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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No.: 3:20-cv-865-BAS

**Notice of Motion and Renewed
 Motion for a Temporary
 Restraining Order / Preliminary
 Injunction**

Judge: Cynthia Bashant
 Dept: Courtroom: 4B
 Date: TBD
 Time: No Oral Argument Unless
 Requested by the Court

ORAL ARGUMENT REQUESTED

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

PLEASE TAKE NOTICE that Plaintiffs South Bay United Pentecostal Church and Bishop Arthur Hodges III, by and through counsel, will and hereby do renew their motion for a temporary restraining order / preliminary injunction pursuant to Fed. R. Civ. P. 65(b), seeking an order enjoining Defendants 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, and William D. Gore, in his official capacity as Sheriff of the County of San Diego (“Defendants”), as follows:

Defendants, their agents, employees, and successors in office, are restrained and enjoined from enforcing, trying to enforce, threatening to enforce, or otherwise requiring compliance with:

1. any industry-specific standards for Places of Worship that do not apply to other industries;
2. any government order treating Places of Worship dissimilarly from shopping (whether deemed by California to be essential or non-essential shopping), restaurants, factories, and protests; and
3. any prohibition on indoor worship services, including singing or chanting during such worship services.

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

Good cause exists to issue the requested Order to preserve Plaintiffs’ rights under the Constitution of the United States and the Constitution of the State of

1 California, and to avoid irreparable harm to those rights. This Motion is supported by
 2 the accompanying Memorandum of Points and Authorities; by the declarations of
 3 Plaintiff Bishop Arthur Hodges III, Attorney Jeffrey M. Trissell, Esq., and experts
 4 Dr. Charles Cicchetti, Dr. James Lyons-Weiler, Sean G. Kaufmann, Dr. George
 5 Delgado, and Dr. Jayanta Bhattacharya, and all exhibits attached thereto; by the
 6 Verified Second Amended Complaint (Dkt. 47); by the prior briefing (Dkt. 12, 29, 36,
 7 45); by the prior declarations of Bishop Hodges (Dkt. 12-2, 45-2); by the prior
 8 declaration of Dr. Delgado (Dkt. 12-3); by the prior attorney declarations with
 9 exhibits (Dkt. 12-4, 45-3); by the prior requests for judicial notice (Dkt. 13, 21, 45-4);
 10 and by such further argument and evidence that may be adduced at any hearing on
 11 this matter or of which the Court may take judicial notice.

12 Plaintiffs request that the Court waive any bond requirement, because
 13 enjoining Defendants from unconstitutionally prohibiting religious practices will not
 14 financially affect Defendants.

15
 16
 17
 18 Dated: August 10, 2020

LiMANDRI & JONNA LLP

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TABLE OF CONTENTS

1		
2		
3	INTRODUCTION	1
4	PROCEDURAL HISTORY	1
5	A. The Stabilization of the Pandemic in California	1
6	B. The Present Ban on Pentecostal Worship	3
7	C. Plaintiffs Bishop Hodges and South Bay Pentecostal Church	5
8	LEGAL STANDARD	7
9	ARGUMENT	8
10	1. South Bay Pentecostal Church Will Likely Succeed on the Merits.....	8
11	1.1. California’s Worship Restrictions Violate Plaintiffs’	
12	Free Exercise Rights.	8
13	1.1.1. California’s worship restrictions are not neutral.....	8
14	1.1.2. California’s worship and protest restrictions	
15	are not generally applicable because they have	
16	been enforced discriminatorily	9
17	1.2. The Worship Restrictions Fail Strict Scrutiny and	
18	<i>Jacobson</i> Scrutiny Because They Are Not Narrowly	
19	Tailored.	10
20	1.2.1. The worship restrictions violate the California	
21	Constitution.....	10
22	1.2.2. The worship restrictions violate the U.S.	
23	Constitution.....	17
24	2. The Other Injunction Factors Favor South Bay.	24
25	CONCLUSION.....	25
26		
27		
28		

TABLE OF AUTHORITIES

Cases:

<i>A&M Records, Inc. v. Napster, Inc.</i>	7
284 F.3d 1091 (9th Cir. 2002)	
<i>Antietam Battlefield KOA v. Hogan</i>	14
No. 1:20-cv-01130, 2020 WL 2556496 (D. Md. May 20, 2020)	
<i>Ashcroft v. ACLU</i>	17
542 U.S. 656 (2004)	
<i>Berean Baptist Church v. Cooper</i> , ...	16, 24
No. 4:20-CV-81-D, 2020 WL 2514313 (E.D.N.C. May 16, 2020)	
<i>Blackhawk v. Pennsylvania</i> , ...	9, 12
381 F.3d 202 (3d Cir. 2004)	
<i>Brown v. Smith</i>	10
24 Cal. App. 5th 1135 (2018)	
<i>Bruni v. City of Pittsburgh</i>	16
824 F.3d 353 (3d Cir. 2016)	
<i>Calvary Chapel of Bangor v. Mills</i>	14
No. 1:20-cv-00156, 2020 WL 2310913 (D. Me. May 9, 2020)	
<i>Calvary Chapel Dayton Valley v. Sisolak</i>	12, 13, 15, 18, 20, 21
--- S. Ct. ---, 2020 WL 4251360 (2020)	
<i>Catholic Charities of Sacramento, Inc. v. Superior Court</i>	10
32 Cal. 4th 527 (2004)	
<i>Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah</i> , ...	8, 12
508 U.S. 520 (1993)	
<i>Coll. Republicans at San Francisco State Univ. v. Reed</i> , ...	26
523 F. Supp. 2d 1005 (N.D. Cal. 2007)	

TABLE OF AUTHORITIES—Continued

Cases:

<i>Compassion in Dying v. State of Wash.</i>	18
79 F.3d 790 (9th Cir. 1996)	
<i>Cross Culture Christian Ctr. v. Newsom</i>	14
No. 2:20-CV-00832-JAM-CKD, 2020 WL 2121111 (E.D. Cal. May 5, 2020)	
<i>DiMartile v. Cuomo</i>	19
No. 1:20-CV-0859 (GTS/CFH), 2020 WL 4558711 (N.D.N.Y. Aug. 7, 2020)	
<i>Doe v. Harris</i>	26
772 F.3d 563 (9th Cir. 2014)	
<i>Elrod v. Burns</i>	25
427 U.S. 347 (1976)	
<i>Engle v. Vitale</i>	24
370 U.S. 421 (1962)	
<i>Espinoza v. Montana Dep't of Revenue</i>	8, 9, 10, 12
140 S. Ct. 2246 (2020)	
<i>Everson v. Bd. of Ed. of Ewing Twp.</i>	23
330 U.S. 1 (1947)	
<i>Ex parte Arata</i>	10
52 Cal. App. 380 (1921)	
<i>Ex parte Martin</i>	10
83 Cal. App. 2d 164 (1948)	
<i>Ex parte Milligan</i>	18
71 U.S. 2 (1866)	
<i>First Baptist Church v. Kelly</i>	19, 20
No. 20-1102-JWB, 2020 WL 1910021 (D. Kan. Apr. 18, 2020)	
<i>Fisher v. Univ. of Texas at Austin</i>	8
570 U.S. 297 (2013)	
<i>Flores v. Huppenthal</i>	7
789 F.3d 994 (9th Cir. 2015)	

TABLE OF AUTHORITIES—Continued

Cases:

<i>Gon v. First State Ins. Co.</i>	7
871 F.2d 863 (9th Cir. 1989)	
<i>Hurley v. Irish American GLIB</i>	7
515 U.S. 557 (1995)	
<i>In re Wong Kim Ark</i>	20
71 F. 382 (N.D. Cal. 1896)	
<i>Int’l Refugee Assistance Project v. Trump</i>	24
857 F.3d 554 (4th Cir. 2017)	
<i>Jacobson v. Commonwealth of Massachusetts,</i>	1, 9, 17
197 U.S. 11 (1905)	
<i>Jew Ho v. Williamson</i>	19, 20
103 F. 10 (C.C. Cal. 1900)	
<i>Joelner v. Vill. of Washington Park</i>	25
378 F.3d 613 (7th Cir. 2004)	
<i>League of Indep. Fitness Facilities & Trainers, Inc. v. Whitmer</i>	12
---Fed. Appx. ---, 2020 WL 3468281 (6th Cir. 2020)	
<i>Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania</i>	24
140 S. Ct. 2367 (2020)	
<i>Maryville Baptist Church v. Beshear</i>	14
No. 3:20-cv-278, 2020 WL 1909616 (W.D. Ky. Apr. 18, 2020)	
<i>McCreary Cty., Ky. v. Am. Civil Liberties Union of Ky.</i>	22
545 U.S. 844 (2005)	
<i>McCullen v. Coakley</i>	15, 16
134 S. Ct. 2518 (2014)	

TABLE OF AUTHORITIES—Continued

Cases:

<i>Old Dominion Branch No. 496, National Ass’n of Letter Carriers v. Austin</i>	7
418 U.S. 264 (1974)	
<i>Our Lady of Guadalupe Sch. v. Morrissey-Berru</i>	23, 24
140 S. Ct. 2049 (2020)	
<i>Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church</i>	23, 24
393 U.S. 440 (1969)	
<i>Reed v. Town of Gilbert, Ariz.</i>	12
576 U.S. 155, 172 (2015)	
<i>Roberts v. Neace</i>	9, 25
958 F. 3d 409 (6th Cir. 2020)	
<i>S. Bay United Pentecostal Church v. Newsom</i>	13, 18
140 S. Ct. 1613 (2020)	
<i>S. Bay United Pentecostal Church v. Newsom</i> , ...	18
959 F.3d 938 (9th Cir. 2020)	
<i>Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Milivojevic</i>	24
426 U.S. 696 (1976)	
<i>Soos v. Cuomo</i>	12, 13, 20
No. 1:20-cv-651 (GLS/DJS), 2020 WL 3488742 (N.D.N.Y. June 26, 2020)	
<i>Spell v. Edwards</i>	21, 23
962 F.3d 175 (5th Cir. 2020)	
<i>State v. Trump</i>	7
871 F.3d 646 (9th Cir. 2017)	
<i>Stormans, Inc. v. Wiesman</i>	9
794 F.3d 1064 (9th Cir. 2015)	

TABLE OF AUTHORITIES—Continued

Cases:

<i>Tabernacle Baptist Church, Inc. of Nicholasville v. Beshear</i>	16
--- F. Supp. 3d ---, 2020 WL 2305307 (E.D. Ky. 2020)	
<i>Tenaflly Eruv Ass’n, Inc. v. Borough of Tenaflly</i>	9
309 F.3d 144 (3d Cir. 2002)	
<i>Trump v. Hawaii</i>	20
138 S. Ct. 2392 (2018)	
<i>U. S. of Am. & Canada v. Milivojeovich</i>	24
426 U.S. 696 (1976)	
<i>U.S. ex rel. F.T.C. v. Bus. Recovery Servs. LLC</i>	7
488 F. App’x 188 (9th Cir. 2012)	
<i>United States v. Playboy Entm’t Grp., Inc.</i>	15
529 U.S. 803 (2000)	

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Cal. Const. Art. 1, § 1	10
District Attorney San Luis Obispo County, <i>SLO County DA Declared a Sanctuary County for Singing in Houses of Worship During COVID</i> , YOUTUBE (Jul. 31, 2020), https://youtu.be/KWjn233gMNM	5
Roxana Kopetman, <i>OC Board of Education to sue Newsom as it seeks the full reopening of schools</i> , THE ORANGE COUNTY REGISTER (Jul. 29, 2020), https://bit.ly/3fytGPr	8

INTRODUCTION

The situation has changed dramatically since this Court ruled in early May on Plaintiffs South Bay United Pentecostal Church's and Bishop Arthur Hodges III's application for a temporary restraining order and OSC re: preliminary injunction. As Justice Kavanaugh recently made clear, defendants in cases such as these have had more than four months to get their act together, and to be able to convincingly meet their burden of establishing the constitutionality of their actions without recourse to *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905). However, for the reasons discussed below, neither California nor San Diego can meet their burden under either regular Free Exercise jurisprudence, or *Jacobson* jurisprudence, and so this Court should grant Plaintiffs' request for an injunction.

PROCEDURAL HISTORY

A. The Stabilization of the Pandemic in California

According to Centers for Disease Control and Prevention (CDC), between February 1 and July 15, 2020, there were 1,387,325 deaths in America, with 121,374 deaths occurring as a result of COVID-19—or 8.75%. (Dkt. 47, Verified Second Amended Complaint [VSAC], ¶ 105, Ex. 5-1.) The pandemic hit its peak in April, but since then has dropped off dramatically. (VASC, ¶ 105, Ex. 5-2.)

Looking to California specifically, it is doing quite well. In comparison to other states, as of July 15, 2020, California's death rate placed it as only the 30th highest rate among the 50 states. (VSAC, ¶ 107 & n.44.) Its statistics are only improving. (*See Cicchetti Decl.*, ¶¶ 15–20.) California's death rate has largely stabilized, and its hospitalization rates are in free-fall. (VSAC ¶ 108, Ex. 5-3.)

As of July 14, 2020, California had only reported a total of 7,227 deaths from COVID-19. (VSAC, ¶ 106, Ex. 5-3.) With a population of 39,512,223 (Dkt. 13-1, RJN, at 4), this means that as of mid-July, the probability of dying of COVID-19 in California was 18.3 out of 100,000. This, of course, only includes data from the start of the pandemic in mid-March to mid-July. But even if extrapolated out, the data is

not overwhelming. Averaging the deaths for the past three months (May, June, and July) shows an average of 2,384 monthly deaths. (Trissell Decl., Ex. Q.) If this rate continues—which seems unlikely as the death rates are falling and a vaccine is forthcoming—then over a twelve-month period, there would be 28,604 coronavirus related deaths in California, which would be a death rate of 72.4 out of 100,000. In comparison, the ten leading causes of death in California have the following rates out of 100,000, according to the CDC: (1) Heart Disease: 139.7; (2) Cancer: 135; (3) Alzheimer's: 37.1; (4) Stroke: 37; (5) Accidents: 33.7; (6) Chronic Lower Respiratory Diseases: 30.9; (7) Diabetes: 21.4; (8) Influenza/ Pneumonia: 15.6; (9) Drug Overdose: 12.8; (10) Hypertension: 12.3. (VSAC, ¶ 106 & n.43.)

Looking to San Diego County specifically, as of July 13, 2020, it had a total of 436 coronavirus related deaths. (VSAC, ¶ 109, Ex. 5-4.) With a population of 3,338,330 (Dkt. 21-1, RJN, at 16), this means that the probability of dying of COVID-19 in San Diego County was 13 out of 100,000. Again, this only includes data from the start of the pandemic in mid-March to mid-July. But if the data from San Diego's reporting (VSAC, ¶ 110, Ex. 5-4) is extrapolated out—multiplied by three—then there would be a total of 1,308 deaths, or a rate of only 39 out of 100,000. And of course, this relies on the death rates not decreasing at all, an unlikely proposition. In comparison, below are the leading causes of death in San Diego: (1) Malignant Neoplasms: 158.3; (2) Diseases of the Heart: 140.6; (3) Alzheimer's Disease: 33.9; (4) Chronic Lower Respiratory Diseases: 32.7; (5) Cerebrovascular Diseases: 30.3; (6) Accidents: 30.5; (7) Diabetes: 20.4; (8) Suicide: 12.8; (9) Chronic Liver Disease: 11.0; (10) Hypertension: 9.8. (Dkt. 21-1, RJN, at 20.)

Finally, looking to South Bay Pentecostal Church itself, despite regularly testing its staff and volunteers, South Bay has yet to receive a positive test for the coronavirus. The Church has also encouraged its congregants to notify it if they test positive for the coronavirus, and is unaware of any congregant testing positive as a result of its worship services. (VSAC, ¶¶ 83, 179.) And as one of Plaintiffs' experts

1 makes clear, the Court should look to the Church itself. (Kaufmann Decl., ¶ 14.)

2 Thus, in both California generally, and San Diego specifically—if the official
3 numbers can be trusted (*but see* Lyons-Weiler Decl., ¶¶ 8–20)—the coronavirus is
4 approximately half as deadly as either heart disease or cancer. In San Diego
5 specifically, even when extrapolated out for the whole year, the death rate stays in the
6 30s, along with Alzheimer’s disease, respiratory disease, strokes and physical
7 accidents. And at South Bay Pentecostal Church, the rate of coronavirus infections,
8 hospitalizations, and deaths resulting from its worship services is an absolute 0.

9 **B. The Present Ban on Pentecostal Worship**

10 On March 4 and 13, 2020, both President Donald J. Trump and Governor
11 Gavin Newsom proclaimed a State of Emergency as a result of the threat of the
12 emergence of a novel coronavirus, COVID-19. (VSAC, ¶ 18.) Then, in response to
13 these emergency declarations, on March 17, 2020, the County of San Diego issued its
14 “Order of the Health Officer and Emergency Regulations,” which prohibited
15 gatherings of more than 50 people. (VSAC, ¶ 27, Ex. 2-1.)¹ Two days later, on March
16 19, 2020, California Governor Newsom issued his executive orders banning all
17 worship (VSAC, ¶¶ 28–29, Exs. 1-1, 1-2), which were re-promulgated by San Diego.
18 (VSAC, ¶¶ 30, Exs. 2-2, 2-3.) This was Stage 1 of Governor Newsom’s 4-Stage
19 “Resilience Roadmap” pandemic plan.

20 After seven weeks of Stage 1, however, Californians had enough—and on May
21 8, 2020, Governor Newsom moved California to Stage 2a of his Resilience Roadmap—
22 opening retail for curbside pickup and manufacturing/warehousing. (VSAC, ¶¶ 31–39,
23 Exs. 1-3, 1-4, 2-4, 2-5; Trissell Decl., Ex. R.) On Wednesday, May 20 (ahead of
24 Memorial Day weekend), California let San Diego move ahead to Stage 2b, including
25 permitting restaurants and malls to reopen. (VSAC, ¶ 42; Trissell Decl., Ex. S.)

26 On Memorial Day—Monday, May 25, 2020—Governor Newsom announced

27
28 ¹ Unless noted, all quotations are “cleaned up” by having ellipses, brackets, citations, emphasis,
and quotation marks omitted, and all emphasis is added.

1 changes to his Resilience Roadmap with respect to constitutionally protected
 2 protesting and worship activities. With respect to both, Governor Newsom permitted
 3 individual counties to apply for 21-day licenses during which worship and protest
 4 would be permitted so long as the gathering did not exceed 25% of “building
 5 capacity” or “the relevant area’s maximum occupancy,” and with a maximum cap of
 6 no more than 100 persons. (VSAC, ¶ 44.) However, California remained in “Stage
 7 2.” Alongside this change, Governor Newsom published industry guidance for
 8 “Places of Worship” (VSAC, Ex. 1-5), and updated the Q&A page on the
 9 coronavirus website concerning political protests. (VSAC, Ex. 1-6.)

10 The next day, May 26, 2020, Governor Newsom also announced that hair
 11 salons and barbershops could reopen (moving them from “Stage 3” to “Stage 2”).
 12 (VSAC, ¶ 45; Trissell Decl., Ex. T.) On May 27, 2020, San Diego received its first
 13 21-day worship/protest license, and issued a series of orders granting permission to
 14 worship. (VSAC, ¶ 45, Ex. 2-6.) On June 5, 2020, California announced that the
 15 remaining Stage 2 industries would be allowed to open within a week, such as
 16 “schools and day camps.” Some Stage 3 industries were also allowed to open, such
 17 as “bars [and] gyms.” (Dkt. 45-3, LiMandri Decl., Ex. 49.) Ultimately, on June 12,
 18 2020, California let gyms, bars, museums, and schools reopen in San Diego—
 19 essentially all Stage 3 industries except nail salons, tattoo parlors, and movie theaters.
 20 (VSAC, ¶ 47; LiMandri Decl., Ex. 50; Trissell Decl., Ex. U.)

21 That same day, June 12, Governor Newsom changed, without public
 22 announcement, the industry guidance for “Places of Worship” and the Q&A page
 23 concerning protesting. On that date, Governor Newsom lifted restrictions on them
 24 when they occurred outdoors—but continued the 100-person cap or 25% occupancy
 25 limit for indoor worship or protesting. (VSAC, ¶ 48, Exs. 1-7, 1-8.) Beginning on June
 26 16, San Diego issued orders adopting this change. (VSAC, ¶ 48, Ex. 2-7.)

27 On July 6, 2020, Governor Newsom changed the industry guidance for “Places
 28 of Worship” and the Q&A page concerning political protesting. On that date,

Governor Newsom banned “indoor singing and chanting activities.” (VSAC, ¶ 49, Exs. 1-9, 1-10.) This led law enforcement in some counties to announce they would not enforce that order.² Then, on July 13, 2020, Governor Newsom banned 30 counties from conducting many indoor activities, including worship and protest. (VSAC, ¶ 49, Exs. 1-11, 1-12, 1-13.) This included small gatherings of worshippers in homes. (Trissell Decl., Ex. V.) San Diego was one of those counties (VSAC, Ex. 1-11), and it modified its orders to make clear that the ban on indoor activities applied in the County. (VSAC, Ex. 2-8; Trissell Decl., Ex. W.)³ This led to a group of senators to call for President Trump to get involved again, and speak out against this newest worship ban. (Trissell Decl., Ex. X.) Finally, on July 17, 2020, California ordered that the same 30 counties may not reopen their schools. (Trissell Decl., Ex. Y; *see also* Exs. Z, AA.)

C. Plaintiffs Bishop Hodges and South Bay Pentecostal Church

During the week following Monday, May 25, 2020, California and San Diego lifted the first ban on all worship services. As a result, the following Sunday, May 31 (Pentecost Sunday), South Bay Pentecostal Church held worship services with no more than 100 persons in attendance. (VSAC, ¶ 71.) To attend a Sunday worship service, the Church required its congregants to reserve their place online. Every Sunday, the Church had to turn numerous people away because it met the 100-person cap for each of its services. This is despite the fact that the sanctuary could safely (with social distancing) accommodate well over 100 persons. (VSAC, ¶ 72.)

Each worship service required the participation of at least 30 volunteers/staff to be held. Such individuals served as parking lot attendants, members of the COVID-safe intake team, security, cleaners between services, ushers, greeters,

² District Attorney San Luis Obispo County, *SLO County DA Declared a Sanctuary County for Singing in Houses of Worship During COVID*, YOUTUBE (Jul. 31, 2020), <https://youtu.be/KWjn233gMNM>.

³ Also closed were indoor and outdoor activities at bars and breweries, and indoor activities at restaurants, wineries and tasting rooms, movie theaters, family entertainment (e.g., bowling alleys, miniature golf, batting cages, arcades), zoos and museums, cardrooms, fitness centers, protests, non-essential offices, personal care services (e.g., nail salons, body waxing, tattoo parlors), hair salons and barbershops, and malls. (VSAC, Ex. 2-8.) Not closed were indoor activities at other places, such as essential offices, manufacturing, and either essential or nonessential retail.

1 musicians, singers, and video/audio projection operators. Many of the Church's
 2 volunteers and staff are elderly or high-risk, and so the Church asked them to not
 3 participate. This, however, limited its ability to hold multiple services. The Church
 4 had been holding, and could not feasibly hold more than, three worship services each
 5 Sunday. (VSAC, ¶ 73.)

6 The Church has a complex theology, based on Sacred Scripture, relating to the
 7 requirement that "all" of its congregants gather together. California's regulations
 8 continued to burden those religious beliefs, by preventing "all" from gathering.
 9 (VSAC, ¶¶ 57–62, citing Hebrews 10:25; Acts 1:8, 2:1, 2:42, 2:46–27.) These religious
 10 requirements disfavor multiple worship services, by preferring that the entire
 11 congregation meet at once. For example, it would be like holding a family reunion in
 12 three sessions, with one-third of the family gathering at each session, but not being
 13 allowed to meet the rest of the family gathering in the other sessions. (VSAC, ¶ 80.)
 14 The Church's theology also encourages congregants to attend multiple worship
 15 services—which many normally do. Nevertheless, because the interplay of California's
 16 regulations and the nature of its worship services limited the Church to serving a
 17 maximum of 300 people each Sunday (at three worship services), it had to limit
 18 congregants' ability to attend more than one service per Sunday. (VSAC, ¶ 81.)

19 On June 12, 2020, after South Bay Pentecostal Church noted in briefing that
 20 political protests and worship services were treated the same under California's
 21 regulations—but in practice certain political protests were entirely exempt from
 22 those regulations—California modified them. Under the June 12 regulations, there
 23 are no restrictions on protest or worship, so long as they occur outdoors, not indoors.
 24 But regardless of whether this regulation was motivated by good or bad intent, it does
 25 not help South Bay Pentecostal Church. The Church does not have an adequate place
 26 where it can meet outdoors. More problematically, the Church's theology requires
 27 approaching the altar at the end of each service and performing baptisms (both with
 28 social distancing). The Church's altar and baptistery is in its sanctuary auditorium,

1 which is indoors. (VSAC, ¶ 69.)

2 On July 6, 2020, in addition to the above restrictions, California published
3 regulations stating that “Places of worship must therefore discontinue indoor singing
4 and chanting activities.” (VSAC, Ex. 1-9.) This restriction is particularly concerning
5 because singing is at the very heart of Pentecostal worship services, and essentially acts
6 as a ban on them. (VSAC, ¶ 70; 2d Supp. Bishop Hodges Decl., ¶¶ 3–23.) Finally, on
7 July 13, 2020, California banned all indoor worship services. (VSAC, ¶ 49.) For the
8 reasons stated above, it has thus again banned Plaintiffs from exercising their faith.

9 LEGAL STANDARD

10 “A district court has inherent authority to modify [an order concerning] a
11 preliminary injunction in consideration of new facts.” *A&M Records, Inc. v. Napster,*
12 *Inc.*, 284 F.3d 1091, 1098 (9th Cir. 2002). “A party seeking modification of an
13 injunction bears the burden of establishing that a significant change in facts or law
14 warrants revision of the injunction [order].” *State v. Trump*, 871 F.3d 646, 654 (9th
15 Cir. 2017). Typically, a motion to modify a preliminary injunction order is limited to
16 new facts or law. *U.S. ex rel. F.T.C. v. Bus. Recovery Servs. LLC*, 488 F. App’x 188,
17 189-90 (9th Cir. 2012). “On the other hand, a modification may be so fundamental to
18 the original injunction, or may otherwise present issues so inextricable from the
19 validity of the original injunction, that review must include the whole package.” *Gon*
20 *v. First State Ins. Co.*, 871 F.2d 863, 866-67 (9th Cir. 1989). “A court abuses its
21 discretion when it refuses to modify an injunction [order] in light of a significant
22 change either in factual conditions or in law.” *Flores v. Huppenthal*, 789 F.3d 994,
23 1001 (9th Cir. 2015). When the preliminary injunction order involves constitutional
24 rights, a review of the whole package is also compelled by the constitution. *See Old*
25 *Dominion Branch No. 496, National Ass’n of Letter Carriers v. Austin*, 418 U.S. 264,
26 282 (1974); *Hurley v. Irish American GLIB*, 515 U.S. 557, 567-68 (1995).

