and geographic location of San Diego County,

combined with the worldwide spread of COVID-19, there is a potential threat of the introduction of COVID-19 in San Diego County; and

**R3.** The Board of Supervisors of the County of San Diego is not in session and cannot immediately be called into session; and

**R4.** The Chief Administrative Officer of the County of San Diego as Director of Emergency Services, finds that these emergency conditions will require immediate action including additional resources, services, personnel, equipment, facilities and funding to contain a threat of danger to the public health; and

**R5.** This Proclamation of Local Emergency will be ratified by the Board of Supervisors pursuant to law.

## **PROCLAMATIONS AND ORDERS**

**NOW, THEREFORE, IT IS HEREBY PROCLAIMED AND ORDERED** by the Chief Administrative Officer of the County of San Diego as Director of Emergency Services, as follows:

**1.** That a local emergency exists throughout San Diego County pursuant to Government Code section 8630 and as defined by Government Code section 8558 and shall be deemed to continue to exist subject to ratification, review and termination by the Board of Supervisors pursuant to Government Code section 8630.

**2.** That during the existence of said local emergency the powers, functions, and duties of the emergency organization of this county shall be those prescribed by State law including but not limited to Government Code section 8634, County ordinances and resolutions, and the current Emergency Services Agreement and Operational Area Emergency Plan.

**3.** That a copy of this Proclamation be forwarded to the Director of the California Governor's Office of Emergency Services ("Director Cal OES") requesting that Director Cal OES find this Proclamation acceptable in accordance with State law and forward this Proclamation to the Governor of the State of California for consideration and action on San Diego County's requests that:

**3.1** The Governor of California proclaim a State of Emergency in San Diego County.

**3.2** The Governor suspend those statutes, regulations, rules and orders that may hinder response and recovery efforts.

**3.3** The Governor order that recovery assistance be made available to



San Diego County under the California Disaster Assistance Act to respond to and assist in prevention of potential spread of the Novel Coronavirus (COVID-19), and assist in treatment of those potentially affected.

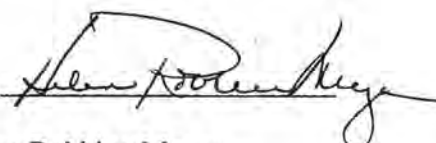
3.4 The Governor order that the State expedite access to Federal resources and any other appropriate federal disaster relief programs for San Diego County.

4. The Director of the County Office of Emergency Services shall continue to assess the local emergency and, as emergency response and recovery efforts warrant, send to Director Cal OES any additional requests that the Governor suspend further statutes, rules and regulations pursuant to Government Code section 8571, and that State and Federal assistance be provided to San Diego County.

5. Helen Robbins-Meyer, Chief Administrative Officer, or her representative is hereby designated as the authorized representative of the County of San Diego for the purpose of receipt, processing, and coordination of all inquiries and requirements necessary to obtain available state and federal assistance.

#### COUNTY OF SAN DIEGO

Date/Time: 2/14/2020  
5:02 p.m.

By: 

Helen Robbins-Meyer,  
Chief Administrative Officer and  
Director of Emergency Services

# EXHIBIT C



## County of San Diego

NICK MACCHIONE, FACHE  
DIRECTOR

HEALTH AND HUMAN SERVICES AGENCY  
PUBLIC HEALTH SERVICES  
3851 ROSECRANS STREET, MAIL STOP P-576  
SAN DIEGO, CA 92110-3134  
(619) 692-5565 • FAX (619) 692-5650

WILMA J. WOOTEN, M.D., M.P.H.  
PUBLIC HEALTH OFFICER

### DECLARATION OF LOCAL HEALTH EMERGENCY

*Whereas*, a novel coronavirus, COVID-19, causes infectious disease and was first detected in Wuhan City, Hubei Province, China in December 2019. Symptoms of COVID-19 include fever, cough, and shortness of breath; outcomes have ranged from mild to severe illness, and in some cases death. The Centers for Disease Control and Prevention considers the virus to be a very serious public health threat.

*Whereas*, Chinese health officials have reported tens of thousands of cases of COVID-19 in China, with the virus reportedly spreading from person-to-person. COVID-19 illnesses, most of them associated with travel from Wuhan, are also being reported in a growing number of international locations, including the United States.

*Whereas*, on January 30, 2020, the World Health Organization declared the outbreak a “public health emergency of international concern.” On January 31, 2020, United States Health and Human Services Secretary Alex M. Azar II declared a public health emergency for the United States to aid the nation’s healthcare community in responding to COVID-19.

*Whereas*, on February 2, 2020, the federal government initiated the suspension of the entry of foreign nationals who were in China within the past fourteen days. United States citizens, residents, and their immediate family members who were in the Hubei province and other parts of mainland China are screened upon their entry into the United States. Those without symptoms traveling from areas of China (other than Hubei province) are allowed to continue to their final destination, but are requested to self-quarantine in coordination with local public health officials for up to fourteen days. Federal quarantine of some individuals traveling from Wuhan is presently occurring at the Marine Corps Air Station (MCAS) Miramar.

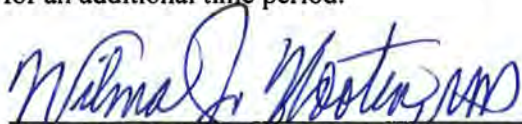
*Whereas*, there are currently two confirmed cases of COVID-19 in San Diego County. Although these two cases are part of a federal quarantine at MCAS Miramar, due to the large population and geographic location of San Diego County, combined with the worldwide spread of COVID-19, there is a potential threat of introduction of COVID-19 in San Diego County.

*Now, therefore*, pursuant to Health and Safety Code section 101080, the San Diego County Health Officer declares:

- 1) The potential introduction of COVID-19 in San Diego County is a threat to the public health within the meaning of Health and Safety Code section 101080.
- 2) A local health emergency is declared in San Diego County.

This declaration shall remain in effect for no longer than seven days unless ratified by the San Diego County Board of Supervisors and continued for an additional time period.

Date: February 14, 2020



WILMA J. WOOTEN, M.D., M.P.H.

Public Health Officer

Director, Public Health Services

County of San Diego

# EXHIBIT D



**COUNTY OF SAN DIEGO  
BOARD OF SUPERVISORS - Wed  
WEDNESDAY, FEBRUARY 19, 2020**

**MINUTE ORDER NO. 1**

**SUBJECT: RATIFY PROCLAMATION OF LOCAL EMERGENCY AND RATIFY  
DECLARATION OF LOCAL HEALTH EMERGENCY REGARDING COVID-19  
(DISTRICTS: ALL)**

**OVERVIEW**

A novel coronavirus (COVID-19) was first detected in Wuhan City, Hubei Province in China in December 2019. Since then, on January 30, 2020, the World Health Organization declared COVID-19 a public health emergency of international concern. On January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared this global outbreak a public health emergency for the United States.

On February 14, 2020, the San Diego County Public Health Officer issued a Declaration of Local Health Emergency, pursuant to California Health and Safety Code Section 101080, as a result of the international COVID-19 outbreak. Additionally, on February 14, pursuant to California Government Code 8630, the Chief Administrative Officer serving as the County of San Diego (County) Director of Emergency Services and as the Coordinator of the Unified San Diego County Emergency Services Organization, issued a Proclamation of Local Emergency regarding COVID-19.

While the current, local situation remains stable, today's recommended actions will provide the County additional powers to coordinate local efforts and identify resources that may be necessary to fully address the response in the event that the situation evolves.

The virus is considered to be a very serious public health threat for a number of reasons including, but not limited to, the fact that much is unknown about the nature of the virus such as the exact modes of transmission, the factors facilitating human-to-human transmission, the extent of asymptomatic viral shedding, the groups most at risk of serious illness, the attack rate, and the case fatality rate. All these factors remain active areas of investigation. Additionally, there is currently no vaccine to prevent COVID-19 or specific antiviral treatment.

What is known at this time is that the virus is spread between people primarily via respiratory droplets produced when an infected person coughs or sneezes. Symptoms of the virus include fever, cough, and shortness of breath, and infected individuals have experienced a range of outcomes, from mild sickness to severe illness and death. Based on experience with other coronaviruses that cause severe respiratory illness the U.S. Centers for Disease Control and Prevention (CDC) currently believes that symptoms appear two to 14 days after exposure.

State law requires both the Declaration of Local Health Emergency and the Proclamation of Local Emergency to be ratified by the Board of Supervisors (Board) within seven days of issuance. Today's action requests the Board to ratify, and find that there is a continuing need for, both the Declaration of Local Health Emergency and Proclamation of Local Emergency. If approved, the Board's ratification of the Proclamation of Local Emergency will (1) further ensure legal immunities for emergency actions taken by the County; (2) facilitate requests by the County and other local governments for State and Federal assistance under the State and Federal Disaster Assistance Programs; and (3) allow the Chief Administrative Officer (or authorized official) to take preventive measures necessary to protect and preserve public health and safety.

## **RECOMMENDATION(S)**

### **CHIEF ADMINISTRATIVE OFFICER**

1. Ratify the attached Declaration of Local Health Emergency made by the Public Health Officer on February 14, 2020.
2. Find that there is a continuing need for the local health emergency until no longer needed, subject to the California Health and Safety Code Section 101080 requirements.
3. Ratify the attached Proclamation of Local Emergency made by the Chief Administrative Officer on February 14, 2020.
4. Find that there is a need for continuing the local emergency until no longer needed, subject to California Government Code 8630 review requirements.

### **FISCAL IMPACT**

The estimated costs in responding to the international novel coronavirus (COVID-19) are currently being assessed. The primary costs being incurred by the County of San Diego (County) are for physician and other clinical and administrative support staff in the coordination, surveillance, communication and management of the COVID-19 local health emergency and local emergency, as well as related services and supplies, including requested ambulance standby and transport services. It does not include various hospital-related costs for patient care or for the shelter and basic care of those quarantined at Marine Corps Air Station Miramar location. Current County costs are being covered by existing department appropriations, including the use of Health and Human Services Agency Management Reserves, and are funded with General Fund fund balance, Realignment, and General Purpose Revenue. Staff will pursue federal and State reimbursement for all County costs incurred. There is no change in net General Fund and no additional staff years.

### **BUSINESS IMPACT STATEMENT**

N/A

### **ACTION:**

ON MOTION of Supervisor Jacob, seconded by Supervisor Desmond, the Board of Supervisors took action as recommended.

AYES: Cox, Jacob, Gaspar, Fletcher, Desmond

State of California)  
County of San Diego) §

I hereby certify that the foregoing is a full, true and correct copy of the Original entered in the Minutes of the Board of Supervisors.

ANDREW POTTER  
Clerk of the Board of Supervisors




**Signed**  
**by** Marvice Mazyck, Chief Deputy

THOMAS E. MONTGOMERY, County Counsel (SBN 109654)  
 County of San Diego  
 By JOHN P. COOLEY, Senior Deputy (SBN 162955)  
 TIMOTHY M. WHITE, Senior Deputy (SBN 220847)  
 1600 Pacific Highway, Room 355  
 San Diego, California 92101-2469  
 Telephone: (619) 531- 4892; (619) 531-4865; Fax: (619) 531-6005  
 E-mail: [john.cooley@sdcounty.ca.gov](mailto:john.cooley@sdcounty.ca.gov); [timothy.white@sdcounty.ca.gov](mailto:timothy.white@sdcounty.ca.gov)

Attorneys for WILMA J. WOOTEN, Public Health Officer for San Diego County, in her  
 official capacity; COUNTY OF SAN DIEGO

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ABIDING PLACE MINISTRIES, a  
 Church,

Plaintiff,

v.

WILMA J. WOOTEN, Public Health  
 Officer for San Diego County, in her  
 official capacity; the COUNTY OF SAN  
 DIEGO; and DOES 1 through 100,  
 inclusive.

Defendants.

No. 20-cv-00683-BAS-AHG

DECLARATION OF WILMA J. WOOTEN,  
 M.D., M.P.H., IN SUPPORT OF  
 OPPOSITION TO PLAINTIFF'S EX  
 PARTE MOTION FOR TEMPORARY  
 RESTRAINING ORDER

Judge: Cynthia Bashant  
 Magistrate Judge: Allison H. Goddard

Action Filed: April 9, 2020  
 Trial Date: None Set

I, Wilma J. Wooten, M.D., M.P.H., declare and state as follows:

1. I am the Public Health Officer for the County of San Diego, and I am in  
 charge of the County's response to the COVID-19 pandemic.

2. On April 8, 2020, I issued the Order of the Health Officer and Emergency  
 Regulations which Plaintiff Abiding Place Ministries seeks to enjoin.

///

///



1           3. During the last week, I exchanged correspondence with representatives of  
2 Plaintiff regarding its intent to have a religious service in Campo on Easter Sunday. Such  
3 a gathering of people would violate my April 8 Public Health Order and Governor  
4 Newsom's Emergency Executive Order N-33-20. Both orders essentially require all  
5 individuals in the state to stay at home or at their residence unless they are acting as  
6 "Essential Critical Infrastructure Workers" as identified under the orders


7           4. Congregants at in-person church services such as the one proposed by  
8 Plaintiff are not acting as Essential Critical Infrastructure Workers. Faith based services  
9 are allowed only if the services are provided through streaming or other technology. In  
10 other words, people may participate in a faith based service, but they must remain at  
11 home.

