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

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

Plaintiffs,

v.

**GAVIN NEWSOM, in his Official
Capacity as Governor of the State of
California; XAVIER BECERRA, in
his Official Capacity as Attorney
General of California; SONIA
ANGELL, in her Official Capacity as
Director of the California Department
of Public Health, et al.,**

Defendants.

3:20-cv-00865 BAS-AHG

**STATE DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

Judge: Hon. Cynthia A. Bashant

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1 Defendants California Governor Gavin Newsom, California Attorney General
 2 Xavier Becerra, and California Public Health Officer Sonia Angell¹ (collectively,
 3 the State Defendants) file this opposition to Plaintiffs' Application for a Temporary
 4 Restraining Order.

5 INTRODUCTION

6 Plaintiffs seek a temporary restraining order that would permit them to resume
 7 their normal, in-person worship schedule—which includes three to five services
 8 each Sunday, with 200-300 or more congregants at each service—this coming
 9 weekend. Ordinarily, Plaintiffs would be entitled to worship together in their
 10 sanctuary. But these are not ordinary times. The State of California, like much of the
 11 world, is combatting a public health emergency of a magnitude unseen for at least a
 12 century. The virulently infectious and frequently deadly COVID-19 has infected
 13 almost 1.4 million and killed over 83,000 people in the U.S. alone. Because there is
 14 not yet any vaccine or even widely effective treatment for the virus, and it may be
 15 transmitted unknowingly by individuals with no symptoms, many large in-person
 16 gatherings—including, unfortunately, in-person worship services—have been
 17 transformed into “super-spreader” events, significantly threatening public health.

18 In March, faced with these alarming facts about the COVID-19 virus and news
 19 of devastatingly large numbers of victims in hard-hit areas around the world,
 20 California leaders and public health officials took swift and decisive action to slow
 21 the spread of the virus. Their plan used the only effective measure available against
 22 the virus—physical distancing—temporarily shutting down nearly all activities
 23 outside the home for residents throughout the state, and engaging the entire state's
 24 population in a collective effort to slow the virus's spread. Due to the enormous
 25 sacrifices of millions of individuals, significant progress has been made in
 26 “flattening the curve” representing new coronavirus cases in California. But the

27 _____
 28 ¹ Ms. Angell holds dual positions as California's Public Health Officer and
 the Director of its Department of Public Health.

1 threat is far from over. Resuming normal activities too quickly will lead to further
2 outbreaks and accelerated spread, effectively undoing all of the work done so far
3 and causing further death and economic dislocation.

4 To avoid such a calamity, the Governor and public health officials have
5 formulated guidelines for gradually reopening the State, which are based on the
6 judgment of public health experts with the goal of minimizing the risk to public
7 health. The guidelines are focused on risk and provide for 3 stages of reopening,
8 beginning with entities and individuals that, with restrictions to protect public
9 health, can reopen in the short term without inordinate risk to themselves or others.
10 Plaintiffs' TRO application asks the Court to intercede in this process, effectively
11 rewrite the State's reopening plan, and permit houses of worship to return to in-
12 person services *immediately*—without regard to the known risk this will pose both
13 to congregation members and the public in general.

14 Many states have imposed restrictions on in-person worship services, and
15 these restrictions have been challenged on constitutional grounds, including several
16 cases in California. In all three decisions that have been issued, federal courts in
17 California (including this Court) have denied TRO requests challenging the
18 Governor's March 19 Executive Order. *See, e.g., Abiding Place Ministries v.*
19 *Wooten*, No. 3:20-cv-00683-BAS-AHG (S.D. Cal. Apr. 10, 2020); *Cross Culture*
20 *Christian Ctr. v. Newsom*, No. 2:20-cv-00832-JAM-CKD, 2020 WL 2121111 (E.D.
21 Cal. May 5, 2020); *Gish v. Newsom*, No. 5:20-cv-00755 (C.D. Cal. Apr. 23, 2020).
22 The result should be the same here.

23 In seeking emergency equitable relief, plaintiffs always bear a heavy burden.
24 That burden is even heavier where, as here, the Court is being asked to enjoin
25 public health orders in the midst of a once-in-a-century pandemic. Plaintiff has not
26 satisfied this burden. While the free exercise of religion is a fundamental right
27 afforded constitutional protection, the Supreme Court has long recognized that
28 "[t]he right to practice religion freely does not include liberty to expose the

community . . . to communicable disease.” *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944). Moreover, as recent decisions reaffirm, in the face of a public health emergency, States have broad emergency powers that may be exercised to restrict activities that are normally constitutionally protected. Although Plaintiffs do not dispute the need for such restrictions to slow the spread of COVID-19, at bottom they disagree with distinctions the Governor and public health officials have drawn in assessing the relative risk of allowing various activities to resume, even with precautions. This sort of second-guessing does not begin to satisfy the heavy burden needed to overcome the State’s exercise of its emergency powers to combat a pandemic. Indeed, because the State’s current guidelines are based on an assessment of risk, a neutral and generally applicable standard, Plaintiffs’ claims would fail even under traditional constitutional analysis.

In addition to failing to show likelihood of success on the merits, Plaintiffs cannot show that the balance of equities favors a temporary restraining order because the public interest weighs heavily against the relief that Plaintiffs seek. Although Plaintiffs assert that the in-person services that they seek to hold pose little or no threat to public health and safety, they have not supported that contention with competent evidence, and there are numerous documented cases in which in-person services have acted as “super-spreader events,” causing dozens and in some cases even thousands of infections.² In the face of that risk, Plaintiffs’ interest in resuming in-person services earlier than permitted under the current guidelines is far outweighed by the threat of accelerating the spread of COVID-19 and infecting and potentially killing many within and outside those congregations. Indeed, it is hard to imagine a situation in which equitable relief could be more inappropriate. Defendants California Governor Gavin Newsom, California Attorney

² See CDC Article describing church choir superspreader incident in Washington State. <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e6.htm> (last accessed on May 12, 2020)

General Xavier Becerra, and California Public Health Officer Sonia Angell³ (collectively, the State Defendants) file this opposition to Plaintiffs' Application for a Temporary Restraining Order.

BACKGROUND

I. THE COVID-19 PANDEMIC AND CALIFORNIA'S SWIFT ACTION TO COMBAT THE VIRUS

In mere months, the coronavirus disease 2019 (COVID-19) has infected well over four million people and caused the deaths of nearly 300,000 people worldwide.⁴ As of this writing approximately 83,000 individuals have died from the virus in the United States, including at least 20,000 deaths in New York City alone.⁵ California fortunately recognized early that COVID-19 had the potential to spread rapidly throughout the state, and since early December 2019, the California Department of Public Health has been working with the national Centers for Disease Control and Prevention, the United States Health and Human Services Agency, and local health departments to monitor, plan for, and combat the spread of COVID-19 based on an ongoing assessment of current circumstances and the best available data. *See* Declaration of James Watt, M.D., M.P.H. in Support of Opp. to TRO motion (Watt Decl.) ¶¶ 2-4, 8-18.

As a result of the measures adopted by the State and the enormous sacrifices of California's residents, the state made significant progress toward "flattening the curve" representing new COVID patients in many areas of California. However, the danger is far from past. Indeed, more than half of the deaths in California from the

³ Ms. Angell holds dual positions as California's Public Health Officer and the Director of its Department of Public Health.

⁴ See Coronavirus disease 2020 (COVID-19) Situation Report, [https://www.bing.com/search?q=Coronavirus+disease+2020+\(COVID-19\)+Situation+Report&src=IE-SearchBox&FORM=IESR4A](https://www.bing.com/search?q=Coronavirus+disease+2020+(COVID-19)+Situation+Report&src=IE-SearchBox&FORM=IESR4A) (last accessed May 13, 2020.)

⁵ See Cases in U.S., <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/casesps-in-us.html> (last accessed May 13, 2020); <http://www.nydailynews.com/coronavirus/ny-coronavirus-new-york-city-death-toll-20200512-yb7q35usazgt3gfcsoh4fhby-story.html> (accessed May 13, 2020)

1 virus have occurred in the last two weeks, and last week saw the second highest
 2 daily death toll this year. (See “California Coronavirus COVID-19 Statewide
 3 Update,” [as of May 12, 2020].)

4 **II. THE STAY-AT-HOME ORDER AND THE STAGED REOPENING PLAN**

5 The Governor proclaimed a State of Emergency in California on March 4,
 6 2020 (FAC, ¶ 29),⁶ thereby making available additional resources to help the State
 7 prepare for the unfortunately anticipated broader spread of COVID-19. *Id.* Two
 8 weeks later the Governor and Public Health Officer (PHO) Angell, respectively,
 9 issued Executive Order N-33-20 and a corresponding Public Health Order directing
 10 individuals living in California to stay home or at their place of residence except as
 11 needed to maintain continuity of operations of the 16 federal critical infrastructure
 12 sectors (outlined at [https://www.cisa.gov/identifying-critical-infrastructure-during-](https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19)
 13 [covid-19](https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19)). FAC, ¶ 30; Ex. 1-1; ¶ 32. PHO Angell thereafter designated a
 14 supplemental list of “Essential Critical Infrastructure Workers” in California who
 15 were exempted from the stay-at-home order;⁷ the list included “[f]aith based
 16 services that are provided through streaming or other technology.”⁸ FAC, ¶ 32;
 17 Exs. 1-2. Beginning in March 2020, San Diego County Public Health Officer
 18 Wilma Wooten also issued county-level “stay-at-home” orders that prohibited in-
 19 person gatherings.⁹

21
 22 ⁶ President Trump shortly thereafter issued a national State of Emergency on
 March 13, 2020. FAC, ¶ 17.