27 ///

28 ///

ARGUMENT

1. South Bay Pentecostal Church Will Likely Succeed on the Merits.

1.1. California's Worship Restrictions Violate Plaintiffs' Free Exercise Rights.

With respect to the State of California, its ban on religious worship triggers the application of strict scrutiny for the reasons discussed in this section.⁴ With respect to the County of San Diego, any substantial burden on Plaintiffs' free exercise of religion automatically triggers strict scrutiny. This is because Plaintiffs are asserting against San Diego a claim under the California Constitution's Free Exercise clause, which automatically applies strict scrutiny. Therefore, with respect to San Diego, the Court may proceed directly to Section 1.2.⁵

1.1.1. California's worship restrictions are not neutral.

If a law classifies on the basis of protected characteristic such as race or religion, it is subject to strict scrutiny. *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297, 309 (2013) (race); *Espinoza v. Montana Dep't of Revenue*, 140 S. Ct. 2246, 2255 (2020) (religion). With respect to the latter, a law classifies on the basis of religion and "lacks facial neutrality if it refers to a religious practice" unless it is clear that the words used were intended to have "a secular meaning." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 533, 546 (1993).

Previously, California instituted a generic ban on all people leaving their homes (VSAC, ¶ 28, Ex. 1-1), and then granted a long series of exemptions which did not include leaving one's home for the purpose of worship. (VSAC, ¶ 29, Ex. 1-2.) Thus, the parties were required to argue over whether those long series of exemptions made

⁴ In line with its motion for an indicative ruling, South Bay Pentecostal Church tailors its argument to its Free Exercise claims under the U.S. and California Constitutions. However, the Church is not abandoning its Equal Protection or Due Process claims. Indeed, under modern jurisprudence, a Federal Free Exercise claim is akin to an Equal Protection claim, and so the analysis largely overlaps. And the Church still believes that a ban on *its* worship, and an instruction that it worship like some other groups (via video streaming, outdoor services, or without singing), "shocks the conscience."

⁵ *Cf.*, e.g., VSAC, ¶ 46 (quoting letter from San Diego to California requesting leave to open more fully because local situation does not justify shutdown); Roxana Kopetman, *OC Board of Education to sue Newsom as it seeks the full reopening of schools*, THE ORANGE COUNTY REGISTER (Jul. 29, 2020), <https://bit.ly/3fytGPr>.

1 an otherwise neutral (not facially discriminatory) law not generally applicable. This is
 2 no longer the case. Now California is explicitly regulating worship itself. Stated
 3 differently, ordering that “worshippers may not gather” is no different than—and
 4 equally repugnant as—if in response to the very beginning of the pandemic,
 5 California ordered that “Chinese may not gather,” or following the BLM Protest
 6 spikes, California ordered that “African-Americans may not gather.” In either case,
 7 strict scrutiny is mandated.

8 Even if the government later attempts to identify a purportedly neutral
 9 explanation, classifying people based on a protected characteristic is always
 10 repugnant, and indeed, trying to come up with an explanation, is equally repugnant as
 11 invidious stereotyping. *Espinoza*, 140 S. Ct. at 2256 (“Status-based discrimination
 12 remains status based even if one of its goals or effects is” a valid, neutral goal).

13 **1.1.2. California’s worship and protest restrictions are not generally**
 14 **applicable because they have been enforced discriminatorily**

15 Even if California’s regulation of worship and protest were neutral, that
 16 regulation would not be generally applicable because they have been “enforced in a
 17 discriminatory manner.” *Blackhawk v. Pennsylvania*, 381 F.3d 202, 209 (3d Cir.
 18 2004). “Faith-based discrimination can come in many forms.” *Roberts v. Neace*, 958
 19 F. 3d 409, 413 (6th Cir. 2020). To not be “enforced in a discriminatory manner,”
 20 California must show that it “had enforced it[s regulations] uniformly.” *Tenaflly Eruv*
 21 *Ass’n, Inc. v. Borough of Tenaflly*, 309 F.3d 144, 167–68 (3d Cir. 2002); *see also*
 22 *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1083–84 (9th Cir. 2015) (no discriminatory
 23 enforcement because no evidence that Washington’s “complaint-driven enforcement
 24 of the rules” was not uniform).

25 Previously, although Plaintiffs had evidence that California and San Diego
 26 were enforcing their regulations against places of worship, they had little evidence of
 27 a conscious refusal to enforce them against other groups. This has now changed, as
 28 explained below in section 1.2.2, mandating strict scrutiny.

1.2. The Worship Restrictions Fail Strict Scrutiny and *Jacobson* Scrutiny Because They Are Not Narrowly Tailored.

Jacobson dealt with a statute, passed by a duly elected legislature, that infringed on federal constitutional rights. *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 38 (1905). It has no applicability to Plaintiffs’ religious claims under the California Constitution. *Id.* Rather, under the California Constitution, the Right of Liberty limits the government’s ability to mandate even secular pandemic restrictions. *See* Cal. Const. Art. 1, § 1 (“All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty”). Relying on this clause, California courts have held that its residents may only be quarantined if “reasonable ground exists to support the belief that the person so held is infected.” *Ex parte Martin*, 83 Cal. App. 2d 164, 167 (1948); *see also Ex parte Arata*, 52 Cal. App. 380, 385 (1921). In light of the above, Plaintiffs proceed first to an analysis of regular Free Exercise jurisprudence, which applies to their California Constitution Free Exercise claim against San Diego, and then to a *Jacobson* analysis, which potentially applies to their U.S. Constitution Free Exercise claim against California.

1.2.1. The worship restrictions violate the California Constitution

Since San Diego’s restrictions on Plaintiffs’ worship burdens Plaintiffs’ religious rights, they must satisfy “strict scrutiny.” *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562 (2004).⁶ “That stringent standard is not watered down but really means what it says. To satisfy it, government action must advance interests of the highest order and must be narrowly tailored in pursuit of those interests.” *Espinoza*, 140 S. Ct. at 2260.

⁶ This Court has previously noted that the California Supreme Court has always simply applied strict scrutiny without explicitly stating whether it is required or not. But in light of this, all lower courts are bound to continue applying strict scrutiny as well, so long as there is a burden to religious rights. *See, e.g., Brown v. Smith*, 24 Cal. App. 5th 1135, 1145 (2018) (“[A]ssum[ing] that laws requiring vaccination substantially burden the free exercise of religion and therefore merit strict scrutiny”). Here, as explained in the declarations of Bishop Hodges and the Verified Second Amended Complaint, California’s restrictions criminalize activity necessary to Plaintiffs’ faith, and so burden their free exercise of religion.

Here, San Diego’s supposed interest of “the highest order” is “in curbing the virus” at the expense of all other interests. (Dkt. 38, TRO Hearing Transcript, at 5:10–11.) However, Plaintiffs no longer agree that this is a compelling interest. In light of the flattening of the death and hospitalization rates, regardless of the infection rate, numerous experts have concluded that the worst of the pandemic is absolutely over. (VSAC, Exs. 5-5, 5-6; Bhattacharya Decl., ¶¶ 31–43.) These opinions are particularly important when it is recognized—as it is widely recognized—that the pandemic lockdowns have led to a spike in suicides, and that restricting religious practice is detrimental to psychological health.

Due to the heavy-handed quarantine, suicide rates have spiked. (VSAC, Ex. 5-7.) Indeed, “[a]ccording to Robert Redfield, MD, the director of Centers for Disease Control and Prevention (CDC), at this point in the pandemic, both suicides and drug overdose deaths are outnumbering deaths due to the coronavirus, itself.” (Supp. Delgado Decl., ¶ 9.) Indeed, the scientific literature is now speaking about two pandemics, a coronavirus pandemic, and a “COVID-19 suicides pandemic.” (Trissell Decl., Exs. BB, CC, DD.) This is unsurprising since scientific studies have found that “[p]atients highly religious by multiple indicators, particularly those involved in community religious activities, remit faster from depression.” (VSAC, Ex. 5-13.) And contrarily, the stress of being unable to practice one’s faith can lead to negative outcomes throughout the whole body. (VSAC, Ex. 5-10.)

Outside the pandemic context, “an increasing number of studies [] have persuasively documented positive relationships between religious involvement and physical and mental health outcomes.” (VSAC, Ex. 5-8.) Studies have shown that “[r]eligious service attendance . . . predicted both objective and subjective physical health and well-being.” (VSAC, Ex. 5-9.) And within the pandemic context, a new “review of the literature published from 1978 to 2019” makes clear that religion is especially needed during the present pandemic. (VSAC, Ex. 5-12.) This has spurred forthcoming additional articles, for example, on “how religious involvement may

1 enhance immune function and resilience against the coronavirus.” (VSAC, Ex. 5-11.)
 2 Plaintiffs contest that San Diego has a compelling interest in harming the physical
 3 and mental health of all of its residents solely to curb the coronavirus, when the
 4 disease death rate is half that of death rates for heart disease and cancer.

5 However, even if San Diego had a compelling interest in harming public health
 6 to keep its coronavirus numbers lower than they already are, in the Free Exercise
 7 context, “[a] law does not advance ‘an interest of the highest order when it leaves
 8 appreciable damage to that supposedly vital interest unprohibited.’” *Espinoza*, 140 S.
 9 Ct. at 2261 (quoting *Lukumi*, 508 U.S. at 547.) In other words, the fact that *any*
 10 industry is allowed to open and spread the coronavirus—even if it does so to a lesser
 11 degree than Plaintiffs supposedly would—means that “appreciable damage” to the
 12 “vital interest” is occurring, and so the order fails for “underinclusiveness.” *Reed v.*
 13 *Town of Gilbert, Ariz.*, 576 U.S. 155, 172 (2015); *Espinoza*, 140 S. Ct. at 2261 (same);
 14 *see also Soos v. Cuomo*, No. 1:20-cv-651 (GLS/DJS), 2020 WL 3488742, at *11
 15 (N.D.N.Y. June 26, 2020) (New York’s regulations, which had very similar 25%
 16 capacity limits for worship, 50% for select businesses, and no limit for other
 17 businesses, were underinclusive).

18 Only if the spread of the coronavirus by all other sectors was “inconsequential”
 19 could San Diego refuse Plaintiffs the special protection they merit under the Free
 20 Exercise Clause of the California Constitution. *Blackhawk*, 381 F.3d at 208 (quoting
 21 *Lukumi*, 508 U.S. at 543.) This San Diego undeniably cannot do. There have been
 22 numerous coronavirus outbreaks tied to factories. (VSAC, ¶¶ 93–95, 97; LiMandri
 23 Decl., Exs. 44, 52–55; Trissell Decl., Ex. EE.) Further, restaurants are coronavirus
 24 epicenters (LiMandri Decl., Exs. 47–48), as well as gyms. (LiMandri Decl., Ex. 51;
 25 *League of Indep. Fitness Facilities & Trainers, Inc. v. Whitmer*, --- Fed.Appx. ---, 2020
 26 WL 3468281, at *3 (6th Cir. 2020).) The outbreaks at these places are not
 27 “inconsequential.” *Calvary Chapel Dayton Valley v. Sisolak*, --- S. Ct. ---, 2020 WL
 28 4251360, at *4 (2020) (Alito, J., dissenting) (“Having allowed thousands to gather,”

1 “the State cannot claim to have a compelling interest in limiting religious gatherings”).

2 Notably, in a subtle departure from this orthodox analysis, all five Justices have
 3 recently applied far more of an equal protection style analysis. All five agree that
 4 worship cannot be treated less favorably than other similarly situated activities. *See S.*
 5 *Bay United Pentecostal Church v Newsom*, 140 S. Ct. 1613 (2020); *Calvary Chapel*
 6 *Dayton Valley v. Sisolak*, --- S. Ct. ---, 2020 WL 4251360 (2020). The issue, then, is
 7 what activities are similar.

8 Four of the justices are clear that restaurants/breweries may not have less
 9 stringent restrictions than houses of worship. *S. Bay*, 140 S. Ct. at 1613; *Calvary*
 10 *Chapel*, 2020 WL 4251360, *2, 3, 6. Justice Roberts was silent on this point, but
 11 restaurants are not akin to the industries he found dissimilar, namely retail, banks, and
 12 laundromats. *S. Bay*, 140 S. Ct. at 1613 (contrasting “lectures, concerts, movie
 13 showings, spectator sports, and theatrical performances,” with “grocery stores, banks,
 14 and laundromats”). Thus, on the merits (as opposed to in an emergency application
 15 for an injunction),⁷ Justice Roberts would likely side with the other four justices who
 16 find restaurants too similar to houses of worship to be granted preferential treatment.

17 This makes sense. On average, Americans expect to spend 60.2 minutes dining
 18 at a restaurant—essentially the same amount of time as the typical worship service.
 19 (LiMandri Decl., Ex. 45.) But of course, diners can take as long as they want to eat
 20 their meal. Further, in a busy restaurant, most diners could also be expected to be
 21 strangers to those around them, and to speak loudly so as to be heard by their own
 22 party without wearing masks. The only difference between restaurants and worship
 23 would appear to be the size of the gathering, as some restaurants may be small—but
 24 plenty of restaurants can seat 100 guests or more. (LiMandri Decl., Ex. 46.) And

25 ⁷ *S. Bay United Pentecostal Church v Newsom*, 140 S. Ct. 1613 (2020) (Roberts, J., concurring)
 26 (“Applicants seek to enjoin enforcement of the Order. Such a request demands a significantly
 27 higher justification than a request for a stay because, unlike a stay, an injunction does not simply
 28 suspend judicial alteration of the status quo but grants judicial intervention that has been withheld
 by lower courts. This power is used where the legal rights at issue are indisputably clear and, even
 then, sparingly and only in the most critical and exigent circumstances.”).

1 lower courts are in broad agreement that gatherings at restaurants are comparable to
 2 those at places of worship. *E.g.*, *DiMartile v. Cuomo*, No. 1:20-CV-0859 (GTS/CFH),
 3 2020 WL 4558711, at *10 (N.D.N.Y. Aug. 7, 2020); *Soos v. Cuomo*, No. 1:20-cv-651,
 4 2020 WL 3488742, at *11 (N.D.N.Y. June 26, 2020); *Antietam Battlefield KOA v.*
 5 *Hogan*, No. 1:20-cv-01130, 2020 WL 2556496, at *9 (D. Md. May 20, 2020); *Calvary*
 6 *Chapel of Bangor v. Mills*, No. 1:20-cv-00156, 2020 WL 2310913, at *8 (D. Me. May 9,
 7 2020); *Cross Culture Christian Ctr. v. Newsom*, No. 2:20-cv-00832, 2020 WL 2121111,
 8 at *6 (E.D. Cal. May 5, 2020); *Maryville Baptist Church v. Beshear*, No. 3:20-cv-278,
 9 2020 WL 1909616, at *2 (W.D. Ky. Apr. 18, 2020). Here, between May 20 and July
 10 13, restaurants were allowed to open without the capacity limits imposed on places of
 11 worship. This Court should not allow that to happen again.

12 But most importantly, the above Justices' views on the likelihood of spreading
 13 the coronavirus at stores⁸ (either the "essential" grocery stores, or the nonessential
 14 retail), and in manufacturing and warehousing facilities, were not legal views—but
 15 factual views. A better developed record establishes that the coronavirus does spread
 16 more easily at stores and manufacturing facilities than in places of worship.

17 It is plain that shopping at supermarkets and retail stores primarily involves
 18 strangers, who cannot be told where to go, and who have not pre-registered to attend.
 19 Further, the average grocery shopper takes 43 minutes to complete his shopping.
 20 (LiMandri Decl., Ex. 34.) The average trip to the mall, for those aged 18–34, is 158.4
 21 minutes. (LiMandri Decl., Ex. 35.) The average person makes 1.6 trips to the grocery
 22 store every week. (Ex. 36.) And the average woman spends 399 hours shopping a
 23 year. (LiMandri Decl., Ex. 37.) This all adds up, with Americans spending a
 24 collective 37 billion hours per year waiting in lines. (LiMandri Decl., Ex. 38.) Under
 25 California's current rules, one can take as long as one likes to complete their
 26

27 ⁸ Justice Roberts found that houses of worship were dissimilar from stores, but was silent as to their
 28 similarity to factories. Justices Thomas, Alito, Gorsuch, and Kavanaugh held that houses of
 worship were similar to both stores and factories. *S. Bay*, 140 S. Ct. at 1613–16.

shopping. This results, as numerous Twitter videos demonstrate, in large gatherings. (LiMandri Decl., Ex. 39–41.)

The only true distinction is that in shopping centers people are milling about, and so may not spend a significant amount of time next to a single person (except when waiting in line). But that is a distinction without a difference. As stated by Dr. Delgado, due to the inability to control where shoppers walk and what they touch, the coronavirus spreads more easily in stores than in houses of worship. (Supp. Delgado Decl., ¶¶ 23–27.) This conclusion is not unique to Dr. Delgado. Rather, the general unsanitariness of stores is widely known. (LiMandri Decl., Exs. 42–43.)

Further, under California’s current rules, there is no limit on the number of people, or length of time spent, in factories. For example, Defendant Angell specifically identified that what could open was “manufacturing, which can include things like toys, *clothing*, other things.” (Dkt. 12-4, at 111.) California is famous for its clothing manufacturing, and pictures of them show that they result in a gathering involving (1) a long period of time (presumably an eight-hour shift); (2) a large number of distinct households; and (3) a shared experience. (LiMandri Decl., Ex. 44.) And as further explained by Dr. Delgado, the reason why there have been so many outbreaks related to factories is because they do spread the coronavirus more readily than places of worship. (Supp. Delgado Decl., ¶¶ 34–43.)

The First Amendment jurisprudence set forth above requires places of worship to at least be treated equally. And as Justice Kavanaugh made clear, the burden is on the state to justify unequal treatment. *Calvary Chapel*, 2020 WL 4251360, at *9 (“[T]he First Amendment requires that religious organizations be treated equally to the favored or exempt secular organizations, unless the State can sufficiently justify the differentiation.”); *see also United States v. Playboy Entm’t Grp., Inc.*, 529 U.S. 803, 816, 818 (2000) (under strict scrutiny, the government “bears the burden of proving the constitutionality of its actions” and does not get “the benefit of the doubt.”).

Under this burden, California must demonstrate that it seriously undertook to

1 consider other, less-restrictive alternatives and ruled them out for good reason,
 2 meaning that it “considered different methods that other jurisdictions have found
 3 effective.” *McCullen v. Coakley*, 134 S. Ct. 2518, 2539 (2014). Under its burden,
 4 California “would have to show either that substantially less-restrictive alternatives
 5 were tried and failed, or that the alternatives were closely examined and ruled out for
 6 good reason.” *Bruni v. City of Pittsburgh*, 824 F.3d 353, 370 (3d Cir. 2016).

7 Here, there is no evidence that California engaged in these actions. Notably,
 8 the only *evidence* actually submitted so far by California is one expert declaration.
 9 (Dkt. 23-2, Watt Decl., ¶¶ 1–18.) But that declaration merely establishes the
 10 undisputed fact that gatherings can lead to COVID-19 outbreaks, and then provides
 11 examples of outbreaks connected to “religious services, choir practices, funerals, and
 12 parties.” (Watt Decl., ¶ 15.)

13 But that declaration does not answer the real question. There have been plenty
 14 of outbreaks related to factories. (LiMandri Decl., Exs. 52–55.) What is California’s
 15 compelling interest in restricting churches, *but not* factories or other industries?
 16 “There is ample scientific evidence that COVID-19 is exceptionally contagious. But
 17 evidence that the risk of contagion is heightened in a religious setting any more than a
 18 secular one is lacking.” *Tabernacle Baptist Church, Inc. of Nicholasville v. Beshear*, ---
 19 F. Supp. 3d ---, 2020 WL 2305307, at *5 (E.D. Ky. 2020). Further, examples abound
 20 of less restrictive approaches that California has neither tried nor considered:

21 Notably, 15 other Governors trusted the people of their
 22 states and exempted religious gatherings from *any*
 23 *attendance limitations* during this pandemic. The Governor
 24 has failed to cite any peer-reviewed study showing that
 25 religious interactions in those 15 states have accelerated the
 spread of COVID-19 in any manner distinguishable from
 non-religious interactions.

26 *Berean Baptist Church v. Cooper*, No. 4:20-CV-81-D, 2020 WL 2514313, at *9
 27 (E.D.N.C. May 16, 2020) (footnote omitted). Indeed, Illinois’ orders simply adopt
 28 California’s guidance and make the standards permissive, not mandatory. (LiMandri

Decl., Ex. 56.) California has no evidence that a permissive approach will not be sufficient. And in June, San Diego itself sent a letter to Governor Newsom stating that due to its “positive data results” it “believe[s] that religious facilities could be opened more broadly—beyond the 25% or 100 person cap provided we have another week of positive data.” (LiMandri Decl., Ex. 7.) Further, many states have never had any state-wide shutdown whatsoever. (LiMandri Decl., Ex. 57.) The COVID-19 rates in those states have been largely similar to California’s. (LiMandri Decl., Ex. 58.) Other states have set their caps at 250 persons. (LiMandri Decl., Ex. 61.) Why 100 and not 250? It is not clear, but it appears that California has simply arbitrarily picked a number.

South Bay Pentecostal Church’s food distribution and Pentecost worship services met or exceeded the distancing and hygiene requirements California and San Diego deem sufficient for other industries, including currently open factories. As such, there is no justification for restricting Plaintiffs in a manner disparate from those other industries. California’s failure to tailor its Reopening Plan to closely fit the safety ends it espouses, and its failure to try other, less restrictive alternatives that it cannot demonstrate are not working in other jurisdictions across the country, defeats California’s satisfaction of its burden to prove narrow tailoring. “As the Government bears the burden of proof on the ultimate question of . . . constitutionality, [Plaintiffs] must be deemed likely to prevail unless the Government has shown that [its] proposed less restrictive alternatives are less effective than [unduly limiting Plaintiffs’ worship].” *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). It has not shown as much.

1.2.2. The worship restrictions violate the U.S. Constitution

In *Jacobson*, the Supreme Court explained that legislatures can validly enact restrictions on substantive due process rights to stop the spread of diseases, but they violate the federal constitution if they do so in “an arbitrary, unreasonable manner,” or in a way that “go[es] so far beyond what was reasonably required for the safety of the public.” *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 28 (1905).

As stated previously, Plaintiffs do not believe *Jacobson* ever could have been applied to a Free Exercise claim.⁹ It also dealt with a legislature deliberating and passing a statute—not an executive acting unilaterally during an emergency. But perhaps more poignantly, there is little reason why it should *continue* to apply. As Justice Kavanaugh recently noted,

As more medical and scientific evidence becomes available, and as States have time to craft policies in light of that evidence, courts should expect policies that more carefully account for constitutional rights. Governor Sisolak issued the directive in question on May 28, more than two months after declaring a state of emergency on March 12. Now four months have passed since the original declaration. The problem is no longer one of exigency, but one of considered yet discriminatory treatment of places of worship.

Calvary Chapel, 2020 WL 4251360, at *2 (Kavanaugh, J., dissenting). Every day, Plaintiffs’ constitutional rights are being irreparably violated. At least, after four months California should be able to explain, very precisely and without recourse to *Jacobson*, why that irreparable harm is necessary.

If, however, the Court determines that a full-throated application of *Jacobson* is warranted, then there are two questions the Court must analyze. The first question is whether the law “has no real or *substantial* relation to those objects” of protecting public health. *Jacobson*, 197 U.S. at 28. The second question is whether the law is a “palpable invasion of rights secured by the fundamental law.” *Id.* Here, as explained in section 1.2.1. *supra*, neither California nor San Diego has convincingly explained

⁹ See, e.g., *Ex Parte Milligan*, 71 U.S. 2, 120 (1866) (express constitutional rights apply with more force, not less, during emergencies); *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020) (not explicitly applying *Jacobson*, and dissent arguing against applying it); *Compassion in Dying v. State of Wash.*, 79 F.3d 790, 799 (9th Cir. 1996) (describing *Jacobson* as applying to “substantive due process cases”), *rev’d*, 521 U.S. 702 (1997); *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1614 (2020) (Kavanaugh, J., dissenting) (not applying *Jacobson*); *Calvary Chapel Dayton Valley v. Sisolak*, --- S. Ct. ---, 2020 WL 4251360, at *5 (2020) (Alito, J., dissenting) (expressing suspicion over applicability of *Jacobson*).

1 why letting large numbers of people sit together indoors for eight hours at a factory or
 2 a school, but not for one-hour worshipping, provides a “real or substantial” benefit to
 3 curbing the pandemic—let alone curbing infection numbers justifies the spike in
 4 suicides. California has only ever asserted that the novel coronavirus is serious, and
 5 needs to be curbed. But that is not a sufficient answer—especially when California
 6 lets potential hotbeds for coronavirus outbreaks operate without complying with the
 7 restrictions placed on churches. *See DiMartile*, 2020 WL 4558711, at *10 (permitting
 8 a large restaurant to host diners at 50% capacity, but banning a wedding with more
 9 than 50 persons, violated Equal Protection clause, even considering *Jacobson*). But
 10 perhaps more importantly, there are three reasons why California’s regulation of
 11 worship constitutes a “palpable invasion” of Plaintiffs’ constitutional rights.

12 *First*, imposing burdens on Plaintiffs *because* of their religion is *per se* a
 13 “palpable invasion” of their rights. *See Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal.
 14 1900); *First Baptist Church v. Kelly*, No. 20-1102-JWB, 2020 WL 1910021, at *6 (D.
 15 Kan. Apr. 18, 2020).

16 In *Jew Ho*, the San Francisco “board of health” purported to quarantine 12 city
 17 blocks, consisting of some 15,000 people, due to fear of a bubonic plague epidemic. *Jew*
 18 *Ho*, 103 F. at 11–13. But the evidence established that, in practice, only the 10,000
 19 Chinese living in those blocks were subject to it. *Id.* at 23. The court there analyzed
 20 whether the quarantine order was “a palpable invasion of rights secured by fundamental
 21 law,” *id.* at 18, and held that in no case could such discrimination be tolerated:

22 The evidence here is clear that this is made to operate
 23 against the Chinese population only, and the reason given
 24 for it is that the Chinese may communicate the disease
 25 from one to the other. That explanation, in the judgment of
 the court, is not sufficient. It is, in effect, a discrimination.

26 “Therefore the court must hold that this ordinance is invalid and cannot be
 27 maintained.” *Id.* at 23–24. Similarly, in *First Baptist Church*, the court reviewed
 28 *Jacobson*, and rejected it when applied to the facts because the regulation at issue was

1 facially discriminatory: “*Jacobson*, and similar cases do not provide the best
 2 framework in which to evaluate the Governor’s executive orders because all those
 3 cases deal with laws that are facially neutral.” *First Baptist Church*, 2020 WL
 4 1910021, at *6. The same conclusion should be reached here. When a law “is
 5 discriminating in its character” it is a palpable violation of fundamental rights. *Jew*
 6 *Ho*, 103 F. at 26.¹⁰ Stated more concretely, if analogized to the situation in *Korematsu*,
 7 the courts should not look to factors such as the length of the Japanese internment, or
 8 the conditions of the internment. That is irrelevant. What is relevant is that the
 9 government discriminated based on a protected characteristic. *See Trump v. Hawaii*,
 10 138 S. Ct. 2392, 2423 (2018) (“*Korematsu* was gravely wrong the day it was decided,
 11 has been overruled in the court of history, and—to be clear—has no place in law
 12 under the Constitution.”); *Calvary Chapel*, 2020 WL 4251360, at *11 (Kavanaugh, J.,
 13 dissenting) (“There are certain constitutional red lines that a State may not cross
 14 even in a crisis. Those red lines include racial discrimination, religious
 15 discrimination, and content-based suppression of speech.”).

