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**IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

SOUTH BAY UNITED PENTECOSTAL CHURCH, a California nonprofit corporation, BISHOP ARTHUR HODGES III, an individual, RABBI MENDEL POLICHENCO, an individual,

Plaintiffs,

v.

GAVIN NEWSOM, in his official capacity as the Governor of California; XAVIER BECERRA, in his official capacity as the Attorney General of California, SONIA ANGELL, in her official capacity as California Public Health Officer, WILMA J. WOOTEN, in her official capacity as Public Health Officer, County of San Diego, HELEN ROBBINS-MEYER, in her official capacity as Director of Emergency Services, WILLIAM D. GORE, in his official capacity as Sheriff of the County of San Diego, KEVIN FAULCONER, in his official capacity as Mayor of the City of San Diego, and DAVID NISLEIT, in his official capacity as the Chief of police of the City of San Diego,

Defendants.

No. 20-cv-865-BAS-AHG

OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER [ECF 12] BY DEFENDANTS:

- 1. WILMA J. WOOTEN, in her official capacity as Public Health Officer for the County of San Diego;**
- 2. HELEN ROBBINS-MEYER, in her official capacity as Director of Emergency Services; and**
- 3. WILLIAM D. GORE, in his official capacity as Sheriff of the County of San Diego**

Judge: Hon. Cynthia Bashant
 Magistrate Judge: Hon. Allison H. Goddard

Action Filed: May 8, 2020
 Trial Date: None Set

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1 **I. Introduction**

2 The ex parte application for a temporary restraining order (TRO) [ECF 12] brought
 3 by plaintiffs South Bay United Pentecostal Church (the “Church”) and Bishop Arthur
 4 Hodges III (“Bishop Hodges”) (collectively, “Plaintiffs”)¹ should be denied. Plaintiffs
 5 ask this Court to override the considered judgment of this State’s public health officials,
 6 to allow Plaintiff to have at least three to five services this Sunday (and each Sunday
 7 thereafter) with hundreds of people gathered in a single room during each service. The
 8 County defendants (County Public Health Officer, Dr. Wilma J. Wooten; San Diego
 9 County Sheriff William D. Gore; and County Emergency Services Director Helen
 10 Robbins-Meyer, sued in their official capacity²), while sympathetic to the sacrifice the
 11 Church and its members have made over the last two months while the public health
 12 departments in this State have worked to contain a global pandemic, urge the Court not to
 13 enjoin the emergency public health measures that have helped California and the County
 14 of San Diego “flatten the curve” to avoid the region’s hospitals and healthcare system
 15 from being overwhelmed. Plaintiffs have not carried their heavy burden to justify the
 16 extraordinary remedy of a TRO or preliminary injunction.

17 **II. Summary of Arguments**

18 On March 19, 2020, Governor Newsom ordered “all individuals living in the State
 19 of California to stay home” in order to flatten the curve of the COVID-19 infection
 20 growth rate.³ His order has temporarily closed businesses and prohibits in-person
 21 gatherings, except for specified categories of work and activities deemed essential to the
 22 critical infrastructure of this State, and to the health and safety of the millions of

23 ¹ On May 11, 2020, Plaintiffs filed a request for voluntary dismissal of plaintiff
 24 Rabbi Mendel Polichenco and his claims. [ECF 10]

25 ² The three County defendants are sued in their official capacities only.
 26 Accordingly, these defendants are at times referred to collectively as the “County.” [See
 27 *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.”).]

28 ³ Executive Order N-33-20, attached as Exhibit 1 to the Request for Judicial Notice
 (“RJN”) filed herewith.

1 Californians staying at home (e.g., grocery stores, pharmacies, banks). While “faith-based
 2 services” are included in the list of exemptions to the Governor’s stay-at-home order,
 3 they are permitted only to the extent they can be provided through online streaming or
 4 other technological means (such as a drive-in style service where the message is
 5 broadcast to car radios).

6 In-person religious services will be allowed in Stage 3 of the Governor’s four-stage
 7 Resiliency Roadmap, and the Governor has indicated that California may move into
 8 Stage 3 within a month. In the meantime, the Governor has made clear that local
 9 governments have no authority to relax or lift the State’s stay-at-home order (e.g., by
 10 allowing a business to reopen before the State gives its approval). In fact, the Governor’s
 11 office recently warned several counties that they may lose disaster funding by allowing
 12 businesses and activities to resume before the Governor authorizes the resumption of
 13 such activities.⁴ Because the State insists that counties have no discretion to move to
 14 Stage 3 before the Governor permits them to do so, any restraining order directed at the
 15 County would be meaningless; Plaintiffs’ request for relief must be directed to the State
 16 defendants. Thus, a TRO against the County defendants should be denied.

17 Separately, and as to all defendants, the TRO should be denied because the factors
 18 for issuing preliminary injunctive relief tip sharply against Plaintiffs. Bishop Hodges and
 19 his Church ask this Court, on just a few days’ notice, to invalidate or rewrite key
 20 provisions of the State’s emergency public health orders and guidelines in the middle of
 21 defendants’ response to a once-in-a-lifetime public health crisis. As noted,
 22 notwithstanding the Governor’s generally-applicable stay-at-home order, Plaintiffs want
 23 to resume immediately in-person religious services, which historically have involved
 24 three to five separate services each Sunday, with 200-300 individuals congregating in a

25 ⁴ See Taryn Lima *Newsom warns defiant counties they could lose coronavirus*
 26 *cash for reopening early*. L.A. Times, May 8, 2020,
 27 [https://www.latimes.com/california/story/2020-05-08/newsom-disaster-funds-yuba-](https://www.latimes.com/california/story/2020-05-08/newsom-disaster-funds-yuba-sutter-modoc-counties-california-reopening)
 28 [sutter-modoc-counties-california-reopening](https://www.latimes.com/california/story/2020-05-08/newsom-disaster-funds-yuba-sutter-modoc-counties-california-reopening) (last visited May 11, 2020); see also, May 7,
 2020 letter from Governor’s Office of Emergency Services to the Chief Administrative
 Officer for Sutter County, attached as Exhibit 2 to the RJN.

1 single indoor location for the duration of each service. [TRO application, ECF 12-1, at p.
2 9:18-21⁵; Hodges Decl., ECF 12-2, at ¶¶ 12-13, 24.]

3 Just last Friday, Governor Newsom indicated that the State may reach Stage 3 of
4 his phased reopening plan (the “Resilience Roadmap”) in less than a month, indicating
5 that the State may be only three to four weeks away from allowing in-person religious
6 services, and multiple other types of gatherings, subject to satisfying specific, detailed
7 checklists of sanitation and health mitigation measures. Governor Newsom stated:
8 “[P]hase III is not a year away, it’s not six months away, it’s not even three months
9 away. It may not even be more than a month away.” [May 8, 2020 press conference by
10 Governor Newsom, with video linked to at the official Twitter account of the “Office
11 of the Governor of California,” @CAGovernor,⁶ at the 45:35 to 45:45 time mark.] With
12 relief potentially just a short time away, there is simply no need for the extraordinary
13 remedy of a TRO.

14 Additionally, the threat posed to the community by COVID-19 remains substantial.
15 Just this last Sunday, on Mother’s Day, May 10, 2020, California recorded its second-
16 highest weekly number of COVID-19-related deaths since the pandemic began.⁷ State
17 and local public health officials must retain the power and flexibility to respond quickly
18 to flare ups and other emergencies as they arise. Whether this Court reviews defendants’
19 emergency public health measures under *Jacobson v. Commonwealth of Massachusetts*,
20 197 U.S. 11, 27 (1905), or under ordinary constitutional principles such as the Free

21
22 ⁵ Page numbers for cited ECF documents refer to the page numbers stamped atop
each page.

23 ⁶ <https://twitter.com/CAGovernor/status/1258833189750988801> (last visited
24 5/9/20).

25 ⁷ “For the seven-day period that ended Sunday, 503 people in California died from
the virus — the second-highest weekly death toll in the course of the pandemic and a
26 1.6% increase from the previous week.” [Rong-Gong Lin II & Iris Lee, *California
coronavirus deaths hit stubborn plateau; experts fearful about future*, The San Diego
27 Union-Tribune, May 12, 2020,
28 [https://www.sandiegouniontribune.com/news/california/story/2020-05-12/california-
coronavirus-deaths-have-reached-stubborn-plateau](https://www.sandiegouniontribune.com/news/california/story/2020-05-12/california-coronavirus-deaths-have-reached-stubborn-plateau).]

Exercise principles of *Employment Div., Dep't of Human Res. of Or. v. Smith*, 494 U.S. 872, 879 (1990) (*Smith*) Plaintiffs' application for a TRO should be denied.

III. Relevant Background

A. The COVID-19 Global Pandemic and Public Health Emergency

"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 [now over] two hundred thousand people." [*Gish v. Newsom*, No. EDCV 20-755 JGB KXX, 2020 WL 1979970, at *2 (C.D. Cal. Apr. 23, 2020)⁸.] "There is currently no vaccine for the novel coronavirus, and it remains unlikely that one will be developed in the coming months." [*Lighthouse Fellowship Church v. Northam*, No. 2:20CV204, 2020 WL 2110416, at *1 (E.D. Va. May 1, 2020)⁹.]

"The CDC has announced that the novel coronavirus ('COVID-19') is spread primarily through in-person interactions, either '[b]etween people who are in close contact with one another' or '[t]hrough respiratory droplets produced when an infected person coughs, sneezes or talks.'" [*Id.*, at *2.]¹⁰ "It can be spread by people who are not showing symptoms and do not know they are infected with the virus." [*Id.*] And the "virus can travel up to thirteen feet through the air, and can live on surfaces, including shoes, for long periods of time." [*Id.*¹¹] "Consistent with this information, the CDC

⁸ Citing 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.

⁹ Citing Knvul Sheikh & Katie Thomas, *More Coronavirus Vaccines and Treatments Move Towards Human Trials*, N.Y. TIMES (Apr. 8, 2020), <https://www.nytimes.com/2020/04/08/health/coronavirus-vaccines.html>.

¹⁰ Citing CDC, *How COVID-19 Spreads* (last updated Apr. 13, 2020), <https://www.cdc.gov/corona-virus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

¹¹ Citing Zhen-Dong Guo, et al., *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020*, 26 Emerging Infectious Diseases 7 (2020), <https://doi.org/10.3201/eid2607.200885>.

1 currently recommends that everyone practice social distancing.” [*Id.*¹²] “Social distancing
 2 requires staying at least six feet away from other people and ‘avoid[ing] large and small
 3 gatherings.’” [*Id.*¹³]

4 Although the numerous and bold emergency public health measures taken by the
 5 Governor and local public health officials in this State have undoubtedly helped to
 6 “flatten the curve” and avoid our hospitals and emergency medical care system from
 7 being overwhelmed, the threat to the public from COVID-19 remains substantial. For
 8 example, on Monday, May 11, 2020, the State reported a *one-day increase* of 77 new
 9 COVID-19 deaths, bringing the total number of deaths in this State attributable to the
 10 disease to 2,847. [*See* COVID-19 Statewide Update for May 12, 2020, at
 11 update.covid19.ca.gov (accessed on May 12, 2020); *see also*, May 12, 2020 news story
 12 cited in fn. 7, *supra* (“For the seven-day period that ended Sunday [May 10, 2020], 503
 13 people in California died from the virus – the second highest weekly death toll in the
 14 course of the pandemic.”).]

15 **B. Relevant State and County Public Health Orders and Regulations**

16 The State and County public health orders and regulations relevant to this action
 17 are as follows:

18 **1. Governor Newsom’s Stay-at-Home Order Prohibits Plaintiffs’** 19 **Desired In-Person Church Services. The Governor Has Asserted** 20 **Sole Authority to Decide When In-Person Religious Services and** 21 **Similar Secular Gatherings Can Resume.**

22 In response to the COVID-19 pandemic, Governor Newsom issued Executive
 23 Order N-33-20 on March 19, 2020. [3/19/20 Executive Order N-33-20, at RJN, Exh. 1.]

24
 25 ¹² Citing CDC, *How COVID-19 Spreads* (last updated Apr. 13, 2020),
 26 <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

27 ¹³ Citing CDC, *What is Social Distancing?* (last updated Apr. 4, 2020),
 28 <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.

1 That order, which incorporated the State’s March 19, 2020 Public Health Order, required
2 “all residents” of the State of California “to immediately heed the current State public
3 health directives,” including the State’s March 19, 2020 Public Health Order that was
4 incorporated into Executive Order N-33-20. [*Id.*] And in an effort to slow the spread of
5 the deadly virus (including by asymptomatic infected persons), and to ensure that
6 California’s hospitals and emergency medical care system were not overwhelmed by
7 demand, the Governor ordered “all individuals living in the State of California to stay at
8 home or at their place of residence, except as needed to maintain continuity of operations
9 of the federal critical infrastructure sectors.” [*Id.*]

10 The express exemption from the Governor’s stay-at-home order for “federal
11 critical infrastructure sectors” applied to those workers, businesses, and activities deemed
12 essential to meet the immediate health and safety needs of the populace while they are
13 temporarily sheltering in place at home to help “flatten the curve” of COVID-19 growth
14 rate. Specifically, the State published a list of the categories of businesses, workers, and
15 activities (“critical infrastructure sectors”) that are exempt from the stay-at-home order.
16 The current list, published on April 28, 2020, permits grocery stores, pharmacies,
17 doctor’s offices (for emergency medical care), and the like to remain open, in order to
18 ensure that California’s residents can safely remain in their homes. [Calif. List of
19 Essential Critical Infrastructure Workers (rev. 4/28/20), at RJN, Exh. 3.]

20 Of relevance to this case, the list designates the following category of faith-based
21 workers and activities as exempt from the Governor’s stay-at-home order: “Clergy for
22 essential support and faith-based services that are provided through streaming or other
23 technologies that support physical distancing and state public health guidelines.” [RJN,
24 Exh. 3, at § 8, ¶ 16.] The Governor has clarified that this exemption from his stay-at-
25 home order not only applies to the online streaming of religious services, but also permits
26 drive-in style services “as long as the individuals engaged in such services abide by
27 physical distancing guidelines and refrain from direct and indirect physical touching of
28 others.” [See Governor Newsom’s 4/17/20 opposition to TRO application, filed in *Gish v.*

1 *Newsom* (C.D. Cal. Case No. 5:20-cv-00755), at ECF 13-1, pp. 7-8, 18.]

2 Lastly, the Governor foresees relaxing or lifting the restrictions on in-person
3 religious services and other secular gatherings (such as movie theaters) in Stage 3 of his
4 four-stage “Resilience Roadmap” for gradual easing or rescinding of his stay-at-home
5 order. (*See*, covid19.ca.gov/roadmap.) In his May 8, 2020 press conference, the Governor
6 stated that California may move into Stage 3 in a month’s time (i.e., possibly by early
7 June). “[P]hase III is not a year away, it’s not six months away, it’s not even three
8 months away. It may not even be more than a month away.” [May 8, 2020 press
9 conference by Governor Newsom, with video linked to at the official Twitter account
10 of the “Office of the Governor of California,” @CAGovernor,¹⁴ at the 45:35 to 45:45
11 time mark.]

12 But the Governor has made one thing abundantly clear: he asserts sole authority to
13 decide when the State will move to Stage 3, and thus when his stay-at-home order will be
14 modified to permit in-person religious services and similar secular gatherings. The
15 Governor has repeatedly emphasized his view that local governments and officials have
16 no power to ease or lift his stay-at-home order, as they apply to Stage 3 activities,
17 including in-person religious assemblies, until the Governor first modifies or lifts the
18 State order.¹⁵ In fact, the Governor’s Office of Emergency Services recently warned
19 several counties that they may lose critical federal disaster funding by attempting to ease
20 restrictions on businesses, or permit them to re-open, beyond what the Governor’s orders
21 allow.¹⁶

22
23 ¹⁴ <https://twitter.com/CAGovernor/status/1258833189750988801> (last visited
24 5/9/20)

25 ¹⁵ *See* Tarvin Lina *Newsom warns defiant counties they could lose coronavirus*
26 *cash for reopening early*. L.A. Times, May 8, 2020,
<https://www.latimes.com/california/story/2020-05-08/newsom-disaster-funds-yuba-sutter-modoc-counties-california-reopening> (last visited May 11, 2020).

27 ¹⁶ *Id.*; *see also*, RJN, Exh. 2 (May 7, 2020 letter from Governor’s Office of
28 Emergency Services to the Chief Administrative Officer for Sutter County).

2. County's Public Health Order

While the County's Public Health Officer (Dr. Wooten) has issued several orders in response to the COVID-19 public-health crisis, the current version of the County's Public Health Order became effective May 10, 2020. [See 5/9/20 "Order of the Health Officer and Emergency Regulations," effective 5/10/20, at RJN, Exh. 4.] While the County's order broadly prohibits "public or private 'gatherings,'" as defined in section 18b of the order, the County has incorporated by reference all of the Governor's exemptions from his stay-at-home order (i.e., those sectors and activities included on the State's April 28, 2020 list of "essential critical infrastructure workers"). [RJN, Exh. 4, at ¶¶ 2, 18; *see also*, RJN, Exh. 3.]