23 ⁷ Executive Order N-33-20 and the March 22 Public Health Officer
 designations will be collectively referenced as the “Executive Order” or the “Stay-
 at-Home Order.”

24 ⁸ This exemption permits houses of worship to conduct services over online
 streaming or teleconferencing and via drive-ins (provided congregants do not leave
 25 their cars and refrain from direct or indirect physical contact).

26 ⁹ [https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/](https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/HealthOfficerOrderCOVID19.pdf)
[phs/Epidemiology/HealthOfficerOrderCOVID19.pdf](https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/HealthOfficerOrderCOVID19.pdf). After the State announced in
 27 April 2020 that drive-in worship was a form of worship service authorized by the
 State Order, San Diego County interpreted its Public Health Order to likewise
 28 permit such services.

1 As the stay-at-home orders have sufficiently slowed the spread of COVID-19,
 2 state officials and experts have developed a four-stage reopening plan for the State.
 3 This plan, which is based on the relative risks of resuming various activities, was
 4 announced by the Governor and the Public Health Officer on April 28, 2020. FAC,
 5 ¶ 36; Trissel Decl. ISO TRO Application, ¶¶ 9-27, Ex E-F. The Public Health
 6 Officer then issued a “California Pandemic Roadmap” on May 4, in which she
 7 described the four stages of the state’s reopening plan. *See* Public Health Order
 8 dated May 4, 2020.¹⁰ The Pandemic Roadmap identifies the following four stages:
 9 safety and preparation (Stage 1), reopening of lower-risk workplaces and other
 10 spaces (Stage 2), reopening of higher-risk workplaces and other spaces (Stage 3),
 11 and last an easing of final restrictions leading to the end of the Stay-at-Home order
 12 (Stage 4). *Id.*

13 An Order issued by the Public Health Officer on May 7 further explained the
 14 status of California’s efforts to combat the spread of COVID-19 and the reopening
 15 plan:

16 Today, COVID-19 continues to present a significant risk to the health
 17 of individuals throughout California. There are confirmed cases of the
 18 virus in 54 of the 58 counties across the State, and each day over the
 19 past two weeks over one thousand new cases have been confirmed in
 20 California and dozens of people have lost their lives due to the virus.
 21 However, owing to Californians’ mitigation efforts, statewide data
 22 currently demonstrates stable rates of new infections and
 23 hospitalization, the maintenance of surge capacity, and an improved
 24 ability to test, contact trace, isolate, and provide support to individuals
 25 exposed to COVID-19. As State Public Health Officer, I have
 26 determined that the statewide data now supports the gradual movement
 27 of the entire state from Stage 1 to Stage 2 of California’s Pandemic
 28 Resilience Roadmap.

Id. She further explained in the May 7 Order that:

gradual movement into stage 2 is intended to reintroduce activities and
 sectors in a phased manner and with necessary modifications, in order

¹⁰ <https://www.gov.ca.gov/sp-content/uploads/2020/05/5.4.20-Update-on-Californias-Pandemic-Roadmap.pdf>.

1 to protect public health and result in a lower risk for COVID-19
 2 transmission and outbreak in a community. Such deliberate phasing is
 3 critical to allowing the state to protect the public, and to mitigate and
 4 manage the impact of the re-openings, such that our health care
 delivery system has the capacity to respond to potential increased
 demands.

5 *Id.* The Governor released additional guidance concerning the reopening plan
 6 (entitled the “Resilience Roadmap”) on May 7, stating “[w]e are now moving to
 7 Stage 2, where some lower-risk workplaces can gradually open with adaptations.
 8 The state is issuing guidance to help these workplaces reopen safely.”¹¹ Emphasizing
 9 that businesses are not permitted simply to reopen and admit customers inside, the
 10 new guidance describes Stage 2 as “Gradually reopen retail (curbside only),
 11 manufacturing & logistics. Later, relax retail, restrictions, adapt & reopen schools,
 12 child care, offices & limited hospitality, personal services.” *Id.* The corresponding
 13 May 7 Public Health Order states: “stage [2] allows for some retail to open, but
 14 only where the business in question has adopted a plan and put in place the
 15 modifications required to protect employees and customers. (Emphasis added); *see*
 16 Trissel Decl., Ex. E.¹²

17 Stage 3 of the Resilience Roadmap provides for the reopening of operations
 18 and entities that by their nature involve people gathering in close proximity with
 19 one other for extended periods. Resilience Roadmap, *supra*. The Roadmap
 20

21
 22
 23 ¹¹ <https://www.gov.ca.gov/wp-content/uploads/2020/04/Update-on-California-Pandemic-Roadmap.pdf>.

24 ¹² Plaintiffs request in their TRO application that the Court categorize South
 25 Bay United Pentecostal Church as being within stage “2a,” but it is unclear what
 26 that would mean in practical effect, particularly given that the church seeks to
 27 resume a full in-person service and activity schedule, while the Resilience
 28 Roadmap and May 7 Public Health Order indicate that “2a” entities are limited to
curbside operations, that is, contact-free interactions between businesses and their
 customers.

1 identifies churches, personal services (hair and nail salons), gyms, movie theaters
2 and sporting events as being within this category.

3 Plaintiffs in their application and supporting documents repeatedly
4 mischaracterize the Resilience Roadmap. For example, Plaintiffs assert that under
5 the reopening plan, “manufacturing and retail (bookstores, clothing stores, florists,
6 and sporting goods) will open on Friday, May 8 (Stage 2a),” and that
7 “Manufacturing, offices, seated dining at restaurants, shopping malls, and schools
8 will open a few weeks after that (Stage 2b),” while “churches will open a few
9 months after that.” MPA at 1. Not true. The Roadmap places public safety-based
10 conditions and restrictions on *all* businesses and entities which they must fulfill and
11 maintain in order to reopen and operate lawfully. Plaintiffs likewise omit the fact
12 that all of the provisions of the Stay-at-Home Order and related directives requiring
13 compliance with physical distancing and other safety measures remain applicable to
14 all entities and individuals.

15 **III. THE PRESENT LAWSUIT AND REQUEST FOR TRO**

16 Plaintiffs are the South Bay United Pentecostal Church and South Bay’s
17 Senior Pastor Bishop Arthur Hodges III. First Amended Complaint (“FAC”), ¶¶ 9,
18 20; Declaration of Bishop Arthur Hodges III ISO Application for TRO (Hodges
19 Decl), ¶ 2. Plaintiffs filed their initial complaint against the State Defendants as
20 well as San Diego County and City of San Diego officials, along with an ex parte
21 application for a temporary restraining order, on May 8. That application was
22 denied because Plaintiffs had failed to meet and confer before filing it. Plaintiffs
23 filed the FAC and a renewed application for a temporary restraining order on May
24 11. The FAC, which drops San Diego city officials as defendants, as well as one of
25 the previously named plaintiffs (a rabbi from a San Diego-area congregation),
26 asserts claims under the First Amendment’s Free Exercise Clause and ten other
27 federal and state constitutional provisions. The renewed request for a temporary
28 restraining order is based only on claimed Free Exercise violations.

1 In support of the requested TRO, Hodges states a sincere religious belief that
 2 “all” being gathered in “one place” is fundamental in order to fulfill Christ's final
 3 charge that “you will be my witnesses,” Hodges Decl, ¶ 10, and that being together
 4 physically (and spiritually) with his congregants is key in the church’s preaching,
 5 teaching and worship practice. *Id.*, ¶¶ 11, 13. According to Hodges, South Bay
 6 United Pentecostal Church has a sanctuary that holds up to six hundred people,
 7 “average” attendance at Sunday services is between two-hundred and three-
 8 hundred, and the church conducts from three to five services each Sunday. *Id.*, ¶ 12.

9 Services begin with Bible classes spread across different ages and groups,
 10 each class having between 10 and 100 participants. *Id.*, ¶ 13. After classes,
 11 “congregants gather together with one another in the sanctuary.” *Id.* “Those with
 12 special needs or sickness come forward and stand around the altar, where hands are
 13 laid upon them and they are then anointed. *Id.*; *see also id.*, ¶ 16 (services include
 14 weekly and/or daily baptisms “by immersion in water . . . based on the need or
 15 request of a candidate”). The services conclude with “preaching followed by a
 16 challenge to physical action, where the congregation is challenged to approach the
 17 altar to ‘come believing, come praying.’” *Id.*, ¶14. Hodges further states that, as a
 18 result of the State’s orders, “I am prohibited from holding the services mandated by
 19 Scripture.” *Id.*, ¶ 21.

20 Plaintiffs seek what they characterize as a “a narrow temporary restraining
 21 order enjoining Defendants' enforcement of the reopening plan as applied against
 22 Plaintiffs--and thus moving them from Stage 3 of the Reopening Plan to Stage 2a--
 23 so they can conduct services on the weekend of May 16-17, 2020.” Plaintiffs seek a
 24 TRO on the grounds that the reopening plan (1) targets Plaintiffs for discriminatory
 25 treatment merely because of their religious beliefs and practices in violation of the
 26 Free Exercise Clause, and (2) “is irreparably harming Plaintiffs' fundamental
 27 constitutional rights.” Pls' TRO, Memorandum of Points and Authorities, p. 2.
 28

LEGAL STANDARD

“An application for a temporary restraining order involves the invocation of a drastic remedy which a court of equity ordinarily does not grant, unless a very strong showing is made of a necessity and desirability of such action.” *Vaccaro v. Sparks*, No. SACV 11-00164, 2011 WL 16318039, at *1 (C.D. Cal. Jan. 28, 2011) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 103 F. Supp. 978, 980 (D.D.C. 1952)). Temporary restraining orders are subject to standards similar to those governing preliminary injunctions: Plaintiffs have the burden to demonstrate that they are likely to succeed on the merits of their claims, they are likely to suffer irreparable harm without preliminary relief, the balance of equities weighs in their favor, and an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

ARGUMENT

Plaintiffs have not met their burden of demonstrating entitlement to a temporary restraining order. First, they cannot demonstrate a likelihood of success on the merits. Plaintiffs’ Free Exercise and other constitutional challenges fail because the State’s reopening plan, like the Stay-at-Home order, is a clearly valid use of the Governor’s emergency powers to combat the COVID-19 crisis and a neutral enactment of general applicability. Second, Plaintiffs have not shown that the balance of equities weighs in their favor. To the contrary, any harm Plaintiffs may suffer is far outweighed by the significant risk of harm to public health if Plaintiffs are permitted to hold in-person worship services, especially as their church is very large and holds services averaging two to three hundred congregants three to five times each Sunday. The potential for a substantial outbreak of COVID-19 from holding in-person services for more than 500 individuals and perhaps more than 1500 is very real and substantial, and Plaintiffs present no competent evidence that they can do so without creating a substantial public health risk.

I. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS

A. The Stay-at-Home Order and Reopening Plan Are Constitutional Exercises of the Governor’s Emergency Powers to Combat the COVID-19 Pandemic

California is in the throes of an unprecedented, once-in-a-century public health crisis that has brought normal life to a halt. In response, the Governor—along with other state, local, and national officials—proclaimed a state of emergency and issued the Executive Order to protect the health and safety of Californians. Since then, state and local officials have issued guidance interpreting and applying the Order. In an extraordinary public health crisis such as this, the State has broad emergency power to protect public health, and courts must afford deference to temporary actions taken to curb the spread of a dangerous disease and mitigate its effects. Plaintiffs have not even begun to show a likelihood that they can establish the State’s exercise of this power in first establishing a shelter-in-place order, and then adopting a staged reopening plan, is unconstitutional.

1. Under *Jacobson v. Massachusetts*, Governors Have Broad Emergency Powers to Combat Health Crises

The Supreme Court has long recognized that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” *Jacobson v. Massachusetts*, 197 U.S. 11, 27 (1905) (internal quotation marks omitted); *see also Kansas v. Hendricks*, 521 U.S. 346, 356 (1997) (recognizing the continuing vitality of *Jacobson*). In that regard, the Court has permitted states to enact “quarantine laws and health laws of every description,” *Jacobson*, 197 U.S. at 27, similar to the Executive Order’s measures to combat the COVID-19 pandemic. *See, e.g., Compagnie Francaise de Navigation a Vapeur v. Bd. of Health of State of La.*, 186 U.S. 380 (1902) (upholding quarantine law against constitutional challenges); *Benson v. Walker*, 274 F. 622 (4th Cir. 1921) (upholding board of health resolution that prevented carnivals and circuses from

1 entering a certain county in response to the 1918-1919 influenza epidemic); *Hickox*
 2 *v. Christie*, 205 F. Supp. 3d 579 (D.N.J. 2016) (upholding quarantine of a nurse
 3 returning from treating Ebola patients in Sierra Leone).

4 The exercise of these emergency powers “necessarily restricts activities that
 5 would normally be constitutionally protected,” and “[a]ctions which citizens are
 6 normally free to engage in [have] become subject to criminal penalty.” *United*
 7 *States v. Chalk*, 441 F.2d 1277, 1281 (4th Cir. 1971). But “measures [that] would
 8 be constitutionally intolerable in ordinary times [] are recognized as appropriate and
 9 even necessary responses to the present [COVID-19 pandemic] crisis.” *In re*
 10 *Abbott*, 954 F.3d 772, 787 (5th Cir. 2020). Although the Constitution is not
 11 suspended during a state of emergency, the Supreme Court has recognized that
 12 “under the pressure of great dangers,” constitutional rights may be reasonably
 13 restricted “as the safety of the general public may demand.” *Jacobson*, 197 U.S. at
 14 29.

15 To combat a virulently infectious disease in an emergency pandemic, the State
 16 must be able to take swift and decisive action. *Cf. Chalk*, 441 F.2d at 1281. The
 17 court’s review of temporary measures during such an emergency is therefore
 18 “limited to a determination of whether the [executive’s] actions were taken in good
 19 faith and whether there is some factual basis for [the Governor’s] decision that the
 20 restrictions he imposed were necessary to maintain order.” *Id.*; *see also Jacobson*,
 21 197 U.S. at 29 (“reasonable regulations” may be implemented in the face of an
 22 infectious disease epidemic); *Abbott*, 954 F.3d 772 (applying a deferential standard
 23 to an executive order restricting otherwise constitutionally protected abortion access
 24 in the face of the COVID-19 crisis). This deferential standard recognizes that, in a
 25 public health crisis, “it is no part of the function of a court . . . to determine which
 26 one of two modes was likely to be the most effective for the protection of the public
 27 against disease,” *Jacobson*, 197 U.S. at 30, and that “governing authorities must be
 28 granted the proper deference and wide latitude necessary for dealing with . . .

emergenc[ies].” *Smith v. Avino*, 91 F.3d 105, 109 (11th Cir. 1996), *abrogated on other grounds*, *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83 (1998).

2. As Numerous Recent Decisions Recognize, *Jacobson* Applies to Free Exercise Claims.

Plaintiffs argue that *Jacobson* has little relevance here because it either does not apply to the First Amendment or because it requires application of heightened scrutiny. TRO at 17-19. This argument is demonstrably wrong. The Supreme Court long ago expressly recognized that “[t]he right to practice religion freely does not include liberty to expose the community . . . to communicable disease,” *Prince*, 321 U.S. at 166-67, and just four years ago this court rejected a Free exercise challenge to a vaccination law based on *Jacobson*. See *Whitlow v. California*, 203 F. Supp. 3d 1079, 1083 (S.D. Cal. 2016) (finding no likelihood of success on a free exercise challenge to a law removing a religious- or conscious-based exemption for mandatory vaccination of schoolchildren); see also *Zucht v. King*, 260 U.S. 174 (1922) (upholding the exclusion of non-vaccinated children from a school district against a due process and equal protection challenge); *Phillips v. City of New York*, 775 F.3d 538 (2d Cir. 2015) (finding that a challenge to mandatory vaccination law was “foreclosed” by *Jacobson*). And less than a month ago, the Fifth Circuit stated that this “settled rule” allows states facing emergencies to “restrict, for example, one’s right to peaceably assemble, to publicly worship, to travel, and even to leave one’s home.” *Abbott*, 954 F.3d at 778 (emphasis added).

In addition, following this rule, courts across the country have denied requests for preliminary injunctive relief in constitutional challenges to emergency COVID-19-related measures,¹³ including in the three previously referenced California

¹³ See, e.g., *Calvary Chapel of Bangor v. Mills*, No. 1:20-CV-00156-NT, 2020 WL 2310913 (D. Me. May 9, 2020) (Maine); *Crowl v. Inslee*, No. 3:20-cv-5352, ECF No. 30 (W.D. Wash. May 8, 2020) (ECF No. 30) (Washington); *Cassell v. Snyders*, No. 20 C 50153, 2020 WL 2112374 (N.D. Ill. May 3, 2020) (Illinois); *Legacy Church, Inc. v. Kunkel*, No. CIV 20-0327 JB\SCY, 2020 WL 1905586 (D.N.M. Apr. 17, 2020) (New Mexico); *Lighthouse Fellowship Church v. Northam*,

1 federal court decisions. This Court denied a motion for temporary restraining order
 2 in *Abiding Place Ministries v. Wooten* in April. Shortly thereafter, a Central District
 3 judge denied a temporary restraining order in a Free Exercise Clause challenge to
 4 the Executive Order. *Gish v. Newsom*, No. 5:20-cv-00755, 2020 WL 1979970 (C.D.
 5 Cal. Apr. 23, 2020), *emergency motion for injunction pending appeal denied*, No.
 6 20-55445 (9th Cir. May 7, 2020) (citing *Winter*, 555 U.S. 7). Citing *Jacobson* and a
 7 recent Fifth Circuit opinion applying that decision, the court observed that during a
 8 public emergency such as the COVID-19 pandemic, “traditional constitutional
 9 scrutiny does not apply,” and “states and municipalities have greater leeway to
 10 burden constitutionally protected rights.” *Id.* at *4-*5 (citing *Abbott*, 954 F.3d at
 11 784-85; *Jacobson*, 197 U.S. at 31). Applying the highly deferential standard of
 12 review that applies to such orders, the court found that the State’s Executive Order
 13 bears a substantial relation to combatting the COVID-19 pandemic because it
 14 “require[s] the physical distancing that is needed to slow the spread of the virus.”
 15 *Id.* at *5. It also rejected the assertion that the Order was a “plain or palpable
 16 invasion of the general right to free exercise of religion,” given that “a wide swath
 17 of religious expression remains untouched by the Order[.]” *Id.* Although in-person
 18 gatherings are not permitted, the court explained, congregants are free to “gather
 19 virtually or over the phone,” “gather in-person with the members of their
 20 household,” and “practice their religion in whatever way they see fit so long as they
 21 remain within the confines their own homes.” *Id.*; *see also id.* at *5-*7 (no violation
 22 under traditional constitutional analysis).

23
 24
 25 No. 2:20-cv-204, 2020 WL 2110416 (E.D. Va. May 1, 2020) (Virginia); *Davis v.*
 26 *Berke*, No. 1:20-CV-98, 2020 WL 1970712 (E.D. Tenn. Apr. 17, 2020)
 27 (Chattanooga, Tenn.); *Nigen v. New York*, No. 1:20-cv-01576-EK-PK, 2020 WL
 28 1950775 (E.D.N.Y. Mar. 29, 2020) (New York); *Tolle v. Northam*, No. 1:20-cv-
 00363-LMB-MSN, 2020 WL 1955281 (E.D. Va. Apr. 8, 2020) (Virginia), *motion*
for injunction pending appeal denied, No. 20-1419 (4th Cir. Apr. 28, 2020);
Binford v. Sununu, No. 217-2020-CV-00152 (N.H. Sup. Ct. March 25, 2020) (New
 Hampshire).