16 *Second*, courts have held that discriminatory enforcement of the pandemic
 17 restrictions results in a palpable violation of fundamental rights. *Soos*, 2020 WL
 18 3488742. “[W]hatever *Jacobson*’s scope, . . . pandemic regulations must govern
 19 ‘evenhandedly,’” for “the principle that freedom for me, but not for thee, has no

20 ¹⁰ *Jew Ho* was decided by the U.S. Circuit Court for the District of California. At the time it was
 21 decided, the federal courts were in a period of transition. Previously, the district courts essentially
 22 served as misdemeanor and admiralty courts, the circuit courts as the regular trial court, and the
 23 Supreme Court as the sole appellate court. However, in 1891, the circuit courts of appeals were
 24 created as intermediate appellate courts, and the district courts became the regular trial courts. 26
 25 Stat. 826. This led to a period of about twenty years when the old circuit courts had attributes of
 26 both the district courts and the circuit courts of appeal. On the one hand, the old circuit courts tried
 27 in the first instance major federal crimes and diversity actions. On the other hand, appeals from
 28 their adjudications of constitutional issues did *not* go to the circuit courts of appeal—but rather to
 the Supreme Court. *Id.* Thus, should San Francisco have decided to appeal in *Jew Ho*, the appeal
 would not have gone to the Ninth Circuit, but to the Supreme Court. In 1911, the old circuit courts
 were abolished, and absorbed by both the district courts and the circuit courts of appeal. 36 Stat.
 1087. Most important here, when the old circuit courts decided constitutional issues that were
 appealable not to the Ninth Circuit but to the Supreme Court, they created binding circuit law. *See*
In re Wong Kim Ark, 71 F. 382, 385 (N.D. Cal. 1896) (citing an old circuit court opinion: “being the
 law of this circuit, is controlling upon this court”). Thus, *Jew Ho* should be binding on this Court.

place under our Constitution.” *Spell v. Edwards*, 962 F.3d 175, 180–83 & n.1 (5th Cir. 2020) (Ho, J., concurring). “The State defends the Governor on the ground that the protests expressed a viewpoint on important issues, and that is undoubtedly true, but favoring one viewpoint over others is anathema to the First Amendment.” *Calvary Chapel*, 2020 WL 4251360, at *4 (Alito, J., dissenting); *see also* VSAC, ¶ 104, Exs. 4-11, 4-12 (press releases and letters from DOJ).

Here, starting on May 25, California decided to nominally treat political protests and religious worship exactly the same—imposing a limit on gatherings at 25% of “building capacity” or “the relevant area’s maximum occupancy,” along with a maximum cap of 100 persons. (VSAC, ¶ 44, Exs. 1-5, 1-6.) Nevertheless, despite enforcing its restrictions against houses of worship,¹¹ California has steadfastly refused to enforce its restrictions against political protests.

The same day that California created that regime—Monday, May 25, 2020—a police officer in Minneapolis, Minnesota killed an African-American man in his custody named George Floyd. The next day, a video-recording of the incident went viral on social media, leading to protests in Minneapolis. The day after that, Wednesday, May 27, protests erupted in cities across the country, including a protest with hundreds of participants in Los Angeles. (VSAC, ¶ 98, Ex. 4-1.) These protests plainly violated Governor Newsom’s ban on political protests exceeding 100 persons.

The next day, Saturday, May 30, 2020, the George Floyd protests reached San Diego County. That day, a group of 1,000 protestors blocked the I-8 highway. This protest also violated Governor Newsom’s 100-person cap on political protest. The protests in San Diego continued daily for weeks. (VSAC, ¶ 99, Ex. 4-2.)

As stated above, the George Floyd protests in California have plainly violated the Governors’ orders against protest and worship—violating the 100-person cap

¹¹ Despite well-publicized statements by Governor Newsom and San Diego officials that no police enforcement would be forthcoming (Dkt. 12-4, Original Trissell Decl., ¶¶ 9–11), government officials have enforced the restrictions against house of worship throughout the state (Trissell Decl., Exs. FF, GG, HH), and in San Diego specifically. (Trissell Decl., Exs. II, JJ.)

1 through protests numbering in the thousands, but instead of trying to shut down
2 these unlawful gatherings, California encouraged them.

3 In response to the killing of George Floyd, Governor Newsom actively
4 promoted unlawful protests. He “thank[ed]” the protestors for violating his orders
5 (VSAC, ¶ 100, Ex. 4-3), instructed them to “[k]eep doing it” (VSAC, ¶ 100, Ex. 4-
6 4), “express[ed his] deep gratitude” to them (VSAC, ¶ 101, Ex. 4-5), and told them
7 they had a “right” to free speech. (Trissell Decl., Ex. KK.) Later, he even tweeted
8 his support. (Trissell Decl., Ex. LL.) Similarly, San Diego has refused to enforce its
9 orders against the George Floyd protests, telling them they had a “right” to illegally
10 protest (VSAC, ¶ 102, Ex. 4-6), and worked to “facilitate[e]” them. (VSAC, ¶ 102,
11 Ex. 4-7.) This facilitation led to thousands of people protesting, as shown in several
12 videos obtained from Twitter. (VSAC, ¶ 102, Exs. 4-8, 4-9, 4-10.)

13 It is true that on June 12, 2020, California lifted all restrictions on outdoor
14 protest activities—so that by definition anything the protestors did would not be in
15 violation of its orders. And then a month later, on July 13, California forced many
16 other businesses (and worship services) to take their operations outside. But that
17 does not defeat discriminatory enforcement. Courts must not “turn a blind eye to the
18 context in which [a] policy” arises. *McCreary Cty., Ky. v. Am. Civil Liberties Union of*
19 *Ky.*, 545 U.S. 844, 866 (2005). This is especially the case when the logic underlying
20 the state’s rationale is suspect:

21 The Governor may respond that his order forbids only
22 indoor worship but still allows people of faith to worship
23 outdoors. But whether health experts would endorse that
24 dichotomy—and whether the First Amendment permits
25 it—is far from obvious. . . . Under his logic, the Governor
26 would allow tens of thousands of LSU fans to assemble this
fall under the open sky at Tiger Stadium, while forbidding
countless others from cheering on the Saints under the
Superdome.

27 *Spell v. Edwards*, 962 F.3d 175, 182 & n.6 (5th Cir. 2020) (Ho., J., concurring).

28 Indeed, why were the June 12 changes made without any public announcement?

Most importantly, the parties are in agreement that the cause of the recent spike in coronavirus infections (even though the spike has caused no spike in hospitalizations and deaths) is California's and San Diego's own refusal to enforce their regulations against the protestors. (*See* Trissell Decl., Ex. MM [Defendant Angell: "We don't have exact numbers, but we do know from speaking to our counties that it is a contributor."]; Supp. Delgado Decl., ¶ 11 ["Our conclusion, supported by the COVID-19 Decision Model is that the recent increases are related to . . . the tolerance and even encouragement of public protests"].) Making places of worship pay for the sins of protestors is discriminatory enforcement—a palpable violation of Plaintiffs' rights.

Third, under Plaintiffs' faith, physical, indoor, in-person worship services are required, with singing—not video-recorded or outdoor services. (VSAC, ¶¶ 58–61, 67–70, 79–81.) "[S]inging is at the very heart of Pentecostal worship services," and so a ban on singing "is essentially a ban on Pentecostal worship services." (VSAC, ¶ 70.) It should seem plain that a ban on Pentecostal worship services is a "palpable invasion" of the rights of Pentecostal Christians. *See Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 15–16 (1947) ("Neither a state nor the Federal Government can . . . force nor influence a person to go to or to remain away from church against his will").

In adjudicating whether it is or not, this Court must also answer that question in a manner that does not violate the religious clauses in other ways. The Supreme Court has made clear that "First Amendment values are plainly jeopardized when litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice." *Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S. Ct. 2049, 2063 n.10 (2020) (quoting *Presbyterian Church in U.S. v. Mary Elizabeth Blue Hull Mem'l Presbyterian Church*, 393 U.S. 440, 449 (1969)). Because such values are jeopardized, courts are forbidden from issuing legal opinions that have the effect of "resolving underlying controversies over religious doctrine." *Id.* (quoting *Presbyterian Church*, 393 U.S. at 449). Indeed, "[w]hen the government chooses sides on religious issues, the 'inevitable result' is 'hatred, disrespect and even contempt'

towards those who fall on the wrong side of the line.” *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554, 604 (4th Cir. 2017), *vacated as moot*, 138 S. Ct. 353 (2017) (quoting *Engel v. Vitale*, 370 U.S. 421, 431 (1962)).

“In a country with the religious diversity of the United States, judges cannot be expected to have a complete understanding and appreciation of” the requirements of various faiths. *Our Lady of Guadalupe Sch.*, 140 S. Ct. at 2066. “It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own.” *Id.* at 2063 n.10 (quoting *Serbian E. Orthodox Diocese for U. S. of Am. & Canada v. Miliwojevich*, 426 U.S. 696, 715 n.8 (1976)). As a result, “[a] religious institution’s explanation of . . . the life of the religion in question is important.” *Id.* at 2066. And in regular First Amendment jurisprudence, neither the government nor the courts may “tell the plaintiffs that their beliefs are flawed,” but “must accept the sincerely held [] objections.” *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2383 (2020).

In the pandemic context, courts have made clear that they cannot simply tell the religious objector that they are wrong, that they may worship in a manner not required (or even permitted) by their faith. *See Berean Baptist Church v. Cooper*, No. 4:20-CV-81-D, 2020 WL 2514313, at *7 (E.D.N.C. May 16, 2020) (“Again, the question becomes: who decides whether a religious organization or group of worshipers correctly determined that their religious beliefs dictated the need to have more than 10 people inside to worship? Under EO 138, the answer is [the government]. This court has grave concerns about how that answer comports with the Free Exercise Clause.”). Thus, this Court should accept Plaintiffs’ assertions that California’s and San Diego’s regulations act as a ban on their Free Exercise of Religion.

2. The Other Injunction Factors Favor South Bay.

The Supreme Court has made clear that “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable

injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). As previously acknowledged by this Court, without an injunction preventing California from further enforcing its worship restrictions, the Church will suffer irreparable harm to its fundamental constitutional rights. (Dkt. 38, 6:3–6.)

The balance of hardships also tips overwhelming in favor Plaintiffs because the threatened injury to them is weighty—the loss of constitutional rights and the inability to practice their faith. *Coll. Republicans at San Francisco State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1012 (N.D. Cal. 2007). By contrast, the cost of a temporary restraining order to the Government is negligible. “[T]here can be no harm to [the government] when it is prevented from enforcing an unconstitutional statute.” *Joelner v. Vill. of Washington Park*, 378 F.3d 613, 620 (7th Cir. 2004).

Finally, an injunction is in the public interest. The Ninth Circuit has “consistently recognized” that there is a “significant public interest in upholding First Amendment principles.” *Doe v. Harris*, 772 F.3d 563, 683 (9th Cir. 2014). And there is an even greater interest here—treating Plaintiffs similarly to the favored protesters—which is necessary to maintain public confidence in the government and the courts. *See, e.g., Roberts v. Neace*, 958 F.3d 409, 416 (6th Cir. 2020) (“As for the public interest, treatment of similarly situated entities in comparable ways serves public health interests at the same time it preserves bedrock free-exercise guarantees.”).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their renewed motion for a temporary restraining order / preliminary injunction.

LiMANDRI & JONNA LLP

Dated: August 10, 2020

By:



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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:20-cv-865-BAS

**Second Supplemental
 Declaration of Bishop Arthur
 Hodges III in Support of
 Plaintiffs' Renewed Motion for a
 Temporary Restraining Order /
 Preliminary Injunction**

Judge: Hon. Cynthia Bashant

1 I, Bishop Arthur Hodges III, declare and state as follows:

2 1. I am a plaintiff in this action. I am a resident of San Diego County,
3 California. I serve as Senior Pastor of South Bay United Pentecostal Church, also a
4 plaintiff. I also serve as Superintendent for the SoCal District of the United
5 Pentecostal Church International.

6 2. I submit this second supplemental declaration with respect to Plaintiffs'
7 renewed motion for a temporary restraining order / preliminary injunction. This
8 declaration is meant to supplement my prior declarations dated May 11 and July 9,
9 2020, and the Verified Second Amended Complaint. As a result, I largely do not
10 repeat the matters discussed in those declarations. I have personal knowledge of the
11 matters set forth below, and could and would testify competently to them if called
12 upon to do so.

13 3. To ban singing in Pentecostal worship services has the effect of banning
14 those worship services outright. Based on our reading of Sacred Scripture, singing is
15 at the heart of our worship services, and comprises 25-50% of our typical Pentecostal
16 worship gathering experience at Church.

17 4. The earliest reference to singing in the Bible is in Exodus, the second of
18 the Bible's sixty-six books, as the children of Israel exuberantly praised God in song
19 upon His delivering them miraculously from Pharaoh and Egypt's pursuing armies.

20 o Exodus 15:1: "Then sang Moses and the children of Israel this song
21 unto the Lord, and spake, saying, I will sing unto the Lord, for he
22 hath triumphed gloriously: the horse and his rider hath he thrown
23 into the sea."

24 o Exodus 15:2: "The Lord is my strength and song, and he is become
25 my salvation..."

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1 5. Ever since, singing has become fairly synonymous with praising God,
2 both in scripture and practice among the people of God.

3 o Psalms 104:33: “I will sing unto the Lord as long as I live: I will sing
4 praise to my God while I have my being.”

5 o Judges 5:3: “Hear, O ye kings; give ear, O ye princes; I, even I, will
6 sing unto the Lord; I will sing praise to the Lord God of Israel.”

7 6. Forty-four verses in the Bible link singing and praise to God, and we are
8 told to sing praises to the Lord. For example: Psalms 47:6: “Sing praises to God, sing
9 praises: sing praises unto our King, sing praises.”

10 7. We are told by the Bible to sing praises to the Lord. Psalms 68:32: “Sing
11 unto God, ye kingdoms of the earth; O sing praises unto the Lord; Selah.”

12 8. Throughout scripture, and even into the last book of the Bible with a
13 scene in Heaven, singing remains integral to praising God. Revelation 15:3 (a scene in
14 Heaven): “And they sing the song of Moses the servant of God, and the song of the
15 Lamb, saying, Great and marvellous are thy works, Lord God Almighty; just and true
16 are thy ways, thou King of saints.”

17 9. Singing is an integral component of praise to God because Sacred
18 Scripture tells us that God dwells in the praises of His people. Psalms 22:3 “But thou
19 art holy, O thou that inhabitest the praises of Israel.”

20 10. In a Pentecostal Church worship service, everyone is instructed and
21 expected to sing praise to God, just as everyone is instructed and expected to pray to
22 God. In our worship services, praying, singing, and praising God is not for spectators,
23 it is for participants. Our Music & Praise teams are instructed to lead the
24 Congregation in Singing, Praise, Worship.

25 11. Singing praise together brings a disparate group of individuals together
26 into “one mind and one accord” (Acts 2:1) as a cohesive unit called a congregation as
27 opposed to just a crowd listening a concert.

28 ///

12. Singing, in the various forms of the word, appears 232 times in the Bible. For example: Psalms 33:3: “Sing unto him a new song; play skilfully with a loud noise.”

13. One entire book of the Bible is devoted to poetic songs: the book of Psalms, and there are 150 of them. The last chapter gives us instructions on what to do with the previous 149. Note that we are to praise God through song and instruments in the sanctuary. The last verse of Psalm 150, and / or the entire book of Psalms, reminds us that praising God with song is expected of everyone!

o Psalms 150:1–6: “Praise ye the Lord. Praise God in his sanctuary: praise him in the firmament of his power. Praise him for his mighty acts: praise him according to his excellent greatness. Praise him with the sound of the trumpet: praise him with the psaltery and harp. Praise him with the timbrel and dance: praise him with stringed instruments and organs. Praise him upon the loud cymbals: praise him upon the high sounding cymbals. Let every thing that hath breath praise the Lord. Praise ye the Lord.”

14. The Apostle Paul affirms this imperative in the New Testament, that we are to sing praise to God together at Church: Hebrews 2:12 “Saying, I will declare thy name unto my brethren, in the midst of the church will I sing praise unto thee.”

15. He further affirms that everyone is to participate: Ephesians 5:19: “Speaking to yourselves in psalms and hymns and spiritual songs, singing and making melody in your heart to the Lord.”

16. And that songs are used to teach and reinforce Truth: Colossians 3:16: “Let the word of Christ dwell in you richly in all wisdom; teaching and admonishing one another in psalms and hymns and spiritual songs, singing with grace in your hearts to the Lord.”

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- 1 17. Even Jesus led His disciples in singing:
 - 2 o Matthew 26:30: “And when they had sung an hymn, they went out
 - 3 into the mount of Olives.”
 - 4 o Luke 19:37-40: “And when he was come nigh, even now at the
 - 5 descent of the mount of Olives, the whole multitude of the disciples
 - 6 began to rejoice and praise God with a loud voice for all the mighty
 - 7 works that they had seen; Saying, Blessed be the King that cometh in
 - 8 the name of the Lord: peace in heaven, and glory in the highest. And
 - 9 some of the Pharisees from among the multitude said unto him,
 - 10 Master, rebuke thy disciples. And he answered and said unto them, I
 - 11 tell you that, if these should hold their peace, the stones would
 - 12 immediately cry out.”
- 13 18. Other verses in the Bible make clear that praising the Lord is an
 - 14 imperative:
 - 15 o Ephesians 5:18-20: “And be not drunk with wine, wherein is excess;
 - 16 but be filled with the Spirit; Speaking to yourselves in psalms and
 - 17 hymns and spiritual songs, singing and making melody in your heart
 - 18 to the Lord; Giving thanks always for all things unto God and the
 - 19 Father in the name of our Lord Jesus Christ.”
 - 20 o Psalms 40:3: To the chief Musician, A Psalm of David: “And he hath
 - 21 put a new song in my mouth, even praise unto our God: many shall
 - 22 see it, and fear, and shall trust in the Lord.”
 - 23 o Psalms 96:1: “O sing unto the Lord a new song: sing unto the Lord,
 - 24 all the earth.”
 - 25 o Psalms 144:9: “I will sing a new song unto thee, O God: upon a
 - 26 psaltery and an instrument of ten strings will I sing praises unto thee.
 - 27 o Psalms 149:1: “Praise ye the Lord. sing unto the Lord a new song,
 - 28 and his praise in the congregation of saints.

1 19. There is delivering power in praising God in song: Acts 16:25 (Paul and
2 Silas are in bonds in prison): “And at midnight Paul and Silas prayed, and sang
3 praises unto God: and the prisoners heard them. And suddenly there was a great
4 earthquake, so that the foundations of the prison were shaken: and immediately all
5 the doors were opened, and everyone’s bands were loosed.”

6 20. Even in Heaven, there is singing in praise to God: Revelation 5:9: “And
7 they sung a new song, saying, Thou art worthy to take the book, and to open the seals
8 thereof: for thou wast slain, and hast redeemed us to God by thy blood out of every
9 kindred, and tongue, and people, and nation”

10 21. Singing transcends language. I have been to numerous continents and
11 countries of the world, only to discover believers singing some of the same songs, but
12 in their own languages. I ministered in Turkey on Saturday, August 8 (via Zoom) in
13 two different services to two different language groups, Turkish and Farsi. They both
14 sang songs in their own language that I could sing along with in English because it was
15 the same song. The same happens in my own multi-national congregation, with
16 African immigrants and others.

17 o Revelation 14:3: “And they sung as it were a new song before the
18 throne, and before the four beasts, and the elders: and no man could
19 learn that song but the hundred and forty and four thousand, which
20 were redeemed from the earth.”

21 22. Our primary Pentecostal Hymnal, “Sing Unto The Lord,” published in
22 1978, is one of many song books. It contains 401 songs, hymns, and spiritual songs.
23 On the cover page it has this inscription, which is repeated on the last page of this
24 important song book: Psalms 30:4: “Sing unto the LORD, O ye saints of his, and give
25 thanks at the remembrance of his holiness.”

26 ///

27 ///

28 ///

23. And it says, “We give thanks to the Lord Jesus Christ and do gratefully dedicate these messages in song to His Glory.” This is an acknowledgment of the importance and necessity to praising our Lord and Saviour in song.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on August 10, 2020.


Bishop Arthur Hodge III

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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No.: 20-cv-865-BAS

**Supplemental Declaration of
 Jeffrey M. Trissell, Esq. in
 Support of Plaintiffs' Renewed
 Motion for a Temporary
 Restraining Order / Preliminary
 Injunction**

Judge: Hon. Cynthia Bashant

1 I, Jeffrey M. Trissell, Esq. declare and state as follows:

2 1. I am an attorney at law duly licensed to practice in the State of California
3 and in the Southern District of California, and am counsel for Plaintiffs South Bay
4 United Pentecostal Church and Bishop Arthur Hodges III. As such, I have personal
5 knowledge of the matters set forth below and could and would competently testify
6 thereto if called upon to do so.

7 2. Attached hereto as **Exhibit Q** is a true and correct copy of California
8 Public Health post series, *California COVID-19, By The Numbers*, published on
9 TWITTER, dated May 1, 2020, June 1, 2020, July 1, 2020, August 1, 2020 and
10 available at: <https://twitter.com/CAPublicHealth/status/1256358692695334912>;
11 <https://twitter.com/CAPublicHealth/status/1267557726814498816>;
12 <https://twitter.com/CAPublicHealth/status/1278489569420169216>;
13 <https://twitter.com/CAPublicHealth/status/1289712952954597376>.

14 3. Attached hereto as **Exhibit R** is a true and correct copy of the California
15 Department of Public Health, *Order of the State Public Health Officer*, dated May 7,
16 2020, and available at: [https://www.cdph.ca.gov/Programs/CID/DCDC/
17 CDPH%20Document%20Library/COVID-19/SHO%20Order%205-7-2020.pdf](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%205-7-2020.pdf).

18 4. Attached hereto as **Exhibit S** is a true and correct copy of the article
19 *Some San Diego shopping malls get reopening date*, published by FOX5 SAN DIEGO,
20 dated May 21, 2020, and available at: [https://fox5sandiego.com/news/local-
21 news/some-san-diego-shopping-malls-get-reopening-date](https://fox5sandiego.com/news/local-news/some-san-diego-shopping-malls-get-reopening-date).

22 5. Attached hereto as **Exhibit T** is a true and correct copy of the article by
23 Noah Higgins-Dunn, *California to allow hair salons and barbershops to reopen in
24 majority of state's counties, Gov. Newsom says*, published by CNBC, dated May 26,
25 2020, and available at: [https://www.cnbc.com/2020/05/26/california-to-allow-hair-
26 salons-and-barbershops-to-reopen-in-majority-of-states-counties-gov-newsom-
27 says.html](https://www.cnbc.com/2020/05/26/california-to-allow-hair-salons-and-barbershops-to-reopen-in-majority-of-states-counties-gov-newsom-says.html).

6. Attached hereto as **Exhibit U** is a true and correct copy of the article *Gyms, Bars, Museums, Hotels & More Can Reopen Friday, SD County Says*, published by NBC7 SAN DIEGO, dated June 8, 2020, and available at: <https://www.nbcsandiego.com/news/local/gyms-bars-museums-hotels-more-can-reopen-friday-sd-county-says/2342823/>.

7. Attached hereto as **Exhibit V** is a true and correct copy of the article by Alex Swoyer, *Church sues California Gov. Gavin Newsom over ban against at-home Bible studies*, published by WASHINGTON TIMES, dated July 20, 2020, and available at: <https://www.washingtontimes.com/news/2020/jul/20/gavin-newsom-sued-over-ban-against-home-bible-stud/>.

8. Attached hereto as **Exhibit W** is a true and correct copy of County of San Diego's *Safe Reopening Supplemental Guide, Faith-Based Organizations and Places of Worship*, published July 21, 2020, and available at: https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/Community_Sector_Support/CommunityBased-FaithBased-Organizations/FINAL_FBO%20COVID-19%20Companion%20Guide_7.22.20.pdf.

9. Attached hereto as **Exhibit X** is a true and correct copy of a letter from United States Senators to President Trump regarding COVID-19 and religious freedom, dated July 23, 2020, and available at: https://www.lee.senate.gov/public/_cache/files/4b75b6ae-0fed-4f30-b14f-7cbe289b52fd/ltr-to-president-trump-on-covid.pdf.

10. Attached hereto as **Exhibit Y** is a true and correct copy of the article by Joe Hong, *Gov. Newsom Outlines Strict Guidelines for Schools*, published by KPBS, dated July 17, 2020, and available at: <https://www.kpbs.org/news/2020/jul/17/california-governor-outline-plans-reopening-school/>.

11. Attached hereto as **Exhibit Z** is a true and correct copy of County of San Diego, Health and Human Services Agency's *Order of the Health Officer and Emergency Regulations*, dated July 20, 2020, effective July 21, 2020.

12. Attached hereto as **Exhibit AA** is a true and correct copy County of San Diego, Health and Human Services Agency's *Order of the Health Officer and Emergency Regulations*, dated August 7, 2020, effective August 8, 2020, and available at: <https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/HealthOfficerOrderCOVID19.pdf>.

13. Attached hereto as **Exhibit BB** is a true and correct copy of the article by Vikram Thakur and Anu Jain, *COVID 2019-suicides: A global psychological pandemic*, published in BRAIN, BEHAVIOR, AND IMMUNITY, Volume 88 (August, 2020), pages 952-953, and available at: <https://www.sciencedirect.com/science/article/pii/S0889159120306437?via%3Dihub>

14. Attached hereto as **Exhibit CC** is a true and correct copy the article by Leo Sher, *The impact of the COVID-19 pandemic on suicide rates*, published in QJM: AN INTERNATIONAL JOURNAL OF MEDICINE, (June 30, 2020), and available at: <https://academic.oup.com/qjmed/advance-article/doi/10.1093/qjmed/hcaa202/5857612>.

15. Attached hereto as **Exhibit DD** is a true and correct copy of the article by Mark Reger, Ian Stanley, Thomas Joiner, *Suicide Mortality and Coronavirus Disease 2019–A Perfect Storm?*, published by JOURNAL OF AMERICAN MEDICAL ASSOCIATION (April 30, 2020), and available at: <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2764584>.

16. Attached hereto as **Exhibit EE** is a true and correct copy the article by Sarah Moon and Jon Passantino, *Los Angeles apparel factory ordered closed after over 300 coronavirus cases and 4 deaths*, published by CNN, dated July 11, 2020, and available at: <https://www.cnn.com/2020/07/11/health/coronavirus-los-angeles-apparel-factory-closed/index.html>.

17. Attached hereto as **Exhibit FF** is a true and correct copy of the Verified Complaint for Declaratory and Injunctive Relief in *Cross Culture Christian Center v.*

1 *Newsom*, Case No. 2:20-cv-00832-JAM-CKD (E.D. Cal. Apr. 22, 2020), along with
2 exhibits 4 and 9 thereto.

3 18. Attached hereto as **Exhibit GG** is a true and correct copy the Order
4 Granting Temporary Restraining Order and Order to Show Cause Re Issuance of
5 Preliminary Injunction in *County of Ventura v. Godspeak Calvary Chapel*, Ventura
6 Cnty. Case No. 56-2020-00544086-CU-MC-VTA (Aug. 7, 2020).

7 19. Attached hereto as **Exhibit HH** is a true and correct copy of the article
8 ‘Great Concern’: *LA County Warns Churches Could Face Fines for Indoor Services*,
9 published by CBS LOS ANGELES, dated July 30, 2020, and available at:
10 [https://losangeles.cbslocal.com/2020/07/30/covid-church-religious-indoor-](https://losangeles.cbslocal.com/2020/07/30/covid-church-religious-indoor-services-coronavirus-la-county/)
11 [services-coronavirus-la-county/](https://losangeles.cbslocal.com/2020/07/30/covid-church-religious-indoor-services-coronavirus-la-county/).

12 20. Attached hereto as **Exhibit II** is a true and correct copy of Verified
13 Complaint for Temporary Restraining Order, Declaratory Relief, Injunctive Relief
14 and Damages in *Abiding Place Ministries v. Wooten*, Case No 20-CV-0683-BAS (S.D.
15 Cal. April 9, 2020), along with exhibits 3–8 thereto.