Thus, as relevant to this case, the County's stay-at-home order does not prohibit "clergy for essential support and faith-based services that are provided through streaming or other technologies that support physical distancing and state public health guidelines." [RJN, Exh. 4, at ¶¶ 2, 18; *see also*, RJN, Exh. 3, at § 8, ¶ 16.] Plaintiffs are thus permitted, under both the State and (by extension) the County's stay-at-home orders, to engage in those activities necessary to broadcast their services via streaming or other technology, or to have drive-in style services to the extent the physical distancing can be maintained. The Governor has indicated that the restrictions on in-person gatherings, including religious services, will be relaxed or removed as the public health data improve.

C. Plaintiffs' Request for Immediate Large-Scale, In-Person Services

Plaintiffs seek a TRO allowing the Church to resume large-scale, in-person services immediately (i.e., starting this Sunday, May 17, 2020). [ECF 12-1, at p. 9:18-21.] According to Pastor Hodges' declaration, the Church holds between three and five services each Sunday, with an average of 200 to 300 congregants attending each service (in a room or sanctuary that Bishop Hodges estimates can seat 600). [Hodges Decl., ECF 12-2, at ¶ 12.] Bishop Hodges stresses that a key part of the Church's services is to invite those "with special needs or sickness" to come forward, "where hands are laid upon

1 them” in accordance with Acts 19:6. [*Id.*, at ¶¶ 13-14 (describing the importance of the
 2 physical laying on of hands to their faith).] It appears from Bishop Hodges’ declaration
 3 that physical contact between Church staff and congregants would occur if the Court
 4 grants the TRO; and it seems likely that there would be hundreds of people attending
 5 each of the multiple Sunday services. [*Id.*, at ¶¶ 12-14, 24, 26-27.]

6 **IV. Plaintiff is Not Entitled to a TRO**

7 To date, three federal courts in California have ruled on churches’ requests for
 8 TROs against the stay-at-home orders in this State. The courts in each case issued well-
 9 reasoned decisions denying the churches’ TRO applications. [*See, Gish, supra*, at 2020
 10 WL 1979970; *Cross Culture Christian Ctr. v. Newsom*, No. 2:20-cv-00832-JAM-CKD,
 11 2020 WL 2121111 (E.D. Cal. May 5, 2020); *Abiding Place Ministries v. Wooten, et al.*,
 12 No. 20-cv-683-BAS-AHG (S.D. Cal. April 10, 2020) (ruling denying TRO as reflected
 13 by transcript of 4/10/20 hearing, at RJN, Exh. 5).]¹⁷ Plaintiffs’ similar request should
 14 fare no better here.

15 **A. Standard for Issuing a TRO**

16 “The purpose of a TRO is to preserve the status quo before a preliminary
 17 injunction hearing may be held; its provisional remedial nature is designed merely to
 18 prevent irreparable loss of rights prior to judgment.” [*Doe v. McAleenan*, 415 F. Supp. 3d
 19 971, 976 (S.D. Cal. 2019), citing *Granny Goose Foods, Inc. v. Brotherhood of Teamsters*
 20 *& Auto Truck Drivers*, 415 U.S. 423, 439 (1974).] “The standard for issuing a temporary
 21 restraining order is identical to the standard for issuing a preliminary injunction.
 22 *Lockheed Missile & Space Co., Inc. v. Hughes Aircraft Co.*, 887 F. Supp. 1320, 1323
 23 (N.D. Cal. 1995).” [*Id.*] “An application for a temporary restraining order involves the

24 ¹⁷ Outside of California, most federal courts that have considered churches’
 25 requests for TROs against similar COVID-19 stay-at-home orders, have likewise denied
 26 the requests. *See, e.g., Legacy Church, Inc. v. Kunkel*, No. CIV 20-0327 JB/SCY, 2020
 27 U.S. Dist. LEXIS 68415 (D.N.M. Apr. 17, 2020) (*Legacy Church*); *Lighthouse*
 28 *Fellowship Church v. Northam*, No. 2:20CV204, 2020 WL 2110416 (E.D. Va. May 1,
 2020); *Cassell v. Snyders*, No. 20 C 50153, 2020 U.S. Dist. LEXIS 77512 (N.D. Ill. May
 3, 2020); *Calvary Chapel of Bangor v. Mills*, No. 1:20-cv-00156-NT, 2020 U.S. Dist.
 LEXIS 81962 (D. Me. May 9, 2020); *but see, Roberts v. Neace*, 2020 U.S. App. LEXIS
 14933 (6th Cir. May 9, 2020).

1 invocation of a drastic remedy which a court of equity ordinarily does not grant, unless a
 2 very strong showing is made of a necessity and desirability of such action.” [*Postmates*
 3 *Inc. v. 10,356 Individuals*, No. hell (emphasis added; internal citation omitted).] To meet
 4 that showing, a plaintiff “must establish that [it] is likely to succeed on the merits, that [it]
 5 is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
 6 equities tips in [its] favor, and that an injunction is in the public interest.” [*Am. Trucking*
 7 *Ass'ns v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009), quoting *Winter v.*
 8 *NRDC, Inc.*, 555 U.S. 7, 20 (2008); *see also*, Fed. R. Civ. P. 65(b).]

9 **B. Likelihood of Success on the Merits**

10 “The first factor under *Winter* is the most important – likely success on the merits.”
 11 [*Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).] A TRO is an “extraordinary
 12 remedy that may only be awarded upon a *clear showing* that the plaintiff is entitled to
 13 such relief.” [*Winter*, *supra*, 555 U.S. at 22 (italics added).] Plaintiffs cannot meet this
 14 heavy burden with respect to the County defendants, for three reasons. First, the
 15 restrictions Plaintiffs ask this Court to lift are imposed by the State’s stay-at-home order,
 16 which Governor Newsom has made clear that counties have no power to relax or lift
 17 (upon threat of loss of federal disaster funds). Second, the TRO request fails under
 18 *Jacobson*’s “minimal scrutiny” for public health orders issued in response to a public
 19 health emergency. [*Gish v. Newsom, supra*, 2020 WL 1979970, at *11, citing *Jacobson,*
 20 *supra*, 197 U.S. at 27; *see also, Abiding Place Ministries v. Wooten, et al.*, No. 20-cv-
 21 683-BAS-AHG (S.D. Cal. April 10, 2020).] And third, “even absent consideration of
 22 greater leeway afforded to executive acts during a state of emergency, the Orders do not
 23 violate Plaintiffs’ rights under traditional constitutional analysis.” [*Ibid.*]

24 **1. A TRO Against the County Defendants is Not Justified, as it** 25 **Would Not Provide Plaintiffs’ Any Effective Relief. The Governor** 26 **Has Asserted Sole Authority to Relax or Lift His Stay-at-Home** 27 **Order.**

28 Even if Plaintiffs’ constitutional claims had merit (which they do not), a
 TRO against the County defendants would not be justified. As discussed above, the

County’s stay-at-home order incorporates all of the exemptions from the Governor’s stay-at-home order. [RJN, Exh. 4, at ¶¶ 18a and 18b.] Thus, the County’s order does not prohibit the activities of “[c]lergy for essential support and faith-based services that are provided through streaming or other technologies that support physical distancing and state public health guidelines.” [RJN, Exh. 3, at § 8, ¶ 16.] At present, the Governor has interpreted this exemption to permit the production of religious services via streaming technology, as well as drive-in style worship services. [See Governor Newsom’s 4/17/20 opposition to TRO application, filed in *Gish v. Newsom*, No. EDCV 20-755 JGB (KKx) (C.D. Cal.), at ECF 13-1, pp. 7-8, 18.]

Plaintiffs want to resume large, in-person church services. But under the Governor’s stay-at-home order, in-person religious services (along with multiple other types of gatherings) cannot resume until California reaches Stage 3 of the Governor’s Resilience Roadmap. (*See*, covid19.ca.gov/roadmap) And the Governor has asserted the sole authority to move the State to relax or lift the temporary restrictions under his Executive Orders. Indeed, the Governor’s Office of Emergency Services has warned counties in writing that they may lose access to disaster funding by attempting to re-open businesses or ease restrictions beyond what the State orders allow.

Accordingly, a TRO against the County defendants is not justified (even if Plaintiffs had a likelihood of success on the merits of their claims), as the Governor has made clear that local governments and officials cannot allow what the Governor’s stay-at-home order currently prohibits.

2. Exercise of Executive Powers During State of Emergency

When a State or local government enacts emergency measures to combat a serious public health emergency, such temporary executive action “are entitled to substantial judicial deference and [are] not subject to traditional constitutional scrutiny.” [*Gish, supra*, 2020 WL 1979970 at *11.] “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.” [*Id.*, at *11-12.]

1 “The Supreme Court held over a century ago that ‘a community has the right to
2 protect itself against an epidemic of disease which threatens the safety of its members.’”
3 [*Gish, supra*, at *12, quoting *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11,
4 27 (1905).] To do so, a State may “exercise . . . its general police powers to promote
5 public safety during a public health crisis.” [*Cross Culture Christian Ctr., supra*, 2020
6 WL 2121111, at *3, citing *Jacobson, supra*, at 25.] And states’ police powers – which
7 they may invest in “counties and cities within their province” – “entails the authority ‘to
8 enact quarantine laws and health laws of every description.’” [*Id.*]

9 “Recognizing that the need to protect the public may trump individual rights
10 during a crisis, the Supreme Court has held that states and municipalities have greater
11 leeway to burden constitutionally protected rights during public emergencies:

12 In every well-ordered society charged with the duty of conserving the safety
13 of its members the rights of the individual in respect of his liberty may at
14 times, under the pressure of great dangers, be subjected to such restraint, to
15 be enforced by reasonable regulations, as the safety of the general public
may demand.

16 [*Gish, supra*, 2020 WL 1979970 at *4-5, quoting *Jacobson*, 197 U.S. at 29.]

17 “When responding to the COVID-19 pandemic, therefore, Defendants ‘may
18 implement emergency measures that curtail constitutional rights so long as the measures
19 have at least some “real or substantial relation” to the public health crisis and are not
20 “beyond all question, a plain, palpable invasion of rights secured by the fundamental
21 law.”’” [*Gish*, at *5, quoting *In re Abbott*, 2020 WL 1685929, at *7 (5th Cir. Apr. 7,
22 2020) (quoting *Jacobson*, 197 U.S. at 31).] “In other words, during an emergency,
23 traditional constitutional scrutiny does not apply. Instead, any measures that limit or
24 suspend constitutional rights (1) must have a ‘real or substantial relation’ to the crisis and
25 (2) must not represent ‘plain, palpable’ invasions of clearly protected rights.” [*Gish*,
26 *supra*, at *5, quoting *Jacobson*, 197 U.S. at 31.]

27 The challenged, temporary restrictions on Plaintiffs’ ability to hold in-person
28 services, with hundreds of congregants at each service, easily meet the *Jacobson* test.

1 First, they have a “real or substantial relation” to the crisis, as the science shows that
 2 COVID-19 is easily passed between individuals, especially indoors, and individuals who
 3 have no symptoms of the disease can nevertheless be infected and infect others with the
 4 virus.¹⁸ In fact, on May 12, 2020, the CDC published a report detailing how a church
 5 choir practice in the State of Washington on March 10, 2020, became a “superspreader
 6 event.” Specifically, a single individual choir member infected up to 53 other choir
 7 members at the practice, even though the choir members had no physical contact during
 8 practice, with the transmission likely facilitated by droplets being expelled into the air
 9 during singing, as well as the choir members sitting near each other and then
 10 congregating after practice while they ate cookies and stacked the chairs. [See, Centers
 11 for Disease Control and Prevention, *Morbidity and Mortality Weekly Report* (Vol. 69,
 12 May 12, 2020), at RJN, Exh. 6; *see also*, Carla K. Johnson (The Associated Press), *Mount*
 13 *Vernon choir outbreak was “superspreader event,” says CDC report on how easily virus*
 14 *spreads*. The Seattle Times, May 12, 2020, [https://www.seattletimes.com/seattle-](https://www.seattletimes.com/seattle-news/health/mount-vernon-choir-outbreak-was-superspreader-event-says-cdc-report-on-how-easily-virus-spreads/)
 15 [news/health/mount-vernon-choir-outbreak-was-superspreader-event-says-cdc-report-on-](https://www.seattletimes.com/seattle-news/health/mount-vernon-choir-outbreak-was-superspreader-event-says-cdc-report-on-how-easily-virus-spreads/)
 16 [how-easily-virus-spreads/](https://www.seattletimes.com/seattle-news/health/mount-vernon-choir-outbreak-was-superspreader-event-says-cdc-report-on-how-easily-virus-spreads/) (last visited 5/12/20).]

17 Second, the temporary restrictions on in-person gatherings does not “represent
 18 ‘plain, palpable’ invasions of clearly protected rights.” [*Gish, supra*, at *5, quoting
 19 *Jacobson*, 197 U.S. at 31.] While Plaintiffs temporarily cannot hold their traditional, in-
 20 person services, they can broadcast their services through streaming technology or other
 21 means, and they can hold drive-in style services. While this is not a perfect substitute for
 22 the in-person assembly of the faithful, it is a *temporary* emergency measure in the face of
 23 a once-in-a-lifetime global pandemic. “The right to practice religion freely does not
 24 include liberty to expose the community . . . to communicable disease.” [*Prince v.*
 25 *Massachusetts*, 321 U.S. 158, 166-167 (1944).] The Governor is already discussing the
 26 time frame for moving the State into Stage 3 of his Resiliency Roadmap, when in-person

27 ¹⁸ Citing CDC, *How COVID-19 Spreads* (last updated Apr. 13, 2020),
 28 [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html)
[spreads.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html)

1 religious services may resume. The challenged emergency public health measures should
2 be upheld under *Jacobson*, and the TRO denied.

3 **3. Traditional Constitutional Analysis**

4 Plaintiffs' TRO application should be denied under *Jacobson*. Likewise,
5 Plaintiffs' request lacks merit under traditional constitutional analysis.

6 **a. Free Exercise Clause**

7 The gravamen of Plaintiffs' TRO application is their Free Exercise claim.
8 [See, Memo. of P&A, ECF 12-1, at pp. 13-21.] Because the challenged emergency public
9 health order is a *valid and neutral law of general applicability* that does not target
10 Plaintiff's exercise of religion, Plaintiffs are not likely to succeed on their Free Exercise
11 claim, and the TRO should be denied.

12 "The Free Exercise Clause, applicable to the states through the Fourteenth
13 Amendment, provides that 'Congress shall make no law . . . prohibiting the free exercise
14 [of religion],' U.S. Const., amend. I." [*Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127
15 (9th Cir. 2009) (*Selecky*) (internal citation omitted).] "The right to freely exercise one's
16 religion, however, 'does not relieve an individual of the obligation to comply with a valid
17 and neutral law of general applicability on the ground that the law proscribes (or
18 prescribes) conduct that his religion prescribes (or proscribes)." [*Id.*, quoting *Smith*,
19 *supra*, 494 U.S. at 879 (internal quotation omitted).]

20 "Underlying the Supreme Court's jurisprudence is the principle that the Free
21 Exercise Clause 'embraces two concepts – freedom to believe and freedom to act. The
22 first is absolute but, in the nature of things, the second cannot be. Conduct remains
23 subject to regulation for the protection of society.'" [*Selecky*, at 1128, quoting *Cantwell v.*
24 *State of Conn.*, 310 U.S. 296, 303-304 (1940) (underscore added).] "Under the governing
25 standard, 'a law that is neutral and of general applicability need not be justified by a
26 compelling governmental interest even if the law has the incidental effect of burdening a
27 particular religious practice.'" [*Id.* at 1127-1128, quoting *Church of the Lukumi Babalu*
28 *Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 53 (1993) (*Lukumi*).]

1 “In assessing neutrality and general applicability, courts evaluate both ‘the text of
2 the challenged law as well as the effect . . . in its real operation.’” [*Parents for Privacy v.*
3 *Barr*, 949 F.3d 1210, 1234 (9th Cir. 2020) (*Parents for Privacy*), quoting *Selecky*, *supra*,
4 794 F.3d at 1076 (ellipsis in original).] “[T]he two tests for whether a law is neutral and
5 generally applicable focus on whether a law specifically targets or singles out religion.”
6 [*Id.* at 1234-1235.] As this Court recently held, the County’s public health order is
7 neutral and generally applicable, and thus passes both tests. [*See, Abiding Place*
8 *Ministries v. Wooten, et al.*, No. 20-cv-683-BAS-AHG (S.D. Cal. April 10, 2020) (ruling
9 denying TRO as reflected by transcript of 4/10/20 hearing, at RJN, Exh. 5).]