1 Similarly, in *Cross Culture Christian Center v. Newsom*, --F. Supp. 3d --, No.
2 2:20-cv-00832-JAM-CKD, 2020 WL 2121111 (E.D. Cal. May 5, 2020), an Eastern
3 District judge applied *Jacobson* and upheld the State's exercise of emergency
4 police powers to enact an emergency public health measure unless there is no real
5 or substantial relation to public health or the measures are beyond all question a
6 plain and palpable invasion of rights secured by fundamental law. Of particular
7 relevance here, the court found unpersuasive the plaintiff's argument that the
8 church's biweekly services did not pose a unique or unacceptable threat. *Id.* at *4. It
9 further held that the State's ban on mass gatherings, such as sporting event,
10 concerts, dining rooms and in-person church services, all flowed from its
11 appropriate larger goal of substantially reducing in-person interactions. *Id.* at *5-*7.

12 Plaintiffs attempt to distinguish the three recent California federal court
13 rulings by brute force, arguing that those cases involved challenges to the
14 Governor's earlier order establishing the list of "essential businesses," whereas they
15 claim they are only challenging the Resilience Roadmap and the designation of
16 religious services in Stage 3. Pls.' TRO at 10-12. This is a distinction without a
17 difference. The reopening plan, like the Executive Order itself, relies on
18 scientifically-backed risk assessments and is a good faith, reasonable exercise of the
19 Governor's emergency powers. Plaintiffs are simply asking the Court to second-
20 guess the judgments of the Governor and the Public Health Officer about the risks
21 associated with in-person gatherings where people mingle in close proximity to
22 each other for long periods of time—including at religious gatherings. *See Watt*
23 *Decl.* ¶¶ 8-18.

24 Plaintiffs also reference the few decisions striking down restrictions on
25 worship services from other states. Those restrictions, however, are easily
26 distinguishable. For example, *On Fire Christian Ctr. v. Fischer*, --5 F. Supp. 3d --,
27 No. 3:20-CV-264-JRW, 2020 WL 1820249 (W.D. Ky. Apr. 11, 2020), does not
28 assist Plaintiffs, however, as the temporary restraining order was issued only as to

1 restrictions on drive-in worship services; by contrast, here, California has
 2 interpreted the Executive Order to permit drive-in worship services. *See also*
 3 *Tabernacle Baptist Church, Inc. of Nicholasville, Kentucky v. Beshear*, No. 3:20-
 4 CV-00033-GFVT, 2020 WL 2305307 (E.D. Ky. May 8, 2020) (applying different
 5 rules to comparable religious and non-religious activities, distinct from the
 6 California Executive Order).¹⁴ Likewise, the Sixth Circuit’s ruling was *limited* to
 7 drive-in services and did *not* enjoin the prohibition on in-person religious
 8 gatherings. *Maryville Baptist Church, Inc. v. Beshear*, No. 20-5427, 2020 WL
 9 2111316, at *5 (6th Cir. May 2, 2020). Plaintiffs also cite an order from a Kansas
 10 district court. Pls.’ TRO at 1 n.3, 8, 14 (citing *First Baptist Church v. Kelly*, -- F.
 11 Supp. 3d --, No. 20-1102-JWB, 2020 WL 1910021, at *7-*8 (D. Kan. Apr. 18,
 12 2020)). That court, however, addressed a Kansas executive order with restrictions
 13 explicitly targeting churches and other religious facilities, “prohibiting gatherings
 14 of more than ten congregants,” and exempting a broad range of places from any
 15 restrictions, including hotels, bars, office spaces, and even shopping malls. *First*
 16 *Baptist Church*, 2020 WL 1910021, at *2, *8. Here, by contrast, the Stay-at-Home
 17 Order does not target religious services, and they are categorized with and treated
 18 the same as other gatherings with similar relevant characteristics in the Resilience
 19 Roadmap. Thus, Plaintiffs’ attempts to evade *Jacobson* fail.

20 **3. Under *Jacobson*, Both the Stay-at-Home Order and the**
 21 **Reopening Plan Are Constitutional Exercises of the**
 22 **Governor’s Broad Emergency Powers.**

23 Notably absent from Plaintiffs’ papers is any attempt to show that either the
 24 Stay-at-Home Order or the Reopening Plan fail to satisfy the deferential standard
 25 that courts have recognized *Jacobson* to impose. The temporary restrictions placed
 26 on religious services by these measures easily satisfy the standards governing
 27 emergency measures taken to combat a public health emergency. The Governor

28 ¹⁴ As discussed herein, California’s Executive Order and ensuing guidance
 treat similarly all gatherings involving extended close personal contact.

1 issued the Stay-at-Home Order and ensuing directives in a good-faith, science-
 2 backed response to the imminent and deadly threat posed by the COVID-19
 3 pandemic. To date, the disease has infected over 1.3 million people and caused over
 4 80,000 deaths in the United States;¹⁵ in California, which took measures early on to
 5 prevent the spread of COVID-19, approximately 67,000 people have been infected
 6 and 2,700 have died.¹⁶ However, the virulently infectious nature of this disease,
 7 combined with the ability of asymptomatic individuals to unknowingly spread the
 8 virus and the absence of any vaccination or widely effective treatment, has limited
 9 the options for combatting the disease and—as similar measures by other state,
 10 local, and national officials demonstrate—made the Order’s “stay-home” strategy
 11 crucial to slowing the spread of the virus. *See generally* Watt Decl. ¶¶ 8-18.

12 Correspondingly, the decision to assign all large public gatherings, including
 13 religious services, to Stage 3 of the reopening plan is an indispensable part of the
 14 state’s COVID-19 response. There are by now numerous unfortunate examples of
 15 public gatherings of this nature that have fueled the spread of COVID-19, including
 16 in-person religious services. In addition to being stationary in close quarters for
 17 extended periods during such services, congregants often are speaking aloud and
 18 singing, which increases the danger that infected individuals will project respiratory
 19 droplets that contain the virus and could thereby infect others. There are numerous
 20 documented examples of in-person services becoming “super-spreader” events:

21 • In South Korea, as of March 25, at least 5,080 confirmed cases of
 22 COVID-19 had been traced back to one individual who attended a religious service
 23 in Daegu.¹⁷

24 ¹⁵ <https://www.cdc.gov/coronavirus/2019-ncov/cass-updates/cases-in-us.html>
 25 (last accessed May 12, 2020)

26 ¹⁶ *see* COVID-119 by the Numbers
[https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.as](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx)
 27 px (last accessed May 12, 2020).

28 ¹⁷ *See* Youjin Shin, Bonnie Berkowitz, Min Joo-Kim, *How a South Korean church helped fuel the spread of the coronavirus*, Washington Post, March 25, 2020, <https://www.washingtonpost.com/graphics/2020/world/coronavirus-south->

- 1 • In California, seventy-one cases of COVID-19 have been linked to a
2 church in Sacramento.¹⁸
- 3 • Near Seattle, according to CDC report, following a 2.5 hour church choir
4 practice attended by 61 persons on March 10, 2020, 32 of the participants were
5 confirmed to be infected with COVID-19, 20 were suspected to be infected, three
6 were hospitalized, and two died.¹⁹
- 7 • In Kentucky, a church revival has been linked to at least twenty-eight
8 cases and two deaths from COVID-19.²⁰

9 In light of these risks, Plaintiffs provide no basis to override the State's
10 determination that large in-person gatherings, including church services, should be
11 in Stage 3 of the reopening plan. Although Plaintiffs submit a declaration from a
12 doctor and demand that this Court draw a different set of lines based on their
13 assessment of the risks involved, the Supreme Court's holding in *Jacobson* bears
14 repeating: "it is no part of the function of a court . . . to determine which one of two
15 modes was likely to be the most effective for the protection of the public against
16 disease." 197 U.S. at 30.²¹ Those decisions are reserved for the responsible state

17 [korea-church/](#). Although news articles are generally hearsay, "[t]he urgency of
18 obtaining a preliminary injunction necessitates a prompt determination" and thus
19 they may be given some weight when adjudicating a preliminary injunction. *Flynt*
20 *Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984).

21 ¹⁸ See Anita Chabria, Sean Greene, Rong-Gong Lin II, *Pentecostal church in*
22 *Sacramento linked to dozens of coronavirus cases*, Los Angeles Times, April 2,
23 2020, <https://www.latimes.com/california/story/2020-04-02/pentecostal-church-in-sacramento-linked-to-dozens-of-coronavirus-cases>.

24 ¹⁹ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e6.htm>; see also
25 Richard Read, *A choir decided to go ahead with rehearsal. Now dozens have*
26 *COVID-19 and two are dead*, Los Angeles Times, March 29, 2020,
27 <https://www.latimes.com/world-nation/story/2020-03-29/coronavirus-choir-outbreak>

28 ²⁰ Bailey Loosmore & Mandy McLaren, *Kentucky county 'hit really, really hard' by church revival that spread deadly COVID-19*, Louisville Courier Journal, April 2, 2020, <https://www.courier-journal.com/story/news/2020/04/01/coronavirus-kentucky-church-revival-leads-28-cases-2-deaths/5108111002/>.