16 21. Attached hereto as **Exhibit JJ** is a true and correct copy of the article by
17 Artie Ojeda, *Cease and Desist: County Cracks Down on Churches Holding Indoor*
18 *Services*, published by NBC SAN DIEGO, dated July 28, 2020, and available at:
19 [https://www.nbcsandiego.com/news/coronavirus/cease-and-desist-county-cracks-](https://www.nbcsandiego.com/news/coronavirus/cease-and-desist-county-cracks-down-on-churches-holding-indoor-services/2373987/)
20 [down-on-churches-holding-indoor-services/2373987/](https://www.nbcsandiego.com/news/coronavirus/cease-and-desist-county-cracks-down-on-churches-holding-indoor-services/2373987/).

21 22. Attached hereto as **Exhibit KK** is a true and correct of the article by
22 Eric Ting, *Gavin Newsom asked to reconcile support for protests with new warnings on*
23 *gatherings*, published by SF GATE, dated July 2, 2020, and available at:
24 [https://www.sfgate.com/politics/article/Gavin-Newsom-protests-coronavirus-July-](https://www.sfgate.com/politics/article/Gavin-Newsom-protests-coronavirus-July-Fourth-ask-15383112.php)
25 [Fourth-ask-15383112.php](https://www.sfgate.com/politics/article/Gavin-Newsom-protests-coronavirus-July-Fourth-ask-15383112.php).

26 23. Attached hereto as **Exhibit LL** is a true and correct copy of Exhibit “E”
27 to Verified Complaint for Declaratory and Injunctive Relief in *Calvary Chapel v.*
28 *Newsom*, Case No. Case 2:20-cv-01431-KJM-DMC (E.D. Cal. July 15, 2020), which

1 is a copy of Gavin Newsom's posts, published on TWITTER, dated May 30, 2020,
2 June 5, 2020, and June 19, 2020.

3 24. Attached hereto as **Exhibit MM** is a true and correct copy of the article
4 by Cheri Mossburg, *Recent protests have contributed to California's coronavirus case*
5 *increase, state official says*, published by CNN, dated June 26, 2020, and available at:
6 [https://www.cnn.com/world/live-news/coronavirus-pandemic-06-26-20-](https://www.cnn.com/world/live-news/coronavirus-pandemic-06-26-20-intl/h_b3a9aa753b4c05ea71479065f58bf534)
7 [intl/h_b3a9aa753b4c05ea71479065f58bf534](https://www.cnn.com/world/live-news/coronavirus-pandemic-06-26-20-intl/h_b3a9aa753b4c05ea71479065f58bf534).

8 I declare until penalty of perjury under the laws of the United States and the
9 State of California that the foregoing is true and correct. Executed on August 10,
10 2020.

11
12 
13 Jeffrey M. Trissell
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EXHIBIT Q



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@CAPublicHealth

California COVID-19, By The Numbers:

- ◆ Positive cases: 50,442
- ◆ Confirmed hospitalizations: 3,428
- ◆ Confirmed ICU hospitalizations: 1,192
- ◆ Deaths: 2,073

More numbers bit.ly/3c1Yck4

#StayHomeSaveLives



4:03 PM · May 1, 2020 · Twitter Web App

28 Retweets and comments 26 Likes

CA Public Health @CAPublicHealth · May 1
Replying to @CAPublicHealth
Números del #COVID19 en California:

- ◆ Casos confirmados/positivos: 50,442
- ◆ Hospitalizaciones confirmadas: 3,428
- ◆ Hospitalizaciones en las Unidades de Cuidados Intensivos (ICU) confirmadas: 1,192
- ◆ Muertes: 2,073

#QuedateEnCasaSalvaVidas

Números del COVID-19 en California

Los Mayo 2020

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Rocksteady teases new **Suicide Squad** game

Trending with: Subermen



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Coach Fox

Music · Last night

Cardi B and Megan Thee Stallion shine in new music video with surprise appearances

Trending with: #WAPMusicVideo



Music · Trending

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50,442
CASOS

Estados de los casos confirmados que han sido analizados

- Alameda 1,000
- Alameda 2 95,000
- Alameda 3 15,000
- Alameda 4 10,000
- Alameda 5 5,000

Estados de los casos confirmados que aún están pendientes

- Alameda 6 10,000
- Alameda 7 5,000
- Alameda 8 10,000
- Alameda 9 5,000

Hospitales/ocios

Casos confirmados de COVID-19

Casos sospechados de COVID-19

2,073



Heather M @hmbmkj · May 2

Replying to @CAPublicHealth @CAgovernor and 3 others

Why are you lumping 18-49 together? That's a pretty large group that makes up a good number of your total so it would be nice to know more accurate info based on age groups.





Anubis @DreadHornby2 · May 2

Replying to @CAPublicHealth @CAgovernor and 3 others

Crazy





California COVID-19, By The Numbers:

- ◆ Positive cases: 113,006
- ◆ Confirmed hospitalizations: 2,973
- ◆ Confirmed ICU hospitalizations: 1,053
- ◆ Deaths: 4,251

More information cdph.ca.gov/covid19

#YourActionsSaveLives



1:44 PM · Jun 1, 2020 · Twitter Web App

30 Retweets and comments 22 Likes



CA Public Health @CAPublicHealth · Jun 1
Replying to @CAPublicHealth
Números del #COVID19 en California:

- ◆ Casos confirmados/positivos: 113,006
- ◆ Hospitalizaciones confirmadas: 2,973
- ◆ Hospitalizaciones en las Unidades de Cuidados Intensivos (ICU) confirmadas: 1,053
- ◆ Muertes: 4,251

#TusAccionesSalvanVidas



PROPAGACIÓN DE COVID-19 EN CALIFORNIA
113,006
CASOS

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175k Tweets

Music · Last night
Cardi B and Megan Thee Stallion shine in new music video with surprise appearances
Trending with: #WAPMusicVideo

Flip books · Trending
#PlanetAmerica

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+ Cases 274,449
 + Deaths 26,443
 + Cases 274,449

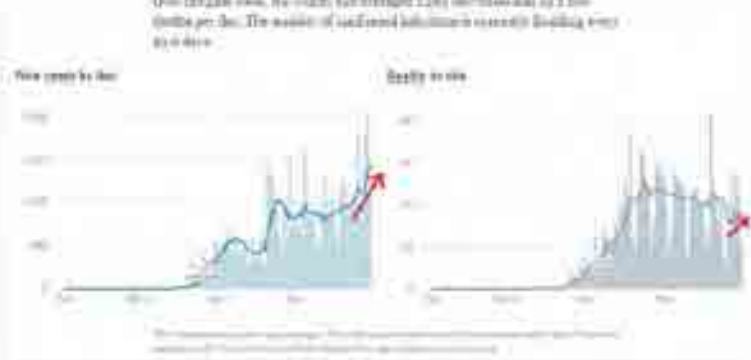
+ Confirmed 274,449
 + Confirmed 274,449

Hospitalizaciones
 Cases confirmados de COVID-19: **2,973/1,053**
 Cases sospechosos de COVID-19: **1,285/220**
4,251 Faltas de datos

las vacunas [¿cómo saber?](#) [covid19.ca.gov](#)



Eduardo Suastegui @Suastegui_E · Jun 1
 Replying to @CAPublicHealth
 Los Angeles, before the #Riots2020 #COVID19 Wave-2 effect kicks in:
[latimes.com/projects/valit...](https://www.latimes.com/projects/valit...)



 1
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Boubou @Boubou21565881 · Jun 1
 It IS too early to see anything

 1
  1
  1
 

3 more replies

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CA Public Health

@CAPublicHealth

California COVID-19, By The Numbers:

- ◆ Positive cases: 232,657
- ◆ Confirmed hospitalizations: 5,196
- ◆ Confirmed ICU hospitalizations: 1,617
- ◆ Deaths: 6,090

More information cdph.ca.gov/covid19

#YourActionsSaveLives



5:44 PM · Jul 1, 2020 · Twitter Web App

49 Retweets and comments · 44 Likes



CA Public Health · Jul 1

Replying to @CAPublicHealth

Números del #COVID19 en California:

- ◆ Casos confirmados/positivos: 232,657
- ◆ Hospitalizaciones confirmadas: 5,196
- ◆ Hospitalizaciones en las Unidades de Cuidados Intensivos (ICU) confirmadas: 1,617
- ◆ Muertes: 6,090

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Números hasta el 30 de junio 2020

PROPAGACIÓN DE COVID-19 EN CALIFORNIA

232,657 CASOS

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#肖俊0808生日快乐

Trending with: #0808JustYouXiaoJun, #XIAOJUN 175K Tweets

Music · Last night

Cardi B and Megan Thee Stallion shine in new music video with surprise appearances

Trending with: #WAPMusicVideo



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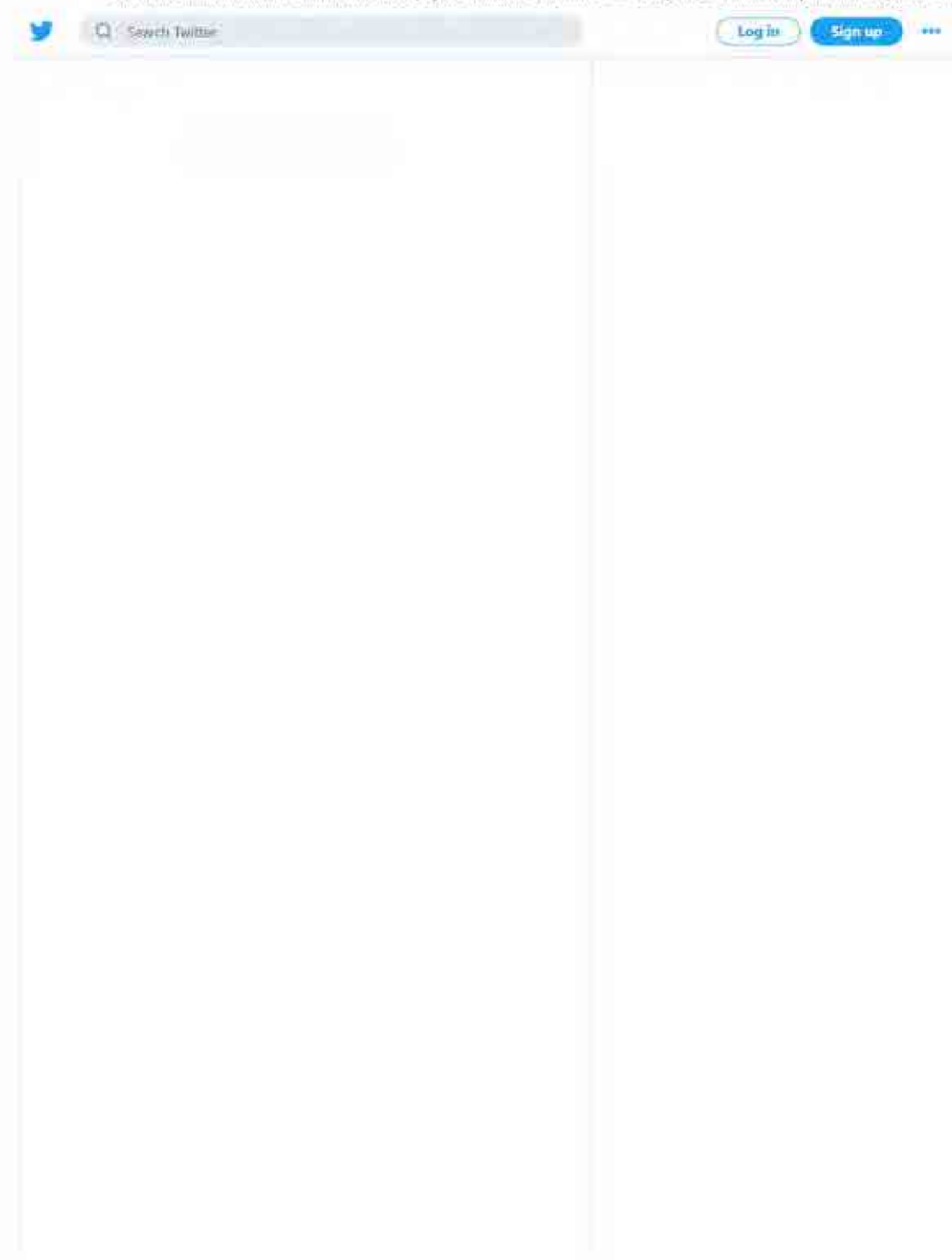


CA Public Health (@CAPublicHealth) · Jul 1

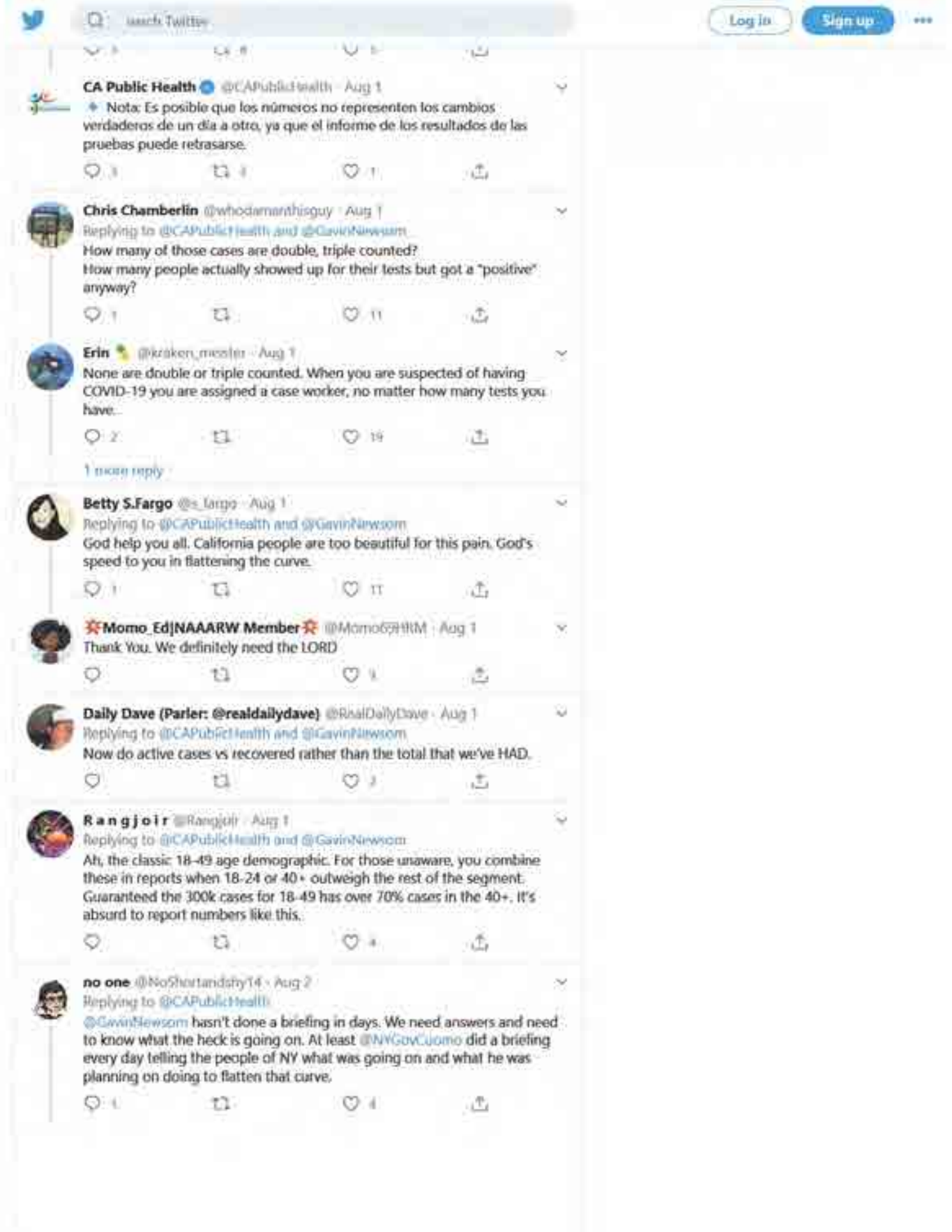
processing delayed test results + updating CA's case counts. To ensure the data accurately reflects how #COVID19 is impacting our communities, previously reported case numbers may sometimes be updated retroactively. The graph shows how cases have been adjusted in recent days.

7 16 12











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EXHIBIT R



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

EXHIBIT S

8/7/2020

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LOCAL

Some San Diego shopping malls get reopening date



68° **FOX 5**

by FOX 5 Digital Team

Posted May 21, 2020 / 07:30 PM PDT / Updated May 21, 2020 / 10:16 PM PDT

SAN DIEGO — Some of San Diego's most notable shopping malls plan to reopen next week with new health and safety protocols for customers.

Four shopping centers including Westfield UTC, Mission Valley, North County and Plaza Bonita will reopen to the community on May 29, a Westfield spokeswoman said in an email Thursday. The decision comes following approval by the state this week of a San Diego County plan which called for dine-in restaurants and in-store retail to reopen with modifications.

RELATED CONTENT

Faulconer: Restaurant, retail reopenings are 'major victory' for San Diego

Retail reopens in San Diego after state OKs county safety plan

CDC releases recommendations for schools to consider when reopening

Calif. official: School districts will 'make their own decisions' on reopening

The centers reopen with adjusted hours, now open from 11 a.m. to 7 p.m. Monday through Saturday, and 12 p.m. to 6 p.m. on Sunday. They've also implemented a series of new measures including increasing the frequency of cleaning "high-touch areas" and monitoring the number of guests entering each center.

"We are excited to welcome back guests and come together as a community again," said Nino Rodriguez, vice president of shopping center management. "As we begin our initial recovery from the COVID-19 pandemic, our centers will be equipped to

68° **FOX 5**

More information on the reopenings is available to customers through Westfield's Answers on the Spot program, which offers responses by text or online chat from 10 a.m. to 7 p.m. daily. Malls can be reached at 858-914-2752 (Westfield UTC), 619-324-3686 (Mission Valley), 760-232-6217 (North County) and 619-485-1770 (Plaza Bonita).

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Why is Everyone in Rancho Santa Fe Rushing to Get This \$89 AC Unit?

Blank Portable AC



3 Ways Your Cat Asks for Help

Dr. Marty



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California Doctor "I Beg Americans To Throw Out This Vegetable Now"

Willowgoode2018



Top U.S. Vet Warns: The One Meat All Dogs Should Avoid

Dr. Marty



How Dogs Cry For Help: 3 Warning Signs Your Dogs Is Crying For Help

Dr. Marty



Removing Moles & Skin Tags Has Never Been This Easy

Womans Den



68° ☁

FOX 5



Man found stabbed underneath Ocean Beach Pier

by City News Service / Aug 7, 2020

SAN DIEGO (CNS) - A man suffering from a stab wound was found underneath the Ocean Beach Pier early Friday morning, but he was expected to recover, police said.

The stabbing was reported around 4:15 a.m. near the pier off Niagara Avenue, San Diego police Sgt. Tony Adams said.

[Read the Full Article](#) →

68° ☁

FOX 5



Sweetwater district investigates inappropriate disruptions of online learning

by Kasia Gregorczyk / Aug 6, 2020

CHULA VISTA, Calif. -- Just four days into the school year, Sweetwater Union High School District is investigating several instances of inappropriate interruptions during virtual learning.

School officials are looking into reports from five to six high schools.

[Read the Full Article](#) →



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by City News Service / Aug 6, 2020

VISTA (CNS) - A San Diego County Sheriff's Department employee accused of trying to break into a Vista business last month pleaded not guilty Thursday to attempted burglary and vandalism charges.

Estella Velez, a 54-year-old licensed vocational nurse at the Vista Detention Facility, was arrested last week, along with 44-year-old Raol Rios, on suspicion of attempting to break into a business last month.

[Read the Full Article](#) →

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Tourist snaps the toes off 19th-century statue while posing for photo



Virus testing in the US is dropping, even as deaths mount



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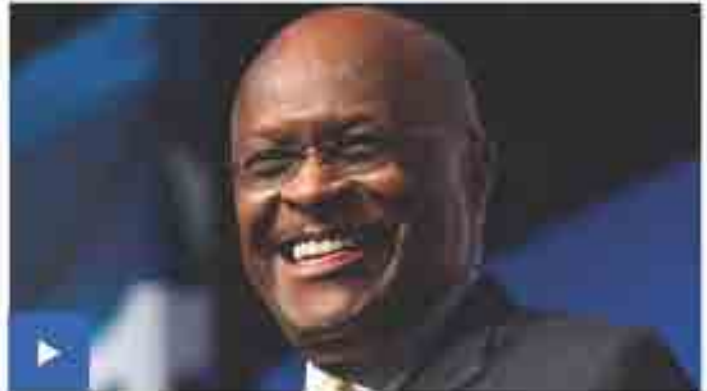
Homeless vets get free dental, eye care from Healing California



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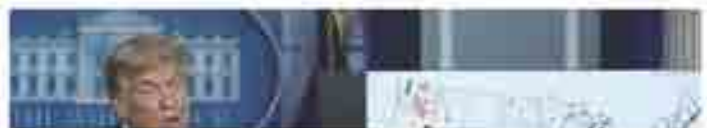
Herman Cain dies after COVID 19 battle



NASA launches Mars rover Perseverance



NASA's next Mars rover is brawniest and brainiest one yet



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EXHIBIT T



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HEALTH AND SCIENCE

California to allow hair salons and barbershops to reopen in majority of state's counties, Gov. Newsom says

PUBLISHED TUE, MAY 26 2020 3:41 PM EDT | UPDATED TUE, MAY 26 2020 4:31 PM EDT

Noah Higgins-Dunn
@HIGGINS-DUNN

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SEARCH QUOTES 🔍

HOME ORDERS IN MID-MARCH, HAS BEEN REOPENING ITS ECONOMY
statewide in phases.

The state is currently in phase two of its reopenign plan, which
has allowed for the resumption of retail businesses and
manufacturing jobs with modifications.



Gavin Newsom, governor of California, speaks during a news conference in Sacramento, California, on Tuesday, April 14, 2020.

Rich Pedroncelli | AP | Bloomberg via Getty Images

California Gov. Gavin Newsom announced on Tuesday that he would ease the state's restrictions on barbershops and hair salons for some counties in the state that meet certain health criteria.

The state, which issued one of the earliest statewide stay-at-home orders in mid-March, has been reopening its economy



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businesses and manufacturing jobs with modifications.

Counties in the state that [meet certain health criteria](#), including less than 25 new cases per 100,000 residents in the past 14 days or less than 8% testing positive in the last week, are allowed to move further into the state's reopening plan.

Newsom said 47 of the state's 58 counties have "self-attested" to meeting the state's criteria to move further into phase two, and starting Tuesday they will be allowed to reopen barbershops and hair salons with modifications, he said, including enhanced cleaning protocols and face covering requirements.

"Those counties will begin to allow for those kind of operations with meaningful modifications, with the appropriate protective gear, particularly face coverings that are so essential in that environment, sanitation requirements and the like," Newsom said.

So far, those 47 counties have been allowed to reopen dine-in restaurant services with enhanced sanitation practices and modifications. Newsom has yet to lift restrictions on nail salons, bars and wineries, nightclubs and theme parks, among other businesses.

"We are advancing conversations with the legislature in particular supporting efforts to put out guidelines on nail salons and personal care, personal services," Newsom said. "The issues there require, I think, a little bit more specificity, a little bit more nuance and details in terms of the guidance to satisfy



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Some of California's largest counties, however, like San Francisco and Los Angeles County, have yet to move further into the state's reopening plan. Newsom has allowed cities to follow their own stay-at-home orders and ease restrictions when officials felt it's safe to do so.

Both the Bay Area and Los Angeles have issued their own stay-at-home orders. Barbara Ferrer, director of the Los Angeles County department of public health, [has indicated](#) that the county's stay-at-home restrictions will likely remain in place in the county through August, [according to reports](#) from NBC Los Angeles.

Newsom said that the hospitalization rate for Covid-19 cases in the state has remained stable and there's now more intensive-care unit beds available, although he said the number of people in the ICU remains "stubborn but stable."

"All of these numbers are part of those indicators that have to turn yellow to green so we can continue to march forward and indeed, they are turning yellow to green and we are marching forward as it relates to these modifications to the stay-at-home order," Newsom said.



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PUBLIC HEALTH ORDER

Gyms, Bars, Museums, Hotels & More Can Reopen Friday, SD County Says

Also included in the next wave of reopenings are wineries, card rooms, family entertainment centers, swimming pools, museums, galleries, zoos, aquariums, hotels and Airbnbs

Published June 8, 2020 • Updated on June 8, 2020 at 4:54 pm



Print Story



Several more businesses including gyms, bars, museums, hotels and others will be allowed to reopen as soon as Friday, San Diego County public health leaders announced Monday, ending a nearly three-month shutdown for some.

San Diego's bar industry was one of the first shut down by the county's public health order, first issued on March 16 as the novel coronavirus began to spread through the region. Gyms followed several days later as health officials took more drastic steps to contain the spread.

12 weeks later, public health officials have announced that they will loosen restrictions to allow those industries to reopen, along with wineries, card rooms, family entertainment centers, museums, galleries, zoos, aquariums, hotels and Airbnbs. Swimming pools, including those at apartment complexes, would be allowed to reopen.

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The county also announced that [additional activities would be allowed](#) to resume, effective immediately, with modifications, including day camps, campgrounds, RV parks and outdoor recreation like sports fishing and private charter boats.

The move from San Diego County leaders followed guidance from California Gov. Gavin Newsom, who is working to gradually pull back a statewide stay-at-home order.

Mark Ghaly, the state's top health official, said last week that the [new wave of reopenings would only apply to counties](#) that have met certain thresholds on the number of cases, testing and preparedness will be allowed to start reopening the other sectors.

Fletcher said businesses who wish to reopen this Friday were required to go to the [county's Safe Reopening website](#) and follow the steps outlined under their specific industry. Each industry will have its own requirements and standards to ensure the safety of their guests, Fletcher said.

Some Phase 3 businesses were notably not included in the wave of reopenings, including nail salons, places to get facials, tattoo parlors, therapeutic massage venues, movie theaters, conventions and concerts. Public Health Officer Wilma Wooten said she expected guidance from the state on more businesses in the coming weeks.

On Friday, San Diego County [had a total of 8,619 cases](#) and 296 deaths since the start of the outbreak.

This article tagged under:

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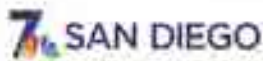
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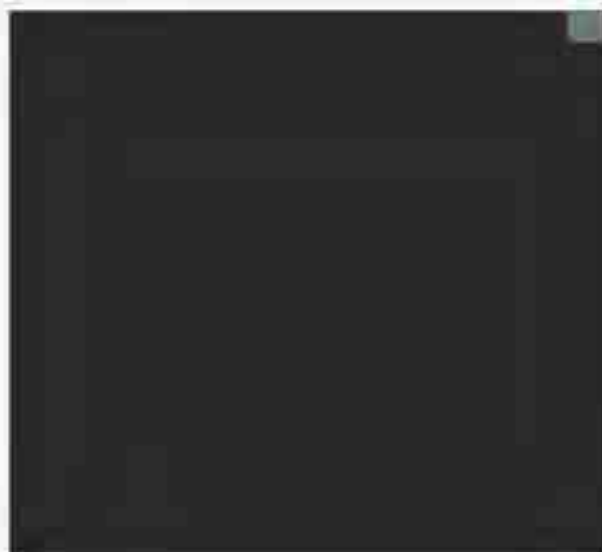


EXHIBIT V

Church sues California Gov. Gavin Newsom over ban against at-home Bible studies



In this May 14, 2020, file photo, California Gov. Gavin Newsom discusses his revised 2020-2021 state budget during a news conference in Sacramento, Calif. Gov. Gavin Newsom announced Friday, July 17, 2020, that most counties will start the school year ... more »

By Alex Swoyer - The Washington Times - Monday, July 20, 2020

Churchgoers sued California Gov. Gavin Newsom over his ban on indoor services in several counties, including in-home Bible studies.