12           5. Plaintiff's proposal to hold Easter service for congregants sitting in their cars  
13 in a parking area in Campo violates the stay-at-home Public Health Orders because, by  
14 definition, the congregants must leave their homes and residences and drive to Campo in  
15 order to park in the parking lot. Allowing people to leave their homes and drive to a  
16 religious service puts everyone's health in San Diego County at risk because the COVID-  
17 19 virus is easily spread. While driving to Campo, the congregants may stop to put  
18 gasoline in their car, purchase food or use the restroom. Or they may get out of their cars  
19 at the location of the service to use the restroom, or greet a friend. Any of these activities  
20 by a person with the virus could cause a County "hotspot." None of these activities and  
21 the resulting health risks would occur if the church members follow the Public Health  
22 Orders and stay at home.

23           6. The members of Plaintiff's church undoubtedly believe worshipping  
24 together is important. However, the health risks associated with Plaintiff's "drive-in"  
25 proposal are real. The same health risks do not exist if Plaintiff's congregants, and all  
26 people of faith, stay home and participate in their services electronically. Temporarily  
27 staying at home keeps all San Diego residents safe and furthers the critical County-wide  
28 goal of "flattening" the COVID-19 curve.

1           7. As of April 9, 2020, San Diego County had 1,628 individuals test positive  
2 for COVID-19 and 40 have died from that virus. April is the critical month in San Diego  
3 County to flatten the COVID-19 epidemiological curve by staying at home. Unless our  
4 region successfully flattens the curve of COVID-19 illnesses through aggressive and  
5 comprehensive measures, local hospitals will become overwhelmed with COVID-19  
6 patients; and there will not be enough medical personnel, hospital beds, and ventilators to  
7 treat all of the patients. For these measures to have success, the Public Health Orders  
8 must have broad application and compliance.

9           I declare under penalty of perjury that the foregoing is true and correct. Executed  
10 on April 10, 2020.

11   
12 Wilma J. Wooten, M.D., M.P.H.  
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THOMAS E. MONTGOMERY, County Counsel (SBN 109654)  
County of San Diego  
By JOHN P. COOLEY, Senior Deputy (SBN 162955)  
TIMOTHY M. WHITE, Senior Deputy (SBN 220847)  
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Attorneys for WILMA J. WOOTEN, Public Health Officer for San Diego County, in her  
official capacity; COUNTY OF SAN DIEGO

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ABIDING PLACE MINISTRIES, a  
Church,

Plaintiff,

v.

WILMA J. WOOTEN, Public Health  
Officer for San Diego County, in her  
official capacity; the COUNTY OF SAN  
DIEGO; and DOES 1 through 100,  
inclusive.

Defendants.

No. 20-cv-00683-BAS-AHG

DECLARATION OF SERGEANT  
WILLIAM UELIN IN SUPPORT OF  
OPPOSITION TO PLAINTIFF'S EX  
PARTE MOTION FOR TEMPORARY  
RESTRAINING ORDER

Judge: Cynthia Bashant  
Magistrate Judge: Allison H. Goddard

Action Filed: April 9, 2020  
Trial Date: None Set

I, William Uelen, declare and state as follows:

1. I am a sergeant with the San Diego County Sheriff's Department. I work in the rural eastern portion of San Diego County, including the unincorporated community of Campo.

2. On Sunday, April 5, 2020, I drove to the Abiding Place Ministries (the "church") located at 2155 N. Campo Truck Trail in Campo to patrol for non-compliance with the County's COVID-19 Public Health Order. The prior Sunday, March 29, the

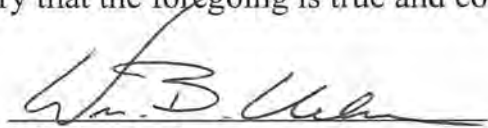


1 Sheriff's Department received a complaint from a Campo community member that the  
2 church was holding services in violation of the County's Public Health Order, and not  
3 complying with social distancing rules. Sheriff's Deputy Richard Phillips responded to  
4 the complaint and observed that a church service was in progress in a tent, and the 50-60  
5 people in attendance were seated closer than six feet apart. A true and correct copy of  
6 Deputy Phillips's Crime/Incident Report regarding this matter is attached to this  
7 declaration as Exhibit 1. As indicated on the bottom of that report, I reviewed and  
8 approved it on March 31, 2020.

9 3. When I arrived at the church service location on April 5, I observed cars  
10 driving onto the property. A church member, Jeremiah Graham, stopped each car as it  
11 approached and told the occupants to stay in their cars during the church service, but that  
12 they could leave their cars to use the bathroom. I left the area before the church service  
13 began.

14 4. When I returned to the location of the church service about three hours later,  
15 most of the cars had left the parking lot. However, 6-7 people were standing together  
16 near a tent, less than six feet apart. When the group of people saw me, they walked away  
17 from each other, and entered two vehicles which drove toward the exit. One of the cars  
18 stopped when it reached me. Mr. Graham got out and told me that the church service  
19 ended about an hour earlier, and 10-12 people had stayed to help break down the stage  
20 due to the inclement weather. A true and correct copy of my report is attached to this  
21 declaration as Exhibit 2.

22 I declare under penalty of perjury that the foregoing is true and correct. Executed  
23 on April 10, 2020.

24   
25 William Uelen  
26  
27  
28

# EXHIBIT 1

Case 3:20-cv-00553-BSS-ARG Document 13-3 Filed 04/11/20 Page 99 of 110 Page 100 of 110

## San Diego County Sheriff's Department

## Crime/Incident Report



CAD Event No.: E6420459

Case No. 20115300

Case Disposition: Active

Primary Victim: State of California

Report No. 20115300.1

1  
Page 1 of 3

## GENERAL CASE INFORMATION

Primary Charge: <b>981153 - ZZ - MISCELLANEOUS REPORTS - 153</b>			
Special Studies:		Related Cases:	
Location, City, State, ZIP: <b>2155 N Campo Truck Tktl, Campo, CA 91906</b>		Occurred On: <b>03/29/2020 11:00:00 (Sunday)</b>	
Jurisdiction:	Beat: <b>881</b>	Call Source: <b>ADMIN</b>	(and Between):
Means:	Motives:		

## VICTIM/S

## IBR/UCR OFFENSE/S

Offense Description: <b>981153 - ZZ - MISCELLANEOUS REPORTS - 153</b>		Level: <b>O</b>	Against:	Completed? <b>Yes</b>	Counts:	Using:
Location Type: <b>04 - Church/Synagogue/Temple</b>		Hate/Bias: <b>88 - None (no bias) (mutually exclusive)</b>			Domestic Violence: <b>No</b>	
Criminal Activity:	Type Security:	Gang Related:	Entry:	Point of Entry:		
Weapons/Force:	Tools:	Targets:				

## ARRESTEE/S

## SUSPECT/S (Not Yet Arrested)

## Suspect #1

Name: <b>Spitsbergen, Mark</b>	County Residence: <b>R - Resident</b>	Interpreter Language:
-----------------------------------	--	-----------------------

## ALIAS / AKA / NICKNAME / MONIKER:

Name Type:	First:	Middle:	Last:	Suffix:
Home Address, City, State, ZIP: <b>2155 N. Campo Truck Trail, Campo, CA 91906</b>		Res. Country:	Place of Birth:	Undocumented:
Race: <b>W</b>	Sex: <b>M</b>	Date of Birth / Age: <b>60</b>	Height:	Weight:
Hair Color:	Eye Color:	Facial Hair:	Complexion:	
Hair Style:	Hair Length:	Build:	Teeth:	Suspected User:
Employment Status: <b>E - Employed</b>	Occupation/Grade: <b>Pastor</b>	Employer/School: <b>Abiding Place Ministries</b>	Employer Address, City, State, ZIP: <b>2155 N. Campo Truck Trail, Campo, CA 91906</b>	

## CONTACT INFORMATION:

Type:	Number/Address:
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## IDENTIFICATION:

Type:	Number:	State:	Country:
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## SCARS, MARKS, TATTOOS, ODDITIES:

Attire:	Suspect Actions:
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## WITNESSES

## OTHER ENTITIES

## Other Entity #1

Person Code: <input type="checkbox"/> Secured Premise <input type="checkbox"/> Discovered Crime <input type="checkbox"/> Reporting Party <input type="checkbox"/> Law Enforcement Officer <input type="checkbox"/>			
Name: <b>Graham, Jeremiah Israel</b>	Entity Type: <b>OT - Other (Person)</b>	Person Code:	County Residence:

## ALIAS / AKA / NICKNAME / MONIKER:

Name Type:	First:	Middle:	Last:	Suffix:
Home Address, City, State, ZIP:		Res. Country:	Place of Birth:	Undocumented:
		Interpreter Language		

Reporting Officer <b>SH2270 - PHILLIPS, RICHARD</b>	Division / Organization <b>Rural Enforcement RURAL CAMPO</b>	Reviewed By <b>SH2212 - UELEN, BILL</b>
Report Date <b>3/30/2020 9:52:07 AM</b>	Detective Assigned <b>SH2270 - PHILLIPS, RICHARD</b>	Reviewed Date <b>03/31/2020 12:25:36</b>

Case 3:20-cv-00883-BAS-WAG Document 135-3 Filed 02/17/20 Page 101 of 117

## San Diego County Sheriff's Department

## Crime/Incident Report

CAD Event No.: **E6420459**Case No. **20115300**Case Disposition: **Active**Primary Victim: **State of California**Report No. **20115300.1****2**

Page 2 of 3

Race: <b>W</b>	Sex: <b>M</b>	Date of Birth / Age: <b>07/20/1982 - 37</b>	Height: <b>6' 0"</b>	Weight: <b>190</b>	Hair Color: <b>BLN</b>	Eye Color: <b>BLU</b>	Facial Hair: <b>03 - Full Beard and Mustache</b>	Complexion:
Employment Status:		Occupation/Grade:		Employer/School:		Employer Address, City, State, ZIP:		
CONTACT INFORMATION:								
Type:						Number/Address:		
IDENTIFICATION:								
Type:			Number:			State:		Country:
Injury:						Extent of Treatment:		

## PROPERTY

## Property Item #1.000 - Body Worn Camera Footage

Derivative No.: <b>0</b>	Property Category: <b>1306 - Body Camera Video</b>		
Status: <b>ES - Evidence (Seized)</b>	Count: <b>1</b>	Value:	
Manufacturer:	Model:		
Serial No.:	Model Year:	OAN:	
Color:	Caliber:		
Body Style:	Recovered/ Seized Date: <b>03/29/2020</b>		
Owner:	Disposition:		
Evidence Tag:	Alert(s):		
Drug Type:	Drug Quantity:		
Search Warrant:			
Notes:			

## REPORT NARRATIVE

## SYNOPSIS:

On 03/29/2020 Abiding Place Ministries was holding church services at 2155 N. Campo Truck Trail in Campo. Local residents called into the Sheriff's Department requesting enforcement of the current Social Distancing Ordinances. Abiding Place Ministries had a congregation of approximately 50-60 parishioners during the services. A warning was given to staff members of the church of the violation but they refused to end the services and stated they were not violating any of the current orders.

## ORIGIN:

On 03/29/2020 at approximately 1115 hours, I was dispatched to 2155 N. Campo Truck Trail in Campo regarding a state issued Ordinance Violation. The contact was captured on Sheriff's Department Body Worn Camera video and the following report is a synopsis of my contact.

## INVESTIGATION:

Upon my arrival into the property, I immediately noticed approximately 20+ cars on the property. I drove onto an upper level where I noticed a large white tent with people inside of it. As I approached the tent and parked, one subject walked to my location to greet me. I noticed approximately 50-60 people inside the tent sitting in chairs and standing as one subject was on a stage delivering a sermon.

I first spoke with the staff member who greeted me as I exited my vehicle. I asked the person if he was in charge and he told me currently he was the person in charge. I explained to him they were in violation

Reporting Officer <b>SH2270 - PHILLIPS, RICHARD</b>	Division / Organization <b>Rural Enforcement RURAL CAMPO</b>	Reviewed By <b>SH2212 - UELEN, BILL</b>
Report Date <b>3/30/2020 9:52:07 AM</b>	Detective Assigned <b>SH2270 - PHILLIPS, RICHARD</b>	Reviewed Date <b>03/31/2020 12:25:36</b>

Case 3:20-cv-00883-BAS-KMG Document 135-3 Filed 02/17/20 Page 10 of 18  
 San Diego County Sheriff's Department  
 #325  
**Crime/Incident Report**

Case No. **20115300**

CAD Event No.: **E6420459** Case Disposition: **Active**

Primary Victim: **State of California** Report No. **20115300.1**

**3**  
 Page 3 of 3

of the state issued ordinance to not congregate with 10 or more persons. The staff member told me he believed the order did not pertain to their church and they were within the guidelines. The staff member told me they church was abiding by the recommendation to stay 6' apart from each other and some of the other orders. I pointed at the people sitting in chairs inside the tent and told the gentleman the chairs were at best 2-3 feet apart and nobody inside the tent were at the recommended 6 foot distance.