10 The first test asks whether the law is “neutral” with respect to religion. “If the
11 object of a law is to infringe upon or restrict practices *because of* their religious
12 motivation, the law is not neutral.” [*Parents for Privacy*, *supra*, 949 F.3d at 1235 (internal
13 citation omitted).] Here, Plaintiff presents no evidence that the County issued its
14 emergency public health orders, or incorporated the State’s exemptions for “essential
15 critical infrastructure workers,” out of any desire or intent to target Plaintiff’s gatherings
16 (or religious gatherings in general) because of the gatherings’ religious nature or
17 motivation. The County’s stay-at-home order applies generally countywide, and has
18 required the temporary closure of myriad businesses, events, and areas where people
19 gather, without respect to the secular or religious nature of any such establishment or
20 gathering.

21 The second test asks whether the challenged law has “general applicability” – that
22 is, “whether a law treats religious observers unequally.” [*Parents for Privacy*, *supra*, 949
23 F.3d at 1235, citing *Lukumi*, *supra*, 508 at 542.] As the Supreme Court has noted,
24 “inequality results when a legislature decides that the governmental interests it seeks to
25 advance are worthy of being pursued *only* against conduct with a religious motivation.”
26 [*Lukumi*, *supra*, at 542-543 (italics added).] “Thus, a law is not generally applicable if its
27 prohibitions substantially underinclude non-religiously motivated conduct that might
28 endanger the same governmental interest that the law is designed to protect.” [*Parents for*

1 *Privacy*, supra, 949 F.3d at 1235 (internal citations omitted).]

2 “In other words, if a law pursues the government's interest ‘*only against conduct*
3 *motivated by religious belief*,’ but fails to include in its prohibitions substantial,
4 comparable secular conduct that would similarly threaten the government's interest, then
5 the law is not generally applicable.” [*Parents for Privacy*, supra, 949 F.3d at 1235,
6 quoting *Lukumi*, 508 U.S. at 545.] “For example, in *Lukumi*, the Court concluded that the
7 challenged ordinances were not generally applicable because they ‘pursue[d] the city's
8 governmental interests only against conduct motivated by religious belief’ and ‘fail[ed] to
9 prohibit nonreligious conduct that endanger[ed] these interests in a similar or greater
10 degree than [the plaintiff's religious practice] does.’” [*Id.*, quoting *Lukumi*, 508 U.S. at
11 543, 545.]

12 Here, as this Court already held in its *Abiding Place Ministries* decision, the
13 challenged public health order in no way places “demands exclusively (or even
14 principally) on religious persons or conduct.” [*Parents for Privacy*, supra, 949 F.3d at
15 1235.] The County's stay-at-home orders applies generally to all individuals, businesses,
16 and other gatherings of people in the State and County, except for a limited number of
17 businesses in “critical infrastructure sectors” designated by the federal and State
18 governments as necessary to protect the health and safety of the community while people
19 hunker down and engage in the extreme social distancing needed to flatten the curve by
20 stemming and slowing the transmission of the virus.

21 Because the challenged public health orders “qualif[y] as neutral and generally
22 applicable, [they are] not subject to strict scrutiny.” [*Parents for Privacy*, supra, 949 F.3d
23 at 1236, citing *Selecky*, 586 F.3d at 1129 (“[A] neutral law of general applicability will
24 not be subject to strict scrutiny review.”).] Instead, the County's order is reviewed “for a
25 rational basis, which means that the [order] must be upheld if it is rationally related to a
26 legitimate governmental purpose.” [*Id.* at 1238; *see also Selecky*, 586 F.3d at 1127-
27 1128 (“Under the governing standard, ‘a law that is neutral and of general applicability
28 need not be justified by a compelling governmental interest even if the law has the

1 incidental effect of burdening a particular religious practice.”).]

2 Under rational basis review, Plaintiff has the burden to negate “every conceivable
 3 basis which might support” the County’s order. [*F.C.C. v. Beach Communs., Inc.*, 508
 4 U.S. 307, 315 (1993) (underscore added).] And Plaintiff’s duty to negate every rational
 5 basis supporting the order exists “whether or not the basis has a foundation in the
 6 record.” [*Heller v. Doe by Doe*, 509 U.S. 312, 320-321 (1993).] In its application,
 7 Plaintiff made no attempt to negate every conceivable basis that might support the
 8 challenged stay-at-home orders. Plaintiffs’ Free Exercise challenge is not likely to
 9 succeed, and thus the TRO should be denied.

10 C. Other TRO Factors

11 As the first factor under *Winter* – the likelihood of success on the merits – is
 12 the most important, and as Plaintiffs are not likely to succeed on their claims (either
 13 under *Jacobson* or traditional constitutional analysis), the application should be denied.
 14 [*Garcia*, supra, 786 F.3d at 740.] Likewise, the other factors do not support issuance of a
 15 TRO.

16 While Plaintiffs claim they will be irreparably harmed if the TRO is not issued,
 17 they have not made a “clear showing” that this is so. Plaintiffs are permitted to offer
 18 streaming services to the Church’s members, or to hold drive-in style services, during this
 19 temporary interruption to normal services while the government works to protect the
 20 community from a once-in-a-lifetime pandemic. Further, Plaintiffs represent that for the
 21 last two months, they “chose to abide by” the stay-at-home orders (as applied to in-
 22 person religious services), “in doing their part to curb the pandemic.” [ECF 12-1, at p.
 23 9:2-3.] Having willingly complied with the public health orders for the last two months to
 24 “do[] their part to curb the pandemic,” Plaintiffs have not shown – much less *clearly*
 25 *shown* – why continuing to do so this coming weekend would irreparably harm them.

26 With respect to the final two TRO factors, the balance of the equities and the
 27 public interest support denial of the TRO. Public health officials in this State and County,
 28 like much of the country, continue to make hard decisions in order to protect society from

1 the COVID-19 pandemic. Schools and colleges are remaining closed¹⁹, SAT
 2 examinations have been canceled or postponed, graduation ceremonies have been
 3 canceled or must be conducted virtually, concerts and professional sports events attended
 4 by fans may not take place for quite some time, and many businesses (such as barbers,
 5 nail salons, and the like) remain closed. California and San Diego County residents have
 6 impressively risen to the moment, and have shared in the sacrifice by staying at home in
 7 an effort to stem the spread of the virus.

8 The hardship to the Plaintiffs of continuing to conduct their Sunday services
 9 through streaming, or as drive-in style services, until the public health experts decide
 10 based on science and all available data that such gatherings are safe to resume, must be
 11 balanced against the profound hardship to the State and the County if the temporary
 12 restraining order is entered. “If the prevalence of COVID-19 pulses up within a
 13 community, it puts lives, and particularly the lives of our most vulnerable citizens and the
 14 health care workers trying to save them, at risk. It also threatens the precarious steps we
 15 are making toward reopening.” [*Calvary Chapel of Bangor v. Janet Mills*, No. 1:20-cv-
 16 00156-NT, 2020 U.S. Dist. LEXIS 81962, at *25 (D. Me. May 9, 2020).]

17 Finally, with respect to the effects of this Court’s ruling on the public interest, the
 18 “State [and County are] managing an extraordinary array of issues, and [have] responded
 19 to the challenges raised by COVID-19 by establishing uniform standards and restrictions
 20 that are based on evolving scientific evidence.” [*Id.*, at *25-26.] Restrictions are being
 21 reevaluated, and often eased, based on current scientific data and the analysis of that data
 22 by public health professionals. “Upsetting the careful balance being drawn . . . at this
 23 time would have an adverse effect on the public interest.” [*Id.*, at *26.]

24 ///

25 ///

26 ///

27 ¹⁹ See, Shawn Hubler, *Fearing a Second Wave, Cal State Will Keep Classes Online*
 28 *in the Fall*. N.Y. Times (May 12, 2020), www.nytimes.com/2020/05/12/us/cal-state-online-classes.html (last visited May 13, 2020).

1 **IV. Conclusion**

2 For the above reasons, the County defendants respectfully request that the Court
3 deny Plaintiffs' application for a TRO.

4
5 DATED: May 14, 2020

THOMAS E. MONTGOMERY, County Counsel

6
7 By s/Timothy M. White

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**IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

SOUTH BAY UNITED PENTECOSTAL)
 CHURCH, a California nonprofit)
 corporation, BISHOP ARTHUR HODGES)
 III, an individual, RABBI MENDEL)
 POLICHENCO, an individual,)

Plaintiffs,

v.

GAVIN NEWSOM, in his official capacity)
 as the Governor of California; XAVIER)
 BECERRA, in his official capacity as the)
 Attorney General of California, SONIA)
 ANGELL, in her official capacity as)
 California Public Health Officer, WILMA)
 J. WOOTEN, in her official capacity as)
 Public Health Officer, County of San)
 Diego, HELEN ROBBINS-MEYER, in)
 her official capacity as Director of)
 Emergency Services, WILLIAM D.)
 GORE, in his official capacity as Sheriff of)
 the County of San Diego, KEVIN)
 FAULCONER, in his official capacity as)
 Mayor of the City of San Diego, and)
 DAVID NISLEIT, in his official capacity)
 as the Chief of police of the City of San)
 Diego,)

Defendants.

No. 20-cv-865-BAS-AHG

**REQUEST FOR JUDICIAL NOTICE IN
 SUPPORT OF OPPOSITION TO
 PLAINTIFFS' EX PARTE
 APPLICATION FOR A TEMPORARY
 RESTRAINING ORDER [ECF 12] BY
 DEFENDANTS:**

- 1. WILMA J. WOOTEN, in her official capacity as Public Health Officer for the County of San Diego;**
- 2. HELEN ROBBINS-MEYER, in her official capacity as Director of Emergency Services; and**
- 3. WILLIAM D. GORE, in his official capacity as Sheriff of the County of San Diego**

Judge: Hon. Cynthia Bashant
 Magistrate Judge: Hon. Allison H. Goddard

Action Filed: May 8, 2020
 Trial Date: None Set

1 Defendants, WILMA J. WOOTEN, in her official capacity as Public Health
 2 Officer, County of San Diego; HELEN ROBBINS-MEYER, in her official capacity as
 3 Director of Emergency Services; and WILLIAM D. GORE, in his official capacity as
 4 Sheriff of the County of San Diego (collectively, “County Defendants”), in support of
 5 their opposition to Plaintiffs’ application for a temporary restraining order [ECF 12],
 6 respectfully request that the Court take judicial notice, under Federal Rules of Evidence,
 7 rule 201, of the following:

8 **Exhibit 1:** A true and correct copy of Governor Newsom’s Executive Order N-
 9 33-20, issued March 19, 2020.

10 **Exhibit 2:** A true and correct copy of a May 7, 2020 letter from the California
 11 Governor’s Office of Emergency Services to the Chief Administrative
 12 Officer for Sutter County.

13 **Exhibit 3:** A true and correct copy of California’s List of “Essential Critical
 14 Infrastructure Workers” categories and sectors (rev. 4.28.20).

15 **Exhibit 4:** A true and correct copy of County of San Diego “Order of the Health
 16 Officer and Emergency Regulations,” signed by County Public Health
 17 Officer, Dr. Wilma J. Wooten, on May 9, 2020, effective May 10,
 18 2020.

19 **Exhibit 5:** A true and correct copy of the official transcript of the April 10, 2020
 20 hearing on Plaintiff’s application for a temporary restraining order, in
 21 *Abiding Place Ministries v. v. Wooten, et al.*, No. 20-cv-683-BAS-
 22 AHG (S.D. Cal. April 10, 2020).¹

23 ///

24 ///

25 ///

26
 27 ¹ A court “may take notice of the proceedings in other courts, both within and
 28 without the federal judicial system, if those proceedings have a direct relation to matters
 at issue.” [*United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971
 F.2d 244, 248 (9th Cir. 1992).]

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.

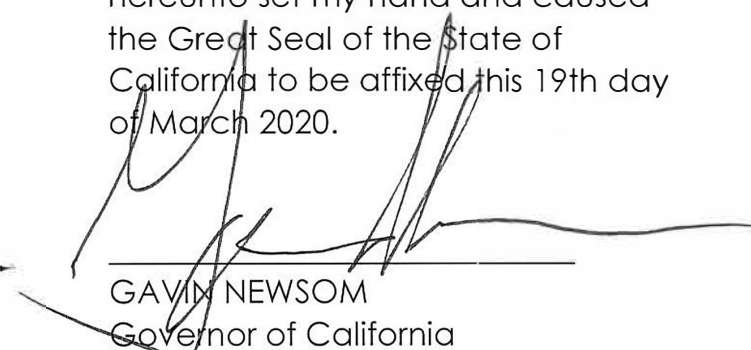
The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they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

GAVIN NEWSOM
GOVERNOR

MARK S. GHILARDUCCI
DIRECTOR



May 7, 2020

Steve Smith
County Administrative Officer
Sutter County
1160 Civic Center Blvd., Suite A
Yuba City, CA 95993
smsmith@co.sutter.ca.us

Dear Mr. Smith,

On March 4, 2020, Governor Newsom proclaimed a State of Emergency to exist statewide due to the threat of COVID-19. Since that time, COVID-19 has spread throughout California, requiring further action to protect the public health and safety. On March 19, 2020, Governor Newsom issued Executive Order N-33-20, which incorporated the State Public Health Officer's Stay-at-Home Order. This Order continues to apply statewide and remains necessary for the preservation of public health and safety. On May 4, 2020, the Governor issued Executive Order N-60-20. The Order allows local jurisdictions to take measured and meaningful steps to modify public health directives where public health data supports such a decision.

It is my understanding Sutter County has taken steps that are inconsistent with the Governor's Executive Orders and the State Public Health Officer's directives. These problematic and concerning actions jeopardize public health and safety, not only within the county, but beyond, through community contact and spread.

The county's actions could threaten Sutter County's eligibility for disaster funding. This funding is designed to assist jurisdictions facing extraordinary circumstances beyond the jurisdiction's capability. If Sutter County believes there is no emergency, such that it can ignore the Governor's Executive Orders or the State Public Health Officer's directives, the county would not be able to demonstrate that it was extraordinarily and disproportionately impacted by COVID-19. This could jeopardize its disaster funding.



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Further, disaster assistance programs prohibit a jurisdiction from receiving funding for a condition caused by its own negligence. Should Sutter County experience a surge in COVID-19 cases as a result of hasty and careless actions, the county may be ineligible for reimbursement.

We are seeking your cooperation and are offering to assist you in bringing Sutter County into compliance with state orders and directives by providing the framework established by the State Public Health Officer pursuant to Executive Order N-60-20, which allows local jurisdictions to move through Stage 2 of California's Pandemic Resilience Roadmap more quickly than California as a whole, to the extent local conditions warrant. Please visit

<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-19-County-Variance-Attestation-Memo.aspx> to access the State Public Health Officer's guidance, including the following:

- An overview of Stage 2 of California's Pandemic Resilience Roadmap, including description potential variation within each stage;
- Metrics critical to assessing a county's readiness to move through Stage 2 of California's Pandemic Resilience Roadmap—including hospitalization and ICU trends, hospital surge capacity, quantities of Personal Protective Equipment, and capacity for testing and contact tracing; and
- Best practices for preparation of a county's COVID-19 Containment Plan.

Please confirm your intention to bring your jurisdiction into compliance with this framework by contacting Jake Hanson (jake.hanson@cdph.ca.gov) at your earliest convenience. Mr. Hanson can also assist you in making arrangements for a phone consultation regarding your intent to seek a variance, and for the submission of your related written materials.

It is my hope that Sutter County will act in good faith, in the best interests of its residents, and for the safety of all Californians.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark S. Ghilarducci', with a long horizontal flourish extending to the right.

MARK S. GHILARDUCCI
Director

cc: Dr. Ngoc-Phuong Luu, Bi-County Health Officer, pluu@co.yuba.ca.us
Mark Pazin, Chief, Law Enforcement, Cal OES, Mark.Pazin@caloes.ca.gov

EXHIBIT 3

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ESSENTIAL WORKFORCE

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.