Harvest Rock Church and its ministry argued the ban, which was aimed to stop the spread of the coronavirus, is unconstitutional and they're

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“While the Governor has unilaterally and significantly restricted the number of individuals permitted to ‘gather’ in Plaintiffs’ churches, he has imposed no similar restrictions on the untold thousands of protesters who have gathered all throughout California cities with no threat of criminal sanction, and no social distancing or restrictions whatsoever,” the complaint filed Saturday read. “And, the Governor explicitly encouraged such large gatherings of protesters while condemning churches for [singing] hymns in their churches.”

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Earlier this month the governor said worship could take place in the state with an indoor limit at 25 percent capacity but his order restricted singing to stop the spread of respiratory droplets.

Less than two weeks later, though, on July 13, he announced some counties must close indoor services.

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Harvest Rock Church, represented by the religious liberty legal group Liberty Counsel, argued the ban applies to at-home Bible studies too, which the church helps facilitate.

"Governor Gavin Newsom cannot disregard the First Amendment and ban all in-person worship in private homes and churches. Nor can the state micromanage the form of worship by banning singing or chanting. The governor is not the High Priest over all religions," said Mat Staver, founder of Liberty Counsel.

"There is not two First Amendments - one for protests and one for houses of worship. Gov. Newsom encourages thousands of protesters to gather in the streets but bans in-person worship and home Bible studies and fellowship. This discriminatory treatment is unconstitutional," Mr. Staver added.

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Harvest International Ministry includes 162 churches in the state.

Mr. Newsom's office did not immediately respond to a request for comment.

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beanbag58

20 July, 2020



So the democrat message is law abiding Americans cannot worship God, but thugs and rioters can carry out mayhem in very close quarters, even commit murder, and the democrats won't lift a finger to prevent it. The choice is clear in November: Trump if you love America, Biden if you want America to fail. *(Edited)*

Reply  10 

Spec Ops Lawyer > beanbag58

20 July, 2020



Good Point! Under the left, two kinds of justice exist, i.e., one for Democratic-Socialists and one for us "little people." *(Edited)*

Reply  4 

Purple umbrella

20 July, 2020



Newsom following in a long line of family politics and far left liberalism. His Aunt by marriage is Nancy Pelosi. Both families tied closely to the Getty's and Pritzkers. They all lie when they say they are in it for public service. Just like Bush, Kennedy, Clinton and now Obama, they are sucked in for the greed and power. Be gone, all of them.

Reply  5 

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beanbag58 · Purple umbrella

20 July, 2020

Correct, Newsom like Pelosi is simply part of the swamp that needs to be drained for America to ever get better.

Reply  2 

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EXHIBIT W

County of San Diego



CORONAVIRUS DISEASE 2019 (COVID-19)

SAFE REOPENING SUPPLEMENTAL GUIDE

JULY 21, 2020

Faith-Based Organizations and Places of Worship



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TABLE OF CONTENTS

Disclaimer.....	2
Purpose of this Supplemental Guide.....	3
Safe Reopening Plan.....	4
A. Signage.....	5
❖ <i>Communication</i>	5
B. Measures to Protect Employee Health.....	7
C. Measures to Protect Customer Safety.....	10
D. Measures to Keep People Six Feet Apart.....	12
E. Other Measures.....	14
Helpful Tip: Assign Roles and Responsibilities.....	16
Resources.....	17
Definitions.....	18
Contact Us.....	19
Safe Reopening Plan Form.....	20

DISCLAIMER

The information in this document was last revised on July 21, 2020. To review the most updated information regarding current guidelines and Public Health Order, please visit the following websites:

- [County of San Diego COVID-19 Website](#)
- [Faith-Based Organizations Sector](#)
- [Public Health Order](#)
- [California Department of Public Health Website](#)



PURPOSE OF THIS SUPPLEMENTAL GUIDE

The Faith-Based Organization Sector is offering this supplemental guidance document as an additional resource to assist places of worship with implementation of the Safe Reopening Plan.

The purpose of this guide is to serve as a companion to:

- [California Department of Public Health \(CDPH\) Industry Guidance for Places of Worship](#)
- [County of San Diego Public Order](#)
- [County of San Diego Safe Reopening Plan](#)

This guide does not obligate places of worship to resume in-person activity. Further, it is strongly recommended that places of worship continue to facilitate remote services and other related activities for those who are vulnerable to Coronavirus Disease 2019 (COVID-19) including older adults and those with co-morbidities.

Places of worship will be able to use this guide in order to:

- Assess readiness by specific areas and actions.
- Initiate plans to resolve any issues.
- Create accountability.

Worship Service Attendance/Capacity effective July 13, 2020 and until further notice:

- **Indoor Services:** Indoor services may not be held at this time, in order to mitigate the spread of the virus.
- **Outdoor Services:** Outdoor attendance should be limited naturally through implementation of strict physical distancing measures of a minimum of six feet between attendees from different households, in addition to other relevant protocols within this document.

SAFE REOPENING PLAN

The County of San Diego Public Health Order, effective June 3, 2020, requires all Faith-Based Organizations reopening to complete and implement a [Safe Reopening Plan](#).

The purpose of the Safe Reopening Plan is to ensure that establishments that host patrons, including houses of worship, have a standardized process and guidelines to minimize risk of COVID-19.

The most recent public health order can be found by visiting [San Diego County Public Health Order](#).

Provided in a checklist format (○), this guide covers the requirements that support a safe reopening plan to help prevent the spread of COVID-19. Additionally, recommendations are provided throughout this guide (◇) to further support a safe reopening.

SAFE REOPENING PLAN

✓ STEPS A THROUGH E: REQUIREMENTS & RECOMMENDATIONS

- A. Signage
- B. Measures to Protect Employee Health
- C. Measures to Protect Customer Safety
- D. Measures to Keep People Six Feet Apart
- E. Other Measures

A Safe Reopening Plan is required for indoor and outdoor operations. Each place of worship is unique, and as such, practical applications and guidance actions may need to be tailored to create an appropriate and complete plan.



A. Signage

Signage is an important part of the reopening plan. Signs reinforcing Physical Distancing, Personal Wellness, and Safe Health Practices are gentle reminders to staff and congregants to keep physically distant, wear facial coverings, and wash hands frequently.



REQUIRED

Signage at each public entrance of the facility or outdoor area to inform all employees and customers that they should:

- avoid entering the facility if they have a cough or fever;
- wear facial coverings;
- maintain a minimum six-foot distance from one another; and
- not shake hands or engage in any unnecessary physical contact.



REQUIRED

Post a copy of the [Safe Reopening Plan](#) at each public entrance to the facilities or outdoor areas.



Sample signage

- [County of San Diego Printable Resources and Materials](#)
- [Centers for Disease Control and Prevention \(CDC\) Print Resources](#)

Communication is another important way to regularly inform your staff, congregants, and visitors of the steps taken to ensure a safe reopening. Examples include: bulletins, newsletters, websites, e-mails, phone calls, social media, texts, etc.

Suggested communication and messaging:



Create initial announcement focusing on “Welcome/What to Expect” messages and attendance guidelines.



Share the steps which have been taken to create a safe environment.



Share that many procedures and guidelines are in effect not only to protect ourselves, but to protect one another.

- ◆ Emphasize that congregants who are at higher risk for severe illness from COVID-19 (65 years or older, have underlying medical conditions) and all who are experiencing symptoms of the virus, those who are quarantined or isolated are strongly encouraged to refrain from attending services.
 - **Quarantine:** Persons are quarantined after being exposed to someone with COVID-19.
 - **Isolation:** Persons are isolated after demonstrating symptoms consistent with COVID-19.
- ◆ Have Faith Leaders create a short video message covering key messages and reopening plans.
- ◆ Utilize “Live Stream” to share reopening plans.
- ◆ Consider having a remote or virtual “Town Hall” to allow Faith Leaders to share reopening plans and answer questions.
- ◆ Communication Resources:
 - [County of San Diego Printable Materials](#)
 - [CDC Social Media Toolkit](#)
 - [CDC Print Resources](#)
- ◆ Resources to create your own posters, handouts, and flyers:
 - Adobe Spark: [Create Your Own Physical Distancing Posters](#)
 - Canva: www.Canva.com

B. Measures to Protect Employee Health

Measures to Protect Employee Health can help prevent transmission of COVID-19 in your community. It is important to train and support staff in practicing Personal Wellness, Physical Distancing, and Safe Health Practices. Leading by example will convey to your team that you are prioritizing the health and well-being of your staff, congregants, and visitors.



REQUIRED

Teleworking opportunities have been maximized.



On days when there are no worship services, it is encouraged that staff work from home for tasks such as accounting or other administrative duties, when possible.



Schedule staff to report to the office on rotating days, if possible.



REQUIRED

All employees must have temperature taken upon reporting to work.

Please note: visitors/congregants do not need temperature checks, but it is highly recommended.

- If 100 degrees or more, they should not be allowed in the workplace.
- If a digital thermometer is not available, employees must be screened for [COVID-19 symptoms](#), which include:
 - Fever or chills
 - Cough
 - Shortness of breath or difficulty breathing
 - Fatigue
 - Muscle or body aches
 - Headache
 - New loss of taste or smell
 - Sore throat
 - Congestion of runny nose
 - Nausea or vomiting
 - Diarrhea



- To the maximum extent possible, make sure the temperature/symptom screener avoids close contact with those being screened.
- Both screener and staff should wear face coverings for the screening.
- Anyone who has a fever or other [symptoms](#) should contact their medical provider for medical advice. If they do not have a healthcare provider or are uninsured, call 2-1-1 for assistance.
- For additional control measures and screening information, see [page 6 of CDPH Guidance](#).
- For testing information, please visit the [County of San Diego Testing Site](#).



REQUIRED

All desks or individual workstations are separated by at least six feet.



If staff are coming in on rotating days and using the same desk space, computers, materials, etc., ensure availability of cleaning supplies and encourage staff to disinfect their space at the beginning and end of their shift.



For office work and worship services, ensure desk space, podiums, seats, musicians, etc. are separated by at least six feet.



REQUIRED

Break rooms, bathrooms, and other common areas are being disinfected frequently.



Disinfect microphones and stands, music stands, instruments and other items on pulpits and podiums between each use. Consult equipment manufacturers to determine appropriate disinfection steps, particularly for soft, porous surfaces such as foam mufflers, upholstery, etc.



Consider using disposable seat covers for congregants/visitors, particularly on porous surfaces or where a facility has multiple daily services.

◇ Create a schedule of cleaning and disinfecting for each commonly used area and any shared items.

◇ Additional Resources:
[Pages 7-8 of CDPH Guidance](#)
[County of San Diego Disinfection Guidance](#)
[CDC Cleaning and Disinfection Guidance](#)
[EPA Approved Disinfectants for Use Against SARS-CoV-2](#)

○ **REQUIRED**
 Disinfectant and related supplies are available to all employees.

○ **REQUIRED**
 Hand sanitizer effective against COVID-19 is available to all employees.

○ **REQUIRED**
 Soap and water are available to all employees.

○ **REQUIRED**
 Copies of the Reopening Plan have been distributed to all employees.

◇ Ensure all employees understand the disinfection schedule and location of all supplies.

◇ Ensure that sanitary facilities stay operational and stocked at all times. Provide additional soap, paper towels, and hand sanitizer when needed. Consider more frequent cleaning and disinfecting of handwashing facilities that are used more often. Use signage to reinforce handwashing.

◇ Install hand sanitizer dispensers, touchless whenever possible, at entrances and contact areas such as meeting rooms, lobbies, and elevator landings.

◇ [See pages 4-5 of CDPH Guidance](#) for additional topics on employee and volunteer training.

C. Measures to Protect Customer Safety

Measures to Protect Customer Safety are intended to protect congregants and visitors. The implementation of these measures may help prevent transmission of COVID-19. Illustrating that your place of worship has an action plan and is practicing Personal Wellness, Physical Distancing, and Safe Health Practices will convey to congregants and visitors that you are prioritizing their health and well-being, as well as protecting the community at-large.



REQUIRED

Reconfigure common areas and limit number of attendees and staff to ensure adherence to at least six foot physical distance requirement.



REQUIRED

Curbside or outdoor service is made available where feasible.

Please Note: Outdoor worship service attendance should be limited naturally through implementation of strict physical distancing measures of a minimum of six feet between attendees from different households, in addition to other relevant protocols within this document.



Shorten services to limit the length of time congregants/visitors spend at facilities whenever possible. This could include limiting speeches, asking congregants/visitors to put on religious garments at home before arrival.



Consider offering additional meeting times (per day or per week) so that fewer guests attend meetings and services at one time. Clean meeting areas between each use as described in this guidance.



Persons from the same household may sit together and do not need to practice physical distancing.



Consider implementing a reservation system to limit the number of congregants/visitors attending facilities at a time. This can include the use of digital platforms or other types of tools. Examples of online reservation websites are:

- [Signupgenius.com](https://signupgenius.com)
- [Evite.com](https://evite.com)
- [Eventbrite.com](https://eventbrite.com)

If meetings or services are held in-person, continue to offer remote access to protect those 65 and older, those with co-morbidities and those who choose to remain at home.



See pages [9-12 in CDPH Guidance](#) for additional recommendations.



REQUIRED

All patrons/visitors must wear facial coverings within six feet of another person.

Please Note: All persons two years of age or older who are present in the county shall have possession of a face covering when they leave their home or place of residence and shall wear the face covering as described in the [CDPH Face Covering Guidance issued on June 18, 2020](#).



Prior to services, remind congregants and visitors of the facial covering requirement and its importance in stopping the spread of COVID-19.



Persons exempt from wearing a facial covering, as stated in the [CDC Guidelines](#) include:

- Children under age 2.
- Anyone who has trouble breathing, or is unconscious, incapacitated, or otherwise unable to remove the mask without assistance.



Place staff or volunteers at the entrance to buildings to remind people to wear facial coverings as they enter.



For more information on face coverings, visit [Face Coverings: Protect Yourself and Others](#).

D. Measures to Keep People Six Feet Apart

Measures to keep people six feet apart will assist in establishing clear guidelines and expectations for staff, congregants, and visitors in your place of worship. Placing signage, using markings, training staff, and using a reservation system can help everyone adhere to physical distancing guidelines and help prevent the transmission of COVID-19.



REQUIRED

Placing signs outside the building or outdoor area reminding people to be at least six feet apart, including when in line. Encourage pedestrian traffic to follow one-way migration paths, if appropriate.



Designate several staff members to walk around and give congregants friendly reminders about physical distancing and wearing a facial covering.



REQUIRED

Placing tape or other markings at least six feet apart in line areas inside and on sidewalks at public entrances. Direct visitors to use the markings as guides for maintaining physical distancing.



Determine how physical distancing will impact seating for services and the overall seating capacity for the house of worship.



Prepare to accommodate for larger family groups from the same household as well as smaller household units.



Map out areas where it is anticipated that congregants will be waiting in lines or are typically in close proximity. These areas will need monitoring for adherence to the six foot physical distance requirement between household groups.



Areas to consider placing markings include: outside prior to entering place of worship, seating areas, line spacing outside of restrooms.



If applicable, place markings in sitting areas on the ground to ensure six feet physical distancing.

○ REQUIRED

All employees have been instructed to maintain at least six feet distance from visitors and from each other. Exceptions may include: accepting payment, delivering goods or services, or as otherwise necessary.

- ◆ Establish a written, workplace-specific COVID-19 prevention plan at every location, perform a comprehensive risk assessment of all work areas, and designate a person at each workplace to implement the plan.
- ◆ Ensure all categories of staff including temporary, contract, and volunteer workers are also properly trained in COVID-19 prevention policies and have necessary Personal Protective Equipment (PPE) if job duties require it. Discuss these responsibilities ahead of time with organizations supplying temporary, contract, and/or volunteer staff.
- ◆ Regularly evaluate workplaces for compliance with the plan and document and correct deficiencies identified.
- ◆ Emphasize the importance of physical distancing, both at work AND off work time (see Physical Distancing section below).
- ◆ Limit the exchange of commonly used items. This can include items such as cups, garments, ritual objects, etc.
- ◆ See page [9-12 of CDPH Guidance](#) for additional recommendations on physical distancing.

○ REQUIRED

Appointment system is utilized, when appropriate.

- ◆ Consider making appointments for counseling services or other in-person meetings to reduce lines or gathering in waiting areas. Examples of online reservations include:
 - [Signupgenius.com](https://signupgenius.com)
 - [Evite.com](https://evite.com)
 - [Eventbrite.com](https://eventbrite.com)

E. Other Measures

Other Measures and Recommendations are other activities that are NOT mandatory, but you may want to consider to protect the health and safety of your staff, congregants, and visitors. In this section, you may add additional measures that may be specific to your house of worship, site or building.

Listed below are ideas that may be helpful in creating your Plan:

- ◆ **Flow of Foot Traffic:** Mark walking paths between spaces designated for congregants/visitors to sit/kneel so that people do not walk where someone may touch their head to the floor.

See [page 8 of CDPH Guidance](#) for additional recommendations.

- ◆ **Ventilation:** During meetings and services, introduce fresh outside air, for example, opening doors/windows (weather permitting) and operating ventilation systems.

- ◆ **Air Cleaners:** Consider installing portable high-efficiency air cleaners, upgrading the building's air filters to the highest efficiency possible, and making other modifications to increase the quantity of outside air and ventilation in worship areas, offices, and other spaces.

- ◆ **Food Self-Service/Food and Beverages:** Discontinue offering self-service food and beverages. Do not hold potlucks or similar family-style eating and drinking events that increase the risk of cross contamination. If food and beverages must be served, provide items in single-serve, disposable containers whenever possible. Employees or volunteers serving food should wash hands frequently and wear disposable gloves and face coverings.

See [pages 11-12 of CDPH Guidance](#) for additional recommendations.

◆ **Singing:** As of July 13, indoor singing and recitation must be discontinued. as there is increased likelihood for transmission from contaminated exhaled droplets. This may be done outdoors with facial coverings and physical distancing.

◆ **Parking Lots:** Reconfigure parking lots to limit congregation points and ensure proper separation (e.g., closing every other space).

If performing drive-in services, ensure vehicle windows and doors are closed if six feet of distance is not possible between vehicles.

Consider volunteers to discourage gatherings among different households in the parking lot.

See [pages 11-12 of CDPH Guidance](#) for additional recommendations.

◆ **Virtual Services:** Continue to support remote services and other related activities to those who are vulnerable to COVID-19 including older adults and those with co-morbidities.

See [page 12 of CDPH Guidance](#) for additional recommendations.

◆ **Additional Safety Measures:** [CDPH Guidance](#).

Additional considerations for Places of Worship: Stay updated on current State and Local guidance regarding ceremonies (weddings, funerals, etc) and other special events by visiting:

- www.coronavirus-sd.com
- www.sdcounty.ca.gov/covidfaithbased
- www.cdph.ca.gov/

HELPFUL TIP: ASSIGN ROLES AND RESPONSIBILITIES

The following are potential roles that staff and volunteers can support in order to ensure that all mandatory requirements and suggested guidelines are met:

Senior Leaders: Promote, model and encourage all health and safety measures.

Reopening Lead: Responsible for coordinating all implementation efforts.

Communication Manger: Responsible for monitoring wellness practices, and informing all leaders, staff and volunteers about overall plans, procedures, protocols and roles and responsibilities.

Safe Entry Coordinator: Responsible for ensuring all staff have their temperature taken and are not exhibiting symptoms of COVID-19.

Welcome Staff: Upon entry, reminding people to wear facial coverings, maintain physical distance, provide and encourage the use of hand sanitizer.

Foot Traffic Staff: Responsible for ensuring visitors/congregants follow the foot traffic guidance so that a six-foot distance is kept between all visitors, congregants, staff and volunteers.

Parking Lot Attendants: Responsible for ensuring there is no gathering in the parking lots and that cars and visitors/congregants are following appropriate physical distancing guidance. Responsible for posting signs, cones and taking other necessary measures to assist people in safely entering the building.

RESOURCES

If you need help finding social services or medical care, call the [San Diego County Information line 2-1-1](#), which is available 24/7.

- [What You Should Know \(Infographic\)](#)
- [FAQs, Fact Sheets and Materials \(available in several languages\)](#)
- [CDC Guidance for Community and Faith-Based Organizations](#)
- [Center for Faith and Opportunity Initiatives U.S. Dept of Health and Human Services](#)
- [How to Cope with Stress \(available in several languages\)](#)
- [Handwashing](#)
- [What If I'm Exposed](#)
- [Home quarantine guidance for close contacts to COVID-19](#)
- [Home care instructions for people with Respiratory Symptoms](#)
- [What to do if you have symptoms of Coronavirus Disease 2019](#)
- Stay tuned on the *Live Well San Diego* for videos on how to use technology [How-To YouTube Channel Playlist](#).

Other reliable sources of information include:

- California Department of Public Health (CDPH, State)
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/nCOV2019.aspx>
- Centers for Disease Control and Prevention (CDC, National)
<http://www.cdc.gov/coronavirus/novel-coronavirus-2019.html>
- World Health Organization (WHO, International)
<https://www.who.int/health-topics/coronavirus>
- National Funeral Directors Association
<https://nfda.org/covid-19>
- Behavioral Health Service
<https://www.sandiegocounty.gov/hhsa/programs/bhs/>
- Access and Crisis Line
(888) 724-7240 is available 24/7 for immediate help
www.Up2sd.org
- Aging and Independence Services
<https://www.sandiegocounty.gov/content/sdc/hhsa/programs/ais.html>
- Vital Family Assistance Center
<https://www.redcross.org/virtual-family-assistance-center.html>



DEFINITIONS

Physical Distancing: Physical distancing is a practice recommended by public health officials to stop or slow down the spread of a contagious disease. A distance of 6 feet or 2 meters between individuals is recommended for COVID-19, to avoid the spread of respiratory droplets. While in the same location (ex: grocery store), wearing a facial covering and maintaining 6 feet of space between individuals is recommended. Direct and indirect touching of people or objects outside of the household should be avoided.

- **Direct Touching** – Physical contact with another person (handshake, hug, high fives)
- **Indirect Touching** - Sharing the same physical objects. (Examples include, sharing a glass of water, touching the same piece of paper, sharing a book, passing cell phones back and forth, etc...)

Quarantine: Used to separate and restrict the movement of people who are well, but who may have been exposed to someone with an infectious disease. People are placed in quarantine to wait and see if they will become ill during the incubation period of the disease. For COVID-19, the incubation period is 2-14 days.

Isolation: Used to separate people with symptoms of an infectious disease, even if the symptoms are mild, from people who do not have symptoms. Isolation can be done at home or in a separate facility. A person in isolation should stay away from others even while isolated at home, to avoid spreading the illness.

Facial Covering: Face coverings should cover the nose and mouth and be used when individuals may be around people outside of their household. Face covering should be used in addition to other protective measures (such as physical distancing and washing your hands). Cloth face coverings should:

- fit snugly but comfortably against the side of the face
- be secured with ties or ear loops
- include multiple layers of fabric
- allow for breathing without restriction
- be able to be laundered and machine dried without damage or change to shape

The cloth face coverings recommended are not surgical masks or N-95 respirators. Those are critical supplies that must continue to be reserved for healthcare workers and other medical first responders, as recommended by current CDC guidance.

For more information visit: [County of San Diego Face Coverings Guidance](#) | [CDC Facial Coverings Guidance](#) | [CDC Cloth Face Coverings Q&A](#)

CONTACT US

E-mail: covid-cbo-faith@sdcounty.ca.gov

Website: www.sdcounty.ca.gov/covidfaithbased

Telebriefings: [Join us every second and fourth Wednesdays each month at 1 PM](#)

Free presentations available on COVID-19 and other health related topics:
[Live Well San Diego Speaker's Bureau](#)

***We appreciate your commitment and dedication to keeping
the County of San Diego healthy, safe and thriving!***





SAFE REOPENING PLAN

Business Name: _____

Facility Address: _____

This plan does not need to be submitted at this time. This plan is to be used to prepare when businesses open per the Governor's Order. The County will not require approval for this plan.

Businesses must implement all mandatory measures listed in A and B below. Businesses shall select applicable measures listed in C and D below and be prepared to explain why any measure that is not implemented is inapplicable to the business. Businesses shall also provide specific details regarding their Safe Reopening Plan pertaining to their business in section E below.

A. Signage (Mandatory):

- ☐ Signage at each public entrance of the facility to inform all employees and customers that they should: avoid entering the facility if they have a cough or fever; wear facial coverings, maintain a minimum six-foot distance from one another; and not shake hands or engage in any unnecessary physical contact.
- ☐ Signage posting a copy of the Safe Reopening Plan at each public entrance to the facility.

B. Measures To Protect Employee Health (Mandatory):

- ☐ Teleworking opportunities have been maximized.
- ☐ All employees have been told not to come to work if sick.
- ☐ All employees must have temperature taken upon reporting to work; if 100 degrees or more, should not be allowed in workplace. Employees must be screened for symptoms (cough, shortness of breath or trouble breathing, headache, fever, chills, muscle or body aches, fatigue, sore throat, congestion or runny nose, new loss of taste or smell, nausea or vomiting, diarrhea, exposure to individuals who have tested positive for COVID-19)
- ☐ All employees must wear facial coverings in the workplace, if within six feet of others.
- ☐ All desks or individual work stations are separated by at least six feet.
- ☐ Break rooms, bathrooms, and other common areas are being disinfected frequently, on the following schedule:

- ☐ Personal Protective Equipment (PPE) has been provided at a level appropriate to employee job duties (describe below)



SAFE REOPENING PLAN

B. Measures To Protect Employee Safety (Mandatory) Continued:

- ☐ Soap and water are available to all employees at the following location(s):

- ☐ Copies of the Protocol have been distributed to all employees.

C. Measures To Protect Customer Safety (Check all that apply to the facility):

- ☐ Limit the number of customers in the store at any one time to which allows for customers and employees to easily maintain at least six-foot distance from one another at all practicable times.
- ☐ All patrons/visitors must have facial coverings in their possession and wear them within 6 ft. of another person.
- ☐ Curbside or outdoor service is made available where feasible.
- ☐ Optional – Describe other measures:

D. Measures To Keep People At Least Six Feet Apart (Check all that apply to the facility):

- ☐ Placing signs outside the store reminding people to be at least six feet apart, including when in line. Including encouragement for pedestrian traffic to follow one-way migration paths, if appropriate.
- ☐ Placing tape or other markings at least six feet apart in customer line areas inside the store and on sidewalks at public entrances with signs directing customers to use the markings to maintain distance.
- ☐ All employees have been instructed to maintain at least six feet distance from customers and from each other, except employees may momentarily come closer when necessary to accept payment, deliver goods or services, or as otherwise necessary.
- ☐ Appointment system is utilized, when appropriate.
- ☐ Optional – Describe other measures:

SAFE REOPENING PLAN

E. Additional Measures Specific to Business (Mandatory):

*Any additional measures not included here should be listed on separate pages, which the business should attach to this document.