As I continued to speak with the staff member another male adult approached us. The gentleman I was speaking with introduced the other male subject as his son, who later identified himself as Jeremiah Graham. Jeremiah told me he is the Secretary of the church and then told me he is a "Civil Rights Attorney". Jeremiah told that should I arrest anyone for attending the services I would be sued. I explained to Jeremiah there was an order issued by the State of California that restricts their right to congregate with 10 or more people. Jeremiah told me he has reviewed the order from the state and it would be a violation of their civil rights to arrest them based on the order.

I explained to Jeremiah I was not current on the actual law that prohibits their right to congregate with more than 10 people as the residents in the area have all complied with the order and there has been no need to apply the law currently. I told Jeremiah I would contact my command staff regarding the order and the Sheriff's Department would be in touch to discuss the law.

During our conversation, Jeremiah continuously attempted to argue their right to worship and suggesting I had no authority to enforce the current orders from the state. I tried to reason with Jeremiah and asked how long the church had been in the area. Jeremiah told me the church moved in to the location in June. I tried to explain to Jeremiah this is a small community and he and his people are now upsetting their immediate neighbors and will eventually be causing turmoil within the community. I tried to appeal to them to be a good neighbor. I explained that people are very concerned about the Covid 19 virus and even more concerned knowing the church is holding large gatherings with people coming from the large city areas of San Diego. Jeremiah told me the church held the cure for the Covid 19 virus. Jeremiah told me that should anyone be concerned about the virus the church would be happy to pray with them and it would keep that person from getting the virus or it would cure anyone with the virus.

I ended my conversation with both subjects and let them know somebody from the Sheriff's Department would be in touch to discuss the lawful order. Jeremiah gave me his name and phone number and told me I could contact him and set up a meeting. While giving me his name and number Jeremiah felt it necessary to give me his state "Bar" number.

#### FOLLOW-UP:

As needed by the Sheriff's Department Command.

RELATED REPORTS: None.

Reporting Officer <b>SH2270 - PHILLIPS, RICHARD</b>	Division / Organization <b>Rural Enforcement RURAL CAMPO</b>	Reviewed By <b>SH2212 - UELEN, BILL</b>
Report Date <b>3/30/2020 9:52:07 AM</b>	Detective Assigned <b>SH2270 - PHILLIPS, RICHARD</b>	Reviewed Date <b>03/31/2020 12:25:36</b>

# EXHIBIT 2



	<b>San Diego County Sheriff's Department</b> <b>Officer Report</b>		Case No. <b>20115300</b> Report No. <b>102343</b>	<b>1</b> Page 1 of 1
	CAD Event No. <b>E6432141</b>			

## GENERAL CASE INFORMATION

Special Studies:		Related Cases:	
Location, City, State, ZIP: <b>2155 N. Campo Truck Trail, Campo, CA 91906</b>		Occurred On: <b>4/5/2020 11:00:00 AM (Sunday)</b>	
Jurisdiction: <b>Campo - CAMPO</b>	Beat: <b>879</b>	Call Source:	(and Between):

## INDIVIDUAL/S

## REPORT NARRATIVE

On 04/05/2020, at approximately 1100 hours I drove to the Abiding Place Ministries located at 2155 N. Campo Truck Trail, Campo, to do extra patrol for COVID-19 County Order compliance. When I arrived, I observed a male adult who I recognized as Jeremiah Graham standing near the main electronic gate onto the property belonging to Abiding Places Ministries. I exited my Sheriff's patrol vehicle and greeted Graham and watched as he addressed arriving worshipers. As vehicles approached, Graham stopped each one of them and explained to them that today's service (04/05/2020) would be a drive-in movie style setting, to remain seated in their vehicles and to tune their radio into 89.1 to listen to the service. Graham went on to tell them that the bathrooms would be open for use, but to please adhere to the current County Order regarding the social distancing guidelines, and that there would be someone directing each vehicle where to park. BWC video is available showing Graham give his speech to an arriving vehicle.

I thanked Graham for his continued efforts to find a common ground for worship, while still trying to adhere to the county order. I left the area with no further incident.

On 04/05/2020, at approximately 1410 hours, I returned to the property belonging to Abiding Place Ministries to check on the worshipers COVID-19 compliance. When I arrived, I could only see two vehicles and a small group of 6-7 people standing near the tent. When the group of people saw me, they walked away from each other and entered two vehicles. The vehicles drove towards the main gate to exit the property. One of the vehicle was occupied by Jeremiah Graham who stopped and exited his vehicle to talk with me. Graham said that the sermon ended right around 1300 hours and a group of 10-12 remained at that time to help break down the stage due to the oncoming inclement weather. Graham said the other vehicle that I watched leave was the last of the group and everyone that remained on the property all lived there. Graham said Pastor Mark advised his congregation to drive straight home to their respective residences from Campo. Lastly, Graham added that after I left prior to the start of the service, he "was kicking himself" after failing to welcome me onto the property to watch the service to ensure their compliance to the health order.

Graham passed along his gratitude to everyone involved in allowing this modified day of worship. There has been no further extra patrols or calls for service at 2155 N. Campo Truck Trail since I left on Sunday 04/05/2020.

Reporting Officer <b>SH2212 - UELEN, BILL</b>	Division / Organization <b>RUR_CAMPO / RURAL - Rural Enforcement</b>	Reviewed By
Report Date <b>4/9/2020 1:41:28 PM</b>	Detective Assigned <b>SH2270 - PHILLIPS, RICHARD</b>	Reviewed Date



Declaration of Service

I, the undersigned, declare:

That I am over the age of eighteen years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California where the service occurred; and my business address is: 1600 Pacific Highway, Room 355, San Diego, California.

On April 10, 2020, I served the following documents: **OPPOSITION TO PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER; DECLARATION OF SERGEANT WILLIAM UELEN IN SUPPORT OF OPPOSITION; DECLARATION OF WILMA J. WOOTEN, M.D., M.P.H., IN SUPPORT OF OPPOSITION; DECLARATION OF TIMOTHY M. WHITE IN SUPPORT OF OPPOSITION**; in the following manner:

☒ **(BY CM/ECF)** I caused to be transmitted a copy of the foregoing document(s) this date via the United States District Court's ECF System, in accordance with the rules governing the electronic filing of documents in the **United States District Court for the Southern District of California**, which electronically notifies all counsel as follows:

Jeremiah D. Graham, Esq.  
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Pmb 20968  
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I declare under penalty of perjury that the foregoing is true and correct.  
Executed on April 10, 2020, at San Diego, California.

By: s/TIMOTHY M. WHITE  
E-mail: [timothy.white@sdcounty.ca.gov](mailto:timothy.white@sdcounty.ca.gov)

**US District Court Civil Docket****U.S. District - California Southern  
(San Diego)****3:20cv683****Abiding Place Ministries v. Wooten et al****This case was retrieved from the court on Wednesday, April 15, 2020****Date Filed: 04/09/2020****Assigned****To: Judge Cynthia Bashant****Referred****To: Magistrate Judge Allison H. Goddard****Class Code: OPEN****Closed:****Nature of****suit: Other Civil Rights (440)****Statute: 42:1983cv****Cause: Civil Rights Act - Civil Action for  
Deprivation of Rights****Jury Demand: Plaintiff****Demand Amount: \$0****Lead****NOS Description: Other Civil Rights****Docket: None****Other****Docket: None****Jurisdiction: Federal Question****Litigants****Attorneys**Abiding Place Ministries  
a Church  
PlaintiffJeremiah Daniel Graham  
LEAD ATTORNEY; ATTORNEY TO BE NOTICED  
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Email: Jeremiahdgraham@gmail.ComWilma J. Wooten  
Public Health Officer for San Diego County, in her official  
capacity  
Defendant  
County of San Diego  
Defendant  
Does 1 Through 100  
inclusive  
Defendant

Date	#	Proceeding Text	Source
04/09/2020	1	COMPLAINT with Jury Demand against County of San Diego, Does 1 Through 100, Wilma J. Wooten ( Filing fee \$ 400 receipt number ACASDC-13725657.), filed by Abiding Place Ministries. (Attachments: # 1 Civil Cover Sheet, # 2 Verification of Complaint, # 3 Exhibit 1 - the Order, # 4 Exhibit 2 - Essential Businesses, # 5 Exhibit 3 - First Written Proposal, # 6 Exhibit 4 - Second Written Proposal, # 7 Exhibit 5 - Third Written Proposal, # 8 Exhibit 6 - First Letter from Public Health Officer, # 9 Exhibit 7 - Letter to Public Health Officer, # 10 Exhibit 8 - Second	

Letter from Public Health Officer, # 320 Declaration Of Actual and Attempted Notice re: Motion for TRO)The new case number is 3:20-cv-683-BAS-AHG. Judge Cynthia Bashant and Magistrate Judge Allison H. Goddard are assigned to the case. (Graham, Jeremiah)(jmr) (jms). (Entered: 04/09/2020)

- 04/09/2020 2 MOTION for Temporary Restraining Order by Abiding Place Ministries. (Attachments: # 1 Memo of Points and Authorities Memorandum Support Motion for TRO)(jmr) (jms). (Entered: 04/09/2020)
- 04/09/2020 3 NOTICE of Party With Financial Interest by Abiding Place Ministries. Identifying Other Affiliate Mark Spitsbergen for Abiding Place Ministries. (jmr) (jms). (Entered: 04/09/2020)
- 04/09/2020 4 Summons Issued. Counsel receiving this notice electronically should print this summons and serve it in accordance with Rule 4, Fed.R.Civ.P and LR 4.1. (jmr) (jms). (Entered: 04/09/2020)
- 04/09/2020 5 ORDER Setting Telephonic Hearing (ECF No. 2 ). The court sets a telephonic oral argument on Plaintiff's Motion for 4/10/2020 at 01:35 PM before Judge Cynthia Bashant. Signed by Judge Cynthia Bashant on 4/9/20.(jmo) Modified on 4/9/2020 (jmo) (dlg). (Entered: 04/09/2020)
- 04/10/2020 6 RESPONSE in Opposition re 2 MOTION for Temporary Restraining Order filed by County of San Diego, Wilma J. Wooten. (Attachments: # 1 Declaration of Timothy White, # 2 Declaration of Wilma Wooten, M.D., M.P.H, # 3 Declaration of Sergeant William Uelen, # 4 Proof of Service)(White, Timothy) (jmo). (Entered: 04/10/2020)
- 04/10/2020 7 ORDER denying 2 Motion for TRO. For the reasons stated in the telephonic hearing, TRO is denied. Signed by Judge Cynthia Bashant on 4/10/2020. (no document attached) (sxm) (Entered: 04/10/2020)
- 04/10/2020 8 Minute Entry for proceedings held before Judge Cynthia Bashant: Motion Hearing held on 4/10/2020 telephonically. Court denies 2 MOTION for Temporary Restraining Order filed by Abiding Place Ministries. (Court Reporter/ECR Dana Peabody). (Plaintiff Attorney Jeremiah Graham). (Defendant Attorney Thomas Montgomery). (no document attached) (sxm) (Entered: 04/10/2020)
- 04/13/2020 9 Order Requesting Status Update. Joint notice due by 4/20/2020. Signed by Judge Cynthia Bashant on 4/13/20.(jmo) (dlg). (Entered: 04/13/2020)
- 04/13/2020 10 NOTICE OF FILING OF OFFICIAL TRANSCRIPT (Motion Hearing) held on 4/10/2020 before Judge Cynthia Bashant. Court Reporter/Transcriber: Dana Peabody. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or the Court Reporter/Transcriber. If redaction is necessary, parties have seven calendar days from the file date of the Transcript to E-File the Notice of Intent to Request Redaction. The following deadlines would also apply if requesting redaction: Redaction Request Statement due to Court Reporter/Transcriber 5/4/2020. Redacted Transcript Deadline set for 5/14/2020. Release of Transcript Restriction set for 7/13/2020. (akr) (Entered: 04/13/2020)

**CERTIFICATE OF SERVICE**

Case Name: **Wendy Gish, et al. v. Gavin Newsom, et al.**

No.: **5:20-cv-00755-JGB-KK**

I declare:

I hereby certify that on April 17, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DECLARATION OF TODD GRABARSKY IN SUPPORT OF OPPOSITION OF  
DEFENDANTS GOVERNOR GAVIN NEWSOM AND ATTORNEY GENERAL  
XAVIER BECERRA TO PLAINTIFFS' APPLICATION FOR TEMPORARY  
RESTRAINING ORDER**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 17, 2020, at Los Angeles, California.