²¹ The declaration submitted by Plaintiffs, which is from a medical (family practice) doctor without any apparent qualifications as an epidemiologist or expert in the spread of infectious diseases, also lacks any probative value. While the declarant states that "I feel that going to one's church, synagogue or mosque should

1 and local officials, and Plaintiffs do not, and cannot, show that the State's actions
2 were taken in bad faith or without any factual basis

3 In sum, although Plaintiffs' religious exercise rights are fundamental, they do
4 not include the "liberty to expose the community . . . to communicable disease,"
5 *Prince*, 321 U.S. at 166-67, especially one as contagious and deadly as COVID-19.
6 The Governor's decision to temporarily restrict one aspect of those rights—the
7 ability to conduct in-person worship services in large communal settings, as
8 Plaintiffs wish to do here—falls well within the scope of the Governor's emergency
9 authority to combat the current public health crisis.

10 **B. Even Under Traditional Constitutional Analysis, Plaintiffs' Free**
11 **Exercise Claim Fails.**

12 Even if Plaintiffs' Free Exercise claim were analyzed under the standard of
13 review applied in non-emergent circumstances, Plaintiffs have still failed to show a
14 likelihood of success.

15 **1. The Executive Order and Resilience Roadmap Are Neutral**
16 **Laws of General Application that Survive Rational Basis**
Review.

17 The Executive Order and Resilience Roadmap do not violate the Free Exercise
18 Clause because they are neutral laws of general application. "The right to exercise
19 one's religion freely . . . 'does not relieve an individual of the obligation to comply
20 with a valid and neutral law of general applicability on the ground that the law
21 proscribes (or prescribes) conduct that [one's] religion prescribes (or proscribes).'"
22 *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1075 (9th Cir. 2015) (quoting *Emp't*
23 *Div. v. Smith*, 494 U.S. 872, 879 (1990)). Thus, "a neutral law of general
24 application need not be supported by a compelling government interest even when
25 be much safer than going to the grocery store," Delgado Decl. ¶ 14, he bases this
26 assertion on a relative risk calculation based on probability figures for which he
27 offers no explanation. *See id.* ¶¶ 17-22. Such a conclusory, unexplained opinion
28 cannot be relied upon: "[a]n expert who supplies nothing but a bottom line supplies
nothing of value to the judicial process." *Huey v. United Parcel Serv., Inc.*, 165
F.3d 1084, 1087 (7th Cir. 1999); *see also Weigel v. Target Stores*, 122 F.3d 461,
468-69 (7th Cir. 1997).

1 ‘the law has the incidental effect of burdening a particular religious practice.’” *Id.*
 2 (quoting *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 543
 3 (1993) (*Lukumi*)). Instead, “[s]uch laws need only survive rational basis review.”
 4 *Id.* at 1076. The Executive Order easily satisfies those requirements.

5 The Executive Order and reopening plan are neutral. Both are neutral on their
 6 face because they “make no reference to any religious practice, conduct, belief, or
 7 motivation.” *Id.* They are also neutral in operation because they do not single out
 8 religious or faith-based services and treat them differently from analogous public
 9 gatherings. Neither the Executive Order nor the reopening plan imposes
 10 “restrictions against religion in disguise.” *Gish*, 2020 WL 1979970, at *6. Far from
 11 discriminating against religious practice, the Executive Order deems faith-based
 12 services essential, allowing Plaintiffs’ and other clergy to leave their homes in order
 13 to provide congregants with worship opportunities through technology such as
 14 online streaming or teleconferencing (using various free platforms), or via drive-in
 15 services (which should be conducted with appropriate distancing and protection
 16 against direct or indirect physical contact). Thus, Plaintiffs cannot show that the
 17 Order or reopening plan “suppress[es], target[s], or single[s] out the practice of any
 18 religion because of religious content.” *Stormans v. Selecky*, 586 F.3d 1109, 1131
 19 (9th Cir. 2009) (reversing district court’s preliminary injunction).

20 In addition to being neutral, the Executive Order and reopening plan are
 21 generally applicable. They do not ““in a selective manner, impose[] burdens only on
 22 conduct motivated by religious belief,”” nor do they “substantially underinclude”
 23 analogous secular conduct. *Stormans v. Wiesman*, 794 F.3d at 1079 (quoting
 24 *Lukumi*, 508 U.S. at 543). Rather, “both secular and religious conduct are
 25 prohibited equally,” and, indeed, “[t]he majority of the prohibited conduct is
 26 secular.” *Gish*, 2020 WL 1979970, at *6. As a result of the COVID-19 pandemic
 27 and Executive Order, a wide variety of California businesses and community
 28 activities shut down or reduced operations. Restaurants have shuttered dining

1 rooms, sporting events and concerts have been cancelled, and schools have moved
2 online; even state and federal courts have taken the drastic measures of closing their
3 doors with only narrow exceptions. In arguing that the Executive Order and
4 reopening plan target them based on their religion, Plaintiffs simply ignore the fact
5 that they apply to nearly every type of public gathering.

6 Plaintiffs complain that some secular activities were permitted to continue
7 under the Executive Order. *E.g.*, Pls.’ TRO at 7. However, they draw a
8 false equivalence between businesses that are permitted to continue to receive serve
9 customers, on the one hand, and public gatherings, including those for worship, on
10 the other. *See Lukumi*, 508 U.S. at 546 (comparing “analogous non-religious
11 conduct” when determining whether a law is substantially underinclusive of secular
12 conduct). Plaintiffs seek to have large groups of people gather in a communal
13 experience: people coming together at once, for the same amount of time, in the
14 same enclosed space, and for the same purpose. Thus, the proper comparison is
15 with similar communal activities such as theaters, concert halls, and large sporting
16 events, all of which were treated equivalently under the Executive Order, and all of
17 which are categorized together in phase 3 in the Resilience Roadmap.

18 In contrast, picking up essential items such as food and medicine at grocery
19 stores, drive-thru restaurants, or pharmacies are singular and transitory experiences:
20 “An in-person religious gathering is not analogous to picking up groceries, food, or
21 medicine, where people enter a building quickly, do not engage directly with others
22 except at points of sale, and leave once the task is complete.” *Gish*, 2020 WL
23 1979970, at *6; *see also Legacy Church*, 2020 WL 1905586, at *33-*37
24 (discussing the neutrality and general application of the executive orders at issue).
25 As noted above, the risk of infection is much greater where individuals are
26 stationary in close quarters for extended periods of time, especially where, as in a
27 church or synagogue, the individuals are singing and speaking aloud towards one
28 another, which increases the risk of respiratory-based transmission of the

1 coronavirus. Furthermore, many services such as preparing, packaging, and
 2 distributing food or medicine cannot be done remotely, unlike worship services,
 3 which can be broadcast over free streaming platforms, or conducted via drive-ins.
 4 *See Legacy Church*, 2020 WL 1905586, at *36 n.12 (“[U]nlike [worship] services, .
 5 . . [t]o name a few examples, grocery store cashiers and baggers cannot do their
 6 jobs, and farmers cannot grow their crops, via teleworking.”).

7 Additionally, that the Executive Order and Resilience Roadmap allow for
 8 certain enterprises to continue, while subjecting them to many restrictions,
 9 including those concerning distancing, physical contact, attire, and cleanliness, does
 10 not render them impermissibly underinclusive: “The government need not choose
 11 between doing nothing in the face of a pandemic and closing all of society. It may
 12 choose a middle ground, provided that it does so ‘without reference to the content
 13 of the regulated’ activity.” *Legacy Church*, 2020 WL 1905586, at *36 n.12
 14 (quoting *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 48 (1986); *Va.*
 15 *Pharmacy Bd. v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976)).
 16 So here. Neither the Executive Order nor the Resilience Roadmap is based on the
 17 content, religious or otherwise, of the regulated activities.

18 Because the Executive Order and Resilience Roadmap are both neutral and
 19 generally applicable, they are subject to rational basis review, which they easily
 20 satisfy. *See Stormans v. Wiesman*, 794 F.3d at 1084. California’s interest in
 21 stopping the spread of COVID-19 and protecting the health of its citizens is not
 22 only legitimate, it is compelling. And the temporary stay-at-home instructions
 23 issued in the Executive Order and Resilience Roadmap are rationally related to that
 24 purpose. Thus, Plaintiffs’ have not shown a likelihood of success on their Free
 25 Exercise Clause claims even under traditional constitutional analysis.²²

26 ²² Plaintiffs also briefly assert claims under the Equal Protection and Due
 27 Process Claims. These claims are, however, based upon the right to Free Exercise,
 28 which as shown above is not violated, and other constitutional claims such as the
 right to travel and to free speech, which Plaintiffs do not discuss and thus fails to
 show their applicability.

2. The Executive Order and Resilience Roadmap Survive Strict Scrutiny.

Plaintiffs' claims would fail even if the Executive Order and ensuing directives were subject to strict scrutiny (and they are not). The State and other Defendants have a compelling interest in protecting the public from the spread of COVID-19. As explained above, "[t]he right to practice religion freely does not include liberty to expose the community . . . to communicable disease." *Prince*, 321 U.S. at 166-67; *see also Workman*, 419 Fed.Appx. at 353 ("[T]he state's wish to prevent the spread of communicable diseases clearly constitutes a compelling interest."). Plaintiffs do not—and cannot—argue otherwise. Moreover, a grave danger is present here. To appreciate the gravity of the threat facing California and its residents, one need only to look at the number of confirmed cases of COVID-19 and the resulting deaths that have occurred in New York -- over 335,000 cases and 26,000 deaths.²³ While it is too early to make meaningful conclusions, California's swift and decisive measures instructing residents to stay at home and prohibiting public gatherings may prove to have been decisive, allowing the State to slow the spread of the disease and not experience the overwhelming of hospitals and health care providers seen elsewhere. The State plainly has a compelling interest in continuing its public health measures, including the Executive Order and Resilience Roadmap, that appear to be working.