You may contact the Health and Safety Coordinator with any questions or comments about this protocol:

Name:

Phone Number:

Signature, Appointing Authority or Designee

Date of Form Completed:



EXHIBIT X

United States Senate
WASHINGTON, DC 20510

July 23, 2020

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President,

At any point, but particularly during the COVID-19 pandemic, it is imperative that we protect our First Amendment's guarantee of religious freedom. Regrettably, this fundamental right—enjoyed by Americans throughout our history—has been infringed by troubling policies implemented during this crisis by many state and local government leaders.¹

As you are aware, there continue to be reported cases of states and localities prohibiting religious entities, including houses of worship, from reopening safely despite compliance with safety precautions found in Centers for Disease Control and Prevention (CDC) guidance such as social distancing, building and surface sanitization, use of masks, etc. This discriminatory behavior violates our Constitution's guarantee of religious freedom, specifically the free exercise guarantee. On May 22, you appropriately identified "houses of worship . . . as essential places that provide essential services" and called on all governors "to allow our churches and places of worship to open right now." However, this call for action appears to have fallen on deaf ears in many of our cities and states. Our nation needs its houses of worship now more than ever.

While Attorney General Barr has appropriately indicated that the Department of Justice would seek to protect religious freedom, these efforts may be too little, too late, as it would require litigating the issues in the courts. As Attorney General Barr recently stated, "even in times of emergency, when reasonable and temporary restrictions are placed on rights, the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. Thus,

government may not impose special restrictions on religious activity that do not apply also to similar nonreligious activity.”ⁱⁱ Indeed, there is no “pandemic” exception to constitutionally protected rights.

We, therefore, respectfully request that you consider taking additional measures within your authority to ensure churches, houses of worship, and religious institutions are able to reopen with appropriate CDC implemented guidelines. Additionally, we ask you to support proposals in Congress to place restrictions on any forthcoming COVID-19 relief funding to states and localities that prevent churches, houses of worship, and religious schools and institutions from reopening.

Such executive action would send the nation and government leaders a clear and unequivocal message that religious liberty matters, and that no state or locality can unilaterally strip away protected constitutional rights. Your resolve and leadership on this issue would deliver a strong message in these most troubling times. We appreciate your commitment to protecting American citizens’ right to exercise their faith, their right to pray for peace, and to healing a deeply divided nation.

Sincerely,



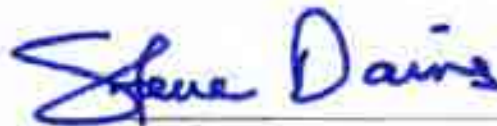
Mike Lee
United States Senator



Mike Braun
United States Senator



Josh Hawley
United States Senator



Steve Daines
United States Senator



Kellyoeffler
United States Senator



Thom Tillis
United States Senator



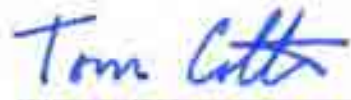
Cindy Hyde-Smith
United States Senator



Roger Wicker
United States Senator



James Lankford
United States Senator



Tom Cotton
United States Senator

¹⁷ Many, including yourself, have properly expressed concern over the recent appearance of a double standard in allowing large gatherings for peaceful protesting but still prohibiting gatherings for religious worship or education.

¹⁸ <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-issues-statement-religious-practice-and-social-distancing-1>

EXHIBIT Y



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Gov. Newsom Outlines Strict Guidelines For Schools

Friday, July 17, 2020

By Associated Press, Joe Hong



Photo by [Magna Burke](#)

Above: Castle Park Middle School in Chula Vista as shown, May 1, 2018.

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California Gov. Gavin Newsom laid out strict criteria Friday for school reopenings that makes it unlikely the vast majority of districts will have classroom instruction in the fall as the coronavirus pandemic surges.

▶ 0:00 / 8:18 ◀

Aired: July 17, 2020 | [Transcript](#)

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California Gov. Gavin Newsom laid out strict criteria Friday for school reopenings that makes it unlikely the vast majority of districts will have classroom instruction in the fall as the coronavirus pandemic surges.

The rules include a mandate that students above second grade and all staff wear masks in school.

Newsom's new guidance mandates that public schools in California counties that are on a watch list for rising coronavirus infections cannot hold in-person classes and will have to meet strict criteria for reopening. That's disappointing news for local school districts such as Poway Unified, which hoped to welcome some students back for in-person instruction in the fall.

"We have been planning for two options all along with a mindset that we need to be prepared to have the entire district be virtual if that was a situation that arose during the school year," said Carol Osborne, Poway Unified associate superintendent of learning support services. "I think it just now has arisen sooner than we anticipated."

The school district is considering multiple options, such as starting different grade levels on different dates or pushing back the start date to give the county more



time to get off the monitoring list, she said.

The state's guidance says all school staff and all students in grades three to 12 will be required to wear face coverings. Younger students will be encouraged but not required to wear masks. Osborne was relieved by this new rule.

<https://www.kpbs.org/news/2020/jul/17/california-governor-outline-plans-reopening-school/>

Your contact info

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"I think for especially for some of our older kids, that'll help put our minds at ease for a lot of our teachers," she said.

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The governor's strict new regulations mark a dramatic shift from his earlier position that it was up to local school districts and boards to decide when and how to reopen. His announcement came as many of the state's 1,000 school districts are set to resume instruction in mid-August, with many still finalizing reopening plans.

"Planning for the reopening of the 20-21 school year has really been a roller-coaster ride," said Robert Meszaros, a spokesman for the Kern County Superintendent of Schools' office. Kern County, north of Los Angeles, is not on the watch list but expects it could be soon and will be affected.

Meszaros said that while the governor's announcement wasn't unexpected, "it is very different from the directive that was given just a few short weeks ago when schools were encouraged to open for the 20-21 school year with in-person instruction to the greatest extent possible."

With many school districts struggling over the decision, teachers unions, parents and school officials have been urging Newsom to provide more direction on whether it is safe to return. This week, California reported its second-highest one-day totals in infection rates and deaths since the start of the pandemic. Nearly 7,500 people have died in California — more than 1,200 of them in the past two weeks.

Several large school districts have already said their schools will begin the new term virtually, including Los Angeles and San Diego, the state's two largest with a combined enrollment of 720,000 K-12 students. San Francisco, Oakland, Sacramento, Long Beach, Santa Ana and San Bernardino are among the other districts opting not to immediately return

to classrooms.

Los Angeles County Department of Public Health Director Barbara Ferrer said it was "disheartening and unfortunate" that LA County students can't have a normal first day back at school but also necessary.

"This week, Los Angeles County has unfortunately reached grim milestones every day. We have reported the most cases in a single day, the most hospitalizations and tragically high death numbers," Ferrer said.

Los Angeles County is on the governor's watch list because of concerning coronavirus transmission and hospitalization rates. Being on the list had already put restrictions on the ability to reopen various segments of the economy. That means schools will have to open with distance learning.

Newsom's guidance lays out in detail when classrooms and schools would have to close if there is an outbreak. If a student or educator test positive for the virus, a classroom would have to close and the students and teacher would quarantine for 14 days. An entire school should revert to distance learning if it reports multiple cases, or 5 percent of students and staff test positive within a 14-day period.

Jeff Frenas, president of the California Federation of Teachers, said the union was thankful Newsom provided direction for schools Friday. But he said the rules for resuming in-person learning should be even stricter. Schools shouldn't be allowed to open until cases decline for 14 straight days within a county and statewide.

"Everybody involved wants in-person learning. We know that is the best way to provide education. But there is a safety issue here," he said.

The California Teachers Association, which represents 310,000 members, had pointedly urged Newsom last week not to reopen schools "until it is safe."

Republican Assemblyman Kevin Kiley accused the governor of listening to "special interests, not science" in laying out the rules.

"Rather than adopting a balanced approach that provides California families options for classroom-based and home-based learning, the governor is shutting down the vast majority of schools across the state," said Kiley, of Rocklin.

Schools across California closed in March as the state ramped up virus-related restrictions. The move to distance learning was rocky for teachers, parents and students, particularly those who lacked the right technology or internet access. Newsom noted the state budget includes more than \$5 billion to help students suffering from learning losses.

Schools will now be required to introduce "robust distance learning programs," something teachers have said they are striving for but may be easier said than done.

The rules call for regular coronavirus testing of school staff and working with county contact tracers if an outbreak occurs, Newsom said.

Superintendents will be able to submit waiver requests to re-open elementary schools, for approval by the local health officers, but it was unclear how strict or lenient authorities would be when examining those requests.

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EXHIBIT Z



County of San Diego

HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH SERVICES

ORDER OF THE HEALTH OFFICER AND EMERGENCY REGULATIONS (Effective July 21, 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 Tuesday, July 21, 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 traveling to and from essential businesses, reopened businesses, or essential activities as defined in section 22, 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 22 below, are prohibited.
3. All businesses not meeting the definition of essential business or reopened business in section 22 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, any 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, charter and private schools shall not hold classes on the school campus, and shall conduct distance learning only as required by COVID-19 an Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year issued by the California Department of Health Services on July 17, 2020 available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID->

[19/Schools%20Reopening%20Recommendations.pdf](#)}. Colleges and Universities shall not hold classes or other school activities where students gather on the school campus, except for research-related activities in colleges and universities and where necessary to train students who will serve as essential workers.

5. Child daycare and child care providers shall operate in compliance with the measures set forth in State COVID-19 Updated Guidance: Child Care Programs and Providers and shall prepare and post a Safe Reopening Plan pursuant to section 11, below.
6. “Non-essential personnel,” as defined in section 22 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, pharmacies 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 years of age or older who are present in the county shall have possession of a face covering when they leave their home or place of residence and shall wear the face covering as described and required in California Department of Public Health Face Covering Guidance issued on June 18, 2020, (available at:

https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Guidance-for-Face-Coverings_06-18-2020.pdf).

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](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, with the exception of restaurants, bars, wineries, distilleries and breweries which do not limit services to take-out or delivery, 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. Restaurants bars, wineries, distilleries and breweries which do not limit services to take-out or delivery, must prepare and post a “COVID-19 Restaurant Operating Protocol” on the form available at https://www.sandiegocounty.gov/content/dam/sdc/deh/fhd/food/pdf/covid19sdrestaurantoperatingprotocol_en.pdf for each restaurant in the county. The Safe Reopening Plan or COVID-19 Restaurant Operating 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 Safe Reopening Plan or COVID-19 Restaurant Operating Protocol must also be provided to each employee performing work at the facility. All reopened businesses shall implement the Safe Reopening

Plan or COVID-19 Restaurant Operating Protocol and provide evidence of its implementation to any authority enforcing this Order upon demand. The Safe Reopening Plan or COVID-19 Restaurant Operating Protocol 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 or COVID-19 Restaurant Operating Protocol to ensure proper social distancing and sanitation. Any business that fails to comply with its Safe Reopening Plan or COVID-19 Restaurant Operating Protocol shall immediately close.

12. When the State of California has issued an industry guidance, or any subsequent amendments thereto, with mandatory and/or suggested measures to be implemented by a particular type of business or industry, a reopened business must include in its Safe Reopening Plan all of the industry guidance mandatory measures, including, but not limited to, all of the requirements and guidance set forth in the Statewide Public Health Officer Order, issued by the California Department of Health Services on July 13, 2020, all portions of which are operative in San Diego County effective immediately, and available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>. The reopened business shall include all suggested measures necessary to maintain proper sanitation, employee screening, social distancing and facial coverings. Any mandatory measures required by this Order must also be included in the Safe Reopening Plan.
13. All brewpubs, breweries, bars and pubs shall close unless they comply with section 14c, below, in which case they shall comply with all other requirements in this section and section 14 below. All other restaurants, bars, wineries, distilleries and breweries shall close indoor service in conformance with the requirements set forth in the Statewide Public Health Officer Order, issued by the California Department of Health Services on July 13, 2020, all portions of which are operative in San Diego County effective immediately, and available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>, and shall be closed from 10:00 p.m. until 5:00 a.m. every day. Guests already in the facility at 10:00 p.m. may remain in the facility until 11:00 p.m. Only staff needed to close, open or clean shall be in the facility between the hours of 11:00 p.m. and 5:00 a.m.
14. All restaurants, bars, wineries and breweries shall also be required to ensure their customers comply with all of the following measures and shall immediately close if they are not able to

do so:

- a. No food or beverages shall be served to or consumed by a customer who is not seated at a table designated by the restaurant for dining.
- b. The bar area of a restaurant may be used only for table service of meals.
- c. Alcoholic drinks shall only be served as part of a meal and must be sold and served in the same transaction as the meal. All meals shall be served by a food operator permitted by the San Diego County Department of Environmental Health. This restriction shall not be applicable to outdoor service of wine at a winery or spirits at a distillery.
- d. Customers shall not stand in the restaurant, bar, winery, distillery or brewery except in the reception area while waiting for a table or to pick up take-out food. If customers cannot be socially distanced in the reception area they shall wait in their cars or outside of the restaurant in a line with six feet between each customer.
- e. Discontinue open seating. All members of the party must be present before seating and the host must bring the entire party to the table at one time. The customers allowed at a table are limited to members of a single household or customers who have asked to be seated together at the time a table is requested.
- f. Discontinue seating customers and/or groups at bar counters, sushi preparation bars, etc. where they cannot maintain at least six feet of distance from employee work areas/stations. Install physical barriers or partitions in areas where maintaining a physical distance of six feet is difficult.
- g. Customers are not required to wear face coverings while at a table with members of the same household. Customers at a table with non-household members are not required to wear face coverings when eating and drinking. Customers are required to wear face coverings at all other times in conformance with paragraph 9, above.
- h. Tables designated for dining shall be six feet apart, or separated by barriers or partitions that extend above the heads of customers while seated. Customer shall not be allowed to bring additional chairs to the table that interfere with the six foot separation.
- i. Self-serve food or drink options, such as buffets, salad bars, and drink stations are not allowed.
- j. Shared entertainment items such as board games, arcade games and vending machines are prohibited and customers shall not have access to game and entertainment areas such as pool tables or darts.
- k. Dance floors shall be closed and live performances such as musical or dance acts shall be discontinued.
- l. Any customer that refuses to comply with this section shall be subject to enforcement per Health and Safety Code section 120295.

15. Places of Worship – Religious services and cultural ceremonial activities (including wedding ceremonies but not receptions) may be conducted in conformance with the State Guidance pursuant to sections 11 and 12, above. Given the high risk of this activity, vulnerable members of the population (over 65 years old, compromised immune system or underlying condition) are strongly encouraged to participate through streaming or some other form of remote technology. Outdoor services and cultural ceremonial activities may be conducted provided all persons practice social distancing as defined in section 22e, below.

16. Each essential business and reopened business shall:

- a. Require all employees/on-site contractors (hereinafter referred to as employees) to have possession of face coverings and wear them as described in section 9 above when in the business facility; and,
- b. Shall conduct temperature screening of all employees and prohibit entry to the workplace of employees with a temperature of 100 degrees or more, employees exhibiting COVID-19 [symptoms as described by the Centers for Disease Control and Prevention](#), or employees who have recently been exposed to a person who has tested positive for COVID-19 (either directly or through a breach of Personal Protective Equipment in the case of healthcare workers/first responders).

17. Outdoor Recreation

- a. Each public park and recreation area or facility, shall operate in compliance with the measures set forth in the [State COVID-19 Industry Guidance: Campgrounds, RV Parks and Outdoor Recreation](#). The operator of the park shall prepare a Safe Reopening Plan pursuant to section 11, above, indicating how the park or recreation facility will implement the required measures. Any park or recreation area/facility at which the Protocol requirements cannot be effectively implemented may be required to close.
- b. Outdoor recreation instruction and day camps that comply with the State COVID-19 Industry Guidance: Day Camps, may be conducted in park and recreation areas/facilities.
- c. Swimming pools owned or operated by a Homeowners' Association, Condominium or Apartment complex may be open provided the owner or operator completes and posts a Safe Reopening Plan that shows conformance with the requirements of this Order and with the swimming pool/aquatic venues requirements of the State COVID-19 Industry Guidance on Fitness Facilities.

18. 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.

19. 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.
20. 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.
21. 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.
22. 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. 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 22a above and reopened businesses as defined in 22f 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 22a above, and has reopened in conformance with the State of California’s Resilience Roadmap (available at: <https://covid19.ca.gov/roadmap-counties/>) and the Statewide Public Health Officer Order, issued by the California Department of Health Services on July 13, 2020, all portions of which are operative in San Diego County effective immediately, and available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>}. A reopened business may open when the State has posted the applicable COVID-19 INDUSTRY GUIDANCE, the Public Health Officer has posted an acknowledgement of the reopened status on the County of San Diego Coronavirus website and the business has

complied with the requirements of this Order.

23. Hotels and lodging establishments may be open for all guests, including tourists and leisure guests, provided they comply with the State COVID-19 Industry Guidance: Hotels, Lodging and Short Term Rentals and complete and post a Safe Reopening Plan pursuant to section 11, above.
24. 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."
25. 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.
26. 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.
27. 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.”

28. 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.
29. 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.
30. This Order is issued to protect the public health as businesses are allowed to reopen by requiring businesses to implement procedures necessary to ensure their employees and customers comply with social distancing, sanitation and screening practices.
31. 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.
32. The statement of facts and circumstances set forth as justification for each Guidance issued by the California Department of Health Services that is referenced in this Order are hereby accepted and incorporated by reference into this Order.
33. 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.

34. Violation of this Order is subject to fine, imprisonment, or both. (California Health and Safety Code section 120295.)
35. 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.
36. Once this Order takes effect it shall supersede the Order of the Health Officer and Emergency Regulations dated July 14, 2020.

IT IS SO ORDERED:

Date: July 20 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: July 20, 2020



Helen Robbins-Meyer
Chief Administrative Officer
Director of Emergency Services
County of San Diego

EXHIBIT AA



County of San Diego

HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH SERVICES

ORDER OF THE HEALTH OFFICER AND EMERGENCY REGULATIONS (Effective August 8, 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 Saturday, August 8, 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 traveling to and from essential businesses, reopened businesses, or essential activities as defined in section 22, 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 22 below, are prohibited.
3. All businesses not meeting the definition of essential business or reopened business in section 22 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, any 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, charter and private schools shall not hold classes on the school campus, and shall conduct distance learning only as required by COVID-19 and Reopening In-Person Learning Framework for K-12 Schools in California, 2020-2021 School Year issued by the California Department of Public Health on July 17, 2020 available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>. Colleges and Universities shall not

hold classes or other school activities where students gather on the school campus, except for research-related activities in colleges and universities and where necessary to train students who will serve as essential workers.

5. Child daycare and child care providers shall operate in compliance with the measures set forth in State COVID-19 Updated Guidance: Child Care Programs and Providers and shall prepare and post a Safe Reopening Plan pursuant to section 11, below.
6. “Non-essential personnel,” as defined in section 22 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, pharmacies 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 years of age or older who are present in the county shall have possession of a face covering when they leave their home or place of residence and shall wear the face covering as described and required in California Department of Public Health Face Covering Guidance issued on June 18, 2020, (available at: <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID->

[19/Guidance-for-Face-Coverings_06-18-2020.pdf](#)).

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, with the exception of restaurants, bars, wineries, distilleries and breweries which do not limit services to take-out or delivery, 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. Restaurants bars, wineries, distilleries and breweries which do not limit services to take-out or delivery, must prepare and post a “COVID-19 Restaurant Operating Protocol” on the form available at https://www.sandiegocounty.gov/content/dam/sdc/deh/fhd/food/pdf/covid19sdrestaurantoperatingprotocol_en.pdf for each restaurant in the county. The Safe Reopening Plan or COVID-19 Restaurant Operating 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 Safe Reopening Plan or COVID-19 Restaurant Operating Protocol must also be provided to each employee performing work at the facility. All reopened businesses shall implement the Safe Reopening Plan or COVID-19 Restaurant Operating Protocol and provide evidence of its implementation

to any authority enforcing this Order upon demand. The Safe Reopening Plan or COVID-19 Restaurant Operating Protocol 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 or COVID-19 Restaurant Operating Protocol to ensure proper social distancing and sanitation. Any business that fails to comply with its Safe Reopening Plan or COVID-19 Restaurant Operating Protocol shall immediately close.

12. When the State of California has issued an [industry guidance](#), or any subsequent amendments thereto, with mandatory and/or suggested measures to be implemented by a particular type of business or industry, a reopened business must include in its Safe Reopening Plan all of the industry guidance mandatory measures, including, but not limited to, all of the requirements and guidance set forth in the Statewide Public Health Officer Order, issued by the California Department of Health Services on July 13, 2020, all portions of which are operative in San Diego County effective immediately, and available at [{https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf}](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf). The reopened business shall include all suggested measures necessary to maintain proper sanitation, employee screening, social distancing and facial coverings. Any mandatory measures required by this Order must also be included in the Safe Reopening Plan.
13. All brewpubs, breweries, bars and pubs shall close unless they comply with section 14c, below, in which case they shall comply with all other requirements in this section and section 14 below. All other restaurants, bars, wineries, distilleries and breweries shall close indoor service in conformance with the requirements set forth in the Statewide Public Health Officer Order, issued by the California Department of Health Services on July 13, 2020, all portions of which are operative in San Diego County effective immediately, and available at [{https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf}](https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf), and shall be closed from 10:00 p.m. until 5:00 a.m. every day. Guests already in the facility at 10:00 p.m. may remain in the facility until 11:00 p.m. Only staff needed to close, open or clean shall be in the facility between the hours of 11:00 p.m. and 5:00 a.m.
14. All restaurants, bars, wineries and breweries shall also be required to ensure their customers comply with all of the following measures and shall immediately close if they are not able to do so:

- a. No food or beverages shall be served to or consumed by a customer who is not seated at a table designated by the restaurant for dining.
- b. The bar area of a restaurant may be used only for table service of meals.
- c. Alcoholic drinks shall only be served as part of a meal and must be sold and served in the same transaction as the meal. All meals shall be served by a food operator permitted by the San Diego County Department of Environmental Health. This restriction shall not be applicable to outdoor service of wine at a winery or spirits at a distillery.
- d. Customers shall not stand in the restaurant, bar, winery, distillery or brewery except in the reception area while waiting for a table or to pick up take-out food. If customers cannot be socially distanced in the reception area they shall wait in their cars or outside of the restaurant in a line with six feet between each customer.
- e. Discontinue open seating. All members of the party must be present before seating and the host must bring the entire party to the table at one time. The customers allowed at a table are limited to members of a single household or customers who have asked to be seated together at the time a table is requested.
- f. Discontinue seating customers and/or groups at bar counters, sushi preparation bars, etc. where they cannot maintain at least six feet of distance from employee work areas/stations. Install physical barriers or partitions in areas where maintaining a physical distance of six feet is difficult.
- g. Customers are not required to wear face coverings while at a table with members of the same household. Customers at a table with non-household members are not required to wear face coverings when eating and drinking. Customers are required to wear face coverings at all other times in conformance with paragraph 9, above.
- h. Tables designated for dining shall be six feet apart, or separated by barriers or partitions that extend above the heads of customers while seated. Customer shall not be allowed to bring additional chairs to the table that interfere with the six foot separation.
- i. Self-serve food or drink options, such as buffets, salad bars, and drink stations are not allowed.
- j. Shared entertainment items such as board games, arcade games and vending machines are prohibited and customers shall not have access to game and entertainment areas such as pool tables or darts.
- k. Dance floors shall be closed and live performances such as musical or dance acts shall be discontinued.
- l. Any customer that refuses to comply with this section shall be subject to enforcement per Health and Safety Code section 120295.

15. Places of Worship – Religious services and cultural ceremonial activities (including wedding

ceremonies but not receptions) may be conducted in conformance with the State Guidance pursuant to sections 11 and 12, above. Given the high risk of this activity, vulnerable members of the population (over 65 years old, compromised immune system or underlying condition) are strongly encouraged to participate through streaming or some other form of remote technology. Outdoor services and cultural ceremonial activities may be conducted provided all persons practice social distancing as defined in section 22e, below.

16. Each essential business and reopened business shall:

- a. Require all employees/on-site contractors (hereinafter referred to as employees) to have possession of face coverings and wear them as described in section 9 above when in the business facility; and,
- b. Shall conduct temperature screening of all employees and prohibit entry to the workplace of employees with a temperature of 100 degrees or more, employees exhibiting COVID-19 [symptoms as described by the Centers for Disease Control and Prevention](#), or employees who have recently been exposed to a person who has tested positive for COVID-19 (either directly or through a breach of Personal Protective Equipment in the case of healthcare workers/first responders); and
- c. Take all of the following actions if an employer becomes aware that an employee is diagnosed with COVID-19:
 - i. Promptly notify the County Department of Public Health that there is an employee diagnosed with COVID-19, together with the name, date of birth, and contact information of the employee.
 - ii. Cooperate with the County Department of Public Health's COVID-19 response team to identify and provide contact information for any persons exposed by the employee at the workplace.
 - iii. Provide notice of the exposure to any employees, and contractors (who regularly work at the workplace), who may have been exposed to COVID-19, as stated in the State's COVID-19 Employer Playbook for a Safe Reopening, available at <https://files.covid19.ca.gov/pdf/employer-playbook-for-safe-reopening--en.pdf>.

17. Outdoor Recreation

- a. Each public park and recreation area or facility, shall operate in compliance with the measures set forth in the [State COVID-19 Industry Guidance: Campgrounds, RV Parks and Outdoor Recreation](#). The operator of the park shall prepare a Safe Reopening Plan pursuant to section 11, above, indicating how the park or recreation facility will

implement the required measures. Any park or recreation area/facility at which the Protocol requirements cannot be effectively implemented may be required to close.

- b. Outdoor recreation instruction and day camps that comply with the State COVID-19 Industry Guidance: Day Camps, may be conducted in park and recreation areas/facilities.
- c. Swimming pools owned or operated by a Homeowners' Association, Condominium or Apartment complex may be open provided the owner or operator completes and posts a Safe Reopening Plan that shows conformance with the requirements of this Order and with the swimming pool/aquatic venues requirements of the State COVID-19 Industry Guidance on Fitness Facilities.

- 18. 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.
- 19. 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.
- 20. 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.
- 21. 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.

22. 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/Essential>

[CriticalInfrastructureWorkers.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. 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 22a above and reopened businesses as defined in 22f 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 22a above, and has reopened in conformance with the State of California’s Resilience Roadmap (available at: <https://covid19.ca.gov/roadmap-counties/>) and the Statewide Public Health Officer Order, issued by the California Department of Health Services on July 13, 2020, all portions of which are operative in San Diego County effective immediately, and available at <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>. A reopened business may open when the State has posted the applicable COVID-19 INDUSTRY GUIDANCE, the Public Health Officer has posted an acknowledgement of the reopened status on the County of San Diego Coronavirus website and the business has complied with the requirements of this Order.

23. Hotels and lodging establishments may be open for all guests, including tourists and leisure guests, provided they comply with the State COVID-19 Industry Guidance: Hotels, Lodging and Short Term Rentals and complete and post a Safe Reopening Plan pursuant to section 11, above.
24. 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.”
25. 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.
26. 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.

27. 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.”
28. 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.
29. 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.
30. This Order is issued to protect the public health as businesses are allowed to reopen by requiring businesses to implement procedures necessary to ensure their employees and customers comply with social distancing, sanitation and screening practices.
31. 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.

32. The statement of facts and circumstances set forth as justification for each Guidance issued by the California Department of Health Services that is referenced in this Order are hereby accepted and incorporated by reference into this Order.
33. 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.
34. Violation of this Order is subject to fine, imprisonment, or both. (California Health and Safety Code section 120295.)
35. 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.