Sector Index:

1. [Health and Public Health Sector](#)
2. [Emergency Services Sector](#)
3. [Food and Agriculture Sector](#)
4. [Energy Sector](#)
5. [Water and Wastewater Sector](#)
6. [Transportation and Logistics Sector](#)
7. [Communications and Information Technology Sector](#)
8. [Government Operations and Other Community-Based Essential Functions](#)
9. [Critical Manufacturing Sector](#)
10. [Financial Services Sector](#)
11. [Chemical Sector](#)
12. [Defense Industrial Base Sector](#)
13. [Industrial, Commercial, Residential and Sheltering Facilities and Services](#)

Relevant Guidance For All Sectors:

- [Face Coverings Guidance](#)
 - [Orientación Sobre el Uso de Mascarillas de Tela](#)
- [Self-Isolation for Older Adults and Those Who Have Elevated Risk](#)
 - [Aislamiento para Adultos Mayores y Personas que Tienen un Riesgo Elevado](#)
- [Employers, health care workers and workers in general industry](#)

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1. 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, if remote working is not practical:

1. Health care providers and caregivers (including physicians, dentists, psychologists, mid-level practitioners, nurses, assistants, and aids; infection control and quality assurance personnel; pharmacists; physical, respiratory, speech and occupational therapists and assistants; social workers and providers serving individuals with disabilities including developmental disabilities; optometrists; speech pathologists; chiropractors; diagnostic and therapeutic technicians; and radiology technologists).
2. Workers required for effective clinical, command, infrastructure, support service, administrative, security and intelligence operations across the direct patient care and full healthcare and public health spectrum, including accounting, administrative, admitting and discharge, engineering, accrediting, certification, licensing, credentialing, epidemiological, source plasma and blood donation, food service, environmental services, housekeeping, medical records, information technology and operational technology, nutritionists, sanitarians; emergency medical services workers; prehospital workers including but not limited to urgent care workers; inpatient and hospital workers; outpatient care workers; home care workers; workers at long-term care facilities, residential and community-based providers; workplace safety workers).
3. Workers needed to support transportation to and from healthcare facilities and provider appointments.
4. Workers needed to provide laundry services, food services, reprocessing of medical equipment, and waste management.
5. Vendors and suppliers (including imaging, pharmacy, oxygen services, durable medical equipment)
6. Workers who perform critical clinical research, development, and testing needed for COVID-19 response.
7. Workers in other medical and life science 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, and retail facilities specializing in medical goods and supplies, including cannabis).
8. Workers for health manufacturing (including life science companies, and companies that have shifted production to medical supplies), materials and parts suppliers, technicians, logistics and warehouse operators, printers, packagers, and distributors of medical equipment (including those who test and repair), personal protective equipment (PPE), isolation barriers, medical

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gases, pharmaceuticals (including materials used in radioactive drugs, and cannabis products), dietary supplements, blood and blood products, vaccines, testing materials, laboratory supplies, cleaning, sanitizing, disinfecting or sterilization supplies, personal hygiene products, and tissue and paper towel products.

9. Public health / community health workers, including those who compile, model, analyze and communicate public health information.
10. Behavioral and mental health workers responsible for coordination, outreach, engagement, and treatment to individuals in need of mental health and/or behavioral services.
11. Donors of blood bone marrow, blood stem cell, or plasma and the workers of the organizations that operate and manage related activities.
12. Workers that manage health plans, billing, and health information.
13. Workers who conduct community-based public health functions, conducting epidemiologic surveillance, compiling, analyzing and communicating public health information.
14. Workers performing IT and cybersecurity functions at healthcare and public health facilities.
15. Workers performing security, incident management, and emergency operations functions at or on behalf of healthcare entities including healthcare coalitions.
16. Pharmacy employees, including workers necessary to maintain uninterrupted prescription filling.
17. Workers in retail facilities specializing in medical goods and supplies.
18. Public health and environmental health workers, including workers specializing in environmental health that focus on implementing environmental controls, sanitary and infection control interventions, healthcare facility safety and emergency preparedness planning, engineered work practices, and developing guidance and protocols for appropriate PPE to prevent COVID-19 disease transmission; Public health/ community health workers (including call center workers) who conduct community- based public health functions, conducting epidemiologic surveillance and compiling, analyzing, and communicating public health information.
19. Mortuary services providers, including workers performing mortuary, funeral, cremation burial, cemetery, and related services, including funeral homes, crematoriums, cemetery workers and coffin makers.
20. 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 and mental health services to the family members, responders, and survivors of an incident.
21. Workers supporting veterinary hospitals and clinics.

Relevant Sector Guidance:

- [All Facility Letters for health care facilities, including long-term care facilities](#)
- [Health care facilities, Skilled Nursing Facilities](#)
- [Individuals with Access and Functional Needs](#)
- [Medical Waste Management - Interim Guidelines](#)
- [Outpatient Healthcare Facility Infection Control Recommendations for Suspect COVID-19 Patients](#)
- [Prioritization of Patients for Laboratory Testing for COVID-19](#)
- [Veterinary Professionals and Premises](#)
- Regional Centers:
 - [Visits to Licensed Residential Facilities](#)
 - [Risk Mitigation Strategies for ARFPSHN, ICF/DD-CN](#)
- [Adult and Senior Care Facilities](#)

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- [Cuidado a los Adultos Mayores](#)
- [Community care facilities, including assisted living facilities and child care](#)
- [Medi-Cal Managed Care Health Plans: COVID – 19 Screening and Testing](#)
- [Coverage Options Fact Sheet](#)
 - [Opciones De Cobertura](#)
- [Department of Managed Health Care All Plan Letter](#)
- [California Department of Insurance Bulletin](#)

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2. 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 as industrial fire departments, private security organizations, and private emergency medical services providers.

Essential Workforce, if remote working is not practical:

1. Public, private, and voluntary personnel (front line and management) in emergency management, law enforcement, fire and rescue services, emergency medical services, corrections, rehabilitation and reentry, search and rescue, hazardous material response, and technicians supporting maritime and aviation emergency response.
2. Public Safety Answering Points and 911 call center employees; personnel involved in access to emergency services including the emergency alert system and wireless emergency alerts.
3. Fusion Center employees
4. Workers who support weather disaster / natural hazard monitoring, response, mitigation, and prevention, including personnel conducting, supporting, or facilitating wildfire mitigation activities
5. Workers – including contracted vendors -- who maintain, manufacture, or supply equipment and services supporting law enforcement, fire, EMS, and emergency service response operations (including safety equipment, electronic security, and uniforms)
6. Workers responding to abuse and neglect of children, elders and dependent adults.
7. Animal control officers and humane officers
8. Security staff to maintain building access control and physical security measures
9. Workers and contracted vendors who maintain and provide services and supplies to public safety facilities, including emergency communication center, public safety answering points, public safety communications centers, emergency operation centers, fire and emergency medical services stations, police and law enforcement stations and facilities.

Relevant Sector Guidance:

- [Public Health Guidance about COVID-19 for California State Prisons](#)
- [First responders, including paramedics and EMTs](#)

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3. FOOD AND AGRICULTURE

Sector Profile

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 sector is critical to maintaining and securing our food supply.

Essential Workforce, if remote working is not practical:

1. Workers supporting groceries, pharmacies, convenience stores, and other retail that sells food or beverage products, and animal/pet food, retail customer support service, information technology support staff, for online orders, pickup/takeout or delivery.
2. Workers supporting restaurant carry-out and quick serve food operations, including food preparation, carry-out and delivery food employees.
3. Food manufacturer employees and their supplier employees to include those employed in food ingredient production and processing-facilities; aquaculture and seafood harvesting 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, including recycling operations and processing.
4. Farmers, farm and ranch workers, and agribusiness support services to include those employed in auction and sales; grain and oilseed handling, storage, processing and distribution; animal food, feed, and ingredient production, packaging, and distribution; manufacturing, packaging, and distribution of veterinary drugs; truck delivery and transport.
5. Farmers, farm and ranch workers, support service workers and their supplier employees producing food supply domestically and for export to include those engaged in raising, cultivating, harvesting, packing, storing, or delivering to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity for human consumption; those engaged in producing and harvesting field crops; cannabis growers; agricultural and commodity inspection; fuel ethanol facilities; storage facilities; biodiesel and renewable diesel facilities; and other agricultural inputs
6. Employees and firms supporting food, feed, and beverage distribution and ingredients used in these products including warehouse workers, vendor-managed inventory controllers, and blockchain managers.
7. Workers supporting the sanitation of all food manufacturing processes and operations from wholesale to retail.
8. Workers supporting the growth and distribution of plants and associated products for home gardens.
9. Workers in cafeterias used to feed workers, particularly worker populations sheltered against COVID-19
10. Workers in animal diagnostic and food testing laboratories
11. Workers essential for assistance programs and government payments
12. Government, private, and non-governmental organizations' workers essential for food assistance programs (including school lunch programs) and government payments.

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13. Employees of companies engaged in the production, storage, transport, and distribution of chemicals; medicines, including cannabis; vaccines; and other substances used by the food and agriculture industry, including seeds, pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids.
14. 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.
15. Transportation supporting animal agricultural industries, including movement of animal medical and reproductive supplies and material, animal vaccines, animal drugs, feed ingredients, feed, and bedding, live animals, animal medical materials; transportation of deceased animals for disposal; and associated regulatory and government workforce
16. 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
17. Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution
18. Workers at animal care facilities that provide food, shelter, veterinary and/or routine care and other necessities of life for animals.

Relevant Sector Guidance:

- [Food, Beverage, Other Services](#)
 - [Alimentos, Bebidas y Otros Sitios de Servicios Relacionados](#)
- [Food Industry and Food Supply Chain](#)

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4. 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. 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, if remote working is not possible:

1. Workers supporting the energy sector, regardless of the energy source, 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, physical and cyber security of the energy system, including power generation, transmission and distribution.
2. Workers supporting the energy sector, regardless of the energy source, needed for construction, manufacturing, transportation and logistics, maintenance, and permitting.
3. IT and OT technology for essential energy sector operations including support workers, customer service operations, call centers, and emergency response and customer emergency operations; energy management systems, control systems, Supervisory Control and Data Acquisition SCADA systems, and energy sector entity data centers; cybersecurity engineers; and cybersecurity risk management.
4. Workers providing services related to energy sector fuels and supply chains, supporting the procurement, mining, drilling, processing, refining, manufacturing, refueling, construction, logistics, transportation (including marine transport, terminals, rail and vehicle transport), permitting operation and maintenance, security, waste disposal, storage, and monitoring of support for resources;
5. Workers supporting environmental remediation and monitoring.
6. Workers supporting manufacturing and distribution of equipment, supplies, and parts necessary to maintain production, maintenance, restoration, and service at energy sector facilities across all energy sectors, and regardless of the energy source.
7. Workers at Independent System Operators and Regional Transmission Organizations, and Network Operations staff, engineers and technicians to manage the network or operate facilities.
8. Workers at Reliability Coordinator, Balancing Authorities, and primary and backup Control Centers, including but not limited to independent system operators, regional transmission organizations, and balancing authorities; and workers involved in energy commodity trading and scheduling.
9. Mutual assistance personnel, which may include workers from outside of the state or local jurisdiction
10. Retail fuel centers such as gas stations and truck stops, and the distribution systems that support them.

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5. 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, if remote working is not practical:

Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure, including:

1. Operational staff at water authorities
2. Operational staff at community water systems
3. Operational staff at wastewater treatment facilities
4. Workers repairing water and wastewater conveyances and performing required sampling or monitoring
5. Operational staff for water distribution and testing
6. Operational staff at wastewater collection facilities
7. Operational staff and technical support for SCADA Control systems
8. Chemical disinfectant suppliers for water and wastewater and personnel protection
9. Workers that maintain digital systems infrastructure supporting water and wastewater operations

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6. 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 bicycles, commercial motor coaches 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, if remote working is not practical:

1. Employees supporting or enabling transportation functions, including truck drivers, bus drivers, dispatchers, maintenance and repair technicians, warehouse workers, truck stop and rest area workers, towing and recovery services, roadside assistance workers, intermodal transportation personnel, and workers that maintain and inspect infrastructure
2. Working supporting or providing services that enable logistics operations for essential sectors, wholesale and retail sale, including warehousing, cooling, storing, packaging, and distributing products for wholesale or retail sale or use.
3. Workers supporting maintenance and operation of essential highway infrastructure, including roads, bridges, and tunnels.

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4. Workers 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.
5. Mass transit workers providing critical transit services and/or performing critical or routine maintenance to mass transit infrastructure or equipment.
6. Employees supporting personal and commercial transportation services, including taxis, bicycle services, Transportation Network Companies, and delivery services including Delivery Network Companies
7. Workers responsible for operating dispatching passenger, commuter and freight trains and maintaining rail infrastructure and equipment
8. Maritime transportation and inland waterway workers – to include maintenance and repair – including port authority and commercial facility personnel, dredgers, port workers, mariners, ship crewmembers, ship pilots and tugboat operators, ship supply, Chandler, and equipment operators.
9. Workers who support the operation, inspection, and maintenance of essential dams, locks, and levees.
10. Workers who support the inspection and maintenance of aids to navigation and other government-provided services that ensure continued maritime commerce.
11. Workers supporting transportation of chemicals, hazardous, medical, waste and recyclable materials to support critical sectors and infrastructure.
12. Automotive repair, maintenance, and transportation equipment manufacturing and distribution facilities.
13. Transportation safety inspectors, including hazardous material inspectors and accident investigator inspectors
14. Manufacturers and distributors (to include service centers and related operations) of lighting and communication systems, specialized signage and structural systems, emergency response equipment and support materials, printers, printed materials, packaging materials, pallets, crates, containers, and other supplies needed to support manufacturing, packaging staging and distribution operations
15. Postal, parcel, courier, last-mile delivery, and shipping workers, to include private companies who accept, process, transport, and deliver information and goods.
16. Workers who supply equipment and materials for maintenance of transportation equipment.
17. 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
18. Workers who support air transportation for cargo and passengers, including operation distribution, maintenance, and sanitation. This includes air traffic controllers, flight dispatchers, maintenance personnel, ramp workers, fueling agents, flight crews, airport safety inspectors and engineers, airport operations personnel, aviation and aerospace safety workers, security, commercial space personnel, operations personnel, accident investigators, flight instructors, and other on- and off-airport facilities workers.
19. Workers critical to the manufacturing, distribution, sales, rental, leasing, repair, and maintenance of vehicles and other transportation equipment (including electric vehicle charging stations) and the supply chains that enable these operations, subject to adhering public health guidance issued by CDPH.
20. 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

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suppliers, traffic signal maintenance, emergency location services for buried utilities, maintenance of digital systems infrastructure supporting public works operations, and other emergent issues

21. Workers who support, such as road and line clearing, to ensure the availability of needed facilities, transportation, energy and communications.

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7. 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 involves both physical infrastructure (buildings, switches, towers, antennas, etc.) and cyber infrastructure (routing and 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, if remote working is not practical:

1. 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, Network Access Points, back haul and front haul facilities, and manufacturers and distributors of communications equipment.
2. Workers performing functions 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
3. Government and private sector employees supporting Department of Defense internet and communications facilities.
4. Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering, reporting, and publishing news.
5. 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
6. Workers 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

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new facilities and deployment of new technology required to address congestion or customer usage on remote services.

7. Installation, maintenance and repair technicians that establish, support or repair service as needed.
8. Central office personnel to maintain and operate central office, data centers, and other network office facilities, and critical support personnel assisting front line employees
9. 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
10. Workers providing electronic security, fire, monitoring, and life safety services, and who ensure physical security, cleanliness, and the safety of facilities and personnel, including those who provide temporary licensing waivers for security personnel to work in other States or Municipalities.
11. Dispatchers involved with service repair and restoration
12. Retail customer service personnel at critical service center locations for onboarding customers, distributing and repairing equipment and other supply chain personnel, to support individuals' remote emergency communications needs;
13. 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.
14. Workers responsible for ensuring that persons with disabilities have access to and the benefits of various communications platforms, including those involved in the provision of telecommunication relay services, closed captioning of broadcast television for the deaf, video relay services for deaf citizens who prefer communication via American Sign Language over text, and audio-description for television programming.

Essential Workforce - Information Technology, if remote working is not practical:

15. Workers who support command centers, including, but not limited to Network Operations Command Centers, Broadcast Operations Control Center and Security Operations Command Centers
16. 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
17. Workers who support client service centers, field engineers, and other workers supporting critical infrastructure, as well as manufacturers and supply chain vendors that provide hardware and software, support services, research and development, 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 for critical infrastructure.
18. Workers needed to pre-empt and respond to cyber incidents involving critical infrastructure,, and entities supporting the functioning of critical infrastructure sectors
19. Suppliers, designers, transporters and other workers supporting the manufacture, distribution, and construction of essential global, national and local infrastructure for computing services (including cloud computing services and teleworking capabilities), business infrastructure, financial transactions, web-based services, and critical manufacturing

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20. Workers supporting communications systems, information technology, and work from home solutions
21. Employees required 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.

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8. GOVERNMENT OPERATIONS AND OTHER COMMUNITY-BASED ESSENTIAL FUNCTIONS

Essential Workforce, if remote working is not practical.