The Executive Order and Resilience Roadmap are also narrowly tailored to serve the State's compelling interest in avoiding the spread of COVID-19 because the virus is highly contagious and has been shown to spread from person to person, especially at public gatherings. As shown above, the pandemic has provided many

²³ *See* NYSDOH COVID-19 Tracker, <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCovid-19Tracker-Map?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n>; Fatalities, <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCovid-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n> (last accessed April 27, 2020).

1 examples of individuals, including asymptomatic individuals, spreading the virus
 2 through attendance at public gatherings, including religious services. Given the
 3 documented examples of how public gatherings can lead to the spread of the virus
 4 not only to those in attendance, but also to the larger community, the Executive
 5 Order and Resilience Roadmap are no broader than required to address the problem
 6 at hand.²⁴ For this reason as well, Plaintiffs' Free Exercise claim fails even under
 7 traditional constitutional analysis.

8 **II. THE REMAINING FACTORS WEIGH HEAVILY AGAINST ISSUANCE OF A** 9 **TEMPORARY RESTRAINING ORDER.**

10 Plaintiffs' motion fails for an additional, independent reason. To obtain a
 11 temporary restraining order, Plaintiffs must show that they will suffer irreparable
 12 harm, that the balance of equities weighs in their favor, and that a temporary
 13 restraining order is in the public interest. *Winter*, 555 U.S. at 20; *Drakes Bay Oyster*
 14 *Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) ("Where the government is a
 15 party to a case in which a preliminary injunction is sought, the balance of the
 16 equities and public interest factors merge."). Plaintiffs do not—and cannot—make
 17 this showing. Defendants do not question the sincerity of Plaintiffs' belief that it is
 18 essential to gather in person for worship services. However, because they have not
 19 shown any constitutional violation, Plaintiffs cannot show any irreparable harm to
 20 their constitutional rights. But even if Plaintiffs could overcome these obstacles,

21 _____
 22 ²⁴ The prohibition on public gatherings is temporary, and even while it is in
 23 place, Plaintiffs and all Californians remain free to gather in person with members
 24 of their household and otherwise practice their religion so long as they do not
 25 gather in person in public. Individuals who wish to maintain their religious
 26 practices during the current emergency have options to stay connected with their
 27 communities and to hold religious services without gathering in person. As noted,
 28 religious leaders and staff are specifically included in the Public Health Officer's
 list of workers who provide an essential service so that they may continue
 providing religious services in any form other than in-person gatherings involving
 close physical proximity. These options include free streaming services online and
 conducting drive-in services. Thus, the Resilience Roadmap is narrowly tailored.
See Legacy Church, 2020 WL 1905586, at *36 n.12 (finding that even if strict
 scrutiny were applied to the COVID-19-related restrictions on public gatherings,
 they would pass constitutional muster).

1 any injury suffered would be limited. The Executive Order and Resilience
 2 Roadmap are temporary, and do not prohibit them from conducting religious
 3 services, only from conducting in-person gatherings during the present health
 4 emergency. *See* footnote 24, *supra*.

5 Furthermore, any harm that Plaintiffs might suffer as a result of such
 6 temporary restrictions is far outweighed by the potential harm to public health and
 7 to individuals in Plaintiffs' community from conducting in-person services, as
 8 recent "super-spreader" events, including at religious services, vividly demonstrate.
 9 The public interest would not be served by the temporary restraining order
 10 Plaintiffs seek—far from it, the public interest in the health, safety, and well-being
 11 of individuals and the community would be greatly threatened.

12 CONCLUSION

13 For the foregoing reasons, the Court should deny Plaintiffs' TRO Application.

14 Dated: May 14, 2020

Respectfully Submitted,

15 XAVIER BECERRA
 16 Attorney General of California
 17 PAUL STEIN
 Supervising Deputy Attorney General
 TODD GRABARSKY
 Deputy Attorney General

18
 19
 20 s/ Lisa J. Plank
 21 LISA J. PLANK
 Deputy Attorney General
 22 *Attorneys for*
Defendants Gavin Newsom, et al.

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CERTIFICATE OF SERVICE

Case **South Bay United Pentecostal** No. **3:20-cv-00865-BAS-AHG**
Name: **Church, et al. v. Newsom et al.**

I hereby certify that on May 14, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

1. **STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER**
2. **DECLARATION OF LISA J. PLANK IN SUPPORT OF STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR TEMPORARY RESTRAINING ORDER WITH EXHIBITS 1-3**
3. **DECLARATION OF JAMES WATT, MD, MPH, IN SUPPORT OF STATE DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 14, 2020, at San Francisco, California.

V. Jordan
Declarant


Signature

SA2020301026

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7 *Attorneys for Defendants Gavin Newsom,*
et al.

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
11
12

13 **SOUTH BAY UNITED**
14 **PENTECOSTAL CHURCH, a**
15 **California non-profit corporation;**
16 **BISHOP ARTHUR HODGES III, an**
individual,

17 Plaintiffs,

18 v.

19 **GAVIN NEWSOM, in his official**
20 **capacity as Governor of the State of**
21 **California; XAVIER BECERRA, in**
22 **his official capacity as Attorney**
23 **General of California; SONIA**
24 **ANGELL, in her official capacity as**
25 **Director of the California**
26 **Department of Public Health, et al.,**

27 Defendants.
28

3:20-cv-00865-BAS-AHG

DECLARATION OF LISA J.
PLANK IN SUPPORT OF STATE
DEFENDANTS' OPPOSITION TO
PLAINTIFF'S APPLICATION FOR
TEMPORARY RESTRAINING
ORDER

Judge: Hon. Cynthia A. Bachant

DECLARATION OF LISA J. PLANK

I, Lisa J. Plank, declare:

1. I am a Deputy Attorney General at the Office of the California Attorney General. I serve as counsel to Defendants California Governor Gavin Newsom, Attorney General Xavier Becerra, and Public Health Officer Sonia Angell in the above-captioned matter.

2. I make this declaration of my own personal knowledge and experience and, if called as a witness, I could and would testify competently to the truth of the matters set forth herein.

3. Attached as **Exhibit 1** is a true and correct copy of the document entitled “California’s Roadmap to Modify the Stay-at-Home Order” as it appears on Governor Newsom’s website on May 14, 2020 at 10:00 a.m. This document should also be available at: <https://www.gov.ca.gov/wp-content/uploads/2020/04/California-Roadmap-to-Modify-the-Stay-at-Home-Order.pdf>

4. Attached as **Exhibit 2** is a true and correct copy of the document entitled “Resilience Roadmap” as it appears on Governor Newsom’s website on May 14, 2020 at 10:00 a.m. This document should also be available at: <https://covid19.ca.gov/roadmap/>

5. Attached as **Exhibit 3** is a true and correct copy of the document entitled Order of the State Public Health Officer, dated May 7, 2020. On May 14, 2020, this document is available at: <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%205-7-2020.pdf>

6. Judicial notice is also requested of the court decisions cited in Defendants’ Opposition brief. These court decisions are judicially noticeable under Federal Rule of Evidence 201(b) because “[f]ederal courts may ‘take notice of proceedings in other courts, both within and without the federal judicial system, if

1 those proceedings have a direct relation to the matters at issue.” *United States v. S.*
2 *Cal. Edison*, 300 F. Supp. 2d 964, 973 (E.D. Cal. 2004) (quoting *U.S. ex rel*
3 *Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir.
4 1992)).

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

7 Executed on May 14, 2020

/s/ Lisa J. Plank

8 LISA J. PLANK
9 Deputy Attorney General
10
11

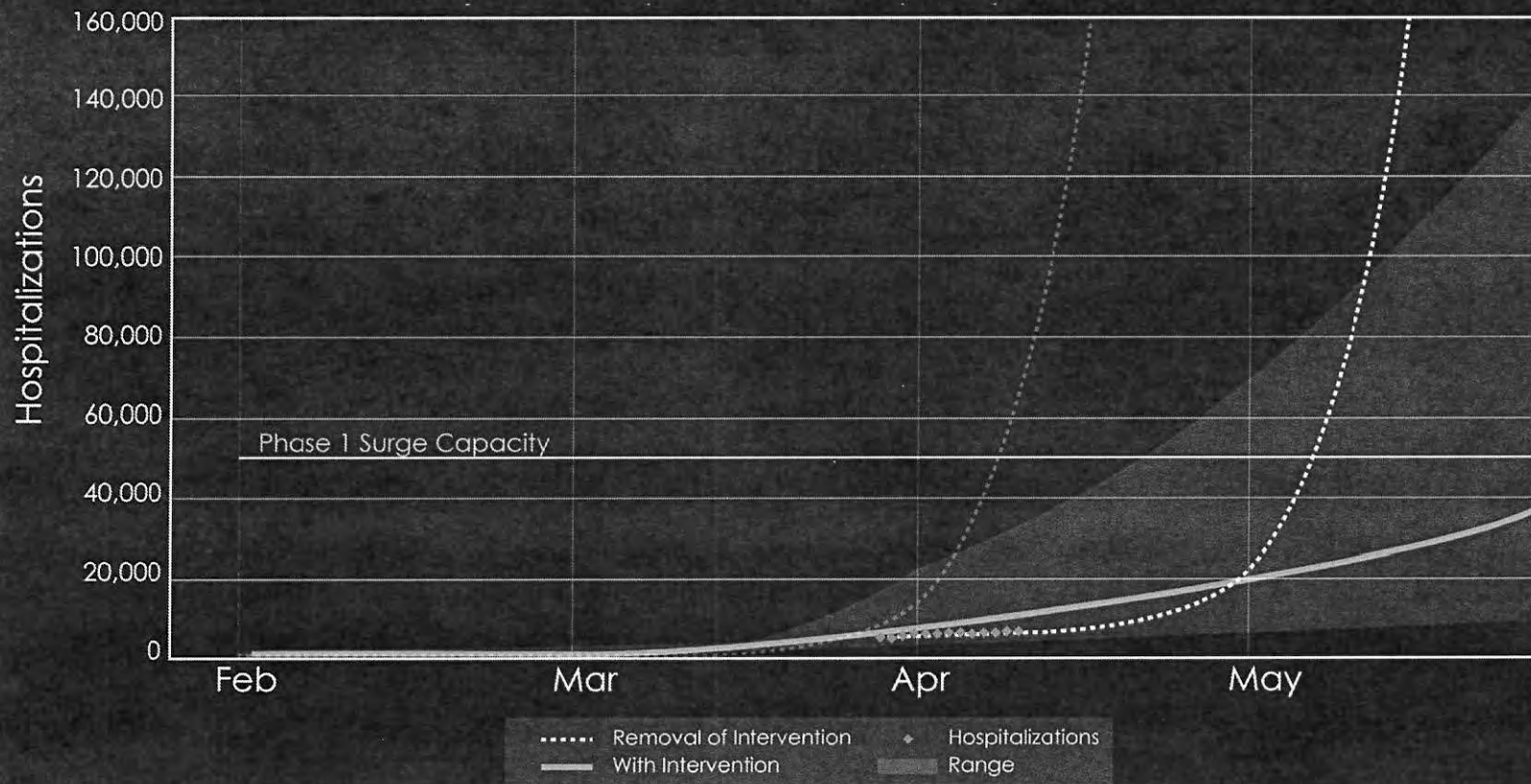
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EXHIBIT 1