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

IT IS SO ORDERED:

Date: August 7, 2020



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

Public Health Officer

County of San Diego

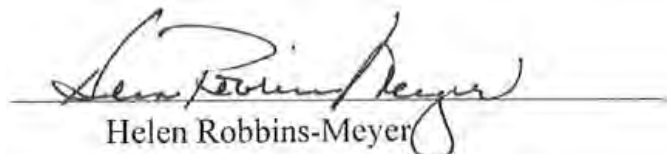
EMERGENCY REGULATIONS

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: August 7, 2020



Helen Robbins-Meyer

Chief Administrative Officer

Director of Emergency Services

County of San Diego

EXHIBIT BB



Since January 2020 Elsevier has created a COVID-19 resource centre with free information in English and Mandarin on the novel coronavirus COVID-19. The COVID-19 resource centre is hosted on Elsevier Connect, the company's public news and information website.

Elsevier hereby grants permission to make all its COVID-19-related research that is available on the COVID-19 resource centre - including this research content - immediately available in PubMed Central and other publicly funded repositories, such as the WHO COVID database with rights for unrestricted research re-use and analyses in any form or by any means with acknowledgement of the original source. These permissions are granted for free by Elsevier for as long as the COVID-19 resource centre remains active.



COVID-2019-suicides: A global psychological pandemic



An inspiring editorial by Montemurro (2020) entitled “The emotional impact of COVID-19: From medical staff to common people” recently published in the *Brain, Behavior, and Immunity* motivated us to pen down a concise yet, informative viewpoint entitled “COVID-2019-suicides: A global psychological pandemic”.

24,81,026 is the fearsome and huge number of COVID-19 cases with 1,70,423 deaths being reported from around the world (<https://www.worldometers.info/coronavirus/>) is complicating the situation and difficult to control. The realization of the non-availability of vaccine and/or effective antiviral drug against SARS-CoV-2 virus, and understanding that social distancing and quarantine/self-isolation is the only available remedy to us, forced the governments of most of the countries to declare the nationwide lock down.

So far the only advice or the option against the disastrous COVID-19 is screening of suspected person for SARS-CoV-2, if comes positive, then quarantine/self-isolation in addition to supportive treatment. However, few cases have been reported around the world where people out of fear of getting COVID-19 infection, social stigma, isolation, depression, anxiety, emotional imbalance, economic shutdown, lack and/or improper knowledge, financial and future insecurities took their lives. With recent suicide reports we can anticipate the rippling effect of this virus on worldwide suicide events. However, the basic psychology and inability of the person and the mass society to deal with the situation are the major factors behind these COVID-19 suicides pandemic.

1. Possible factors and predictors

Social Isolation/distancing induce a lot of anxiety in many citizens of different country. However, the most vulnerable are those with existing mental health issues like depression and older adults living in loneliness and isolation. Such people are self-judgemental, have extreme suicidal thoughts. Imposed isolation and quarantine disrupts normal social lives and created psychological fear and feeling like trapped, for an indefinite period of time. The first suicidal case was reported from south India on 12th Feb 2020, where Balakrishna, a 50-year-old man wrongly co-related his normal viral infection to COVID-19 (Goyal et al., 2019). Although out of fear and love for his family, he quarantined himself, but later committed suicide, as he was psychologically disturbed after reading COVID-19 related deaths in the newspaper. In Delhi, India, one COVID-19 suspected man admitted in the isolation ward of the Safdarjung Hospital allegedly committed suicide by jumping off the seventh floor of the hospital building (<https://economictimes.indiatimes.com/news/politics-and-nation/man-suspected-of-covid-19-commits-suicide/articleshow/74700431.cms?from=mdr>). Not only India, psychosocial distress linked to COVID-19 crises has swept the globe. COVID-19 worries apparently prompted a murder-suicide (<https://abc-news.go.com/US/wireStory/authorities-man-suspected-covid-19-worries-prompt-murder-suicide-69997314>) in Chicago where Patrick Jesernik shot Cheryl Schriefer before shooting himself. Patrick was in an illusion that two of them had SARS-CoV-2 infection.

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Worldwide lockdown creating economic recession: The looming economic crisis may create panic, mass unemployment, poverty and homelessness will possibly surge the suicide risk or drive an increase in the attempt to suicide rates in such patients. US already claimed a vast increase in unemployment (4.6 million) during coronavirus emergency and speculated that lockdown will cause more deaths than COVID-19 itself amid the recession (Reger et al., 2020). This uncertainty of time for isolation, not only demoralize but also make people feel worthless, hopeless about present and future as exemplified by the suicide of German Hesse state Finance Minister Thomas Schaefer (<https://www.todayonline.com/world/covid-19-german-minister-commits-suicide-after-virus-crisis-worries>).

Stress, anxiety and pressure in medical healthcare professionals are at immense and at the peak. 50% of the medical staff in the British hospitals are sick, and at home, leaving high pressure on the remaining staff to deal with the situation. In King's College Hospital, London, a young nurse took her own life while treating COVID-19 patients (<https://www.wzzm13.com/article/news/local/morning-features/suicide-risks-grow-during-pandemic/69-05657860-4404-44ad-bf57-c70dad3c6671>). Even the forefront warriors, i.e. medical professionals are constantly in close contact with COVID-19 positive and/or quarantined patients while treating them are under psychological trauma. The predictors are constant fear of getting infection, unbearable stress, helplessness and distress watching infected patients die alone.

Social boycott and discrimination also added few cases to the list of COVID-19 suicides. Mamun MA et al., 2020 reported the first COVID-19 suicide case in Bangladesh, where Zahidul Islam, a 36-year-old man committed suicide due to social avoidance by the neighbours and his moral conscience to ensure not to pass on the virus to his community (Mamun and Griffiths, 2020). Other important cases from around the world have been described in Table 1.

2. Dealing with COVID-19 stress

Scientists across the world are trying hard to develop vaccine against SARS-CoV-2, and antivirals like Favipiravir and Remdesivir are now under phase III clinical trials to treat clinical manifestation of COVID-19 disease. However, a total of 6,46,675 COVID-19 infected patients had already been recovered (<https://www.worldometers.info/coronavirus/>) and now different approaches need to be implemented to deal with COVID-19 related psychological stress. COVID-19 is a global crisis, so collective efforts are required to deal with this global pandemic. Emotional distress people need to first set the limit of COVID-19 related news consumption from local, national, international, social and digital platform and the sources must be authentic like CDC and WHO. One needs to maintain connectedness and solidarity despite the physical distance. Individuals with the previous history of suicidal thoughts, panic and stress disorder, low self-esteem and low self-worth, are easily susceptible to catastrophic thinking like suicide in such viral pandemic. Indirect

Table 1

Representative cases showing psychological conditions and underlying predictors leading to COVID-19 suicides.

Factors and predictors for COVID-19 suicides			
Social Isolation/distancing			
SN	Case History	Predictors	Reference
1.	Santosh Kaur, a 65- year-old woman, committed suicide over the fear of the COVID-19. (India)	Person was depressed, had anxiety over COVID-19 and was alone. Her fear was just an illusion and there was no one to counsel or to console her.	https://www.tribuneindia.com/news/punjab/anxiety-over-covid-19-leads-to-phagwara-womans-suicide-66466 (Accessed on 7 April 2020)
2.	Chinese student living in the kingdom of Saudi Arabia had committed suicide by jumping from the 3rd floor of a hospital. (Saudi Arabia)	Quarantined on suspicion of being infected with the coronavirus.	https://www.middleeastmonitor.com/20200217-chinese-student-commits-suicide-in-saudi-after-being-quarantined-for-coronavirus/ (Accessed on 15 April 2020)
3.	19-year-old Emily Owen, youngest suicide victim (Britain)	Fear of isolation was created just by the announcement of the country lockdown	https://blogs.scientificamerican.com/observations/covid-19-is-likely-to-lead-to-an-increase-in-suicides/ (Accessed on 8 April 2020)
Worldwide lockdown creating economic recession			
4.	Finance Minister Thomas Schaefer, 54-year-old economist. (Germany)	Could not able to bear and cope with the stress about the economic fallout of COVID-19. Turned him hopeless that he could not able to manage citizen's expectations for financial aid.	https://www.todayonline.com/world/covid-19-german-minister-commits-suicide-after-virus-crisis-worries (Accessed on 8 April 2020)
Stress, anxiety and pressure in medical healthcare professionals			
5.	49-year-old nurse (S.L.) of Jesolo hospital committed suicide by jumping into Piave river (Italy)	Lived alone and distressed	https://www.wsws.org/en/articles/2020/03/31/trez-m31.html (Accessed on 9 April 2020)
6.	Daniela Trezzi, a 34-year-old nurse of the San Gerardo hospital (Italy)	Deeply traumatized, compassion fatigue, emotional burnout, hopelessness, and fear of contracting and spreading the disease to others.	https://www.wsws.org/en/articles/2020/03/31/trez-m31.html (Accessed on 9 April 2020)
Social boycott and discrimination			
7.	Mustafa, a 35-year-old male and Mohammad Dilshad, a 37-year-old male committed suicide. (India)	Both were facing social boycott and religious discrimination from their neighbours in the suspicion of positive COVID-19 report. Resulted in isolation, stigma and finally depression.	https://timesofindia.indiatimes.com/city/madurai/stigma-over-covid-testing-blamed-for-mans-suicide/articleshow/74939681.cms (Accessed on 8 April 2020) https://www.livemint.com/news/india/facing-social-boycott-covid-19-negative-man-commits-suicide-in-himachal-s-una-11586090515081.html (Accessed on 9 April 2020)

clues need to be noticed with great care, where people often say 'I'm tired of life', 'no one loves me', 'leave me alone' and so on. On suspecting such behaviour in person, we can pull together the people struggling with suicidal ideation to make them feel loved and protective.

Socio-psychology needs and interventions for mental rehabilitation should be designed. Tele-counselling along with, 24x7 crisis response service for emotional, mental and behavioural support need to be implemented. However, majority of the countries are already practicing and implementing these measures. Health care policies and the perception for the COVI-19 health care professionals need to be strengthening as reported from Chinese studies (Li et al., 2020; Kang et al., 2020). Government recommendations to work from home, and travel less advisories restricted our social life, but, we can spend time indoor with our families, connect to friends on social media, and engage in mindfulness activities, till we all win this battle.

Financial disclosure

None.

Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Acknowledgements

None.

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EXHIBIT CC



REVIEW

The impact of the COVID-19 pandemic on suicide rates

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Summary

Multiple lines of evidence indicate that the coronavirus disease 2019 (COVID 19) pandemic has profound psychological and social effects. The psychological sequelae of the pandemic will probably persist for months and years to come. Studies indicate that the COVID 19 pandemic is associated with distress, anxiety, fear of contagion, depression and insomnia in the general population and among healthcare professionals. Social isolation, anxiety, fear of contagion, uncertainty, chronic stress and economic difficulties may lead to the development or exacerbation of depressive, anxiety, substance use and other psychiatric disorders in vulnerable populations including individuals with pre-existing psychiatric disorders and people who reside in high COVID 19 prevalence areas. Stress-related psychiatric conditions including mood and substance use disorders are associated with suicidal behavior. COVID 19 survivors may also be at elevated suicide risk. The COVID 19 crisis may increase suicide rates during and after the pandemic. Mental health consequences of the COVID 19 crisis including suicidal behavior are likely to be present for a long time and peak later than the actual pandemic. To reduce suicides during the COVID 19 crisis, it is imperative to decrease stress, anxiety, fears and loneliness in the general population. There should be traditional and social media campaigns to promote mental health and reduce distress. Active outreach is necessary, especially for people with a history of psychiatric disorders, COVID 19 survivors and older adults. Research studies are needed of how mental health consequences can be mitigated during and after the COVID 19 pandemic.

Coronavirus disease pandemic

The coronavirus disease 2019 (COVID 19) pandemic began at the end of 2019 in China and has quickly spread globally.¹ Millions of people around the world are infected and hundreds of thousands have died.² The clinical manifestations of COVID 19 vary from asymptomatic forms to severe clinical conditions characterized by respiratory failure, sepsis, septic shock and multiple organ dysfunction syndromes.³ Understandably, medical professionals and public health specialists are focused on taking care of individuals who are very sick, while containing

the coronavirus's spread in the general population. Less attention is given to the psychiatric consequences of the COVID 19 crisis.

Multiple lines of evidence indicate that the COVID 19 pandemic has profound psychological and social effects.^{1,2} There is a pervasive awareness of uncertainty over the future and an understanding that the pandemic is far from over. It is possible that there will be economic privation and political upheaval. The psychological sequelae of the pandemic will probably persist for months and years to come. In this article, I suggest that the COVID 19 pandemic may increase the

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prevalence of psychiatric disorders and suicide rates during and after the pandemic.

Previous epidemics and suicide

Nothing in our lifetimes can be compared with the magnitude of the COVID 19 disaster. The last comparable crisis was the pandemic of Spanish Flu in 1918–19 caused by H1N1 viruses with genes of avian origin.³ About 500 million people or one third of the world's population were infected with the Spanish Flu viruses and at least 50 million people perished around the world including about 675 000 in the USA.³ The Spanish Flu epidemic was associated with an increase in death by suicide.⁴ It has been proposed that a decrease in social integration and interaction during the epidemic and the fears caused by the epidemic likely increased suicide.⁴ It is important to note that social isolation and fears are common during the current COVID 19 epidemic.²

There was a significant increase in suicide deaths among people aged 65 and over during the 2003 severe acute respiratory syndrome (SARS) outbreak in Hong Kong.⁵ Research indicates that this increase in suicides can be attributed to fears of contracting the illness, fears of being a burden to the family, general anxiety, social isolation and psychological distress.

The psychological impact of COVID-19

A number of studies have been performed to examine the effect of the COVID 19 crisis on the mental health of the general population, health care professionals and individuals with psychiatric disorders.^{6–16} Wang et al.⁶ examined psychological responses during the initial stage of the COVID 19 epidemic in the general population in China. The authors found that 53.8% of 1210 respondents rated the psychological impact of the outbreak as moderate or severe, 16.5% reported moderate to severe depressive symptoms and 28.8% reported moderate to severe anxiety symptoms. Qiu et al.⁷ performed a countrywide survey that included 52 730 people in China during the COVID 19 epidemic and found that about 35% of the participants had psychological distress. This is consistent with the results of a recent Kaiser Family Foundation survey indicating that 45% of adults in the USA report that their mental health has been negatively impacted due to worry and stress over the coronavirus.⁸

Li et al.⁹ analyzed online posts made by 17 865 Chinese social media customers before and after the declaration of COVID 19 in China on 20 January 2020. The authors observed that negative emotions including anxiety, depression and anger rose, whereas the positive emotions and life satisfaction diminished. Xiao et al.¹⁰ studied a relationship between social capital as measured by the Personal Social Capital Scale 16 and sleep characteristics in person who were isolated during the COVID 19 epidemic. Researchers observed that anxiety was associated with stress and reduced sleep quality, and the combination of anxiety and stress reduced the positive effects of social capital on sleep quality. Xiao et al.¹⁰ wrote that 'anxiety and stress of isolated individuals were at high levels, whereas the sleep quality was low.'

Ahmed et al.¹¹ did an online survey of 1074 Chinese people and found elevated rates of anxiety, depression, harmful alcohol use and decrease in mental wellbeing.¹¹ Rates of anxiety and depression were higher among young people aged 21–40 years in comparison to other age groups. Huang and Zhao¹² conducted a web based survey of 7236 individuals in China. The overall prevalence of generalized anxiety disorder, depressive

symptoms and sleep abnormalities were 35.1%, 20.1% and 18.2%, respectively. This study also showed that health care professionals were more likely to have poor sleep quality in comparison to other occupational groups.

Lai et al.¹³ examined a state of mental health of 1257 health care professionals in China. 50.4% of study participants reported depression, 44.6% anxiety, 34.0% insomnia and 71.5% distress. Frontline health care professionals who were taking care of patients with COVID had a higher risk of having symptoms of depression, anxiety, insomnia and distress in comparison to other medical professionals. In March 2020, Ahmed et al.¹⁴ did an online study to examine anxiety and fear of getting infected among dentists. The authors received responses from 669 dentists from 30 countries. An overwhelming majority of study participants reported anxiety and fear of contagion. Some dentists closed their practices for an indefinite period of time.

Hao et al.¹⁵ compared the psychological impact of the COVID 19 epidemic on individuals with or without mood and anxiety disorders. Worries about their physical health, anger, impulsivity and suicidal ideation were significantly higher in psychiatric patients than in healthy controls.

Probably, alcohol consumption increases during the COVID 19 crisis.^{2,16} According to a market research firm Nielsen, US sales of alcoholic beverages rose 55% in the week ending 21 March 2020 compared with the same period last year.¹⁶ Online alcohol sales jumped 243%.

Multiple cases of COVID 19 related suicides in the USA, UK, Italy, Germany, Bangladesh, India and other countries have been reported in mass media and psychiatric literature.^{17–22} For example, a 19 year old waitress in England died in a hospital after a suicide attempt because of fears of the 'mental health impacts' of isolation.¹⁷ A 66 year old man with throat cancer hanged himself in a New York City hospital after testing positive for the coronavirus.¹⁸ A man in Illinois who feared that he and his girlfriend contracted the coronavirus fatally shot his girlfriend and then killed himself.¹⁹ They tested negative for the coronavirus. A 36 year old Bangladeshi man killed himself because he and people in his village thought that he was infected with COVID 19 because he had fever and cold symptoms.²⁰ A postmortem examination showed that he did not have COVID 19. The 49 year old head of the Emergency Department in a New York City hospital died by suicide after telling her family about the tremendous suffering and death she witnessed while taking care of coronavirus patients.²¹ Also, there is a huge increase of calls to suicide prevention hotlines in the USA during the current COVID 19 epidemic.²²

In summary, studies indicate that the COVID 19 pandemic is associated with distress, anxiety, fear of contagion, depression and insomnia in the general population. Health care professionals are especially distressed.

Suicidal behavior in the COVID-19 era

Social isolation, anxiety, fear of contagion, uncertainty, chronic stress and economic difficulties may lead to the development or exacerbation of stress related disorders and suicidality in vulnerable populations including individuals with pre existing psychiatric disorders, low resilient persons, individuals who reside in high COVID 19 prevalence areas and people who have a family member or a friend who has died of COVID 19 (Figure 1).^{23,24} Individuals with pre existing psychiatric disorders include not only patients who are treated by mental health professionals but also a very large number of people with psychiatric conditions who do not receive psychiatric

treatment.^{25,26} For example, an international study that included the data from countries in Europe, North and South America, Asia and Australia showed that the median untreated rates for schizophrenia, major depression and alcohol use disorder were 32.2%, 56.3% and 78.1%, respectively.²⁷ Community epidemiological research in the USA shows that a majority of individuals with mood disorders are either untreated or undertreated.²⁸

Social isolation contributes to the pathophysiology of psychiatric disorders and suicidal behavior.^{5,27-30} In his famous book on suicide, Durkheim²⁷ emphasized that social connectedness is a critical factor in emotional health and social stability. The Irish Longitudinal Study on Ageing as well as other research investigations demonstrated that social isolation and loneliness are associated with major depression and generalized anxiety disorder.^{28,29} Studies have shown that both objective social isolation (e.g. living alone) and subjective sense of being alone are associated with suicidal ideation and behavior.²⁹ These observations are consistent across diverse cultures and populations. For example, the Quebec Health Survey showed that living alone and having no friends were associated with both suicidal ideation and suicide attempts.³⁰ Social disengagement played a role in the increased suicide rate during the 2003 SARS epidemic in Hong Kong.⁵ One third of SARS related suicide victims experienced social isolation during the SARS outbreak. From a suicide prevention perspective, it is troubling that the most important public health approach for the COVID 19 epidemic is social distancing.

Anxiety and fear of contagion during the COVID 19 crisis may be related to uncertainty, fear of unknown and panic

inducing stories in traditional and social media.^{2,23} Repeated exposure to reports about the COVID crisis can intensify anxiety. Worries and fears cause various mental and physical symptoms and may lead to the development of anxiety disorders, depression and sleep disorders.²⁴ Studies suggest that the relationships between insomnia and depression and insomnia and anxiety are bidirectional.³¹ Sleeplessness contributes to symptoms of depression and anxiety and contrariwise, symptoms of depression and anxiety disturb sleep. Sleep disturbances are a stand alone risk factor for suicidal behavior.³²

Uncertainty, especially economic uncertainty is associated with stress related disorders and suicide.^{2,21,33,34} It has been shown that uncertainty is a more stressful state to be in than really knowing something bad will happen.³³ Uncertainty is associated with depression and anxiety.³³ In one research investigation, daily suicide data from England and Wales were matched to a daily economic policy uncertainty index over the period 2001-15.³⁴ The authors found that a spike in daily economic uncertainty lead to an immediate impact on suicides which suggest that economic uncertainty may lead to an increase in the risk of suicide.

The impact of economic problems related to the COVID 19 crisis on mental health may be severe. Millions of people around the world lost their jobs.^{1,2,23} Measures required to contain the virus, including self isolation by workers and consumers, shutting of plants and stores and prohibitions on sports and entertainment events are detrimental for economy. Historically, economic downturns were associated with mental health disorders and suicides.³⁵⁻³⁷ Studies observed that increases in the unemployment rate were associated with higher prevalence of

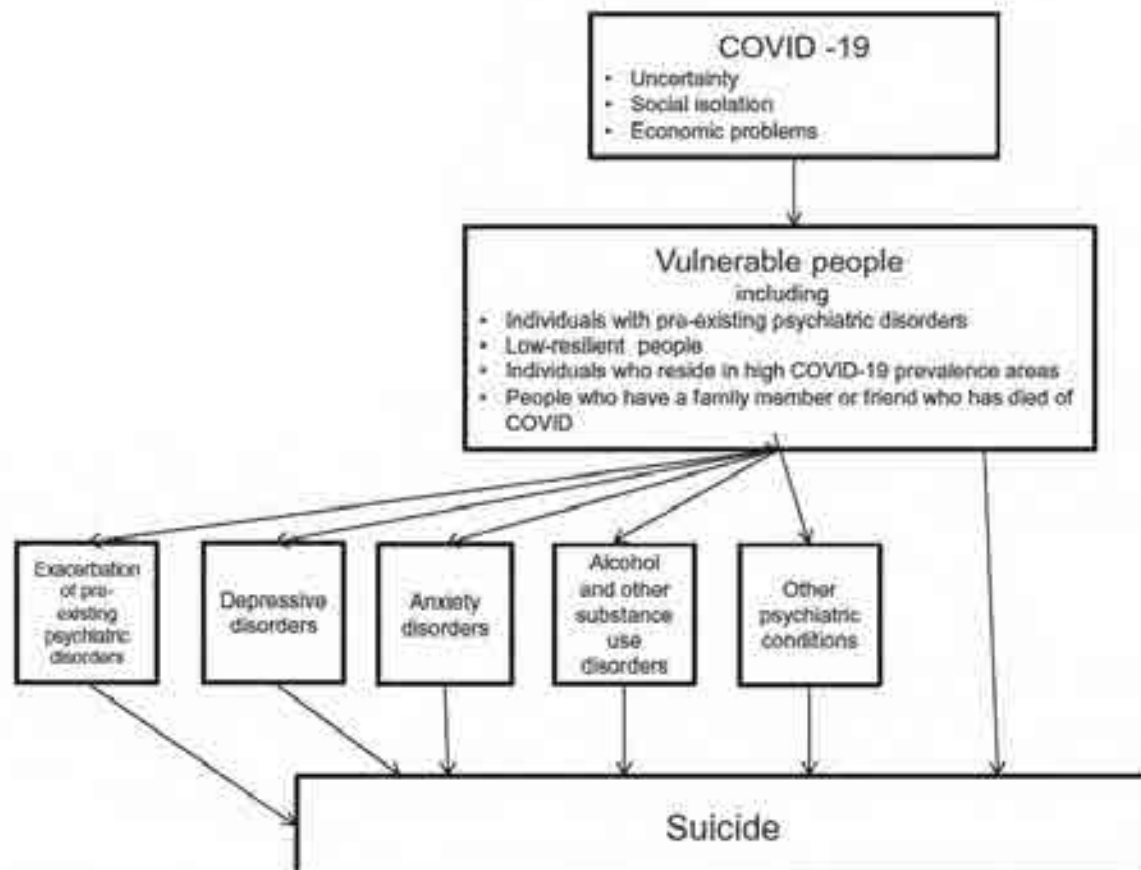


Figure 1. Suicidal behavior in vulnerable populations in the COVID-19 era

depression, alcohol and other substance use disorders and suicide deaths.³⁶ Both perceived job insecurity and unemployment constitute significant risks of increased depressive symptoms in prospective observational studies.³⁷ In the USA, suicides increased during the Great Depression.³⁸ Suicide mortality peaked with unemployment, in the most recessionary years, 1921, 1932 and 1938.³⁸ Suicide rates also increased in other countries during the Great Depression. For example, Varnik³⁹ reported a rise in suicide death in Estonia in the early 1930s. Reeves *et al.*⁴⁰ observed that almost all European countries have experienced rising suicide rates during the 2008–10 recession. The authors estimated that, in total, there were at least 10 000 more economic suicides during the recession in the European Union, Canada and the USA than would have been expected. Economic decline during and after the COVID 19 pandemic will probably have a powerful and harmful effect on mental health and result in an increase in the prevalence of psychiatric disorders and suicidal behavior. It is important to note that financial problems may reduce access to psychiatric treatment.

There is a high probability that the COVID 19 survivors especially survivors who had severe COVID 19 are at elevated suicide risk.⁴¹ Stressful experiences such as learning about the diagnosis of COVID 19, fear of infecting others, symptoms of the illness, hospitalization, especially admission to an intensive care unit, and loss of income may lead to the development of anxiety, depressive and post traumatic stress disorder.^{41,42} A recent study in China indicated that 96.2% of recovering COVID 19 patients had significant posttraumatic stress symptoms.⁴³ Around 50% of recovered patients remained anxious after the 2003 SARS epidemic in Hong Kong.⁴⁴ COVID 19 infection is associated with neurological conditions including acute ischemic stroke, headache, dizziness, ataxia and seizures.⁴⁵ A recent review of the impact of the COVID on the brain show that neurological conditions are present in about 25% of the COVID 19 patients.⁴⁵ Many recovering COVID patients have physical symptoms including pain for a long time.⁴⁶ Neurological disorders such as ischemic stroke, headache and seizures are associated with suicidal behavior.⁴⁷ Physical symptoms, especially pain also increase suicide risk.^{24,48}

Psychiatric conditions including mood, anxiety, sleep and substance use disorders are associated with suicidal behavior.²⁴ Studies in the USA suggest that >90% of suicide victims have a psychiatric disorder.^{24,49} For example, depression is a major risk factor for suicide, accounting for up to 60% of suicide deaths.⁴⁹ Mental health consequences of the COVID 19 crisis including suicidal behavior are likely to be present for a long time and peak later than the actual pandemic.

There is a high probability that suicide rates will increase in many countries of the world. This problem may be especially difficult in the US. Suicide rates have been steadily growing in the USA over the last two decades.⁵⁰ From 1999 through 2017, the age adjusted suicide rate in the USA grew 33% from 10.5 to 14.0 per 100 000.⁵⁰ For women, the rate grew 53% from 4.0 in 1999 to 6.1 in 2017. For men, the rate grew 26% from 17.8 in 1999 to 22.4 in 2017. If suicide rates increase in the USA, it will add to the trend of rising national rates of suicide. An increase in suicide rates may become a significant public health issue in other countries.

Suicide prevention in the COVID-19 era

In 1994, the Institute of Medicine (now the National Academy of Medicine) Committee on Prevention of Mental Disorders suggested that prevention of psychiatric conditions should be divided into three categories: universal preventive interventions,

selective preventive interventions and indicated preventive interventions.^{51,52} Suicide prevention efforts during the COVID 19 crisis can also be classified as either universal, selective or indicated.