Todd Grabarsky

Declarant

*Todd Grabarsky*

Signature

## APPENDIX 24

No. 20-55445

---

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

---

WENDY GISH, *et al.*,  
Plaintiffs and Appellants,

v.

GAVIN NEWSOM,  
in his official capacity as Governor of California, *et al.*,  
Defendants and Appellees.

---

On Appeal from the Order of the United States  
District Court for the Central District of California  
The Honorable Jesus G. Bernal  
District Court Case Number: 5:20-00755-JGB-KK

---

**APPELLANTS' OPENING BRIEF**

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## TABLE OF CONTENTS

INTRODUCTION .....	1
ISSUES PRESENTED .....	3
STATEMENT OF JURISDICTION .....	4
STATEMENT OF THE CASE .....	6
I. STATEMENT OF FACTS .....	6
II. PROCEDURAL HISTORY .....	11
STANDARD OF REVIEW .....	12
SUMMARY OF THE ARGUMENT .....	13
ARGUMENT .....	15
I. THE DISTRICT COURT IS NOT FREE TO INVENT AND THEN MISAPPLY A NEW CONSTITUTIONAL STANDARD UNMOORED FROM ESTABLISHED SUPREME COURT PRECEDENT. ....	16
A. <i>Jacobson</i> Does Not Establish a “Minimal Scrutiny” Standard for Reviewing the Government’s Actions During an Emergency. ....	16
B. The Church Members Are Likely to Prevail Even Under the District Court’s Faulty Minimal Scrutiny Standard.....	20
II. THE CHURCH MEMBERS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS. ....	21
A. The Government’s Criminalization of Communal Religious Worship Violates the Church Members’ Free Exercise Rights. ....	21
1. The Orders are not neutral nor generally applicable because they restrict religiously-motivated activity but not comparable secular activity.....	22
2. The district court impermissibly weighed the reasonableness of the Church Members’ religious beliefs in coming to its	



determination that the Orders did not violate the Free Exercise Clause. ....	27
3. The Government does not have a compelling interest pursued through the least restrictive means for its disparate treatment of houses of worship.....	29
B. The Government’s Orders Violate the Establishment Clause. ....	31
C. The Orders Ban All Public and Private Assembly in Violation of the First Amendment to the U.S. Constitution and California Constitution.....	34
D. The Government’s Orders Are Void for Reasons of Vagueness.....	36
E. The Orders Violate Article I, Section 1 of the California Constitution.....	38
F. The Government Violates the Equal Protection Clause of the Fourteenth Amendment. ....	40
III. THE CHURCH MEMBERS FACE IMMINENT IRREPARABLE HARM ABSENT IMMEDIATE INJUNCTIVE RELIEF. ....	42
IV. THE REMAINING FACTORS WEIGH IN FAVOR OF GRANTING INJUNCTIVE RELIEF.....	43
CONCLUSION .....	44
CERTIFICATE OF COMPLIANCE .....	46
CERTIFICATE OF SERVICE.....	47

## TABLE OF AUTHORITIES

Case	Page(s)
<b>UNITED STATES CONSTITUTION</b>	
U. S. Const. amend. I.....	21, 34
U.S. Const. amend. XIV, § 1.....	40
<b>CALIFORNIA CONSTITUTION</b>	
Cal. Const. Art. I, § 1. ....	13, 38
Cal. Const. Art. I, § 2. ....	13, 34
Cal. Const. Art. I, § 3. ....	13, 34
Cal. Const. Art. I, § 4. ....	13
<b>CASES</b>	
<i>All. for the Wild Rockies v. Cottrell</i> , 632 F.3d 1127 (9th Cir. 2011).....	12, 15
<i>Americans for Prosperity Foundation v. Harris</i> , 182 F. Supp. 3d 1049 (C.D. Cal. 2016).....	42
<i>Berean Baptist Church v. Cooper</i> , No. 4:20-CV-81-D, 2020 WL 2514313 (E.D. N.C. May 16, 2020). ....	26
<i>California v. U.S. Dep’t of Health &amp; Human Servs.</i> , 941 F.3d 410 (9th Cir. 2019).....	12
<i>Cantwell v. State of Connecticut</i> , 310 U.S. 296 (1940). ....	17, 21
<i>Catholic Charities of Sacramento, Inc. v. Superior Court</i> , 32 Cal. 4th 527 (2004) .....	22
<i>Church of the Lukumi Babalu Aye, Inc. v. Hialeah</i> , 508 U.S. 520 (1993). ....	19, 22, 23

<i>City of Cleburne, Tex. v. Cleburne Living Ctr.</i> , 473 U.S. 432 (1985).	40
<i>College Republicans at San Francisco State University v. Reed</i> , 523 F. Supp. 2d 1005 (N.D. Cal. 2007).	42, 43
<i>Connally v. General Const. Co.</i> , 269 U.S. 385 (1926).	36
<i>Cruzan by Cruzan v. Dir., Missouri Dep’t of Health</i> , 497 U.S. 261 (1990).	18
<i>De Jonge v. Oregon</i> , 299 U.S. 353 (1937).	17
<i>Dunn v. Blumstein</i> , 405 U.S. 330 (1972).	30
<i>Earth Island Inst. v. United States Forest Serv.</i> , 351 F.3d 1291 (9th Cir. 2003).	15
<i>Edwards v. Aguillard</i> , 482 U.S. 578 (1987).	33
<i>Edwards v. South Carolina</i> , 372 U.S. 229 (1963).	17
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976).	42, 43
<i>Emp’t Div., Dep’t of Human Res. of Or. v. Smith</i> , 494 U.S. 872 (1990).	18, 22
<i>Envtl. Defense Fund, Inc. v. Andrus</i> , 625 F.2d 861 (9th Cir. 1980).	4
<i>Epperson v. Arkansas</i> , 393 U.S. 97 (1968).	31
<i>Everson v. Board of Ed. Ewing Tp.</i> , 330 U.S. 1 (1947).	18, 31

<i>Ex parte Arta</i> , 52 Cal. App. 380 (1921).....	39
<i>Ex parte Martin</i> , 83 Cal. App. 2d 164 (1948).....	38
<i>Ex parte Milligan</i> , 71 U.S. 2 (1866).....	16
<i>First Baptist Church v. Kelly</i> , No. 20-1102-JWB, 2020 WL 1910021 (D. Kan. Apr. 18, 2020).....	26
<i>G &amp; V Lounge, Inc. v. Mich. Liquor Control Comm’n</i> , 23 F.3d 1071 (6th Cir. 1994).....	43
<i>Gitlow v. New York</i> , 268 U.S. 652 (1925).....	17
<i>Grayned v. City of Rockford</i> , 408 U.S. 104 (1972).....	37
<i>Hernandez v. Sessions</i> , 872 F.3d 976 (9th Cir. 2017).....	43
<i>Houston v. Hill</i> , 482 U.S. 451 (1987).....	36
<i>In re J.M.</i> , 36 Cal. App. 5th 668 (2019).....	34
<i>Jew Ho v. Williamson</i> , 103 F. 10 (C.C. Cal. 1900).....	39
<i>Korematsu v. U.S.</i> , 323 U.S. 214 (1944).....	16
<i>Lopez v. Heckler</i> , 713 F.2d 1432 (9th Cir. 1983).....	43
<i>Los Angeles All. For Survival v. City of Los Angeles</i> , 22 Cal. 4th 352 (2000). ....	35

<i>Maynard v. U.S. Dist. Court for Cent. Dist. of California</i> , 915 F.2d 1581 (9th Cir. 1990).....	40
<i>Maynard v. U.S. Dist. Court for the Cent. Dist. of California</i> , 701 F. Supp. 738 (C.D. Cal. 1988).....	40
<i>McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.</i> , 545 U.S. 844 (2005).....	31
<i>Melendres v. Arpaio</i> , 695 F.3d 990 (9th Cir. 2012).....	43
<i>Mem’l Hosp. v. Maricopa Cnty.</i> , 415 U.S. 250 (1974).....	41
<i>Mills v. Rogers</i> , 457 U.S. 299 (1982).....	18
<i>New York Times Co. v. United States</i> , 403 U.S. 713 (1971).....	19
<i>Nken v. Holder</i> , 556 U.S. 418 (2009).....	15, 43
<i>Okrand v. City of Los Angeles</i> , 207 Cal. App. 3d 566 (1989).....	32
<i>On Fire Christian Ctr., Inc. v. Fischer</i> , No. 3:20-CV-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020).....	26
<i>People ex rel. Gallo v. Acuna</i> , 14 Cal.4th 1090 (1997). ....	36
<i>People v. Chambers</i> , 22 Cal. App. 2d 687 (1937).....	34
<i>Pimentel v. Dreyfus</i> , 670 F.3d 1096 (9th Cir. 2012).....	12
<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i> , 505 U.S. 833 (1992).....	18

<i>Religious Tech. Ctr., Church of Scientology Int’l, Inc. v. Scott</i> , 869 F.2d 1306 (9th Cir. 1989).....	4
<i>Roberts v. Neace</i> , No. 20-5465, 2020 WL 2316679 (6th Cir. May 9, 2020). ....	passim
<i>Roberts v. United States Jaycees</i> , 468 U.S. 609 (1984). ....	35
<i>Robinson v. Marshall</i> , No. 2:19CV365-MHT, 2020 WL 1847128 (M.D. Ala. Apr. 12, 2020).....	20
<i>Roe v. Wade</i> , 410 U.S. 113 (1973). ....	18
<i>S.O.C., Inc. v. Cnty. of Clark</i> , 152 F.3d 1136 (9th Cir. 1998).....	42
<i>Sammartano v. First Jud. Dist. Ct.</i> , 303 F.3d 959 (9th Cir. 2002).....	42, 43
<i>San Antonio Indep. Sch. Dist. v. Rodriguez</i> , 411 U.S. 1 (1973). ....	30, 35
<i>Sessions v. Dimaya</i> , 138 S. Ct. 1204 (2018). ....	37
<i>Stormans, Inc. v. Selecky</i> , 586 F.3d 1109 (9th Cir. 2009).....	42
<i>Stormans, Inc. v. Wiesman</i> , 794 F.3d 1064 (9th Cir. 2015).....	22, 23, 25, 27
<i>Thomas v. Review Bd. of Indiana Employment Security Div.</i> , 450 U.S. 707 (1981). ....	27
<i>Trump v. Hawaii</i> , 138 S. Ct. 2392 (2018). ....	16
<i>United States v. Ballard</i> , 322 U.S. 78 (1944). ....	27

<i>Vernon v. City of Los Angeles</i> , 27 F.3d 1385 (9th Cir. 1994).....	32, 33
<i>W. Va. State Bd. of Educ. v. Barnette</i> , 319 U.S. 624 (1943).....	21
<i>Whitney v. California</i> , 274 U.S. 357 (1927).....	34
<i>Widmar v. Vincent</i> , 454 U.S. 263 (1981).....	35
<i>Wilson v. Superior Court</i> , 13 Cal.3d 652 (1975).....	34
<i>Winter v. Natural Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	15, 43
<i>Wong Wai v. Williamson</i> , 103 F. 1 (C.C. Cal. 1900).....	39
<i>Zepeda v. U.S. I.N.S.</i> , 753 F.2d 719 (9th Cir. 1983).....	12

## STATUTES

28 U.S.C. § 1292(a)(1).....	4, 5
28 U.S.C. § 1331.....	4
28 U.S.C. § 1343(a).....	4
28 U.S.C. § 1367.....	4



## INTRODUCTION

There is no pandemic exception to the Constitution. Yet, for months, the Government's Orders have prohibited Appellants Wendy Gish, Patrick Scales, James Dean Moffatt, and Brenda Wood ("Church Members") and their congregations from engaging in communal worship.<sup>1</sup> The Orders allow secular activities of an indistinguishable nature to continue provided that social distancing

<sup>1</sup> "Orders" hereinafter refers to the Stay-at-Home Executive Order issued by California Governor Gavin Newsom, ER 96-97, the San Bernardino Order, ER 99-102, the San Bernardino Order Clarification, ER 197, the Riverside Order, ER 104-111, as modified by Governor Newsom's May 4, 2020 Order detailing California's Reopening Plan, Executive Order N-60-20, RJN Exs. 1-2. The Counties have since rescinded their orders, and now rely solely on the Governor's Executive Orders for purposes of enforcement. RJN Ex. 5.

"Government" hereinafter refers to Defendants-Appellees Gavin Newsom, in his official capacity as Governor of California; Xavier Becerra, in his official capacity as Attorney General of California; Erin Gustafson, in her official capacity as the San Bernardino County Acting Public Health Officer; John McMahon, in his official capacity as the San Bernardino County Sheriff; Robert A. Lovingood, in his official capacity as a San Bernardino County Supervisor; Janice Rutherford, in her official capacity as a San Bernardino County Supervisor; Dawn Rowe, in her official capacity as a San Bernardino County Supervisor; Curt Hagman, in his official capacity as a San Bernardino County Supervisor; Josie Gonzales, in his official capacity as a San Bernardino County Supervisor; Cameron Kaiser, in his official capacity as the Riverside County Public Health Officer; George Johnson, in his official capacity as the Riverside County Executive Officer and Director of Emergency Services; Chad Bianco, in his official capacity as the Riverside County Sheriff; Kevin Jeffries, in his official capacity as a Riverside County Supervisor; Karen Spiegel, in her official capacity as a Riverside County Supervisor; Chuck Washington, in his official capacity as a Riverside County Supervisor; V. Manuel Perez, in his official capacity as a Riverside County Supervisor; and Jeff Hewitt, in his official capacity as a Riverside County Supervisor.

protocols are observed, while denying religious communities the opportunity to meet under the same standards.