California's Roadmap to Modify the Stay-at-Home Order

Efforts to flatten the curve



Until we build immunity, our actions will be aligned to achieve the following



Ensure our ability to care for the sick within our hospitals



Prevent infection in people who are at high risk for severe disease

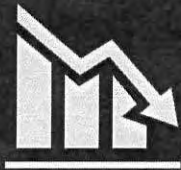


Build the capacity to protect the health and well-being of the public



Reduce social, emotional and economic disruptions

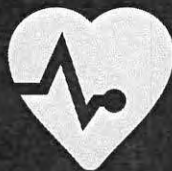
Current efforts are hard to sustain



Impact on economy



Impact on poverty



Impact on healthcare

California's 6 indicators for modifying the Stay-at-Home Order

1

The ability to monitor and protect our communities through testing, contact tracing, isolating, and supporting those who are positive or exposed

Key Questions

- ☐ How prepared is our state to test everyone who is symptomatic?
- ☐ Do we have the ability to identify contacts of those who are positive to reduce further transmission?

2

The ability to prevent infection in people who are at risk for more severe COVID-19

Key Questions

- ☐ Are older Californians and the medically vulnerable living in their own homes supported so they can continue appropriate physical distancing?
- ☐ Have we developed a plan to quickly identify and contain outbreaks in facilities housing older Californians, those living with disabilities, those currently incarcerated, and those with co-morbidities?

3

The ability of the hospital and health systems to handle surges

Key Questions:

- ☐ Do we have adequate bed capacity, staff and supplies such as ventilators and masks?
- ☐ Can our healthcare system adequately address COVID-19 and other critical healthcare needs?

4

The ability to develop therapeutics to meet the demand

Key Questions:

- ☐ Have we built a coalition of private, public, and academic partners to accelerate the development of therapeutics?
- ☐ Have we identified potential therapeutics that have shown promise?

5

The ability for businesses, schools, and child care facilities to support physical distancing

Key Questions

- ☐ Have we worked with businesses to support physical distancing practices and introduced guidelines to provide health checks when employees or the general public enter the premises?
- ☐ Do we have supplies and equipment to keep the workforce and customers safe?

6

The ability to determine when to reinstitute certain measures, such as the stay-at-home orders, if necessary

Key Questions

- ☐ Are we tracking the right data to provide us an early warning system?
- ☐ Do we have the ability to quickly communicate the need to reinstate these measures?

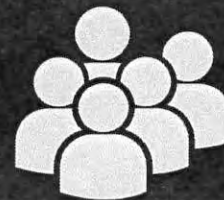
Things will look different...



Restaurants will
likely reopen with
fewer tables



Face coverings will
likely be common in
public



New opportunities
will likely arise to
support mitigation

CALIFORNIA
ALL

Your Actions
Save Lives

covid19.ca.gov

EXHIBIT 2



California Coronavirus (COVID-19) Response

Search

Select language

Resilience Roadmap

Last updated May 12, 2020 at 5:30 PM

Menu

Californians have been staying home and saving lives since the start of our statewide stay-at-home order issued on March 19, 2020. These efforts have allowed the state to move forward on our [roadmap](#) for modifying the statewide order.

We are now in early **Stage 2**, where retail (curbside and delivery only), related logistics and manufacturing, office workplaces, limited personal services, outdoor museums, and [essential businesses](#) can open with modifications. The state is [issuing guidance](#) to help these workplaces reopen safely.



STAGE 1:
Safety
and
prepared
ness



STAGE 2:
Lower-
risk
workplac



STAGE 3:
Higher-
risk
workplac



STAGE 4:
End of
Stay
Home

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Make workpla ces safe for our essentia l workers.	Graduall y reopen retail (curbsid e only), manufac turing & logistics . Later, relax retail restricti ons, adapt & reopen schools, child care, offices & limited hospitali ty, personal services.	Adapt and reopen movie theaters, religious services, & more personal & hospit ality services.	Reopen areas of highest risk: e.g. Concert s, conventi ons, sports arenas.
---	---	--	---

Stage 2 expansion will be phased in gradually. Some communities may move through Stage 2 faster if they are able to show greater progress. Counties that have met the readiness criteria and worked with the California Department of Public Health can open more workplaces as outlined on the [County Variance page](#).

Industry guidance to reduce the risk

California moved into Stage 2 of modifying the state's Stay-at-Home order on May 8, 2020. Our progress in achieving key [public health metrics](#) will allow a gradual re-opening of California's economy.

We recognize the impact of economic hardship. We must get our economy roaring once again and put paychecks in people's pockets. But the risk of COVID-19 infection is still real for all Californians and continues to be fatal.

The state is [issuing guidance](#) for businesses to follow, if they're permitted to open per County Public Health rules.

Customers and individuals

Customers and individuals are encouraged to stay home if they have a fever or other COVID-19 symptoms. Those with symptoms or elevated temperatures should not shop, get services in person, go to work, or gather with others. If you're not sure if this applies to you, check your symptoms with this [Symptom Screener](#).

Higher risk individuals (over 65 or with serious medical conditions) should continue to stay home until Stage 4. Minimize errands by getting groceries delivered or asking for help from friends or family.

Shop safely! Crowded settings increase your risk of exposure to COVID-19. Wear a face covering or cloth mask, stay 6 feet away from others, avoid touching your face, and wash your hands when you get home.

Department of Public Health

Governor's Newsroom

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EXHIBIT 3



ORDER OF THE STATE PUBLIC HEALTH
OFFICER
May 7, 2020

On March 19, 2020, I issued an order directing all individuals living in the State of California to stay at home except as needed to facilitate authorized, necessary activities or to maintain the continuity of operations of critical infrastructure sectors. (See <https://covid19.ca.gov/stay-home-except-for-essential-needs/>.) I then set out California's path forward from this "Stay-at-Home" Order in California's Pandemic Roadmap <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.4.20-Update-on-Californias-Pandemic-Roadmap.pdf>. That Roadmap identifies four stages of the pandemic: safety and preparation (Stage 1), reopening of lower-risk workplaces and other spaces (Stage 2), reopening of higher-risk workplaces and other spaces (Stage 3), and finally an easing of final restrictions leading to the end of the stay at home order (Stage 4).

Today, COVID-19 continues to present a significant risk to the health of individuals throughout California. There are confirmed cases of the virus in 54 of the 58 counties across the State, and each day over the past two weeks over one thousand new cases have been confirmed in California and dozens of people have lost their lives due to the virus. However, owing to Californians' mitigation efforts, statewide data currently demonstrates stable rates of new infections and hospitalizations, the maintenance of surge capacity, and an improved ability to test, contact trace, isolate, and provide support to individuals exposed to COVID-19. As State Public Health Officer, I have determined that the statewide data now supports the gradual movement of the entire state from Stage 1 to Stage 2 of California's Pandemic Resilience Roadmap.

Gradual movement into Stage 2 is intended to reintroduce activities and sectors in a phased manner and with necessary modifications, in order to protect public health and result in a lower risk for COVID-19 transmission and outbreak in a community. Such deliberate phasing is critical to allowing the State to protect the public, and to mitigate and manage the impact of the re-openings, such that our health care delivery system has the capacity to respond to potential increased demands. Differences across the state in the prevalence of COVID-19, as well as testing rates, containment capability, and hospital capacity, have resulted in differences among local health jurisdictions' ability to safely progress through the various stages. The low and stable data reported by some local health officers in their local health jurisdictions, combined with sufficient COVID-19 preparedness, justifies allowance for some variation in the speed with which some local health jurisdictions will be able to move through the phases of Stage 2.

NOW, THEREFORE, I as State Public Health Officer and Director of the California Department of Public Health, order:

1. All local health jurisdictions in the state may begin gradual movement into Stage 2, as set forth in this Order, effective on May 8, 2020; however, a local health jurisdiction may implement or continue more restrictive public health measures if the jurisdiction's Local Health Officer believes conditions in that jurisdiction warrant it.
2. I will progressively designate sectors, businesses, establishments, or activities that may reopen with certain modifications, based on public health and safety needs, and I will add additional sectors, businesses, establishments, or activities at a pace designed to protect public health and safety. Those sectors, businesses, establishments, or activities that are permitted to open will be designated, along with necessary modifications, at <https://covid19.ca.gov/roadmap/>, as I announce them.
3. To the extent that such sectors are re-opened, Californians may leave their homes to work at, patronize, or otherwise engage with those businesses, establishments, or activities and must, when they do so, continue at all times to practice physical distancing, minimize their time outside of the home, and wash their hands frequently. To prevent further spread of COVID-19 to and within other jurisdictions within the State, Californians should not travel significant distances and should stay close to home. My March 19, 2020, Order otherwise remains in full effect.