1. Critical government workers, as defined by the employer and consistent with Continuity of Operations Plans and Continuity of Government plans.
2. County workers responsible for determining eligibility for safety net benefits
3. The Courts, consistent with guidance released by the California Chief Justice
4. Workers who support administration and delivery of unemployment insurance programs, income maintenance, employment service, disaster assistance, workers' compensation insurance and benefits programs, and pandemic assistance
5. Workers to ensure continuity of building functions, including but not limited to security and environmental controls, the manufacturing and distribution of the products required for these functions, and the permits and inspection for construction.
6. Elections personnel
7. Federal, State, and Local, Tribal, and Territorial employees who support Mission Essential Functions and communications networks
8. Trade Officials (FTA negotiators; international data flow administrators)
9. Weather forecasters
10. Workers that maintain digital systems infrastructure supporting other critical government operations
11. Workers who support necessary credentialing, vetting and licensing operations for critical sector workers and operations.
12. Workers who are critical to facilitating trade in support of the national, state, and local emergency response supply chain
13. 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
14. Staff at government offices who perform title search, notary, and recoding services in support of mortgage and real estate services and transactions;
15. 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
16. Clergy for essential support and faith-based services that are provided through streaming or other technologies that support physical distancing and state public health guidelines.
17. Human services providers, especially for at risk populations, including home delivered meal providers for older adults, people with disabilities, and others with chronic health conditions; home-maker services for frail, homebound, older adults; personal assistance services providers to support activities of daily living for older adults, people with disabilities, and others with chronic health conditions who live independently in the community with supports and services; home health providers who deliver health care services for older adults, people with disabilities, and others with chronic health conditions who live independently in the community with supports and services.
18. Government entities, and contractors that work in support of local, state, and federal public health and medical mission sets, including but not limited to supporting access to healthcare and associated payment functions, conducting public health functions, providing medical care,

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supporting emergency management, or other services necessary for supporting the COVID-19 response.

Relevant Sector Guidance:

- Schools and institutions of higher education
 - [Guidance for schools \(PDF\)](#)
 - [Directrices para las escuelas sobre el nuevo coronavirus o COVID-19 \(PDF\)](#)
 - [Guidance for colleges and universities](#)
 - [Directrices para las instituciones de educación superior sobre el nuevo coronavirus o COVID-19](#)
- [Guidance for K-12 Schools: Distance Learning, School Meals, Child Care and Student Supervision](#)
- [Guidance for Using Disinfectants at Schools and Child Cares](#)
 - [Recordatorios para el uso de desinfectantes en las escuelas y guarderías](#)
- [Community care facilities, including assisted living facilities and child care](#)

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9. 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, if remote working is not practical

1. Workers necessary for the manufacturing of metals, industrial minerals, semiconductors, materials and products needed for supply chains of the critical infrastructure sectors.
2. Workers necessary for the manufacturing of materials and products needed to manufacture medical equipment and personal protective equipment
3. 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.
4. 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.
5. Workers manufacturing or providing parts and equipment that enable the maintenance and continued operation of essential businesses and facilities.

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10. 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, if remote working is not practical:

1. Workers who are needed to process and maintain systems for processing financial transactions and services, including payment, clearing, and settlement; wholesale funding; insurance services; and capital markets activities
2. Workers who are needed to maintain orderly market operations to ensure the continuity of financial transactions and services.
3. Workers who are needed to provide business, commercial, and consumer access to banking and non-bank financial and lending services, including ATMs, lending money transmission, and to move currency, checks, securities, and payments
4. Workers who support financial operations, such as those staffing call, data and security operations centers, managing physical security, or providing accounting services.
5. Workers supporting production and distribution of debit and credit cards.
6. Workers providing electronic point of sale support personnel for essential businesses and workers.

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11. CHEMICAL & HAZARDOUS MATERIALS

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 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, if remote working is not practical:

1. 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, building materials, plumbing, electrical and paper products.
2. Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items
3. Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, disinfectants, and packaging that prevents the contamination of food, water, medicine, among others essential products
4. 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
5. 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
6. Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits
7. Workers who support hazardous materials response and cleanup
8. Workers who maintain digital systems infrastructure supporting hazardous materials management operations
9. Workers who support the removal, storage, and disposal of residential and commercial solid waste and hazardous waste, including landfill and recycling operations.

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12. 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 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, if remote working is not practical:

1. Workers who support the essential services required to meet national security commitments to the federal government and U.S. Military, including, but are not limited to, space and aerospace workers, nuclear matters workers, mechanical and software engineers (various disciplines), manufacturing and 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.
2. Personnel working for companies, and their subcontractors, who perform under contract or sub-contract to the Department of Defense (DoD) and the Department of Energy (DoE) (on nuclear matters), as well as personnel at government-owned/contractor operated facilities, and who provide materials and services to the DoD and DoE (on nuclear matters), including support for weapon systems, software systems and cybersecurity, defense and intelligence communications, surveillance, sale of U.S. defense articles and services for export to foreign allies and partners (as authorized by the U.S. government), and space systems and other activities in support of our military, intelligence, and space forces.

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13. INDUSTRIAL, COMMERCIAL, RESIDENTIAL, and SHELTERING FACILITIES AND SERVICES

Essential Workforce, if remote working is not practical:

1. Construction Workers who support the construction, operation, inspection, and maintenance of construction sites and construction projects (including housing, commercial, and mixed-use construction); and 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.
2. 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, recycling and disposal of solid waste and hazardous waste)
3. 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, businesses, and buildings such as hospitals and senior living facilities, including any facility supporting COVID-19 response.
4. Workers who support the supply chain of building materials from production through application and installation, including cabinetry, fixtures, doors, cement, hardware, plumbing (including parts and services), electrical, heating and cooling, refrigeration, appliances, paint and coatings, and workers who provide services that enable repair materials and equipment for essential functions.
5. Workers in hardware and building materials stores, consumer electronics, technology and appliances retail, and related merchant retailers, wholesalers and distributors that support essential workforce functions where sales and operations cannot be conducted online
6. Warehouse operators, including vendors and support personnel critical for business continuity (including heating, ventilation, and air conditioning (HVAC) and electrical engineers, security personnel, and janitorial staff), e-commerce or online commerce, and customer service for essential functions.
7. Workers supporting the operations of commercial buildings that are critical to safety, security, and the continuance of essential activities, such as on-site property managers, building engineers, security staff, fire safety directors, janitorial personnel, and service technicians (e.g., mechanical, HVAC, plumbers, electricians, and elevator).
8. Workers supporting ecommerce through distribution, warehouse, call center facilities, and other essential operational support functions, that accept, store, and process goods, and that facilitate their transportation and delivery
9. Workers distributing, servicing, repairing, installing residential and commercial HVAC systems, boilers, furnaces and other heating, cooling, refrigeration, and ventilation equipment.
10. Workers managing or servicing hotels or other commercial and residential buildings that are used for COVID-19 mitigation and containment measures, treatment measures, provide accommodation for essential workers, or providing housing solutions, including measures to protect homeless populations.

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11. Workers responsible for the leasing of residential and commercial properties to provide individuals and families with ready access to available housing.
12. Residential and commercial real estate workers, limited to scheduled property viewings to a potential buying party. This does not extend to open-house viewings, nor viewings with more than one buying party at a time.
13. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities and critical sector services
14. 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.
15. Workers supporting the entertainment industries, studios, and other related establishments, provided they follow covid-19 public health guidance around physical distancing.
16. 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)
17. 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.
18. Workers who provide support to vulnerable populations to ensure their health and well-being including family care providers.
19. Workers providing dependent care services, particularly those whose services ensure essential workers can continue to work.
20. 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.
21. Workers in laundromats, laundry services, and dry cleaners.
22. Workers providing disinfection services, for all essential facilities in essential sectors
23. Workers necessary for the installation, maintenance, distribution, and manufacturing of water and space heating equipment and its components.
24. 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.

Relevant Sector Guidance:

- [Cleaning & Waste Management for Residences 2/2020](#)
- [Essential/Emergency Personnel Providing Critical In-Home Services](#)
- [Home cleaning with COVID-19 positive individuals](#)
- [Recommended Strategic Approaches for COVID-19 Response for Individuals Experiencing Homelessness](#)
- [Flow Chart: COVID-19 Recommended Protocol for People Experiencing Homelessness](#)
- [Homeless Assistance Providers](#)
- [Immigrant Communities](#)
 - [Las Comunidades de Inmigrantes](#)
- [Pets & People](#)

EXHIBIT 4



County of San Diego

NICK MACCHIONE, FACHE

HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH SERVICES
3851 ROSECRANS STREET, MAIL STOP P-578
SAN DIEGO, CA 92110-3134
(619) 531-5800 • FAX (619) 542-4186

WILMA J. WOOTEN, M.D.
PUBLIC HEALTH OFFICER

ORDER OF THE HEALTH OFFICER AND EMERGENCY REGULATIONS (Effective May 10, 2020)

Pursuant to California Health and Safety Code sections 101040, 120175, and 120175.5 (b) the Health Officer of the County of San Diego (Health Officer) **ORDERS AS FOLLOWS:**

Effective 12:00 a.m. on Sunday, May 10, 2020, and continuing until further notice, the following will be in effect for San Diego County (county):

1. All persons are to remain in their homes or at their place of residence, except for employees or customers travelling to and from essential businesses, reopened businesses, or essential activities as defined in section 18, below, or to participate in individual or family outdoor activity as allowed by this Order.
2. All public or private "gatherings," as defined in section 18 below, are prohibited.
3. All businesses not meeting the definition of essential business or reopened business in section 18 below are referred to in this Order as "non-essential businesses" and shall be and remain closed for the duration of this Order. All essential businesses and reopened businesses must comply with the requirements of this Order. Notwithstanding the foregoing, a non-essential business may remain open if its employees and owners can provide its services from home, including by telecommuting, without direct contact with the public.
4. All public or private schools, colleges, and universities shall not hold classes or other school activities where students gather on the school campus. Parents of minor children shall take steps to ensure said children are not participating in activities prohibited by this Order.
5. Child daycare and child care providers shall operate under the following conditions: i) child

care should be carried out in stable groups of 12 or fewer (“stable” means that the same 12 or fewer children are in the same group each day); ii) children should not change from one group to another; iii) if more than one group of children is cared for at one facility, each group should be in a separate area; iv) groups should not mix with each other; and v) childcare providers should remain solely with one group of children, to the extent possible. Employees of such businesses, and the children being cared for, are not required to wear face coverings as described in section 9 while present at the daycare of child care facility. Child daycare and childcare providers shall establish health check and temperature screening requirements to ensure children and employees with a temperature of 100 degrees or above do not enter the facility. Restroom and other surfaces children regularly contact shall be sanitized with a disinfectant effective against coronavirus on a regular schedule and between groups occupying a particular area.

6. “Non-essential personnel,” as defined in section 18 below, are prohibited from entry into any hospital or long-term care facility. All essential personnel who are COVID-19 positive or show any potential signs or symptoms of COVID-19 are strictly prohibited from entry into hospitals or long-term care facilities. Notwithstanding the foregoing, individuals requiring medical care for COVID-19 or related conditions may be admitted to hospitals or other medical facilities if the hospital or medical facility is appropriate for treating COVID-19 and has adequate precautions in place to protect its patients, medical personnel and staff.
7. Hospitals and healthcare providers, including dentists shall:
 - a. Take measures to preserve and prioritize resources; and,
 - b. May authorize and perform non-emergent or elective surgeries or procedures based on their determination of clinical need and supply capacity, and where consistent with State guidance.
 - c. Nothing in this Order shall prevent physicians and other healthcare providers from conducting routine preventive care provided it conforms to any applicable State guidance.
 - d. Nothing in this Order shall prevent dentists or dental hygienists from conducting routine preventive care provided it conforms to any applicable State guidance.
8. Hospitals, healthcare providers, and commercial testing laboratories shall report all COVID-19 test results to the Public Health Officer immediately after such results are received.
9. All persons two year old or older who are present in the county shall have possession of a face

covering described in California Department of Public Health Face Covering Guidance issued on April 1, 2020, (available at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Face-Coverings-Guidance.aspx>), when they leave their home or place of residence, shall wear the face covering whenever they are in a business or within six feet of another person who is not a member of their family or household. Persons with a medical or mental health condition, or developmental disability that prevents wearing a face covering shall be exempt from this requirement.

10. All essential businesses that allow members of the public to enter a facility must prepare and post a “Social Distancing and Sanitation Protocol” on the form available at: https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/SOCIAL_DISTANCING_AND_SANITATION_PROTOCOL_04022020_V1.pdf), or on a form required by another governmental entity requiring substantially similar information, for each of their facilities open to the public in the county. The Social Distancing and Sanitation Protocol must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. A copy of the Social Distancing and Sanitation Protocol must also be provided to each employee performing work at the facility. All essential businesses shall implement the Social Distancing and Sanitation Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Social Distancing and Sanitation Protocol 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, the business shall promptly modify its Social Distancing and Sanitation Protocols to ensure proper social distancing and sanitation. Any business that fails to successfully implement social distancing and sanitation may be required to close.
11. All reopened businesses must prepare and post a “Safe Reopening Plan” on the form available at: https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/Community_Sector_Support/BusinessesandEmployers/SafeReopeningPlanTemplate.pdf for each of their facilities in the county. The Safe Reopening Plan must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. A copy of the Safe Reopening Plan must also be provided to each employee performing work at the facility. All reopened businesses shall implement the Safe Reopening Plan and provide evidence of its implementation to any authority enforcing this Order upon demand. The Safe Reopening Plan must ensure all required measures are implemented. If the measures identified

and implemented are not effective in maintaining proper social distancing and sanitation, the business shall promptly modify its Safe Reopening Plan to ensure proper social distancing and sanitation. Any business that fails to comply with its Safe Reopening Plan may be required to close.

12. Each essential business and reopened business shall:

- a. Require all employees to wear face coverings as described in section 9 above; and,
- b. Shall conduct temperature screening of all employees prohibiting employees with a temperature of 100 degrees or more from entering the workplace. Symptom screening (prohibiting employees from entering if they have a cough, shortness of breath or trouble breathing or at least two of the following: fever, chills, repeated shaking with chills, muscle pain, headache, sore throat or new loss of taste or smell) may be used only when a thermometer is not available.

13. Outdoor Recreation

- a. Each public park and recreation area, shall operate in compliance with the Protocol found at <https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/parks-beaches-social-distancing-protocol.pdf> created and implemented by the operator of the park. The public shall not congregate or participate in active sport activities at a park with the exception of members of a single family or household if authorized pursuant to the Protocol applicable to the park. Any park at which the Protocol requirements cannot be effectively implemented may be required to close.
- b. Campgrounds may be open provided a vacant campsite separates each occupied campsite and each campsite is occupied only by members of the same household.
- c. Recreational boating is allowed provided all occupants of a boat are from the same household.
- d. For Beaches Only - All parking lots at public beaches shall be closed. Beaches shall be used solely for walking, running, hiking, equestrian or bicycle riding (where allowed). The public shall not congregate or participate in active sport activities at said facilities. Swimming, body surfing, boogie boarding, surfing, kite surfing, paddle boarding, kayaking, snorkeling and scuba diving from the shore may be allowed in the ocean and bays connected thereto. Beaches where social distancing requirements cannot be effectively implemented shall close. All other restrictions applicable to beaches pursuant to other sections of this Order shall remain in effect.
- e. To enhance recreational opportunities in the county, private and public golf courses

and, other public or private outdoor recreational facilities (other than community pools per State order), including recreational equipment (such as bicycle, boat, kayak, equestrian and surfboard) rentals may be open for limited use.

- i. The owner or operator of a golf course shall complete and fully implement a Golf Course Physical Distancing & Safety Plan for San Diego County and shall submit a copy of the completed form to the Public Health Officer at least two days prior to opening. Golf courses shall conduct temperature screening of all employees and customers and anyone with a temperature of 100 degrees or higher shall not be permitted to enter the facility.
- ii. The owner or operator of an outdoor recreational facility shall limit use of recreational equipment or areas to individuals able to practice social distancing before, during or after the activity, or members of the same household. The owner or operator shall prepare a Safe Reopening Plan pursuant to section 11 which shall include a requirement that all equipment be sanitized with a disinfectant effective against coronavirus immediately after every use.

14. All essential businesses and reopened businesses that remain in operation in accordance with the Order shall make every effort to use telecommuting for their workforces.
15. 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 or other suitable location.
16. 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 or other suitable location quarantine and self-monitoring.
17. Persons who have been diagnosed with COVID-19, or who are likely to have COVID-19, shall comply with the Order of the Health Officer titled: "Isolation of All Persons with or Likely to have COVID-19", or as subsequently amended. Persons who have a close contact with a person who either has COVID-19, or is likely to have COVID-19, shall comply with the Order of the Health Officer titled: "Quarantine of Persons Exposed to COVID-19," or as subsequently amended. Both orders are available at: https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/2019-nCoV/health-order.html. If a more specific isolation or quarantine order is issued to a person, that order shall be followed.