For the duration of California's coronavirus lockdown, the Government has let the public stroll freely down the busy aisles of their local grocery store for an indefinite period of time; go to the hospital for certain types of elective surgeries; and even arrange for plumbers, electricians, and exterminators to come into their homes for extended periods. Yet, the Church Members cannot not go to church; attend a baptism; gather to pray for the sick and dying; or even attend an outdoor funeral service for departed loved ones, regardless of the number of persons attending or the precautions they offered to take.

As the Governor has now started to move toward a phased reopening, shopping malls, swap meets, hair salons, and dine-in restaurants will soon be allowed to open with social distancing, but churches, mosques, synagogues, and other places of worship will, at best, be subjected to cumbersome capacity and other restrictions applicable to religious activities only. At worst, communal worship will remain or revert to being altogether criminalized by the Government, which the Government has indicated is a real possibility. RJN Ex. 9, p. 2 (“[n]ot adhering to all of the guidelines in their entirety [sic] could result in . . . the re-closing of places of worship”).

The Government's criminalization of communal worship violates the Church Members' fundamental rights to religious liberty, freedom of speech and assembly, and due process and equal protection under the law. Accordingly, the Church Members respectfully request that this Court reverse the district court's denial of interlocutory injunctive relief, and remand to the district court for further proceedings.

### **ISSUES PRESENTED**

1. Did the district court err by creating an unprecedented "minimal scrutiny" standard for emergencies when reviewing the Church Members' claims for the deprivation of their fundamental rights?

2. Are the Church Members likely to succeed on the merits of their claims that the Government's actual and threatened prohibition on communal religious worship violates the United States and California Constitutions?

3. Are the Church Members likely to suffer irreparable harm absent an injunction prohibiting the Government from further criminalizing communal religious worship?

4. Do the public consequences of a preliminary injunction weigh in favor of temporarily enjoining the Government from further prohibiting religious worship on terms more restrictive than those applicable to comparable secular activities?

## STATEMENT OF JURISDICTION

The district court had federal question subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a) and supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367.

This Court has jurisdiction over appeals from interlocutory orders of the district court that grant, continue, modify, refuse, or dissolve injunctions. 28 U.S.C. § 1292(a)(1). An order denying a temporary restraining order may be appealable if it is tantamount to the denial of a preliminary injunction. *Religious Tech. Ctr., Church of Scientology Int'l, Inc. v. Scott*, 869 F.2d 1306, 1308 (9th Cir. 1989) (citing *Env'tl. Defense Fund, Inc. v. Andrus*, 625 F.2d 861, 862 (9th Cir. 1980)). This is so where the denial followed a “full adversary hearing” and if, “in the absence of review, the appellant would be effectively foreclosed from pursuing further interlocutory relief.” *Andrus*, 625 F.2d at 862.

Here, this Court has jurisdiction over this appeal because the order below is tantamount to the denial of a preliminary injunction. *See* 28 U.S.C. § 1292(a)(1). Appellants had moved for (1) a temporary restraining order and (2) an order to show cause why a preliminary injunction should not issue. ER 129. The district court denied their requests following a full briefing on the merits and a lengthy telephonic hearing, at which all parties were represented by counsel. ER 10-46.

At the conclusion of the hearing, the Church Members’ counsel renewed their request for a further hearing on whether a preliminary injunction should issue. ER 45:8-16. The Honorable Jesus G. Bernal responded by stating that he would “consider that,” and thereafter issued the order denying the Church Members’ motion in full, and without setting any further hearing on the Church Members’ request for a preliminary injunction. *Id.*

By denying the Church Members’ motion, the district court effectively decided the merits of the case and foreclosed the possibility of any further interlocutory relief. In the order, the district court erroneously held, for example, that “as acts of the executive in response to a national emergency, the [Government’s] Orders are subject to only minimal scrutiny, which they easily survive.” ER 4-5. The court further held that “even absent consideration of greater leeway afforded to executive acts during a state of emergency, the Orders do not violate [the Church Members’] rights under traditional constitutional analysis,” because the Orders survive rational basis review. ER 5.

The district court’s decision not only conclusively denies interlocutory injunctive relief, but it effectively decided the merits of the case, providing this Court jurisdiction over this appeal pursuant to 28 U.S.C. § 1292(a)(1).

## STATEMENT OF THE CASE

### I. STATEMENT OF FACTS

On March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency as a result of the threat of COVID-19. ER 274-78. He then issued Executive Order N-33-20 on March 19, 2020, requiring that “all residents . . . heed the current State public health directives.” ER 96-97. The state public health directive requires “all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors . . . .” *Id.* The directive provides that it “shall stay in effect until further notice.” *Id.*

On March 22, 2020, the California Public Health Officer designated a list of “Essential Critical Infrastructure Workers.”<sup>2</sup> ER 285-98. Listed as a part of the “essential workforce” were coffee baristas, grocery store workers, laundromats employees, workers supporting the entertainment industry, and workers supporting ecommerce. *Id.* The list also included “faith based services [] provided through streaming or other technology.”<sup>3</sup> ER 295. Accordingly, the Executive Order

<sup>2</sup> On April 28, 2020, state officials issued an amended “Essential Critical Infrastructure Workers” list, revising slightly the list of allowable “essential” activities under the Governor’s shelter-in-place order. RJN Ex. 4.

<sup>3</sup> After the Church Members initiated this action, Governor Newsom stated in court filings that drive-in worship services were permitted under the Executive Order as

prohibits religious leaders from providing communal religious services to their congregations, regardless of whether any non-technological measures might be taken to reduce or eliminate the risk of the virus spreading, such as offering socially-distanced seating for family units, or mask and glove requirements. ER 96-97.

On May 4, 2020, Governor Newsom issued Executive Order N-60-20, also called California's Reopening Plan. RJN Exs. 1, 2. The plan allows schools, restaurants, factories, offices, shopping malls, swap meets, and others to operate with social distancing in Stage 2 of California's four-stage reopening process, but does not permit houses of worship to hold religious worship services until Stage 3, which may be several months from now. *Id.* The Reopening Plan permits counties to "move through Stage 2 faster if they are able to show greater progress," through a "variance and attestation" procedure. *Id.*; *see also* RJN Ex. 3. San Bernardino and Riverside Counties submitted variance and attestation forms that do not indicate that communal worship reopen earlier than Stage 3. RJN Ex. 3.

On May 19, 2020, the United States Department of Justice Civil Rights Division sent a letter to Governor Gavin Newsom raising "several civil rights

a form of "other technology." ER 17:2-13. Thereafter, San Bernardino and Riverside Counties issued statements indicating that drive-in worship services would henceforth be permitted. *Id.*



concerns with the treatment of places of worship” in Executive Orders N-33-20 and N-60-20 and documents relating to the California Reopening Plan. RJN Ex. 6. Four days later, on May 23, 2020, the CDC issued guidance declaring religious worship to be “essential,” and offering suggestions on how religious communities may practice their faiths while minimizing the risk of transmission of the virus. RJN Ex. 7.

Despite the federal government’s insistence that places of worship be allowed to reopen safely, Governor Newsom has refused to do so. Instead, on May 25, 2020, the Government issued guidance materials imposing *additional* constraints on religious activities. RJN Ex. 8. Under these new guidelines, even if a county obtains a variance from the State’s orders, religious observers must still comply with a laundry list of requirements that other variance-approved activities need not. *Id.*

For example, under the May 25 guidance, “[p]laces of worship must [] limit attendance to 25% of building capacity or a maximum of 100 attendees, whichever is lower.” *Id.* This is regardless of the size of the house of worship. No other sector of California’s economy is subjected to such arbitrary burdens. *See* RJN Ex. 3, p. 101 (establishing Stage 2 variances in San Bernardino County for, *inter alia*, retail stores to operate at 50% capacity and dine-in restaurants to operate at any capacity provided there is “safe physical distance” between patrons). Further, because such

variances would be subject to review every three weeks, even if requested by the counties and approved by the State, there remains a real possibility that the Government will simply reinstate its totalitarian ban on communal worship at any time through an unelected county bureaucrat revoking the government “license to pray” that variance renewals constitute.

On May 25, 2020, San Bernardino County issued a News Release stating that religious services could resume in a limited capacity, subject to the State’s May 25 guidance. RJN Ex. 9. In the release, the County threatens that “[n]ot adhering to all of the guidelines in their entirety [sic] could result in . . . the re-closing of places of worship.” RJN Ex. 9, p. 2.

Appellant Patrick Scales’ church, Shield of Faith Family Church, Inc., is located in San Bernardino County. ER 234-236. He desires to hold in-person religious services for those congregants who desire to attend church. *Id.* Scales believes that he can hold such religious services and abide by social distancing tips recommended by the CDC by keeping congregants at least six feet apart and providing masks and gloves. *Id.* He believes that religious services are essential for the spiritual health of the congregation so that the congregants may exhort one another during these difficult times. *Id.* Scales recognizes that most of his congregants will stay at home, but he wants to be available for those who are

healthy and feel that in-person church service can be safely attended with social distancing and other measures. *Id.*

Appellant Wendy Gish attends Shield of Faith Family Church and would attend an in-person church service should it be made available to her. ER 232-33. She regularly attends church services and believes that she has a scriptural command to “not neglect meeting together.” *Id.*

Appellant James Moffatt’s church, Church Unlimited, is located in Riverside County. ER 217-20. Upon learning about the coronavirus, he immediately had his church building cleaned and disinfected. *Id.* Moffatt ensured that sanitizing materials were available to each person who entered his church and encouraged family units to sit at least six feet apart. *Id.* He encouraged anyone who was uncomfortable with gathering to stay at home. *Id.* He also encouraged anyone experiencing symptoms of illness to stay at home. *Id.*

On April 9, 2020, Moffatt was threatened with a fine of one thousand dollars for holding a church service on April 5, 2020, Palm Sunday. ER 218. But for the Orders, Moffatt would continue to hold in-person religious services in Riverside County, while taking the same social distancing precautions taken by the multitude of “essential businesses” that continue to operate in the county, despite any prevalence of COVID-19. He believes that it is important for Christians to come together, remember, and celebrate all that Jesus has done for this world. *Id.*

Appellant Brenda Wood's church, Word of Life Ministries International Inc. is located in Riverside County. ER 237-39. Word of Life Ministries International Inc. has approximately 20-30 regular attendees. *Id.* Wood believes Scripture commands her to provide opportunities for the believers to obey Hebrews 10:25 where the believers meet together and encourage one another. *Id.*

During a drive-up Easter Sunday service at Wood's church, communion was served by an individual wearing a mask and gloves and the elements were pre-packaged. *Id.* The person serving Holy Communion used tongs to remove the communion cups from the pre-packaged box. *Id.* At this time, Wood has postponed all baptisms at her church. *Id.* She would like to hold drive-up church services every Sunday, including by following reasonable precautions while sharing Holy Communion with her congregation. *Id.*

## **II. PROCEDURAL HISTORY**

On April 13, 2020, the Church Members filed their Verified Complaint, followed by an emergency motion for a temporary restraining order and for an order to show cause why a preliminary injunction should not issue on April 14, 2020. ER 56, 129. The Government filed oppositions to the motion on April 17, 2020. ER 242, 378, 745. The Church Members filed their reply and motion for leave to file the same on April 19. ER 999. On April 22, 2020, the district court

held a telephonic hearing on the motion, and later issued the order denying the motion on April 24, 2020. ER 1-46, 47-55.

The Church Members filed their notice of appeal on the following court day, April 27, 2020. ER 1072. On May 3, 2020, the Church Members filed an emergency motion for an injunction pending appeal with this Court, Dkt. 9, which was denied on May 7, 2020. Dkt. 21.

### **STANDARD OF REVIEW**

This Court reviews a district court's "denial of a preliminary injunction for abuse of discretion." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). In deciding whether the district court has abused its discretion, the Court employs a two-part test: first the Court "determine[s] de novo whether the trial court identified the correct legal rule to apply to the relief requested; second, [the court] determine[s] if the district court's application of the correct legal standard was (1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the facts in the record." *California v. U.S. Dep't of Health & Human Servs.*, 941 F.3d 410, 420 (9th Cir. 2019) (citing *Pimentel v. Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012)); see also *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 724 (9th Cir. 1983). The district court in this case based its decision on multiple erroneous legal standards, and applied such standards in a manner that is illogical, implausible, and draws upon unreasonable inferences from facts in the record.