4. The California Department of Public Health has set forth criteria to help local health officers assess the capacity of their local health jurisdictions to move through Stage 2. Local health jurisdictions that meet the criteria and follow the process set forth <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-19-County-Variance-Attestation-Memo.aspx> will be permitted to move through Stage 2 more quickly than the State as a whole and reopen additional low-risk businesses before the rest of the state, if they choose to do so. A list of the sectors, businesses, establishments, or activities, and any necessary modifications, that such a qualifying jurisdiction may choose to reopen will be available at <https://covid19.ca.gov/roadmap-counties/>, and may be expanded if I deem it to be in the interest of public health and safety.

Pursuant to the authority under EO N-60-20, and Health and Safety Code sections 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.

This Order is being issued to protect the public health of Californians as we move as expeditiously to minimize risk to the extent possible throughout the Stages of the Pandemic Resilience Roadmap.



Sonia Y Angell, MD, MPH
State Public Health Officer & Director
California Department of Public Health

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al.

8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
11
12

13 SOUTH BAY UNITED
14 PENTECOSTAL CHURCH, a
California non-profit corporation;
15 BISHOP ARTHUR HODGES III, an
individual,

16 Plaintiffs,

17 v.
18

19 GAVIN NEWSOM in his official
capacity as Governor of the State of
20 California; XAVIER BECERRA, in his
official capacity as Attorney General of
21 California; SONIA ANGELL, in her
official capacity as Director of the
22 California Department of Public
Health.,

23 Defendants.
24
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27
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3:20-cv-00865-BAS-AHG

**DECLARATION OF JAMES
WATT, MD, MPH, IN SUPPORT
OF STATE DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

Judge: Hon. Cynthia A. Bashant

1 I, JAMES WATT, MD, MPH, declare as follows:

2 1. I am over the age of 18, and a California resident. I know the following
3 facts of my own personal knowledge, and if called upon as a witness, I could and
4 would testify competently thereto.

5 2. I am employed as the Acting Deputy Director of the Center for Infectious
6 Diseases and Interim State Epidemiologist at the California Department of Public
7 Health (CDPH).

8 3. As the Acting Deputy Director of the Center for Infectious Diseases and
9 Interim State Epidemiologist at CDPH, I coordinate the CDPH's epidemiologic
10 response to disease outbreaks and emerging health threats.

11 4. Prior to my role as Acting Deputy Director of the Center for Infectious
12 Diseases, I was the Chief of the Division of Communicable Disease Control from
13 2010 until 2019, and Deputy State Epidemiologist from 2012 until 2019 at CDPH.

14 5. My background is in epidemiology. I completed my residency in pediatrics
15 in 1993 and obtained a Master of Public Health degree in Maternal and Child
16 Health in 1995. In 1996, I joined the California Department of Health Services
17 (CDHS) as a Public Health Medical Officer II. In 1999, I joined the federal Centers
18 for Disease Control and Prevention (CDC) as an Epidemic Intelligence Service
19 Officer in the Respiratory Diseases Branch. In 2001, I became an Assistant
20 Scientist in the School of Public Health at Johns Hopkins University. In 2006, I
21 joined the CDPH as a Public Health Medical Officer III (Epidemiology) and
22 became Chief of the Tuberculosis Control Branch in 2008 and Chief of the Division
23 of Communicable Disease Control in 2010. In 2012, I became Deputy State
24 Epidemiologist at the CDPH. In addition to my current role as Acting Deputy
25 Director of the Center for Infectious Diseases and Interim State Epidemiologist, I
26 am an Associate at the Johns Hopkins University School of Public Health and
27 Clinical Professor at the University of California, San Francisco, School of
28

1 Medicine. I have also served on a variety of advisory panels at, among others, the
2 CDHS, CDC, and World Health Organization.

3 6. CDPH is one of sixteen departments and offices within the California
4 Health and Human Services Agency and its fundamental responsibilities include
5 infectious disease control and prevention, food safety, environmental health,
6 laboratory services, patient safety, emergency preparedness, chronic disease
7 prevention and health promotion, family health, health equity and vital records and
8 statistics. Our mission is to advance the health and well-being of California's
9 diverse people and communities.

10 7. The Center for Infectious Diseases protects the people in California from
11 the threat of preventable infectious diseases and assists those living with an
12 infectious disease in securing prompt and appropriate access to healthcare,
13 medications and associated support services.

14 8. I have been intimately involved with the statewide COVID-19 response
15 since January 2020. My role is to oversee analysis of statewide data on COVID-19
16 cases and trends in disease activity. Since January, I have been working full time
17 for approximately 60-70 hours per week to address the pandemic. I am familiar
18 with the guidance issued by the CDPH and the State of California Executive Order
19 N-33-20, which is attached as Exhibit A.

20 9. The virus that causes COVID-19 is thought to spread mainly from person to
21 person, mainly through respiratory droplets produced when an infected person
22 coughs or sneezes. These droplets can land in the mouths or noses of people who
23 are nearby or possibly be inhaled into the lungs. The role of other transmission
24 pathways such as through aerosols that may travel long distances or through
25 contaminated surfaces has been suggested and is still being researched.

26 10. One of the aspects of COVID-19 that makes it difficult to prevent spread
27 is that it can be transmitted by a person who is asymptomatic.
28

1 11. COVID-19 can spread quickly. A person with COVID-19, on average,
2 infects approximately two people. Unchecked, COVID-19 spreads exponentially
3 and over 10 transmission cycles, one person could be responsible for 1,024 other
4 people contracting the virus. Physical distancing interventions have been
5 successful in reducing the number of persons infected by each case, and changing
6 the exponential pattern of case increases. That is why these interventions are so
7 important for controlling COVID-19 in California. Physical distancing measures
8 include staying home except for essential activities and staying at least six feet
9 away from others when outside the home.

10 12. Spread is more likely when people are in close contact with one another
11 (within about six feet). COVID-19 is currently spreading in the community
12 (communities spread) in many affected geographic areas. An area is experiencing
13 community spread when residents are becoming infected with the virus in
14 community settings and it is not possible to identify the source of exposure in some
15 cases.

16 13. In light of evidence of widespread COVID-19 transmission in
17 communities across the country, CDC recommends that people wear a cloth face
18 covering to cover their nose and mouth in the community setting. This is an
19 additional public health measure people should take to reduce the spread of
20 COVID-19 in addition to, not instead of, physical distancing, frequent hand
21 cleaning, and other everyday preventive actions. A cloth face covering is not
22 intended to protect the wearer but may prevent the spread of virus from the wearer
23 to others. This would be especially important in the event that someone is infected
24 but is not aware of their illness and is not self-isolating. A cloth face covering
25 should be worn whenever people must go into public settings for essential activities
26 (grocery shopping, for example).

27 14. A main purpose of the state's current health and safety rules and related
28 orders is to protect vulnerable people from infection with the coronavirus that

1 causes COVID-19 (SARS-CoV-2) and to reduce the spread of that virus in the
2 community. By reducing community spread, we can protect persons at increased
3 risk of severe disease and prevent critical infrastructure, particularly health care
4 facilities, from being overwhelmed.

5 15. Whenever a large group of people interact, there is an increased risk that
6 COVID-19 may be transmitted. There have been multiple reports of sizable to large
7 gatherings such as religious services, choir practices, funerals, and parties resulting
8 in significant spread of COVID-19.

9 16. Based on my experience with infectious disease prevention, measures that
10 depend on individual behavior such as mask wearing are difficult to sustain and less
11 effective than systematic measures such as canceling gatherings. I believe that in
12 gatherings of large numbers of people it may be very hard to maintain physical
13 distancing. As noted earlier, the virus can be spread by people who are not showing
14 symptoms. Thus, people who gather in groups or near others (other than those with
15 whom they live) will not be able to know whether other individuals who are in
16 close proximity are carrying the virus. By gathering in large groups, and in close
17 proximity to others, individuals put themselves and others at risk. The risk appears
18 to be increased where groups of individuals are in close proximity for extended
19 periods.

20 17. While keeping six feet of separation and wearing masks can reduce the
21 risk of disease transmission, any gathering poses some risk. This is why the CDC
22 recommends that large gatherings be cancelled.

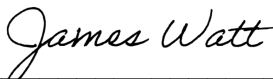
23 18. Individuals attending large gatherings, including but not limited to the
24 types of events where there have been prior instances of COVID-19 spreading,
25 would be at increased risk of disease and could be expected to increase the spread
26 of COVID-19 in their communities and any other communities they visit. When an
27 individual is exposed to and contracts the novel coronavirus at a large gathering,
28 there is a high likelihood that he or she will spread COVID-19 to other individuals

1 in his/her community, and in some cases perpetuate the infection rates across
2 county lines. This spread could fan out into different parts of the state, jeopardizing
3 the hard work to contain COVID-19 that is going on in many communities and
4 placing a further strain on hospitals and other resources across the state.

5 I declare under the penalty of perjury under the laws of the United States that
6 the foregoing is true and correct to my personal knowledge.

7 Executed on May 12, 2020, in Richmond, California.

8
9 /s/ James Watt, M.D. (original signature retained by Attorney Lisa J. Plank)

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11 _____
12 JAMES WATT, MD, MPH, Declarant.
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