18. For purposes of this Order:

- a. “Essential business” is any business or activity (or a business/activity that employs/utilizes workers) designated by the State Public Health Officer as “Essential Critical Infrastructure Workers” set forth in: <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>) as that list may be updated from time-to-time, and referenced in Executive Order N-33-20 issued by the Governor of the State of California. For the purposes of this Order, the following businesses in the Food and Agriculture Sector are considered “groceries” or “other retail that sells food and beverages”: grocery stores, corner stores and convenience stores, liquor stores that sell food, farmer’s markets, food banks, farm and produce stands, supermarkets, big box stores that sell groceries and essentials, or similar business that sell food so long as the store has a current permit related to the sale of food and/or beverages from the San Diego County Department of Environmental Health.
- b. “Gathering” is any event or convening that brings together more than one person in a single room or single indoor or outdoor space at the same time, including people in multiple vehicles in one location. A gathering does not include:
 - i. A gathering consisting only of members of a single family or household.
 - ii. Operations at airports, public transportation or other spaces where persons in transit are able to practice social distancing.
 - iii. Operations at essential businesses as defined in section 19a above and reopened businesses as defined in 18f below and where the other requirements set forth in this Order are followed.
- c. “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.
- d. “Non-essential personnel” 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. Non-essential personnel do not include visitors to hospitals and long-term care facilities who are granted entry by the facility’s director, or designee, because they are family or friends who are visiting a resident in an end of life or similar situation, are parents or guardians visiting a child who is a patient, or because of 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.

- e. “Social distancing” is maintaining a six-foot separation from all persons except for household members, first responders and medical providers or employees conducting temperature screenings.
- f. “Reopened business” is a business that is not an essential business as stated in section 18a above, and has reopened in conformance with the State of California’s Resilience Roadmap (available at: <https://covid19.ca.gov/roadmap/>), as may be subsequently amended

- 19. This Order is issued as a result of the World Health Organization’s declaration of a worldwide pandemic of COVID-19 disease, also known as “novel coronavirus.”
- 20. This Order is issued based on scientific evidence regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, as well as best practices as currently known and available to protect vulnerable members of the public from avoidable risk of serious illness or death resulting from exposure to COVID-19. The age, condition, and health of a significant portion of the population of the county places it at risk for serious health complications, including death, from COVID-19. Although most individuals who contract COVID-19 do not become seriously ill, persons with mild symptoms and asymptomatic persons with COVID-19 may place other vulnerable members of the public—such as older adults, and those with underlying health conditions—at significant risk.
- 21. The actions required by this Order are necessary to reduce the number of individuals who will be exposed to COVID-19, and will thereby slow the spread of COVID-19 in the county. By reducing the spread of COVID-19, this Order will help preserve critical and limited healthcare capacity in the county and will save lives.
- 22. This Order is issued in accordance with, and incorporates by reference: a) the Declaration of Local Health Emergency issued by the Health Officer on February 14, 2020; b) the Proclamation of Local Emergency issued by the County Director of Emergency Services on February 14, 2020; c) the action of the County Board of Supervisors to ratify and continue both the local health emergency and local emergency on February 19, 2020; d) the Proclamation of a State of Emergency issued by the Governor of the State of California on March 4, 2020; e) Executive Order N-25-20 issued by the Governor of the State of California on March 12, 2020 which orders that “All residents are to heed any orders and guidance of

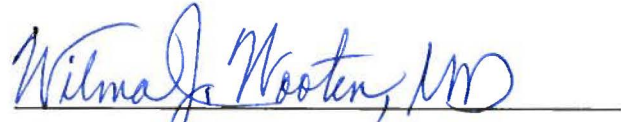
state and local health officials, including but not limited to the imposition of social distancing measures, to control COVID-19”; f) Proclamation 9984 regarding COVID-19 issued by the President of the United States on March 11, 2020; g) Executive Order N-33-20 issued by the Governor of the State of California on March 19, 2020; h) the “Interim Additional Guidance for Infection Prevention and Control for Patients with Suspected or Confirmed COVID-19 in Nursing Homes” issued by the CDC; i) COVID-19 guidance issued by the California Department of Public Health on including, but not limited to the Face Coverings Guidance issued on April 1, 2020; and j) the State of California’s “Resilience Roadmap.”

23. 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.
24. This Order is issued to provide additional opportunities for recreational activities while also requiring additional protections from the spread of COVID-19 to the public who are taking advantage of these opportunities for recreational activities. And providing additional protections for employees of essential businesses or reopened business and their customers/clients by increasing facial covering requirements and health checks and temperature screening.
25. This Order comes after the release of substantial guidance from the Health Officer, the California Department of Public Health, the CDC, and other public health officials throughout the United States and around the world.
26. Pursuant to Health and Safety Code section 120175.5 (b) 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.
27. Violation of this Order is subject to fine, imprisonment, or both. (California Health and Safety Code section 120295.)
28. To the extent necessary, this Order may be enforced by the Sheriff or chiefs of police pursuant to Government Code sections 26602 and 41601 and Health and Safety Code section 101029.

29. Once this Order takes effect it shall supersede the Order of the Health Officer and Emergency Regulations dated May 8, 2020.

IT IS SO ORDERED:

Date: May 9, 2020



Wilma J. Wooten, M.D., M.P.H.

Public Health Officer

County of San Diego

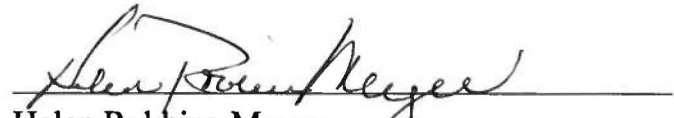
EMERGENCY REGULATIONS

As Director of Emergency Services for the County of San Diego, I am authorized to promulgate regulations for the protection of life and property pursuant to Government Code Section 8634 and San Diego County Code section 31.103. The following shall be in effect for the duration of the Health Officer Order issued above which is incorporated in its entirety by reference:

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

Any person who violates or who refuses or willfully neglects to obey this regulation is subject to fine, imprisonment, or both. (Government Code section 8665.)

Date: May 9, 2020



Helen Robbins-Meyer

Chief Administrative Officer

Director of Emergency Services

County of San Diego

EXHIBIT 5

United States District Court
for the Southern District of California

ABIDING PLACE MINISTRIES,

Plaintiff,

v.

COUNTY OF SAN DIEGO, et al.,

Defendants.

No. 20cv0683-BAS

April 10, 2020

San Diego, California

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE CYNTHIA BASHANT
United States District Judge

APPEARANCES:

For the Plaintiff: THE OFFICE OF COUNTY COUNSEL
TIMOTHY M. WHITE
ATTORNEY AT LAW

For the Defendants: JEREMIAH D. GRAHAM
ATTORNEY AT LAW

Court Reporter: Dana Peabody, RDR, CRR
District Court Clerk's Office
333 West Broadway, Suite 420
San Diego, California 92101
DanaPeabodyCSR@gmail.com

1 San Diego, California, April 10, 2020

2 * * *

3 THE CLERK: I'm going to call matter 20CV0683-BAS-AHG,
4 Abiding Place Ministries versus Wilma Wooten, et al., on
5 calendar for motion hearing.

6 THE COURT: Counsel, can you state your appearances
7 for the record.

8 MR. GRAHAM: Jeremiah Graham appearing on behalf of
9 the plaintiff.

10 MR. WHITE: And good morning, Your Honor.
11 Timothy White of the County Counsel's office for the defendants
12 Wilma Wooten in her capacity as the public health officer and
13 for the County of San Diego.

14 THE COURT: Okay. Thank you all, and thank you for
15 being available via telephone. I know that this is kind of
16 difficult, and if anyone has any difficulty hearing, feel free
17 to interrupt, and let me know, and we'll repeat it. That goes
18 for our court reporter as well. She knows to contact Stephanie
19 if she's having any difficulty hearing.

20 I wanted to give you my preliminary thoughts on the matter,
21 and then I'll hear from each of you as well.

22 I have reviewed the plaintiff's complaint, I've reviewed
23 the motion for the temporary restraining order with all the
24 attached exhibits, and I've reviewed the county's response and
25 the attached declarations as well.

1 I just want to say, I don't think there's any question that
2 our nation, our state, the county, the San Diego community,
3 they're all facing a public health emergency, and it's caused
4 by the exponential threat of the covid-19 virus.

5 I could go through the statistics, but frankly, the numbers
6 of those infected and dying is increasing at such a rapid rate
7 that by the time I announce the statistics, they'd probably be
8 out-of-date.

9 The virus is spreading across the United States at a rapid
10 rate. There are cases in all 50 states and the District of
11 Columbia and the various territories. I think every county in
12 California has the virus. Both the President of the
13 United States and the governor has declared states of
14 emergency, and the covid-19 virus has also increased burden on
15 the healthcare systems, critical shortages of doctors, nurses,
16 medical equipment.

17 I think all of that is beyond dispute, and I think
18 plaintiff would agree from my review of the papers that we're
19 in a state of emergency.

20 Furthermore, I just want to say that under the pressure of
21 great dangers, constitutional rights, including the freedom of
22 religion, may be reasonably restricted, and I am citing to
23 Jacobson versus Massachusetts, 197 US 11, which although it's a
24 1905 case, it's still frequently cited as good law.

25 The bottom line, as recently stated by the Fifth Circuit in

1 In Re Abbott, 2020, westlaw 1685929, just came out on April
2 7th, and citing Jacobson, is that, quote, when faced with a
3 society-threatening epidemic -- and the Fifth Circuit was
4 specifically referring to the covid-19 virus -- a state may
5 implement emergency measures that curtail constitutional rights
6 as long as the measures have at least some real or substantial
7 relation to the public health crisis.

8 Additionally, I think it's important that this Court not
9 usurp the state's authority to craft emergency health measures.
10 I mean, in other words, I shouldn't be second-guessing the
11 wisdom or the efficacy of these measures as long as they have
12 some basis in reality and they aren't pretextual.

13 And finally, as an aside, I don't really think -- I
14 understand plaintiff's making this argument, but I don't really
15 think there's any question that a state, first of all, may vest
16 local bodies, like the San Diego Public Health Officer, with
17 the authority to promulgate rules to appropriately safeguard
18 the public health and safety. And again, I would cite Jacobson
19 for that proposition.

20 And then I also find that California Health and Safety Code
21 sections 101040 and 120175 grant the local health officer with
22 the authority to issue the order that she's issued.

23 So I don't think that's really the issue. I think the
24 San Diego Public Health Officer is completely within her powers
25 to promulgate the complained-of order that includes banning

1 gatherings, including religious congregations, in order to
2 protect the health and safety of the residents of California
3 during the covid-19 crisis.

4 We have a clear public health emergency, and unfortunately,
5 banning gatherings appears to be one of the only ways we have
6 as a society to prevent the spread of the disease.

7 So the fact that the order bans gatherings, including those
8 for purpose of religious services, I think it's a reasonable
9 and necessary restriction. I think that to the extent that the
10 order bans in-person gatherings, I think that has a real and
11 reasonable relation to what is clearly a critical public health
12 concern.

13 So it seems to me that to the extent plaintiff is
14 requesting that it be allowed to -- their parishioners be
15 allowed to gather in person, even while imposing social
16 distancing, I'm inclined to deny the TRO making that request,
17 but I -- also, in considering plaintiff's request to be able to
18 gather by car, I understand plaintiff asserts it's a critical
19 part of its religion that parishioners gather together in one
20 place to worship. And to that end, and recognizing the
21 legitimate health emergency the county's facing, I understand
22 that plaintiff is proposing conducting worship by car, not
23 unlike a drive-in movie where every parishioner remains in his
24 or her car and listens to the worship service on his or her car
25 radio; however, I do think the county has shown that there is a

1 reason for including car gatherings in the ban. Number one,
2 people aren't staying in their cars. And there just aren't
3 adequate resources to monitor all the car gatherings to make
4 sure that they do. In addition, the public health officer
5 points out that while on the road, participants are more likely
6 to stop for gas, to purchase food, or to use the restroom. The
7 point of the stay-at-home order is to minimize the people who
8 are out and about and who might be using these other essential
9 services. And I would add that the more people on the road,
10 the more likely that there will be car accidents or car
11 problems requiring emergency personnel to be out or it would
12 require law enforcement to be out monitoring these gatherings.

13 And I realize plaintiffs are saying, we're only a church of
14 100 people, but San Diego is a county with, I don't know, more
15 than 3 million people, I think, and many of these are religious
16 people who would attend religious services if they could do so.

17 It's very unfortunate that the peak of this virus happens
18 to correspond with so many sacred holidays in the Christian,
19 Jewish, and Muslim religion, and I know plaintiff's counsel
20 poses scenarios where someone could technically buy food at one
21 location, drive to another location for gas, stop at the bank
22 at a third location, all over the county, but the order is a
23 stay-at-home order. The idea is, not that many people will be
24 availing themselves of these essential services because they'll
25 all be staying home and not wandering around the county buying

1 food and gas and going to the bank.

2 So those are kind of my initial thoughts, and I think I'd
3 like to begin with counsel for plaintiff in light of those
4 thoughts, if there's anything you would like to say.

5 MR. GRAHAM: Yes, Your Honor.

6 And first off, I'd like to thank you for expressing all of
7 that. It really helps narrow down the issues for argument.

8 And I really want to focus down in on the Free Exercise
9 Clause and really respond to what you're saying in regards to
10 the decisions relating to compulsory vaccination, and that's
11 what the 1905 Jacobson case was related to, and the recent
12 Abbott decision were both related to compulsory vaccination.
13 And this is a line of cases that includes other sorts of things
14 that are neutral laws of general applicability, and they have
15 very specific characteristics.

16 In the case you're referring to, when we're discussing
17 compulsory vaccinations, the supreme court has said where it's
18 something that's a public health concern, and it applies to
19 every person, then it's something that you can't get a
20 religious exemption from. And that's not just compulsory
21 vaccinations, that's 1978 -- sorry -- 1878 anti-polygamy law.
22 The Court said that even if your religious exercise required
23 you to engage in the act of polygamy, because it's a neutral
24 law of general applicability -- and they didn't use that
25 terminology there. They didn't have that language. That came

1 from 1990 where the Court said when you're dealing with a
2 blanket ban on hallucinogenic drugs, and plaintiff said that
3 their religious practice required them to take hallucinogenic
4 drugs, and the supreme court said, again, that -- and that's
5 where they announced -- they adopted a prior concurrence test
6 from another scenario, which were child labor laws. And that
7 was in the 1940s where someone said that they had to employ
8 their child as part of their religion.

9 Now, in all of these cases, and what the supreme court made
10 very clear in their Employment Division versus Smith case in
11 1990, is that these were neutral laws of general applicability,
12 and the characteristic is that they were countywide laws that
13 imposed a restriction on every person without any exception.
14 And the "without exception" part of those laws is really what
15 made them a neutral law of general applicability, and then the
16 Court went further and said that even if it is a neutral law of
17 general applicability, when it implicates other constitutional
18 rights, then you go back not to the rational basis test, but to
19 strict scrutiny.

20 Now, this law has over 150 bullet point broad categories of
21 exemptions. Not just 150 activities that are exempted.
22 Categories of activities. And it refers by implication to 16
23 federal sectors, one of which includes public assembly as an
24 exception. So it's very vague what's excepted, but there's a
25 huge, broad amount of activity that people are allowed outside

1 of their home to do.

2 And our argument is that when people are allowed outside of
3 their home to do certain different things that are not
4 constitutionally protected, then the Court should really look
5 with strict scrutiny to see if there is a less restrictive means
6 to achieve the government's interest while -- we're not saying
7 that they can't burden the exercise of religion in any way, and
8 we're not saying that they -- that the church shouldn't be
9 subject to public health regulations that are for the good,
10 like vaccination or social distancing or other sorts of
11 restriction, but as soon as you begin to allow someone who's an
12 unelected official to tell the general public what is essential
13 and what's not on such a broad scale, I mean, if it was just a
14 couple activities being exempted, we might have a different
15 scenario, but when you're talking over 150 bullet pointed broad
16 categories of exemptions and then 16 very poorly defined
17 sectors, but one of which includes a subsector that includes
18 public assembly and other things, and not only are these
19 employment-based exemptions, their customers are exempted,
20 patrons are exempted under the order, and they're allowed to
21 have gatherings at these places under the order because when
22 you look at the definition of "gathering," it exempts gathering
23 as necessary to service the businesses that are considered
24 essential, which again, isn't a narrow class, it's a broad
25 class.

1 And so I really think that that is the most important thing
2 for the Court to consider. All the other issues are -- you're
3 right, they're extraneous to the concern of the temporary
4 restraining order.

5 And because this is a case that not only implicates the
6 right of people to freely exercise their religion, but also
7 their right to assemble, both of which are in the First
8 Amendment to the Constitution and considered to be the highest
9 order of constitutional protections, I think that a temporary
10 restraining order is justified to allow -- and again, they're
11 not asking for the ability to have an unrestricted service.
12 They're asking for the ability to have the same sorts of
13 exemptions -- or same sorts of restrictions that other exempt
14 businesses have. And there's a lot of different -- of the same
15 concerns that they have about going to church applying to a lot
16 of these broad activities that are exempted, like going to the
17 grocery store or to the pharmacy or to the gas station or to a
18 cannabis retailer or to all these other different types of
19 things that are exempted. And they're relying on people to
20 self-police and to follow the guidelines and restrictions.

21 This church is willing to promise to the county that
22 they'll impose whatever restriction will allow them to still
23 assemble in one place, including potentially meeting in HAZMAT
24 suits or in their vehicles, and not only will they impose those
25 restrictions, they'll self-police those restrictions as was

1 done this past Sunday.