## SUMMARY OF THE ARGUMENT

The Government's criminalization of gatherings for religious purposes violates multiple provisions of the U.S. and California Constitutions.<sup>4</sup> The district court abused its discretion by holding that "traditional constitutional scrutiny does not apply" to constitutional violations in an emergency and creating a new, never before recognized "minimal scrutiny" standard to analyze the violations of the Church Members' constitutional rights. ER 4-5. The district court invented this standard by misapprehended the Supreme Court's 1905 decision in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 27 (1905). When the Supreme Court has cited *Jacobson* over the last century, the case has been analyzed within the Court's traditional tiered scrutiny analysis, not in the context of a "minimal scrutiny" standard for emergencies.

<sup>4</sup> The Verified Complaint asserts the following causes of action: (1) violation of the Free Exercise Clause of First Amendment; (2) violation of the Establishment Clause of First Amendment; (3) violation of the Free Speech Clause of First Amendment; (4) violation of the First Amendment Freedom of Assembly; (5) violation of the Due Process Clause of Fourteenth Amendment by reason of vagueness; (6) violation of substantive rights protected by the Due Process Clause of Fourteenth Amendment; (7) violation of the Equal Protection Clause of Fourteenth Amendment; (8) violation of the Right to Liberty (Cal. Const. Art. I, § 1); (9) Freedom of Speech (Cal. Const. Art. I, § 2); (10) Freedom of Assembly (Cal. Const. Art. I, § 3); and (11) Free Exercise and Enjoyment of Religion (Cal. Const. Art. I, § 4). ER 56-91.

The district court further abused its discretion in finding that the Government's Orders are neutral and generally applicable, and therefore only considering the Church Members' free exercise claims under rational basis review. ER 5. The Orders are neither neutral, nor generally applicable. They single out religious gatherings for explicit restrictions when similarly situated secular entities may remain open while following social distancing guidelines. In its reasoning, the district court inserted its own value judgment that religious worship deserved lesser protection than going to the grocery store or picking up coffee, because there remains an inherent risk in any community gathering during the pandemic. In determining that the Church Members' fulfillment of deeply held religious beliefs was worthy of less protection than picking up fast food or marijuana, the Court lumped religious worship, a fundamental civil right protected by our Constitution since its inception, in a column with mere entertainment at concerts or sporting events. ER 6. Free exercise jurisprudence does not permit the government to allow some activities to proceed with risk, but then prohibit comparable religiously-motivated activities. Supreme Court precedent holds freedom of religion in much higher regard.

Finally, the district court chose not to address the Church Members' other claims in detail, stating they fail because the Orders were neutral. The Church Members' other claims state independent bases for relief and should not have been



dismissed out of hand. For these reasons, the Church Members ask that this Court reverse the decision of the district court and remand to the district court for further proceedings.

### **ARGUMENT**

This Court has established two sets of criteria for evaluating a request for injunctive relief. *Earth Island Inst. v. United States Forest Serv.*, 351 F.3d 1291, 1297 (9th Cir. 2003). Under the “traditional” criteria, a plaintiff must show (1) a strong likelihood of success on the merits, (2) a likelihood of irreparable injury to plaintiff if preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the public interest. *See, e.g., Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Where the government is the opposing party, balancing of the harm and the public interest merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Thus, the Court asks whether any significant “public consequences” would result from issuing the preliminary injunction. *Winter*, 555 U.S. at 24.

Alternatively, injunctive relief may be appropriate when a movant raises “serious questions going to the merits” and the “balance of hardships tips sharply in the plaintiff’s favor,” provided that the plaintiff is able to show there is a likelihood of irreparable injury and that the injunction is in the public interest. *All. for Wild Rockies*, 632 F.3d at 1131.

For the reasons addressed below, the Church Members meet all the criteria for injunctive relief. They have proved a clear violation of their constitutional rights; they will continue to be irreparably injured if relief is not granted; the balance of hardships tips in favor of protecting the Church Members' constitutional rights; and it is in the public interest to protect constitutional rights from government overreach.

**I. THE DISTRICT COURT IS NOT FREE TO INVENT AND THEN MISAPPLY A NEW CONSTITUTIONAL STANDARD UNMOORED FROM ESTABLISHED SUPREME COURT PRECEDENT.**

**A. *Jacobson* Does Not Establish a “Minimal Scrutiny” Standard for Reviewing the Government’s Actions During an Emergency.**

The district court erred by determining that “traditional constitutional scrutiny does not apply” during an emergency and then inventing a new standard of “minimal scrutiny” out of whole cloth. ER 4, 7. No court has ever held that Constitutional rights give way to plenary state power wholesale in an emergency, and *Jacobson*, a case examining liberty interests in the context of the Fourteenth Amendment, does not suggest or require this result. *Jacobson*, 197 U.S. at 27; *see also Ex parte Milligan*, 71 U.S. 2, 39 (1866) (holding during the Civil War that civilians cannot be convicted by military tribunals while courts remain open); *Korematsu v. U.S.*, 323 U.S. 214 (1944) (condoning internment of Japanese citizens during World Word II); *Trump v. Hawaii*, 138 S. Ct. 2392, 2423 (2018) (“*Korematsu* [*v. U.S.*, 323 U.S. 214 (1944)], condoning internment of Japanese

citizens during World Word II,] was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—“has no place in law under the Constitution.”).

The district court’s analysis of *Jacobson* both misinterprets the case itself and fails to consider the last century of Supreme Court precedent both applying *Jacobson* and developing an established constitutional framework for analyzing potential violations of constitutional rights, sometimes in very trying circumstances. *Jacobson* did not create a “minimal scrutiny” standard for violations of constitutional rights in emergency situations and the Supreme Court has never recognized such a standard. *Id.*

In *Jacobson*, the Supreme Court upheld a conviction under a Massachusetts statute that criminalized the defendant’s refusal to vaccinate himself from smallpox, despite the defendant’s assertion that the statute violated his liberty interests under the Fourteenth Amendment. *Id.* at 12.

*Jacobson* was decided decades before the First Amendment was held to apply to the States by incorporation. *See Cantwell v. State of Connecticut*, 310 U.S. 296, 303 (1940); (incorporating the Free Exercise Clause against the States); *Gitlow v. New York*, 268 U.S. 652 (1925) (Free Speech Clause); *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937) (Free Assembly Clause); *Edwards v. South Carolina*, 372 U.S. 229 (1963) (Right to Petition). It was not a case involving

religious liberty, and therefore does not, and could not, control this Court's analysis of the Church Members' First Amendment claims.

Subsequent Supreme Court citations of *Jacobson* focus largely on questions surrounding interpretations of the Fourteenth Amendment. For example, in *Cruzan by Cruzan v. Dir., Missouri Department of Health*, the Supreme Court compared the liberty interest at issue in *Jacobson* with the liberty interest at issue in the decision to withhold life-sustaining treatment before applying traditional constitutional scrutiny to the Missouri policy at issue. *Cruzan by Cruzan v. Dir., Missouri Dep't of Health*, 497 U.S. 261, 278 (1990). Similarly, in *Mills v. Rogers*, the Court cited *Jacobson* in its discussion of how, under the applicable constitutional framework, individuals' liberty interests should be weighed against competing state interests. *Mills v. Rogers*, 457 U.S. 291, 299 (1982).

The Supreme Court has frequently cited *Jacobson* in its discussion of the right to privacy under the Fourteenth Amendment in the reproductive rights context. *See, e.g., Roe v. Wade*, 410 U.S. 113, 154 (1973); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 857 (1992). When cited outside the context of Fourteenth Amendment violations, the Court has used it as an example of potentially permissible restrictions on rights if neutrally applied. *See, e.g., Emp't Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 878–79 (1990); *Everson v. Board of Ed. Ewing Tp.*, 330 U.S. 1, 32 (1947).

During the 115 years since *Jacobson* was decided, the Supreme Court has developed a substantial and durable body of case law establishing, unequivocally, that a state's infringement of fundamental rights enshrined by the First Amendment to the U.S. Constitution is subject to the most rigorous form of judicial scrutiny: strict scrutiny. *See, e.g., Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 546 (1993); *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) ("The word 'security' is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment."). The Court should not abandon this analysis here, for the first time.

The Supreme Court cases citing *Jacobson* show the Court intends *Jacobson's* analysis be incorporated within the Court's traditional tiered scrutiny framework for constitutional rights. Emergency use of the police power is to be considered in the context of the court's broader traditional constitutional tests, as evidence of the government's rational or compelling purpose, *see Roberts*, No. 20-5465, 2020 WL 2316679, at \*3, not as a separate standard to be applied in emergency situations. None of the Supreme Court's citations to *Jacobson* in the last century suggest *Jacobson* established a separate tier of scrutiny courts should apply in emergencies. The district court abused its discretion by dismissing the Supreme Court's traditional constitutional analysis in favor a new "minimal scrutiny" standard.

**B. The Church Members Are Likely to Prevail Even Under the District Court's Faulty Minimal Scrutiny Standard.**

Even under the district court's erroneous interpretation of *Jacobson*, government action is still rendered unconstitutional if it "has no real or substantial relation to those objects, or is, beyond all question, a plain, palpable invasion of rights secured by the fundamental law." *Jacobson*, 197 U.S. at 31; *see also Robinson v. Marshall*, No. 2:19CV365-MHT, 2020 WL 1847128 (M.D. Ala. Apr. 12, 2020) (granting a temporary restraining order to abortion providers) (appeal pending); *First Baptist Church*, No. 20-1102-JWB, 2020 WL 1910021, at \*3 (applying strict scrutiny to the plaintiff's claims of constitutional violations arising from Kansas' prohibition on public gatherings).

For reasons discussed in greater detail in Section II below, the Government cannot meet even this standard; its indefinite and total ban on gatherings undertaken for purposes of communal worship is beyond all question, a plain, palpable invasion of fundamental rights. *See Roberts*, No. 20-5465, 2020 WL 2316679, at \*4. Allowing the entertainment industry to continue business under CDC guidelines but restricting houses of worship from continuing under the same exact guidelines clearly singles out religion for disfavored treatment. All pretenses of neutrality found in the original Orders have been shed in the Government's recently released plans for reopening as the State will allow restaurants, shopping malls, and swap meets to open, but will continue to restrict houses of worship from

meeting under the exact same standards, or at least threaten to do so. RJN Exs. 1-2, 8, 9. Under California’s Reopening Plan, a church that has a coffee shop can serve coffee as long as people refrain from prayer and the barista refrains from distributing Holy Communion. The arbitrary Orders are a plain and palpable invasion of the Church Members’ rights and do not satisfy even the district court’s newly created *Jacobson* “minimal scrutiny” standard.

The district court abused its discretion both in its interpretation of *Jacobson* as providing a free-standing tier of minimal constitutional scrutiny to be applied in emergency situations, and in its application of that standard to the facts of this case. Thus, this Court should reverse the district court’s order denying injunctive relief.

## **II. THE CHURCH MEMBERS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS.**

### **A. The Government’s Criminalization of Communal Religious Worship Violates the Church Members’ Free Exercise Rights.**

The First Amendment to the U.S. Constitution prohibits government actors from enforcing any “law respecting an establishment of religion, or prohibiting the free exercise thereof.” U. S. Const. amend. I. Fundamental to this protection is the right to gather and worship. *See W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943); *Cantwell*, 310 U.S. at 304. Because of this fundamental protection, “a law burdening religious practice that is not neutral or not of general



application must undergo the most rigorous of scrutiny.” *Lukumi*, 508 U.S. at 546. The requirements to satisfy this scrutiny are so high that the government action will only survive this standard “in rare cases,” and the government bears the burden of proving they further a compelling interest and are pursued through the least restrictive means possible. *Id.*

Similarly, Article I, Section 4 of the California Constitution provides that “[f]ree exercise and enjoyment of religion without discrimination or preference are guaranteed.” California Courts largely defer to the federal Free Exercise standard when examining potential constitutional violations. *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562 (2004) (stating the California Supreme Court has thus far not decided whether an independent interpretation of California’s Free Exercise clause exists apart from the federal standard articulated in *Employment Division v. Smith*, 494 U.S. 872 (1990)).

**1. The Orders are not neutral nor generally applicable because they restrict religiously-motivated activity but not comparable secular activity.**

“[I]f a law pursues the government’s interest ‘only against conduct motivated by religious belief,’ but fails to include in its prohibitions substantial, comparable secular conduct that would similarly threaten the government’s interest, then the law is not generally applicable.” *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1079 (9th Cir. 2015) (citing *Lukumi*, 508 U.S. at 542–46). Laws that

accomplish a “religious gerrymander,” singling out religious practices while not restricting similar secular practices, are not generally applicable. *See id.* at 535–37. The Free Exercise Clause “‘forbids subtle departures from neutrality,’ and ‘covert suppression of particular religious beliefs.’” *Id.* at 542. This is because “an exception-ridden policy takes on the appearance and reality of a system of individualized exemptions, the antithesis of a neutral and generally applicable policy and just the kind of state action that must run the gauntlet of strict scrutiny.” *Roberts*, No. 20-5465, 2020 WL 2316679, at \*3.

Since the Free Exercise Clause “protect[s] religious observers against unequal treatment,” *id.*, prohibitions are not generally applicable if they “substantially underinclude non-religiously motivated conduct that might endanger the same governmental interest that the law is designed to protect.” *Wiesman*, 794 F.3d at 1079. Similarly, an overinclusive law that includes more protected conduct than necessary to achieve its goal is not generally applicable. *Lukumi*, 508 U.S. at 579.

The Governments’ Orders are neither neutral nor generally applicable. Religious gatherings have been singled out for disfavored treatment. Executive Order N-33-20 (March 19, 2020) ordered Californians to remain home but deemed “faith-based services” as essential only if the services can be “provided through streaming or other technologies.” ER 295; RJN Ex. 4. Yet the list of essential

workers not restricted exclusively to telework included workers in the “entertainment industries, studios, and other related establishments” and “workers supporting ecommerce,” without reference to whether the goods provided are life-preserving. As noted by the United States Justice Department in its May 19, 2020, letter to Governor Newsom raising civil rights concerns about the treatment of houses of worship, this sliding scale of “essential worker” that allows Hollywood and Amazon to maintain their activities with appropriate social distancing but prohibits churches, synagogues, and mosques from doing the same “facially discriminates against religious exercise.” RJN Ex. 6.

Even more egregious is the disparate treatment of houses of worship in California’s Reopening Plan. Localities moving to Stage 2 of the plan may reopen schools, restaurants, factories, offices, shopping malls, swap meets, and other general business with social distancing, but houses of worship are not permitted to hold religious services until Stage 3, regardless of what social distancing measures they employ, unless special permission is acquired from the State. RJN Exs. 1-3. A reopening plan that allows people to gather in schools, restaurants, shopping malls and swap meets, but excludes houses of worship from meeting under the exact same standards, is not neutral or generally applicable.

The law does not permit a finding that activity undertaken for a secular purpose, can suddenly become criminal if undertaken for a religious purpose. *See,*

*e.g.*, *Roberts*, No. 20-5465, 2020 WL 2316679, at \*3. The Orders criminalize activity when it is undertaken for a religious purpose and single out religious institutions for disfavored treatment in violation of the Church Members’ constitutional rights.

The Orders are both underinclusive—by permitting equally risky non-religiously motivated activities—and overinclusive—by restricting religious activities to a degree greater than necessary. *See Wiesman*, 794 F.3d at 1079. The district court’s opinion effectively admitted the Orders were underinclusive when it declared there was inherent and unavoidable risk in having grocery stores, pharmacies, and restaurants with takeout services remain open. ER 6. The Court made an unpermitted value judgment on the worthiness of religious exercise in deeming the religious exercise in question “nonessential” in comparison to the permissible activities. *Id.*

The Government clearly has a legitimate interest in mitigating the effects of the pandemic. Allowing businesses such as grocery stores, movie studios, and fast food restaurants to remain open endangers the governmental interest in flattening the curve of infection. The Constitution does not allow the Government to endanger its stated goal by allowing secular activity to continue while shuttering the doors of religious institutions under the same risk threshold. *Wiesman*, 794 F.3d at 1079; *On Fire Christian Ctr., Inc. v. Fischer*, No. 3:20-CV-264-JRW, 2020

WL 1820249, at \*7 (W.D. Ky. Apr. 11, 2020) (granting a temporary restraining order against Louisville's prohibition on religious gatherings); *First Baptist Church v. Kelly*, No. 20-1102-JWB, 2020 WL 1910021, at \*6 (D. Kan. Apr. 18, 2020) (granting a temporary restraining order against Kansas State's prohibition on religious gatherings); *Berean Baptist Church v. Cooper*, No. 4:20-CV-81-D, 2020 WL 2514313, at \*7 (E.D. N.C. May 16, 2020) (granting injunction).

Similarly, the Orders are overinclusive because they restrict more religious activity than necessary to achieve the Government's stated goals. *See* RJN Exs. 7 (CDC guidelines for places of worship), 10 (finding that most states have religious exemptions to COVID-19 social distancing rules). California's blanket prohibition on religious gatherings means there are lots religious activities prohibited which could be undertaken with appropriate safety measures. The Government has provided no defense as to why a church could not gather for a religious service with a limited number of participants, or an outdoor baptism where individuals keep safe distances from one another.

Because the Orders are neither neutral nor generally applicable, they violate the First Amendment to the U.S. Constitution and Article I, Section 4 of the California Constitution unless the Government can prove they further a compelling interest pursued through the least restrictive means. The Government has not met that standard.

**2. The district court impermissibly weighed the reasonableness of the Church Members' religious beliefs in coming to its determination that the Orders did not violate the Free Exercise Clause.**

Determinations as to the sincerity of religious belief “[are] not to turn upon a judicial perception of the particular belief or practice in question.” *Thomas v. Review Bd. of Indiana Employment Security Div.*, 450 U.S. 707, 714 (1981). “[R]eligious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Id.* In applying the Free Exercise clause of the First Amendment, “courts may not inquire into the truth, validity, or reasonableness of a claimant’s religious beliefs.” *See United States v. Ballard*, 322 U.S. 78, 87 (1944). “[T]he guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect,” and courts are not to be “arbiters of scriptural interpretation.” *Thomas*, 450 U.S. at 716. And as discussed above, when the government designs a law to further a particular government interest, the law is not permitted to allow secularly motivated conduct endangering that interest while restricting religious conduct endangering the same interest. *Wiesman*, 794 F.3d at 1079.

In its order, the district court refused to apply the neutral social distancing rules available for the operation of grocery stores and movie studios to houses of worship because, the court reasoned, if it applied “the same rules to in-person religious gatherings as it does to grocery stores, people will get sick and die from

attending religious gatherings just as they are dying from working in grocery stores.” ER 6. The Court then went on to determine that religious gatherings were “non-essential activities,” likening them to a concert or a sporting event, that must be suspended so that “essential functions,” as defined by the Orders, may be undertaken more safely. *Id.* In so doing, the district court substituted its own judgment of the level of risk the Church Members should be willing to take to follow the tenets of their faith for that of the faithful, including the Church Members.

For the Church Members, following biblical commands to gather with believers for communal worship is as essential, if not more so, than grocery shopping, picking up coffee, and going to the local hardware store. ER 217-19, 232-39. While the district court judged fulfillment of their beliefs not worthy of the level of risk the Orders allow for similar secular activities, it is not a prerogative of the court to be the arbiter of what the Church Members’ faiths require. This was not the court’s judgment to make. If “[w]orkers supporting the entertainment industries, studios, and other related establishments” or “supporting ecommerce” are allowed to gather with some risk to themselves in order to perform the secular tasks they undertake on a daily basis, the fact that the court does not consider the Church Members’ religious beliefs of similar import does not mean religious adherents should not have the opportunity to meet under the same standards. As



discussed by the Sixth Circuit in its recent decision striking down similarly unconstitutional restrictions on religious freedom, “[a]ssuming all of the same precautions are taken, why can someone safely walk down a grocery store aisle but not a pew? And why can someone safely interact with a brave deliverywoman but not with a stoic minister?” *Roberts*, No. 20-5465, 2020 WL 2316679, at \*4.

The Free Exercise Clause is not limited to supporting religious freedom for faith decisions with which a Judge agrees. That the district court Judge does not find in-person religious worship “essential” is not the governing principle of the law, and is also contrary to guidelines issued by the federal government. RJN Exs. 6, 7. The Government has a right to enforce neutral laws to stop the flow of a virus. It does not have the right to declare that selected businesses may continue with a lessened risk of transmission but houses of worship may not. The Church Members only ask to be held to the same standards as the other secular activities in the Orders, as recommended by the CDC.

**3. The Government does not have a compelling interest pursued through the least restrictive means for its disparate treatment of houses of worship.**

When a government practice restricts fundamental rights, it is subject to strict scrutiny and can be justified only if it furthers a compelling government purpose and, even then, only if no less restrictive alternative is available. *See, e.g.,*

*San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973); *Dunn v. Blumstein*, 405 U.S. 330 (1972).

The Government does not have a compelling government purpose for continuing to restrict houses of worship from meeting when they are increasingly allowing comparable secular entities to open and meet with social distancing. In their current form, the Orders do not allow any gatherings undertaken for a religious purpose, even those that can take place while maintaining CDC guidelines. RJN Ex. 7. Further, San Bernardino and Riverside Counties have both stated in documents provided to the State that healthcare facilities are well-below surge capacity and the Counties have increased their readiness to respond to the crisis. RJN Ex. 3, p. 114 (“hospitals within the County of San Bernardino have additional surge capacity sufficient to handle current projections”); p. 149 (“Riverside County has sufficient hospital capacity, including Intensive Care Unit (ICU) beds and ventilators, and adequate PPE to handle standard healthcare needs, current COVID-19 cases, and a potential surge due to COVID-19.”). The Orders substantially burden the free exercise of religion by prohibiting every Californian from attending religious services during this time of crisis. Not all Californians own cars or have access to “other technology” needed to engage in communal worship while sheltering at home, and not all religious practices may be observed remotely.

Even if the Government did have a compelling purpose for singling out religious worship in this way, there are less restrictive means to achieve the same end. *See, e.g.*, Ex. 5, 8. The Government could limit the numbers of family units allowed in church buildings based on square footage, or allow churches to provide religious worship for those who may not have electronic access for remote participation. *See, e.g.*, Ex. 6. There are numerous other measures the government could pursue that would be less restrictive on the Church Members' Free Exercise rights. Rather than do so, the Government opted to criminalize communal worship altogether.<sup>5</sup> Accordingly, the Orders violate the Free Exercise Clause of the U.S. and California constitutions.

**B. The Government's Orders Violate the Establishment Clause.**

The "First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion." *McCreary Cnty., Ky. v. Am. Civil Liberties Union of Ky.*, 545 U.S. 844, 860 (2005) (citing *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968)).<sup>6</sup> If a secular group receives more favorable treatment than a religious group because they are secular, such treatment violates

<sup>5</sup> While San Bernardino has indicated intends to reopen places of worship, RJN Ex. 9, it also threatens that it may revert to the Governor's Order to shutter such facilities at any time. *Id.*

<sup>6</sup> The Establishment Clause applies to the states through the Due Process Clause of the Fourteenth Amendment. *Everson*, 330 U.S. at 10.

the Establishment Clause. *Id.* Article I, Section 4 of the California Constitution also guarantees the “[f]ree exercise and enjoyment of religion without discrimination or preference.” Cal. Const. Art. I, § 4; *Okrand v. City of Los Angeles*, 207 Cal. App. 3d 566, 571 (1989) (“ ‘California’s constitutional provisions are more comprehensive than those of the federal Constitution’ ”). “Notwithstanding the clear differences between the state and federal guarantees, California courts have recognized that an analysis of establishment claims under the California Constitution frequently produces the same results as one under the federal constitution.” *Id.* (incorporating the federal Establishment Clause’s *Lemon* test into state law analysis); *see also Vernon v. City of Los Angeles*, 27 F.3d 1385, 1396 (9th Cir. 1994) (discussing state and federal standards in religious liberty cases).

Under the *Lemon* test, government action violates the establishment clause unless it (1) has a secular purpose; (2) has a “principle or primary effect” that “neither advances nor inhibits religion”; and (3) does not foster “an excessive government entanglement with religion.” *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *but see Am. Legion v. Am Humanist Ass’n*, 139 S. Ct. 2067 (2019) (writing for the plurality, Justice Samuel Alito refused to apply the *Lemon* test, but failed to garner majority support for an alternate test.) Failure to satisfy any of these factors

renders the challenged state action unconstitutional. *Edwards v. Aguillard*, 482 U.S. 578, 583 (1987).

The Government's Orders violate the Establishment Clause and Article I, Section 4 of the California Constitution by favoring secular over religious activity and impermissibly subjecting the faithful the comprehensive, discriminatory, and continuous surveillance so as to excessively entangle itself with religion. *See Vernon*, 27 F.3d at 1399. The Stage 2 reopening plan sheds all suggestion of the Government's neutrality towards religious observance by reopening secular institutions like schools, restaurants, and shopping malls while singling out religious institutions for further restrictions. RJN Exs. 1-2. Under Stage 2 reopening, a church could meet for a garage sale, but not for a funeral. It could host a spaghetti dinner, but not the Lord's supper.

Further, if a county successfully obtains a variance from the State to allow religious worship, the State will require places of worship to comply with a lengthy, detailed set of conditions. RJN Ex. 8. A subset of those conditions is applicable to religious gatherings, only. *Compare* RJN Ex. 8 (limiting religious services to the lesser of 25% of the facility's capacity or 100 persons, regardless of the size of the facility) *with* RJN Ex. 3 (establishing Stage 2 variances in San Bernardino County for, *inter alia*, retail stores to operate at 50% capacity and dine-in restaurants to operate at any capacity provided there is "safe physical distance"

between patrons). In order to ensure compliance with these discriminatory conditions, the Government will need to continuously surveil places of worship in a manner wholly inconsistent with the Church Members' fundamental right to religious liberty. Thus, the Government's Orders violate the Establishment Clause and Article I, Section 4 of the California Constitution by favoring the secular over the religious and excessively entangling the government in the affairs of religious institutions.