2 I know that there are other points that are brought up, but
3 I think that's the heart of what the issue is here, and so I
4 would like to hear what the Court -- how the Court would
5 respond to that.

6 THE COURT: Okay. Let me hear from Mr. White first.

7 MR. WHITE: Sure. Thank you, Your Honor.

8 To be honest, you raised most of the points I was going to
9 raise myself, so I don't want to just repeat what you've
10 already said, but I think I would stress, first of all, if
11 we're focusing on the free exercise, this is not strict
12 scrutiny. Employment Division versus Smith clearly applies
13 here. This is a general law, a neutral law of general
14 applicability. It has affected and applied to businesses of
15 all sorts, and you can look around town when you're out at the
16 grocery stores how many businesses are closed down. It applies
17 to residents without respect to religious beliefs of any kind.
18 It's as broad and generally applicable of a regulation that I
19 can think of. So strict scrutiny does not apply, but cases
20 that I cited in my brief showing when you move from a generally
21 applicable law to a law that's targeting religion or motivated
22 against religion, this is not anywhere near those categories
23 and doesn't meet that test.

24 So with rational basis applying under Smith, plaintiff's
25 counsel has the burden of showing that there's no conceivable

1 rational basis for this order. The Court, of course, has
2 already mentioned several bases for the order for the reasons
3 that are more than rational, and Dr. Wooten in her declaration
4 has mentioned several as well.

5 We are at the critical moment these next few weeks. It is
6 absolutely tragic that they are following on so many holidays,
7 no doubt about that, but the evidence in the public health
8 official and expert's statements is that these next few weeks
9 are key in this county and California, in particular, to
10 flatten the curve. And we've had as of yesterday in the
11 county, I believe 40 deaths related to covid-19. And one only
12 has to look at what's happening in New York to see what could
13 be here if these efforts are not successful or not adopted by
14 the community at large. We certainly do not want to be there,
15 and these next few weeks I think are going to be the key time
16 period.

17 The county and the sheriff's department, who enforce the
18 laws in the unincorporated county, simply do not have the
19 resources to monitor the entire populace to determine whether
20 they're complying with the stay-at-home laws.

21 To the extent exceptions are requested and made, it's --
22 Dr. Wooten explains in her declaration why that just will not
23 work. One, it undercuts what we're trying to do with
24 flattening the curve. The more people that are -- exceptions
25 and are out and about, the more opportunities for hot spots to

1 arise and for the virus to spread. And granting exceptions
2 begets additional requests for exceptions. If exceptions are
3 made for one church, I have no doubt that many churches
4 would -- especially for Easter, would request more exceptions,
5 and the county would be in this untenable position of trying to
6 pick when it's a major among churches or between churches and
7 other religious organizations and nonreligious organizations.

8 The county's public health official should be trusted.
9 They need to be focusing on stemming the flow and spread of
10 this virus and flattening the curve.

11 I think the Court noted that stay-at-home order has pretty
12 much been adopted not just throughout the entire country, but
13 throughout many parts of the world is clearly what the public
14 health experts across the board have determined is an
15 absolutely necessary response in order to combat this
16 once-in-a-lifetime-hopefully pandemic and public health crisis
17 that we found ourselves in.

18 And so I think clearly it meets the rational basis test,
19 and plaintiff has not met the heavy burden required to obtain a
20 temporary restraining order against the public health officer's
21 order during the middle of a crisis. That's when the Court and
22 others should be most -- defer to that expertise.

23 THE COURT: Okay, Mr. Graham, did you have anything
24 further?

25 MR. GRAHAM: Yes, Your Honor. I just have a couple

1 points that I feel that I should make.

2 One, in response to what he's saying is, this isn't just a
3 situation where you're talking about, again, a generally
4 applicable law. And the rational basis test doesn't apply
5 under the clear -- a clear reading of Employment Division
6 versus Smith, which is the biggest pronouncement on -- I mean,
7 again, they were dealing with a broadly applied law that had no
8 exemptions. The fact that the County Health Officer's order
9 has so many exemptions is the salient point that I don't
10 believe defense counsel responded to, and I would like to hear
11 his thoughts on how that affects his analysis because there
12 exists, again, more than 150 broad bullet-pointed exemption
13 categories. As soon as you're beginning to pick and choose and
14 say, well, this activity is essential, and this activity is
15 essential, and this one over here, but that's not essential,
16 then that's where we get into a place that it's not really too
17 neutral, and it's clearly not generally applicable.

18 And then the churches singled out amongst those section
19 exemptions for restrictions that are in place on other
20 businesses that have, quite frankly, the same risk of spreading
21 the disease, if not more, especially when we're talking about
22 the church being willing to comply with a heightened set of
23 restrictions, and really, that's the heart of what the issue
24 is, is they're saying that all these businesses over here are
25 essential even though none of them are protected by the

1 Constitution, but the constitutionally protected activity,
2 that's not essential, and we're going to impose additional
3 limits on it that don't apply to all these other not
4 constitutionally protected activities. And that's -- you know,
5 it's a -- it's a broad-brush statement to say that there's so
6 many, but there are. There's so many different exemptions, and
7 it becomes -- and that's where it becomes arbitrary, and it
8 becomes oppressive because they're saying -- they're not
9 saying -- if they were saying, everybody stay at home, no
10 exception, that would fall under the rational basis review.
11 That would be the same sort of scenario as within Employment
12 Division versus Smith as was in Reynolds when we were dealing
13 with polygamy or in the child labor law cases or in the
14 Jacobson and Abbott scenario of vaccine laws. They're saying,
15 everybody stay at home, no exceptions. That would be one
16 thing, but when they're saying, everybody stay at home unless
17 you're doing X, Y, Z, and 150 other things that are very broad
18 categories and potentially these 16 other sectors, not really
19 clear, we're mentioning them, but we're not really adopting
20 them per se, we don't know, but they're saying you can do all
21 this stuff, you can go out of your home for all of these
22 reasons, but you can't go to church. And that's where the
23 First Amendment free exercise concern is. And that's why
24 rational basis doesn't apply to this case, because of the
25 existence of -- already of so many exemptions. We're not

1 talking about businesses that have asked to be excepted. We're
2 talking about businesses that have already been excepted from
3 the order and exempted from the order and with broad-brush
4 strokes, and that's where the constitutional right comes into
5 play, and we begin to ask -- we have to ask the question, if
6 none of these other activities that are being -- we're being
7 told are essential are constitutionally protected, then why
8 isn't the constitutionally protected activity in that list
9 that's also considered essential, and why is it protected by
10 the Constitution? And that's really what I don't think that
11 defense counsel responded to. I know that's the crux of what's
12 at the heart of plaintiff's argument, and it's the existence of
13 all these other exemptions that take it out of being a neutral
14 law of general applicability. And it's very clear. Again,
15 there's five examples of what our neutral laws of general
16 applicability, and those are all laws that are very broadly
17 applied with no, absolutely no, exception.

18 And what we're talking about is a law that has so many
19 different exceptions, lists of exceptions, quite frankly, for
20 businesses that we all could agree might not be so essential.
21 But still a broad list of exceptions. And for some reason,
22 while you can go outside of your house for a huge list of
23 reasons, you're not allowed to go to church. You stay home
24 unless you're going out for this huge list of reasons, but not
25 including church. And that is why it implicates the First

1 Amendment.

2 Again, if it was an order that said, stay at home, no
3 exceptions, that would be different than an order that says
4 stay at home unless you're going out for this huge list of
5 reasons, but not church. That's why it implicates the Free
6 Exercise Clause, because of all the exemptions that already
7 exist. And that's why it rises to the point of being subject
8 to strict scrutiny because of all the exemptions that already
9 exist.

10 THE COURT: Okay. Thank you.

11 First of all, in order to succeed on the TRO or a
12 preliminary injunction, for that matter, a plaintiff must
13 establish: One, that it is likely to succeed on the merits;
14 two, that it is likely to suffer irreparable harm in the
15 absence of preliminary relief; three, that the balance of
16 equities tip in its favor; and four, that the injunction is in
17 the public interest.

18 I'm prepared to assume that plaintiff will suffer
19 irreparable harm if the injunction or the restraining order is
20 not granted. Plaintiff alleges that assembling in person is a
21 critical part of this religion and that live streaming or audio
22 conferencing from home will violate their religion; however, I
23 just don't see that plaintiff has established any of the other
24 prongs.

25 First of all, as I said at the beginning, I do find that

1 the San Diego order by the San Diego Public Health Officer is
2 valid and within her authority.

3 So let me talk about the three areas, the three claims made
4 by the plaintiff in this case.

5 First of all, with respect to the free exercise of religion
6 claim, as I discussed earlier, the state may limit an
7 individual's right to freely exercise his religious beliefs
8 when faced with a serious health crisis such as the one we're
9 now facing with covid-19. Quote, the right to practice
10 religion freely does not include liberty to expose the
11 community to communicable disease, closed quote, or to ill
12 health or death, and that's Prince versus Massachusetts, 321
13 U.S. 158, 1944. Also Whitlow versus California, 203 F. Supp.
14 3d. 1079 at 1086, Southern District of California, 2016. And
15 Board of Medical Quality Assurance versus Andrews, 211
16 Cal. App. 3d, 1346, at 1353, 1989.

17 I do find that the order applies generally to all county
18 members, not specifically to religious services. To the extent
19 there are secular exemptions like grocery stores, gas stations,
20 banks, the need for these exemptions is clear. There's no way
21 these services could be provided remotely, and there is no
22 requirement that if the government provides a secular exemption
23 to a law or a regulation, it must also provide a religious
24 exemption, and I'm citing again to Whitlow versus California,
25 203 F. Supp. 3d. 1079. The order doesn't target religion or

1 restrict movement because of an individual's religious
2 motivation. All kinds of things are prohibited under the rule;
3 going to the beach, going to the park, going outside. So the
4 fact that there are exemptions I don't think brings it into the
5 strict scrutiny layer of review. I don't find strict scrutiny
6 applies, and I do find that the order is rationally based on
7 protecting safety and stopping the virus spread.

8 with respect to the freedom of assembly claim, the
9 government can impose regulations on the time, place, and
10 manner of an assembly to prevent threats to public order. I
11 find that the order not to assemble is content neutral and the
12 least restrictive means available to spread the virus. The
13 order does allow the pastor and his employees to gather to
14 operate the equipment necessary to support streaming of
15 services.

16 Furthermore, the county has expressed concerns about last
17 week's car services where the numbers were found out of their
18 cars gathering after the service. I do have some concern in
19 the belief that plaintiff puts forward in its papers. They
20 believe that assembly and prayer do more to prevent the spread
21 of disease, quote, than all the other precautionary methods
22 combined, closed quote, and that, quote, our assembly is the
23 best cure and preventive for the disease, closed quote.

24 Given the fact that after the last car service people were
25 seen gathering out of their cars and that the religion believes

1 that assembly is a better cure for the disease than staying
2 apart, I agree with the county that enforcement, even of
3 car-only services, would be difficult.

4 Therefore, I do find that the county's restrictions are
5 appropriate and the least restrictive means available to
6 prevent threats to public order.

7 with respect to plaintiff's due process claim, first, to
8 the extent plaintiff is raising a Fifth Amendment claim, that
9 is inapplicable since the federal government is not a defendant
10 in this case, and I'm citing Santa Ana Police Officers versus
11 City of Santa Ana, 723 Fed. Appx. 399, Ninth Circuit, 2018.

12 But to the extent plaintiff meant to bring a due process
13 claim under the 14th Amendment, I find that plaintiff's due
14 process has been met. Plaintiff was given notice and an
15 opportunity to be heard before Sunday's service.

16 Therefore, I do find that plaintiff has not established a
17 likelihood of success on the merits of any of its claims.

18 But finally, and maybe more importantly, I do find that the
19 equities don't tip in plaintiff's favor, particularly when you
20 consider the public's interest.

21 As I discussed earlier, this is a serious health risk to
22 everyone in the county. The only way currently known to curb
23 the disease is to limit personal exposure, and for all the
24 reasons I've stated at the outset of this hearing, plaintiff's
25 proposal for conducting in-person religious services, including

1 by car, are not sufficient to protect the public. The more
2 people traveling to religious services around the county, the
3 more likely they will be exposed to other people, and the more
4 likely they will expose other people to them.

5 Because this is a critical time during the virus, and
6 because of the critical and highly unusual need for protection
7 of the public, curtailing religious services is appropriate
8 along with all the other things that are being banned at this
9 point in time, and I find that's in the public's best interest.

10 Therefore, plaintiff's request for a TRO is denied.

11 Thank you all, and I really appreciate you making yourself
12 available.

13 MR. WHITE: Likewise, Your Honor. Thank you, on
14 behalf of the county.

15 THE COURT: Okay. Thank you.

16 ---000---

17 C-E-R-T-I-F-I-C-A-T-I-O-N

18

19 I certify that the foregoing is a correct transcript from
20 the record of proceedings in the above-entitled matter.

21

22 Dated April 13, 2020, at San Diego, California.

23

24 /Dana Peabody/
25 Dana Peabody,
Registered Diplomat Reporter
Certified Realtime Reporter

EXHIBIT 6



High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice — Skagit County, Washington, March 2020

Lea Hamner, MPH¹; Polly Dubbel, MPH¹; Ian Capron¹; Andy Ross, MPH¹; Amber Jordan, MPH¹; Jaxon Lee, MPH¹; Joanne Lynn¹; Amelia Ball¹; Simranjit Narwal, MSc¹; Sam Russell¹; Dale Patrick¹; Howard Leibrand, MD¹

On March 17, 2020, a member of a Skagit County, Washington, choir informed Skagit County Public Health (SCPH) that several members of the 122-member choir had become ill. Three persons, two from Skagit County and one from another area, had test results positive for SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19). Another 25 persons had compatible symptoms. SCPH obtained the choir's member list and began an investigation on March 18. Among 61 persons who attended a March 10 choir practice at which one person was known to be symptomatic, 53 cases were identified, including 33 confirmed and 20 probable cases (secondary attack rates of 53.3% among confirmed cases and 86.7% among all cases). Three of the 53 persons who became ill were hospitalized (5.7%), and two died (3.7%). The 2.5-hour singing practice provided several opportunities for droplet and fomite transmission, including members sitting close to one another, sharing snacks, and stacking chairs at the end of the practice. The act of singing, itself, might have contributed to transmission through emission of aerosols, which is affected by loudness of vocalization (1). Certain persons, known as superemitters, who release more aerosol particles during speech than do their peers, might have contributed to this and previously reported COVID-19 superspreading events (2–5). These data demonstrate the high transmissibility of SARS-CoV-2 and the possibility of superemitters contributing to broad transmission in certain unique activities and circumstances. It is recommended that persons avoid face-to-face contact with others, not gather in groups, avoid crowded places, maintain physical distancing of at least 6 feet to reduce transmission, and wear cloth face coverings in public settings where other social distancing measures are difficult to maintain.

Investigation and Findings

The choir, which included 122 members, met for a 2.5-hour practice every Tuesday evening through March 10. On March 15, the choir director e-mailed the group members to inform them that on March 11 or 12 at least six members had developed fever and that two members had been tested for SARS-CoV-2 and were awaiting results. On March 16, test results for three members were positive for SARS-CoV-2 and were reported to two respective local health jurisdictions, without indication of a common source of exposure. On March 17, the choir director sent a second e-mail stating that 24 members reported that they had developed influenza-like symptoms since March 11, and at least one had received test results positive for SARS-CoV-2. The email emphasized the importance of social distancing and awareness of symptoms suggestive of COVID-19. These two emails led many members to self-isolate or quarantine before a delegated member of the choir notified SCPH on March 17.

All 122 members were interviewed by telephone either during initial investigation of the cluster (March 18–20; 115 members) or a follow-up interview (April 7–10; 117); most persons participated in both interviews. Interviews focused on attendance at practices on March 3 and March 10, as well as attendance at any other events with members during March, other potential exposures, and symptoms of COVID-19. SCPH used Council of State and Territorial Epidemiologists case definitions to classify confirmed and probable cases of COVID-19 (6). Persons who did not have symptoms at the initial interview were instructed to quarantine for 14 days from the last practice they had attended. The odds of becoming ill after attending each practice were computed to ascertain the likelihood of a point-source exposure event.



U.S. Department of Health and Human Services
Centers for Disease Control and Prevention

Summary**What is already known about this topic?**

Superspreading events involving SARS-CoV-2, the virus that causes COVID-19, have been reported.

What is added by this report?

Following a 2.5-hour choir practice attended by 61 persons, including a symptomatic index patient, 32 confirmed and 20 probable secondary COVID-19 cases occurred (attack rate = 53.3% to 86.7%); three patients were hospitalized, and two died. Transmission was likely facilitated by close proximity (within 6 feet) during practice and augmented by the act of singing.

What are the implications for public health practice?