**C. The Orders Ban All Public and Private Assembly in Violation of the First Amendment to the U.S. Constitution and California Constitution.**

The Court erred in its one-paragraph dismissal of the Church Members' multiple alternate, independent, and free-standing grounds for relief. The First Amendment right to free speech and to peaceably assemble are fundamental rights protected by the U.S. and California Constitutions. U.S. Const. amend. I; Cal. Const. Art. I §§ 2-3; *Whitney v. California*, 274 U.S. 357, 373 (1927); *People v. Chambers*, 22 Cal. App. 2d 687, 706 (1937) ("laws should not infringe upon our guaranteed freedom of speech and lawful assembly."). California courts treat the prior restraint and overbreadth doctrine similarly to federal courts. *See Wilson v. Superior Court*, 13 Cal.3d 652, 658-62 (1975) (relying mostly on federal citations to analyze prior restraint doctrine under California Constitution); *In re J.M.*, 36 Cal. App. 5th 668, 680 (2019) (citing some federal cases and paralleling

overbreadth doctrine analysis under California Constitution with that under the U.S. Constitution).

“Religious worship and discussion are protected speech under the First Amendment.” *Widmar v. Vincent* (“*Widmar*”), 454 U.S. 263, 269, n. 6 (1981). Accordingly, “[t]he Constitution guarantees Appellants’ right to associate for the purpose of engaging in activities protected by the First Amendment.” *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984). When a government practice restricts fundamental rights, it is subject to “strict scrutiny” and can be justified only if it furthers a compelling government purpose and, even then, only if no less restrictive alternative is available. *See, e.g., San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973).

The Government’s Orders constitute a prior restraint on the Church Members’ fundamental rights to freedom of speech and assembly and therefore fail to pass constitutional scrutiny. The Orders are also substantially overbroad, producing a chilling effect on the Church Members’ ability to engage in religious worship safely, pursuant to federal guidelines and recommendations. RJN Ex. 7. As discussed above, the Government cannot overcome strict scrutiny. The CDC’s social distancing guidelines are appropriate to limit the spread of COVID-19. *Id.* Imposing more restrictive requirements that target churches while at the same time allowing restaurants, coffee shops, and marijuana dispensaries to operate drive-ups



is not the least restrictive means of achieving the Government's public safety goals.

In this case, law enforcement officers have unfettered discretion in enforcing the law because they are provided no standards as to when to enforce, or exempt religious services from the law. *See, e.g., Houston v. Hill*, 482 U.S. 451 (1987). Counties have already exercised that discretion to provide *ad hoc* exemptions for Christians, only. ER 211. Violators of the Orders are liable for criminal penalties, further raising the stakes.

Requiring the Church Members to abstain from religious gatherings, under threat of criminal enforcement, and despite substantial modifications to satisfy the public health interests at stake (modifications that have been deemed acceptable in the cases of operations deemed "essential" by government decree, and by the federal government), violates Church Members' constitutional rights to free speech and peaceful assembly.

**D. The Government's Orders Are Void for Reasons of Vagueness.**

A regulation is constitutionally void on its face when, as matter of due process, it is so vague that persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926); *People ex rel. Gallo v. Acuna*, 14 Cal.4th 1090, 1115 (1997). Vague laws "trap the innocent by not providing fair warning." *Grayned v. City of*

*Rockford*, 408 U.S. 104, 108–109 (1972). If “arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.” *Id.* The problem with a vague regulation is that it “impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis with the attendant dangers of arbitrary and discriminatory application.” *Id.*; *see also Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018).

The Orders at issue in this case are so vague as to their scope and application as to run afoul of the Due Process Clause of the Fourteenth Amendment. Embedded within Executive Order N-33-20 is a public health directive to shelter in place. The order itself merely directs the public to “heed” the public health directive, it does not appear to order compliance therewith; Webster’s Dictionary defines the word “heed” to mean “to give consideration or attention to”—not to “adhere” or comply. Despite this, state and local officials have widely reported the Governor’s order to require compliance with the public health directive by sheltering in place. ER 185.

Given this ambiguity, and particularly in light of the fundamental rights at stake, neither the Church Members, nor any other reasonable person, can understand precisely what is being ordered, and what actions may result in criminal penalties, fines, or imprisonment. Statements by local officials have muddled the

issue further. San Bernardino County, for example, has indicated that it “does not expect law enforcement to broadly impose citations on violators” and that “the expectation is that law enforcement will rely upon community members to use good judgment, common sense, and act in the best interest of their own health and the health of their loved ones and the community at large.” ER 179. As no reasonable person can make sense of what conduct is permitted under the Orders and what conduct will result in criminal penalties, the Government’s Orders are void for vagueness.

**E. The Orders Violate Article I, Section 1 of the California Constitution.**

All Californians “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. I, § 1. Understanding the basic fundamental right of liberty, California courts have held that Public Health Officials’ authority is limited. Before exercising their full powers to quarantine, there must be “reasonable grounds [] to support the belief that the person so held is infected.” *Ex parte Martin*, 83 Cal. App. 2d 164 (1948). Public Health Officials must be able to show “probable cause to believe the person so held has an infectious disease . . . .” *Id.*

In a case that is somewhat analogous to what Californians are facing with the coronavirus pandemic of 2020, California courts found that Public Health Officials could not quarantine 12 blocks of San Francisco Chinatown because of nine deaths due to bubonic plague. *See Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900); *Wong Wai v. Williamson*, 103 F. 1 (C.C. Cal. 1900). These courts found it “purely arbitrary, unreasonable, unwarranted, wrongful, and oppressive interference with the personal liberty of complainant” who had “never had or contracted said bubonic plague; that he has never been at any time exposed to the danger of contracting it, and has never been in any locality where said bubonic plague, or any germs of bacteria thereof, has or have existed.” *Jew Ho*, 103 F. at 10. In *Jew Ho* and *Wong Wai*, the courts found that there were more than 15,000 people living in the twelve blocks of San Francisco Chinatown who were to be quarantined. The courts found it unreasonable to shut down the ability of over 15,000 people to make a living because of nine deaths.

California courts have found that “a mere suspicion [of a contagious disease], unsupported by facts giving rise to reasonable or probable cause, will afford no justification at all for depriving persons of their liberty and subjecting them to virtual imprisonment under a purported order of quarantine.” *Ex parte Arta*, 52 Cal. App. 380, 383 (1921) (emphasis added). Under prevailing law, the Church Members are presumed to be free of communicable disease unless and

until the Government establishes otherwise. Requiring the Church Members to abstain from all religious gatherings, despite substantial modifications to satisfy the public health interests at stake, violates their California Constitutional liberty rights.

**F. The Government Violates the Equal Protection Clause of the Fourteenth Amendment.**

The Fourteenth Amendment of the Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. Equal protection requires the state to govern impartially—not draw arbitrary distinctions between individuals based solely on differences that are irrelevant to a legitimate governmental objection. *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985).

Strict scrutiny under the Equal Protection Clause applies where, as here, the classification impinges on a fundamental right, including the right to practice religion freely, to right to free speech and assembly, and the right to travel, among others. *Maynard v. U.S. Dist. Court for the Cent. Dist. of California*, 701 F. Supp. 738, 742 (C.D. Cal. 1988) (“When a law disadvantages a suspect class or impinges upon a ‘fundamental right,’ the court will examine the law by applying a strict scrutiny standard”), *aff’d sub nom. Maynard v. U.S. Dist. Court for Cent. Dist. of California*, 915 F.2d 1581 (9th Cir. 1990). Under strict scrutiny review, the law can be justified only if it furthers a compelling government purpose, and, even

then, only if no less restrictive alternative is available. *See, e.g. Mem'l Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 257-58 (1974).

Here, the Government intentionally and arbitrarily categorizes individuals and conduct as either “essential” or “non-essential.” RJN Ex. 4; ER 285. Those persons classified as “essential,” or as participating in essential services, are permitted to go about their business and activities provided certain social distancing practices are employed. *Id.* Those classified as “nonessential,” or as engaging in non-essential activities, are required to stay in their residence, unless it becomes necessary for them to leave for one of the enumerated “essential” activities. *Id.*

For reasons discussed above, the Government has not and cannot satisfy strict scrutiny; its arbitrary classifications are not narrowly tailored measures that further a compelling government interest. Indeed, the Government’s Orders defy federal guidance, which provides that places of worship are “essential” across the country. RJN Exs. 6, 7. Accordingly, the Government must permit the Church Members to engage in equivalent constitutionally protected activities provided that the Church Members also adhere to the social distancing guidelines established by the CDC.

### **III. THE CHURCH MEMBERS FACE IMMINENT IRREPARABLE HARM ABSENT IMMEDIATE INJUNCTIVE RELIEF.**

Preliminary injunctions in constitutional cases often turn on likelihood of success on the merits, usually making it unnecessary to dwell on the remaining three factors. *Roberts*, No. 20-5465, 2020 WL 2316679, at \*5. “In a case like the one at bar, where the First Amendment is implicated, the Supreme Court has made clear that ‘[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury’ for purposes of the issuance of a preliminary injunction.” *College Republicans at San Francisco State University v. Reed*, 523 F. Supp. 2d 1005, 1011 (N.D. Cal. 2007) (citing *Sammartano v. First Jud. Dist. Ct.*, 303 F.3d 959, 973-74 (9th Cir. 2002), in turn citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); see also *S.O.C., Inc. v. Cnty. of Clark*, 152 F.3d 1136, 1148 (9th Cir. 1998). “Unlike a monetary injury, violations of the First Amendment ‘cannot be adequately remedied through damages.’” *Americans for Prosperity Foundation v. Harris*, 182 F. Supp. 3d 1049, 1058 (C.D. Cal. 2016) (citing *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1138 (9th Cir. 2009)).

Without an injunction preventing the Government from further enforcing the Orders, the Church Members will suffer irreparable harm in the form of deprivations of fundamental freedoms secured by the First and Fourteenth Amendments to the U.S. and the California Constitutions. Thus, irreparable injury is demonstrated and interim injunctive relief is proper and necessary.



#### IV. THE REMAINING FACTORS WEIGH IN FAVOR OF GRANTING INJUNCTIVE RELIEF.

Where the government is the opposing party, balancing of the harm and the public interest merge. *See Nken*, 556 U.S. at 435. Thus, the Court asks whether any significant “public consequences” would result from issuing the preliminary injunction. *Winter*, 555 U.S. at 24. “[I]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (*quoting Elrod*, 427 U.S. at 373). “Faced with . . . preventable human suffering, [the Ninth Circuit] ha[s] little difficulty concluding that the balance of hardships tips decidedly in plaintiffs’ favor.” *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (*quoting Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). “The fact that a case raises serious First Amendment questions compels a finding that there exists the potential for irreparable injury, or that at the very least the balance of hardships tips sharply in [movant’s] favor.” *Sammartano*, 303 F.3d at 973.

Here, at a minimum, the balance of hardships tips strongly in favor of granting relief because the Orders raise serious constitutional questions concerning the Church Members’ fundamental rights. *G & V Lounge, Inc. v. Mich. Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (“it is always in the public interest to prevent the violation of a party’s constitutional rights”); *see also Reed*, 523 F. Supp. 2d at 1101; *Sammartano*, 303 F.3d at 974.

Further, protecting religious liberty will result in positive consequences for the public. There is minimal increased risk to the public by allowing the Church Members to practice their faiths in accordance with federal guidelines issued by the CDC. RJN Ex. 7. Indeed, San Bernardino and Riverside Counties have both stated in documents provided to the State that healthcare facilities are well-below surge capacity and have acquired a measure of control over the situation. RJN Ex. 3, pp. 114, 149 (“Riverside County has sufficient hospital capacity, including Intensive Care Unit (ICU) beds and ventilators, and adequate PPE to handle standard healthcare needs, current COVID-19 cases, and a potential surge due to COVID-19.”). As such, there is no public interest justification for allowing the continued suspension of the Church Members’ fundamental rights, and this Court should reverse the district court’s order.

### CONCLUSION

For the foregoing reasons, Plaintiffs-Appellants respectfully request that this Court reverse the district court’s order denying injunctive relief and remand to the district court for further proceedings.

May 26, 2020

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing motion complies with the requirements of FRAP 27(d). The Motion was prepared in Times New Roman 14-point font, and contains 10,100 words, as counted by Microsoft Word 2016.

May 26, 2020

/s/ Harmeet K. Dhillon  
Harmeet K. Dhillon

### **CERTIFICATE OF SERVICE**

I hereby certify that on May 26, 2020, I filed the foregoing Appellants' Opening Brief with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

May 26, 2020

/s/ Harmeet K. Dhillon  
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