The potential for superspreader events underscores the importance of physical distancing, including avoiding gathering in large groups, to control spread of COVID-19. Enhancing community awareness can encourage symptomatic persons and contacts of ill persons to isolate or self-quarantine to prevent ongoing transmission.

No choir member reported having had symptoms at the March 3 practice. One person at the March 10 practice had cold-like symptoms beginning March 7. This person, who had also attended the March 3 practice, had a positive laboratory result for SARS-CoV-2 by reverse transcription–polymerase chain reaction (RT-PCR) testing.

In total, 78 members attended the March 3 practice, and 61 attended the March 10 practice (Table 1). Overall, 51 (65.4%) of the March 3 practice attendees became ill; all but one of these persons also attended the March 10 practice. Among 60 attendees at the March 10 practice (excluding the patient who became ill March 7, who also attended), 52 (86.7%) choir members subsequently became ill. Some members exclusively attended one practice; among 21 members who only attended March 3, one became ill and was not tested (4.8%), and among three members who only attended March 10, two became ill (66.7%), with one COVID-19 case being laboratory-confirmed.

Because illness onset for 49 (92.5%) patients began during March 11–15 (Figure), a point-source exposure event seemed likely. The median interval from the March 3 practice to symptom onset was 10 days (range = 4–19 days), and from the March 10 practice to symptom onset was 3 days (range = 1–12 days). The odds of becoming ill after the March 3 practice were 17.0 times higher for practice attendees than for those who did not attend (95% confidence interval [CI] = 5.5–52.8), and after the March 10 practice, the odds were 125.7 times greater (95% CI = 31.7–498.9). The clustering of symptom onsets, odds of becoming ill according to practice attendance, and known presence of a symptomatic

contagious case at the March 10 practice strongly suggest that date as the more likely point-source exposure event. Therefore, that practice was the focus of the rest of the investigation. Probable cases were defined as persons who attended the March 10 practice and developed clinically compatible COVID-19 symptoms, as defined by Council of State and Territorial Epidemiologists (6). The choir member who was ill beginning March 7 was considered the index patient.

The March 10 choir rehearsal lasted from 6:30 to 9:00 p.m. Several members arrived early to set up chairs in a large multipurpose room. Chairs were arranged in six rows of 20 chairs each, spaced 6–10 inches apart with a center aisle dividing left and right stages. Most choir members sat in their usual rehearsal seats. Sixty-one of the 122 members attended that evening, leaving some members sitting next to empty seats. Attendees practiced together for 40 minutes, then split into two smaller groups for an additional 50-minute practice, with one of the groups moving to a smaller room. At that time, members in the larger room moved to seats next to one another, and members in the smaller room sat next to one another on benches. Attendees then had a 15-minute break, during which cookies and oranges were available at the back of the large room, although many members reported not eating the snacks. The group then reconvened for a final 45-minute session in their original seats. At the end of practice, each member returned their own chair, and in the process congregated around the chair racks. Most attendees left the practice immediately after it concluded. No one reported physical contact between attendees. SCPH assembled a seating chart of the all-choir portion of the March 10 practice (not reported here because of concerns about patient privacy).

Among the 61 choir members who attended the March 10 practice, the median age was 69 years (range = 31–83 years); 84% were women. Median age of those who became ill was 69 years, and 85% of cases occurred in women. Excluding the laboratory-confirmed index patient, 52 (86.7%) of 60 attendees became ill; 32 (61.5%) of these cases were confirmed by RT-PCR testing and 20 (38.5%) persons were considered to have probable infections. These figures correspond to secondary attack rates of 53.3% and 86.7% among confirmed and all cases, respectively. Attendees developed symptoms 1 to 12 days after the practice (median = 3 days). The first SARS-CoV-2 test was performed on March 13. The last person was tested on March 26.

Three of the 53 patients were hospitalized (5.7%), including two who died (3.8%). The mean interval from illness onset to hospitalization was 12 days. The intervals from onset to death were 14 and 15 days for the two patients who died.

SCPH collected information about patient signs and symptoms from patient interviews and hospital records (Table 2).

Early Release

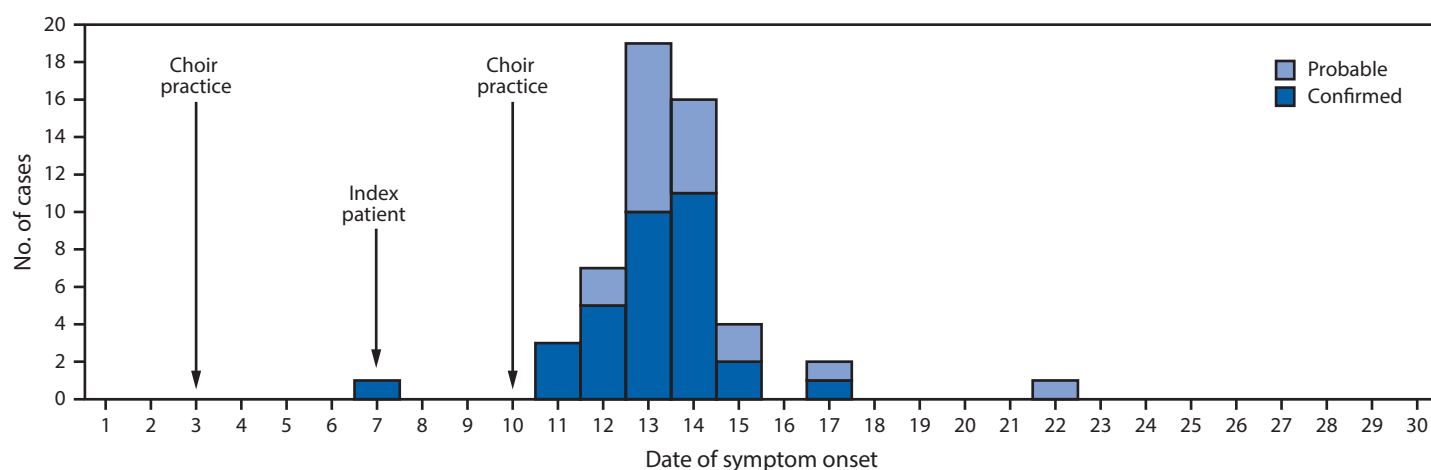
TABLE 1. Number of choir members with and without COVID-19-compatible symptoms (N = 122)* and members' choir practice attendance† — Skagit County, Washington, March 3 and 10, 2020

Attendance	No. (row %)					
	March 3 practice			March 10 practice		
	Total	Symptomatic	Asymptomatic	Total	Symptomatic	Asymptomatic
Attended	78	51 (65.4)	27 (34.6)	61	53 [§] (86.9)	8 (13.1)
Did not attend	40	4 (10.0)	36 (90.0)	61	3 (4.9)	58 (95.1)
Attendance information missing	4	1 (25.0)	3 (75.0)	0	0 (—)	0 (—)
Attended only one practice	21	1 (4.8)	20 (95.2)	3	2 (66.7)	1 (33.3)

Abbreviation: COVID-19 = coronavirus disease 2019.

* No choir members were symptomatic at the March 3 practice.

† Thirty-seven choir members attended neither practice; two developed symptoms, and 35 remained asymptomatic.

[§] Includes index patient; if the index patient excluded, 52 secondary cases occurred among the other 60 attendees (attack rate = 86.7%).**FIGURE. Confirmed* and probable† cases of COVID-19 associated with two choir practices, by date of symptom onset (N = 53) — Skagit County, Washington, March 2020****Abbreviation:** COVID-19 = coronavirus disease 2019.

* Positive reverse transcription-polymerase chain reaction test result.

† Attendance at the March 10 practice and clinically compatible symptoms as defined by the Council of State and Territorial Epidemiologists, Interim-20-ID-01: Standardized surveillance case definition and national notification for 2019 novel coronavirus disease (COVID-19). https://cdn.ymaws.com/www.cste.org/resource/resmgr/2020ps/interim-20-id-01_covid-19.pdf.

Among persons with confirmed infections, the most common signs and symptoms reported at illness onset and at any time during the course of illness were cough (54.5% and 90.9%, respectively), fever (45.5%, 75.8%), myalgia (27.3%, 75.0%), and headache (21.2%, 60.6%). Several patients later developed gastrointestinal symptoms, including diarrhea (18.8%), nausea (9.4%), and abdominal cramps or pain (6.3%). One person experienced only loss of smell and taste. The most severe complications reported were viral pneumonia (18.2%) and severe hypoxemic respiratory failure (9.1%).

Among the recognized risk factors for severe illness, the most common was age, with 75.5% of patients aged ≥ 65 years. Most patients (67.9%) did not report any underlying medical conditions, 9.4% had one underlying medical condition, and 22.6% had two or more underlying medical conditions. All three hospitalized patients had two or more underlying medical conditions.

Public Health Response

SCPH provided March 10 practice attendees with isolation and quarantine instructions by telephone, email, and postal mail. Contacts of patients were traced and notified of isolation and quarantine guidelines. At initial contact, 15 attendees were quarantined, five of whom developed symptoms during quarantine and notified SCPH.

Before detection of this cluster on March 17, Skagit County had reported seven confirmed COVID-19 cases (5.4 cases per 100,000 population). At the time, SCPH informed residents that likely more community transmission had occurred than indicated by the low case counts.* On March 21, SCPH issued a press release to describe the outbreak and raise awareness about community transmission.† The press release emphasized

* Skagit County, updated social distancing information. <https://skagitcounty.net/departments/home/press/031620.htm>.

† Skagit County, public health investigating cluster of related COVID-19 cases. <https://skagitcounty.net/departments/home/press/032120.htm>.

TABLE 2. Signs and symptoms reported at the onset of COVID-19 illness and during the course of illness among persons infected at a choir practice (N = 53)* — Skagit County, Washington, March 2020

Sign or symptom	No. (%)		no./No. (%)	
	Reported at onset of illness		Reported during course of illness	
	All cases (N = 53)	Confirmed cases (N = 33)	All cases (N = 53)	Confirmed cases (N = 33)
Cough	27 (50.9)	18 (54.5)	47/53 (88.7)	30/33 (90.9)
Fever	28 (52.8)	15 (45.5)	36/53 (67.9)	25/33 (75.8)
Myalgia	13 (24.5)	9 (27.3)	34/52 (65.4)	24/32 (75.0)
Headache	10 (18.9)	7 (21.2)	32/53 (60.4)	20/33 (60.6)
Chills or rigors	7 (13.2)	6 (18.2)	23/51 (45.1)	16/31 (51.6)
Congestion	4 (7.5)	2 (6.1)	25/52 (48.1)	15/32 (46.9)
Pharyngitis	2 (3.8)	2 (6.1)	12/52 (23.1)	8/32 (25.0)
Lethargy	4 (7.5)	2 (6.1)	5/52 (9.6)	3/32 (9.4)
Fatigue	3 (5.7)	1 (3.0)	24/52 (46.2)	15/32 (46.9)
Agusia (loss of taste)	1 (1.9)	1 (3.0)	11/48 (22.9)	5/28 (17.9)
Anosmia (loss of smell)	1 (1.9)	1 (3.0)	10/48 (20.8)	5/28 (17.9)
Chest congestion or tightness	1 (1.9)	1 (3.0)	5/52 (9.6)	4/32 (12.5)
Weakness	1 (1.9)	1 (3.0)	3/52 (5.8)	2/32 (6.3)
Eye ache	1 (1.9)	1 (3.0)	1/52 (1.9)	1/32 (3.1)
Dyspnea	0 (—)	0 (—)	8/51 (15.7)	8/31 (25.8)
Diarrhea	0 (—)	0 (—)	8/52 (15.4)	6/32 (18.8)
Pneumonia	0 (—)	0 (—)	6/53 (11.3)	6/33 (18.2)
Nausea	0 (—)	0 (—)	3/52 (5.8)	3/32 (9.4)
Acute hypoxemic respiratory failure	0 (—)	0 (—)	3/53 (5.7)	3/33 (9.1)
Abdominal pain or cramps	0 (—)	0 (—)	2/52 (3.8)	2/32 (6.3)
Malaise	1 (1.9)	0 (—)	1/52 (1.9)	0/32 (—)
Anorexia	0 (—)	0 (—)	1/52 (1.9)	0/32 (—)
Vomiting	0 (—)	0 (—)	0/52 (—)	0/32 (—)

Abbreviation: COVID-19 = coronavirus disease 19.

* Including the index patient.

the highly contagious nature of COVID-19 and the importance of following social distancing guidelines to control the spread of the virus.

Discussion

Multiple reports have documented events involving super-spreading of COVID-19 (2–5); however, few have documented a community-based point-source exposure (5). This cluster of 52 secondary cases of COVID-19 presents a unique opportunity for understanding SARS-CoV-2 transmission following a likely point-source exposure event. Persons infected with SARS-CoV-2 are most infectious from 2 days before through 7 days after symptom onset (7). The index patient developed symptoms on March 7, which could have placed the patient within this infectious period during the March 10 practice. Choir members who developed symptoms on March 11 (three) and March 12 (seven) attended both the March 3 and March 10 practices and thus could have been infected earlier and might have been infectious in the 2 days preceding symptom onset (i.e., as early as March 9). The attack rate in this group (53.3% and 86.7% among confirmed cases and all cases, respectively) was higher than that seen in other clusters, and the March 10 practice could be considered a super-spreading event (3,4). The median incubation period of COVID-19 is estimated to be 5.1 days (8). The median interval from

exposure during the March 10 practice to onset of illness was 3 days, indicating a more rapid onset.

Choir practice attendees had multiple opportunities for droplet transmission from close contact or fomite transmission (9), and the act of singing itself might have contributed to SARS-CoV-2 transmission. Aerosol emission during speech has been correlated with loudness of vocalization, and certain persons, who release an order of magnitude more particles than their peers, have been referred to as superemitters and have been hypothesized to contribute to super-spreading events (1). Members had an intense and prolonged exposure, singing while sitting 6–10 inches from one another, possibly emitting aerosols.

The findings in this report are subject to at least two limitations. First, the seating chart was not reported because of concerns about patient privacy. However, with attack rates of 53.3% and 86.7% among confirmed and all cases, respectively, and one hour of the practice occurring outside of the seating arrangement, the seating chart does not add substantive additional information. Second, the 19 choir members classified as having probable cases did not seek testing to confirm their illness. One person classified as having probable COVID-19 did seek testing 10 days after symptom onset and received a negative test result. It is possible that persons designated as having probable cases had another illness.

This outbreak of COVID-19 with a high secondary attack rate indicates that SARS-CoV-2 might be highly transmissible in certain settings, including group singing events. This underscores the importance of physical distancing, including maintaining at least 6 feet between persons, avoiding group gatherings and crowded places, and wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain during this pandemic. The choir mitigated further spread by quickly communicating to its members and notifying SCPH of a cluster of cases on March 18. When first contacted by SCPH during March 18–20, nearly all persons who attended the practice reported they were already self-isolating or quarantining. Current CDC recommendations, including maintaining physical distancing of at least 6 feet and wearing cloth face coverings if this is not feasible, washing hands often, covering coughs and sneezes, staying home when ill, and frequently cleaning and disinfecting high-touch surfaces, remain critical to reducing transmission. Additional information is available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

Acknowledgments

Patients described in this report; health care personnel who cared for them; Skagit County Public Health staff members and leaders, particularly the Communicable Disease investigators; Washington State Department of Health.

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All authors have completed and submitted the International Committee of Medical Journal Editors form for disclosure of potential conflicts of interest. All authors report receipt of funding through Public Health Emergency Preparedness grant from the Washington State Department of Health during the conduct of the study. No other potential conflicts of interest were disclosed.

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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 May 14, 2020, I served the following document:

- (1) **OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER [ECF 12] BY DEFENDANTS: 1. WILMA J. WOOTEN, in her official capacity as Public Health Officer for the County of San Diego; 2. HELEN ROBBINS-MEYER, in her official capacity as Director of Emergency Services; and 3. WILLIAM D. GORE, in his official capacity as Sheriff of the County of San Diego;**
- (2) **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO PLAINTIFFS' EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER [ECF 12] BY DEFENDANTS: 1. WILMA J. WOOTEN, in her official capacity as Public Health Officer for the County of San Diego; 2. HELEN ROBBINS-MEYER, in her official capacity as Director of Emergency Services; and 3. WILLIAM D. GORE, in his official capacity as Sheriff of the County of San Diego;**

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:

SEE LIST BELOW

Harmeet K. Dhillon Mark Meuser Gregory R. Michael DHILLON LAW GROUP INC. 177 Post Street, Suite 700 San Francisco, CA 94108 Phone: (415) 433-1700 Fax: (415) 520- 6593 Email: harmeet@dhillonlaw.com Email: mmeuser@dhillonlaw.com Email: gmichael@dhillonlaw.com	Attorneys for Plaintiffs
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I declare under penalty of perjury that the foregoing is true and correct.
Executed on May 14, 2020, at San Diego, California.

By: s/TIMOTHY M. WHITE
E-mail: timothy.white@sdcounty.ca.gov