A universal approach is designed for everyone in the general population regardless of their risk for suicide.⁵² To reduce suicides during the COVID 19 crisis it is imperative to decrease stress, anxiety, fears and loneliness in the general population. There should be traditional and social media campaigns to promote mental health and reduce distress. People need to be encouraged to stay connected and maintain relationships by telephone or video, get enough sleep, eat healthy food and exercise. It is vital to deliver community support for those living alone and to encourage families and friends to check in. Screenings for anxiety, depression and suicidal feelings ought to be employed. Transparent, timely and responsible media reporting is absolutely necessary. Community or organizational gatekeepers including clergy, first responders, pharmacists, geriatric caregivers and school employees may have an opportunity to identify individuals at risk for suicide and direct them to proper evaluation and treatment. Suicide prevention help lines should be available and may be very useful in preventing suicides. Integration of basic mental health services into outpatient primary care may help to minimize the harmful psychological effects of the COVID 19 crisis. Whenever possible, governments and non governmental organizations should provide financial support for people in need. This may include direct cash payments, postponement of loan repayments, tax credits etc.

A selective approach is for subgroups at increased risk for suicide, for example, for individuals with a history of psychiatric disorders, persons with symptoms of significant emotional distress, COVID 19 survivors, frontline health care professionals and elderly people.⁵² Active outreach is necessary, especially for people with a history of psychiatric disorders, COVID 19 survivors and older adults. People with psychiatric disorders should be advised to continue their treatment regimens and to stay in touch with their mental health professionals. Some psychiatric patients may need adjustments in their treatment and increased frequency of contact with their mental health clinicians. Telemedicine can improve accessibility of mental health care. Also, vulnerable individuals should be advised to limit watching, reading or listening to traditional and social media news stories.

An indicated approach is designed for individuals who have a risk factor or condition that puts them at very high risk for suicide, e.g. a recent suicide attempt.⁵² Individuals in suicidal crises need special attention. Some suicidal persons might not seek help because of fear that attending face to face appointments with a health care professional might put them at risk of contracting COVID 19 or because of other reasons. Therefore, individuals with a recent suicide attempt history need a follow up. Clinicians should have well defined guidelines on how to deal with suicidal individuals.

Suicide prevention in the COVID 19 era is an important and difficult issue. Research studies are needed of how mental health consequences can be mitigated during and after the COVID 19 pandemic. It is to be hoped that the efforts of clinicians, researchers and policy makers will reduce COVID 19 related suicides.

Conflict of interest. None declared.

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Suicide Mortality and Coronavirus Disease 2019—A Perfect Storm?

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Suicide rates have been rising in the US over the last 2 decades. The latest data available (2018) show the highest age-adjusted suicide rate in the US since 1941.¹ It is within this context that coronavirus disease 2019 (COVID-19) struck the US. Concerning disease models have led to historic and unprecedented public health actions to curb the spread of the virus. Remarkable social distancing interventions have been implemented to fundamentally reduce human contact. While these steps are expected to reduce the rate of new infections, the potential for adverse outcomes on suicide risk is high. Actions could be taken to mitigate potential unintended consequences on suicide prevention efforts, which also represent a national public health priority.

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COVID-19 Public Health Interventions and Suicide Risk

Secondary consequences of social distancing may increase the risk of suicide. It is important to consider changes in a variety of economic, psychosocial, and health-associated risk factors.

Economic Stress

There are fears that the combination of canceled public events, closed businesses, and shelter in place strategies will lead to a recession. Economic downturns are usually associated with higher suicide rates compared with periods of relative prosperity.² Since the COVID-19 crisis, businesses have faced adversity

and laying off employees. Schools have been closed for indeterminable periods, forcing some parents and guardians to take time off work. The stock market has experienced historic drops, resulting in significant changes in retirement funds. Existing research suggests that sustained economic stress could be associated with higher US suicide rates in the future.

Social Isolation

Leading theories of suicide emphasize the key role that social connections play in suicide prevention. Individuals experiencing suicidal ideation may lack connections to other people and often disconnect from others as suicide risk rises.³ Suicidal thoughts and behaviors are associated with social isolation and loneliness.³ Therefore, from a suicide prevention perspective, it is concerning that the most critical public health strategy for the COVID-19 crisis is social distancing. Furthermore, family and friends remain isolated from individuals who are hospitalized, even when their deaths are imminent. To the extent that these strategies increase social isolation and loneliness, they may increase suicide risk.

Decreased Access to Community and Religious Support

Many Americans attend various community or religious activities. Weekly attendance at religious services has been associated with a 5-fold lower suicide rate compared with those who do not attend.⁴ The effects of closing churches and community centers may further contribute to social isolation and hence suicide.

Barriers to Mental Health Treatment

Health care facilities are adding COVID-19 screening questions at entry points. At some facilities, children and other family members (without an appointment) are not permitted entry. Such actions may create barriers to mental health treatment (eg, canceled appointments associated with child restrictions while school is canceled). Information in the media may also imply that mental health services are not prioritized at this time (eg, portrayals of overwhelmed health care settings, canceled elective surgeries). More overcrowded emergency departments may negatively affect services for survivors of suicide attempt. Reduced access to mental health care could negatively affect patients with suicidal ideation.

Illness and Medical Problems

Exacerbated physical health problems could increase risk for some patients, especially among older adults, in whom health problems are associated with suicide. One patient illustrated the psychological toll of COVID 19 symptoms when he told his clinician, "I feel like (you) sent me home to die."⁵

Outcomes of National Anxiety

It is possible that the 24/7 news coverage of these unprecedented events could serve as an additional stressor, especially for individuals with preexisting mental health problems. The outcomes of national anxiety on an individual's depression, anxiety, and substance use deserve additional study.

Health Care Professional Suicide Rates

Many studies document elevated suicide rates among medical professionals.⁶ This at risk group is now serving in the front lines of the battle against COVID-19. A national discussion is emerging about health care workers' concerns about infection, exposure of family members, sick colleagues, shortages of necessary personal protective equipment, overwhelmed facilities, and work stress. This special population deserves support and prevention services.

Firearm Sales

Many news outlets have reported a surge in US gun sales as COVID-19 advances. Firearms are the most common method of suicide in the US, and firearm ownership or access and unsafe storage are associated with elevated suicide risk.⁷ In this context, issues of firearm safety for suicide prevention are increasingly relevant.

Seasonal Variation in Rates

In the northern hemisphere, suicide rates tend to peak in the late spring and early summer. The fact that this will probably coincide with peak COVID-19 prevention efforts is concerning and deserves additional study.

Suicide Prevention Opportunities

Despite challenges, there are opportunities to improve suicide prevention efforts in this unique time. Maintenance of some existing efforts is also possible.

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Physical Distance, Not Social Distance

Despite its name, social distancing requires physical space between people, not social distance. Efforts can be made to stay connected and maintain meaningful relationships by telephone or video, especially among individuals with substantial risk factors for suicide. Social media solutions can be explored to facilitate these goals.

Tele-Mental Health

There is national momentum to increase the use of telehealth in response to COVID 19. Unfortunately, tele-mental health treatments for individuals with suicidal ideation have lagged far behind the telehealth field. Opportunities to increase the use of evidence-based treatments for individuals with suicidal thoughts have been noted for years, especially in rural settings, but fear of adverse events and lawsuits have paralyzed the field. Disparities in computer and high speed internet access must also be addressed. Research, culture change, and potentially even legislative protections are needed to facilitate delivery of suicide prevention treatments to individuals who will otherwise receive nothing.

Increase Access to Mental Health Care

As COVID 19 precautions develop in health care settings, it is essential to consider the management of individuals with mental health crises. Screening and prevention procedures for COVID-19 that might reduce access to care (eg, canceled appointments, sending patients home) could include screening for mental health crises; clinical staff would be needed to some degree in settings that may currently relegate COVID 19 symptom screening to administrative staff. Also, rather than sending a patient with a child home, alternative treatment settings could be considered (eg, a private space outside).

Distance-Based Suicide Prevention

There are evidence-based suicide prevention interventions that were designed to be delivered remotely. For example, some brief contact interventions (telephone based outreach)⁸ and the Caring Letters intervention (in which letters are sent through the mail)⁹ have reduced suicide rates in randomized clinical trials. Follow-up contact may be especially important for individuals who are positive for COVID-19 and have suicide risk factors.

Media Reporting

Because of suicide contagion, media reports on this topic should follow reporting guidelines and in the National Suicide Prevention Lifeline (1-800-273-TALK). The hotline remains open.

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Optimistic Considerations

There may be a silver lining to the current situation. Suicide rates have declined in the period after past national disasters (eg, the September 11, 2001, terrorist attacks). One hypothesis is the so-called pulling-together effect, whereby individuals undergoing a shared experience might support one another, thus strengthening social connectedness. Recent advancements in technology (eg, video conferencing) might facilitate pulling together. Epidemics and pandemics may also alter one's views on health and mortality, making life more precious, death more fearsome, and suicide less likely.

Conclusions

Concerns about negative secondary outcomes of COVID-19 prevention efforts should not be taken to imply that these public health actions should not be taken. However, implementation should include a comprehensive approach that considers multiple US public health priorities, including suicide prevention. There are opportunities to enhance suicide prevention services during this crisis.

Article Information

[Back to top](#)

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April 14, 2020

Suicide Mortality and Coronavirus Disease 2019-Addressing Heavy Drinking is a Prevention Opportunity Not to be Ignored

Shannon Lange, PhD | Institute for Mental Health Policy Research, Centre for Addiction and Mental Health, Toronto ON, Canada

Shannon Lange PhD¹*, Michael Roerecke PhD¹, & Jürgen Rehm PhD¹

PDF

¹Institute for Mental Health Policy Research, Centre for Addiction and Mental Health, Toronto ON, Canada

As Reger and colleagues [1] accurately point out, an epidemic, and in the case of the coronavirus disease 2019 a pandemic, does not directly lead to suicide mortality, but rather, it creates a situation in which the potential for suicide is high. There are a number of risk factors for suicide that can become more prevalent during a pandemic, one of particular importance being heavy drinking. Heavy drinking may increase during such times. ...

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June 17, 2020

Losing the Will to Live....

Melinda Huffman, BSN,MSN,CCNS,CHC | National Society of Health Coaches

Thank you for this article!

Long Term Care facilities, especially assisted living where residents are often moderately independent and live in apartment-style units decorated like their homes, have residents in some cases having "lost their will to live". This includes residents who were active and enjoyed life prior. The concern of executive management about their facility's liability for a Covid "outbreak" has caused severe lockdowns that confine these residents to their rooms for days and days without regular fresh air, sunshine, exercise, or socialization. Food is brought to them.

The management teams of these facilities (how many we don't know) are ...

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EXHIBIT EE



Los Angeles Apparel factory ordered closed after over 300 coronavirus cases and 4 deaths

By Sarah Moon and Jon Passantino, CNN

Updated 8:07 AM ET, Sat July 11, 2020

(CNN) — A garment manufacturer in downtown Los Angeles with over 300 confirmed coronavirus cases among



health

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The Los Angeles Apparel had three deaths in June and one in July, prompting an investigation, the Los Angeles County Department of Public Health announced in a statement.

The death of four dedicated garment workers is "heartbreaking and tragic," said Dr. Barbara Ferrer of the Los Angeles County Department of Public Health. "Business owners and operators have a corporate, moral and social responsibility to their employees and their families to provide a safe work environment."

Los Angeles Apparel was founded in 2016 by Dov Charney, who previously founded American Apparel. It was first shut down on June 27 after violating the county's mandatory health orders. The company failed to cooperate with the health department's investigation of a reported coronavirus outbreak, health officials said.

On June 19, a concerned healthcare provider notified county health officials of a possible outbreak at the garment factory, it said. The health department said despite its multiple requests for a list of all employees, Los Angeles Apparel failed to provide it and reported 151 cases that week.

The list was a "crucial tool" needed by the health department to compare it to testing results and determine the extent of the outbreak. "It allows DPH to track employees against DPH's list of confirmed positive or negative Covid-19 individuals received from testing lab," the health department said.

Related Article: Expert warns the US is approaching "one of the most unstable times in the history of our country"

When inspectors visited the factory on June 26, they observed multiple violations of physical distancing requirements and infection control protocols, including the use of cardboard as a barrier between the workers, the health department said.

Los Angeles Apparel was given detailed instructions on steps that had to be taken for reopening.

On July 4, the health department received an incomplete list of all employees at the company with 198 positive results reported. The health department then used that list to compare with results from laboratories and determined that as of July 10, there were more than 300 positive cases at the site.

While the county's department of public health sent a letter to the company saying only employees who tested positive on or before June 26 could return to work if they had no symptoms, Los Angeles Apparel reopened with new employees and violated the health officer's order.

At this time, Los Angeles Apparel is under order to remain closed until they can show that the facility is in full compliance with Public Health mandates," the health department said.

In a phone interview with CNN on Friday night, Charney fiercely disputed the allegations from the health department, saying officials are operating in "bad faith" and "looking for scapegoats," and suggested the decision to shut down the factory was "political."

Charney said the clothing maker had erected cardboard barrier between worker to reduce spread of the virus, but insisted that the company was not told the material did not comply with health orders. Instead, he blamed health officials for what he described as a lack of clear instruction for employer to keep worker safe, calling it "poor practice on their part."

And while the health department had ordered Los Angeles Apparel to only allow workers back into the factory who had



LIVE TV

Related Article: These California doctors flew to New York to fight Covid-19. Here's what they learned.

"Absolutely, we brought in new employees," Charney said. "What company can't hire new employees? No one said do not hire new employees."

Charney read aloud a letter to CNN that he received from the county health department that stated only employees who had previously tested positive and been free of symptoms could return to work at the factory.

Charney also disputed the allegation that the company had attempted to prevent health officials from entering the factory for inspection, saying they were only asked to wait until the firm's legal counsel could arrive on site.

"We never said they couldn't come in," Charney said. "We never, ever didn't let them in."

Charney said he was aware that a number of the company's employees had been infected with the virus and died, though he suggested employees could have been exposed to the virus elsewhere.

"A gentleman who worked with me for 15, 20 years," recently died from complications of Covid-19, he said. "We're all in tears. But I don't know how he got it. His wife also got it. And if he got it here, of course it's horrifying. But I can't think that everyone just got it here."

Related Article: New WHO report says airborne coronavirus transmission cannot be ruled out in outbreaks in some indoor settings

And while Charney blamed the county for a lack of testing and contact tracing, he said the company would be working with officials to reopen the factory again.

"Could I have done things differently? Of course, with 2020 hindsight I have some new ideas," he said. "I would have arranged testing from the start, every week. I would have fought for more testing earlier."

Los Angeles is part of the recent resurgence of coronavirus cases. California has recorded more than 300,000 coronavirus cases — 40% of which are in Los Angeles County. The state has also reached record highs in hospitalizations and ICU rates with well over 6,000 patients being treated.

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

**CROSS CULTURE CHRISTIAN
CENTER**, a California Non-Profit
Corporation; **PASTOR JONATHAN
DUNCAN**, an individual

Plaintiffs,

vs.

GAVIN NEWSOM, in his official capacity
as Governor of California; **XAVIER
BECERRA**, in his official capacity as the
Attorney General of California; **SONIA
ANGELL**, in her official capacity as

Case No.:

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

1 California Public Health Officer; **MAGGIE**
2 **PARK**, in her official capacity as Public
3 Health Officer, San Joaquin County;
4 **MARCIA CUNNINGHAM**, in her official
5 capacity as Director of Emergency
6 Services, San Joaquin County; **CITY OF**
7 **LODI**; **TOD PATTERSON**, in his official
8 capacity as Chief of Police of Lodi,
9 California,
10 Defendants.

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PRELIMINARY STATEMENT

1. Civil rights are not suspended by a virus. Fundamental and unalienable rights are, by their very nature, “essential.” Yet the State of California has, in a sweeping abuse of its power, criminalized all religious assembly and communal religious worship while allowing citizens to gather at a liquor store, pot-dispensary, Planned Parenthood, Walmart, CVS, Costco, Home Depot, and many other locations which are deemed “essential.” This is not a hypothetical situation from an Orwellian novel describing a bleak future—this is the current and very real nightmare endured by millions of religious citizens who maintain the conviction that the faithful practice of regularly gathering together is absolutely “essential.” The state’s flagrant abuse of authority violates Plaintiffs’ and other citizens’ fundamental and unalienable civil rights, including the free exercise of religion, right to assemble, freedom of speech, and equal protection of the law, in violation of the U.S. and California constitutions. The mass criminalization of religious gatherings was dismissively and causally accomplished by the state and local government’s abuse of its discretion in issuing orders relating to COVID-19. The state fails to articulate or support the implicit assertion that the complete prohibition of religious gatherings due to their “non-essential” status is the least restrictive means to accomplish its compelling interests. In contrast, many other establishments are permitted to continue operations if they carefully follow Centers for Disease Control and Prevention (“CDC”) social distancing

1 guidelines. Simultaneously, the state maintains a near endless list of commercial
2 establishments as “essential” wherein people have been freely gathering and where
3 social distancing is impracticable or impossible. At the least, churches, similar to Cross
4 Culture Christian Center, should be permitted to gather so long as they abide by the
5 CDC’s social distancing guidelines.

6 2. The state does not have the authority to disregard well-established religious
7 tenets relating to gatherings and method of worship. Despite the absence of authority,
8 California has limited all religious institutions to one mode of worship only: live
9 streaming services on the internet. Plaintiff Cross Culture Christian Center’s (the
10 “Church”) protected First Amendment activity-the gathering together of a religious
11 congregation- has been criminalized in spite of the Church carefully following the
12 social distancing guidelines promulgated by the CDC. “The principle that government,
13 in pursuit of legitimate interests, cannot in a selective manner impose burdens only on
14 conduct motivated by religious belief is essential to the protection of the rights
15 guaranteed by the Free Exercise Clause.” *Church of the Lukumi Balalu Aye, Inc. v. City*
16 *of Hialeah*, 508 U.S. 520, 531 (1990). The state’s ban is openly targeted at religious
17 gatherings while permitting similar gatherings for “essential” entities.

18 3. On or about April 3, 2020, San Joaquin County issued a specific stay-at-
19 home order targeting the Church. The order completely prohibited “non-essential” uses
20 of the Church building as well as the entire parking lot. At the same time, a purportedly
21 “essential” day care center on the same Church property is able to continue to operate
22 on-site. The Church is therefore banned even from making video recordings for church
23 services streamed over the internet. If the Church wanted to have a “drive-in service,”
24 which is also permissible under Governor Gavin Newsom’s stay-at-home Executive
25 Order N-33-20 dated March 19, 2020 (“State Order), it is prohibited from doing so by
26 the April 3, 2020 County Order. This absolute government ban on any and all of the
27 Church’s religious worship activity is “‘beyond all reason’ unconstitutional.” *On Fire*
28

1 *Christian Center, Inc. v. Fischer*, No. 3:20-cv-264-JRW at *3 (W.D. Ky. Apr. 11,
2 2020), quoting *Jacobson v. Massachusetts*, 197 U.S. 11, 31 (1905).

3 4. The seeds of this litigation were sewn by the emergence and spread of
4 COVID-19, otherwise commonly referred to a coronavirus. This lawsuit germinated
5 because of Governor Gavin Newsom's sweeping stay at home State Order with no end
6 date, and the four subsequent "stay at home" orders of the Public Health Officer and
7 Director of Emergency Services of San Joaquin County ("County Orders") dated March
8 21, 2020 and March 26, 2020, April 3, 2020, and April 14, 2020. These State and
9 County Orders have declared that all religious assemblies are "non-essential," even
10 churches that are carefully following CDC "social distancing" guidelines.
11 Simultaneously the State and County Orders declare similarly situated commercial
12 business assemblies as "essential," permitting virtually unlimited parking and human
13 assembly. This lawsuit became full grown as of the April 3, 2020 San Joaquin County
14 Order which specifically targeted the Church and resulted in the Church being
15 completely locked out of their leased building and parking lot. The City of Lodi Police
16 Department aggressively enforced the religiously intolerant and discriminatory State
17 Order and County Orders (collectively, the "Orders"), further necessitating this lawsuit.

18 5. On Wednesday, March 25, 2020, the City of Lodi, acting on the tip of an
19 informant, sent two uniformed police officers to disrupt the Church's lightly attended
20 midweek service. The police officers told Plaintiff JONATHAN DUNCAN ("Pastor
21 Duncan") the meeting was in violation of the Orders and warned that further
22 enforcement actions would likely follow. A few days later, on April 1, 2020, the City
23 of Lodi sent three police officers to post a notice on the Church building, warning that
24 the Church's "non-essential" use of the building was a "public nuisance" in violation of
25 the State and County Orders and that the Church would be criminally prosecuted if they
26 continued to meet. On April 3, 2020, San Joaquin County issued an Order specifically
27 targeting the Church, declaring the Church "non-essential" and completely barring it
28 from using the Church building or parking lot. On Palm Sunday morning, April 5,

1 2020, more than five Lodi uniformed police officers told Pastor Duncan that a county
2 order barred him from using the Church building and parking lot, and that the landlord
3 had changed the locks on the Church. The landlord did not have a judicial order to
4 change the locks, nor had any unlawful detainer proceedings been initiated. The officers
5 warned Pastor Duncan that they would cite him if he tried to access the Church
6 property, despite the valid lease that was still in effect.

7 6. For more than four hundred years, people have come to America in a quest
8 for religious freedom. Our shores were populated with many, like the Puritans, who
9 were fleeing religious persecution in Europe. They understood that “[n]o place, not
10 even the unknown, is worse than *any* place whose state forbids the exercise of your
11 sincerely held religious beliefs.” *On Fire Christian Center, Inc., supra*, at *4.
12 Stretching back to the formation of colonies like Pennsylvania and Rhode Island, where
13 citizens could practice religion in a way that would not be impeded by the government,
14 this basic freedom that was sought by so many colonists was subsequently enshrined in
15 the constitutions of the states and, most importantly, in the First Amendment to the
16 United States Constitution. “Congress shall make no law respecting the establishment
17 of religion or prohibiting the free exercise thereof.” U.S. Const. amend i.

18 7. The First Amendment’s guarantee of religious liberty was perhaps its
19 boldest and most audacious promise. Indeed, history is dominated by a long list of
20 tyrants and tyrannies. Until America, freedom was not the historical norm. For
21 centuries European kings and rulers had spent considerable treasure and blood
22 attempting to coercively impose differing religious beliefs and practices on others.
23 America would be different, precisely because of our firm commitment to religious
24 freedom and tolerance. As de Tocqueville wrote, “religion...must be considered as the
25 first of their political institutions; for if it does not give them the taste for liberty, it
26 singularly facilitates use of it.” Justice Anthony Kennedy recently echoed de
27 Tocqueville’s sentiments, “Among the reasons the United States is so open, so tolerant,
28 and so free is that no person may be restricted or demeaned by government in

1 exercising his or her religion.” *Burwell v. Hobby Lobby*, 573 U.S. 682, 739 (2014)
2 (Kennedy, J., concurring).

3 8. Yet in the days leading up to one of the holiest days on the Christian
4 calendar, Easter, Defendants Gavin Newsom, the San Joaquin County Officials, and
5 officers of the Lodi Police Department (collectively, “Defendants”), announced and
6 enforced what would previously have been unthinkable in a nation like the United
7 States—that they were prohibiting all church worship gatherings in the state of
8 California, limiting all religious assembly and worship only to video streamed over the
9 internet. On April 3, 2020, San Joaquin County doubled down the threat to the Church,
10 targeting the Church with an order prohibiting its use of the Church’s leased buildings
11 and parking lot. This ban is backed by Orwellian threats of potential criminal penalties,
12 including citations, fines, and arrest.

13 9. Due to the unprecedented nature of COVID-19 and the indisputable
14 tragedy the disease has wrought on our great Republic, there are those who may find it
15 tempting to hold that First Amendment rights should acquiesce to claims of public
16 health and safety in this instance. However, state regulations, even during a public
17 health crisis do not supersede constitutional rights: “[N]o rule proscribed by a state, nor
18 any regulation adopted by a local government agency acting under the sanction of state
19 legislation, shall contravene the Constitution of the United States, nor infringe on any
20 right granted or secured by that instrument.... **Local...regulation...must always yield**
21 **in case of conflict with...the Constitution**, or any right which that instrument gives or
22 secures.” *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 25 (1905) (emphasis
23 added).

24 10. The justification for this astounding government overreach is the COVID-
25 19 pandemic, truly a national and international tragedy. The coronavirus outbreak has
26 turned our world upside-down, causing profound damage to our lives and to our
27 economy. And it is understood that the rules of constitutional interpretation are not as
28 rigidly fixed in a time of national emergency. *Jacobson v. Massachusetts*, 197 U.S. 11

1 (1905). “But even under *Jacobson*, constitutional rights still exist. Among them is the
2 freedom to worship as we choose.” *On Fire Christian Center, Inc.*, *supra*, at *4 (citing
3 *Jacobson* at 31).

4 11. In full understanding of the public and private danger posed by COVID-19,
5 the Church has conducted itself and intends to continue to conduct its religious
6 assemblies and worship services in a manner that adheres to CDC and California
7 guidelines on social distancing and safe gatherings. The Church merely contends that, at
8 least for its congregants, its assemblies *are* an “essential service” and should therefore,
9 because of fundamental First Amendment Protections, be treated at least as equally as
10 businesses which have which been declared “essential,” including the commercial retail
11 stores or the daycare center that meets at the Church site. Defendants’ targeting of
12 religious adherents and total ban from religious assembly, even in a manner consistent
13 with governmental social distancing guidelines, while permitting similar (and at times
14 even more intimate) social interaction to continue unabated in retail and commercial
15 establishments, flies in the face of the First Amendment of the U.S. Constitution,
16 Article I, Sections 2, 3 and 4 of the California Constitution, and the Religious Land Use
17 and Institutionalized Persons Act.

18 12. Recognizing that times of crisis would arise, that such times might lead
19 governments to seek to repress unalienable fundamental freedoms, and that the
20 Republic’s survival depended upon defeating such repressive instincts, the genius of our
21 founding document is that it placed explicit protections into the text of the Bill of
22 Rights. And, importantly, “[o]ur Bill of Rights placed our survival on firmer ground—
23 that of freedom, not repression.” *Konigsberg v. State Bar of California*, 366 U.S. 36, 79
24 (1961) (Black, J., dissenting).

25 13. During times of national crisis attended by widespread fear and panic, such
26 as the current uncertainty arising from COVID-19, “the fog of public excitement
27 obscures the ancient landmarks set up in our Bill of Rights.” *American Communist*
28 *Ass’n, C.I.O. v. Douds*, 339 U.S. 382, 453 (1950) (Black, J., dissenting). But, where the

1 fog of public excitement is at its apex, “the more imperative is the need to preserve
2 inviolate the constitutional rights of free speech, free press and free assembly.” *De*
3 *Jonge v. Oregon*, 299 U.S. 353, 365 (1937).

4 14. Our commitment to our founding principles is most tested and best
5 calculated during times of crisis and uncertainty. Our willingness to reaffirm our
6 staunch commitment to our fundamental freedoms is imperative to the very survival of
7 the American experiment. For, “[h]istory reveals that the initial steps in the erosion of
8 individual rights are usually excused on the basis of an ‘emergency’ or threat to the
9 public. **But the ultimate strength of our constitutional guarantees lies in the**
10 **unhesitating application in times of crisis and tranquility alike.**” *United States v.*
11 *Bell*, 464 F.2d 667, 676 (2d Cir. 1972) (Mansfield, J., concurring) (emphasis added).

12 15. In the instant matter, Plaintiff brings this case to highlight the troubling
13 erosion of fundamental and cherished liberties wrought by the imposition of the State
14 Order and the County Orders and their unconstitutional enforcement by the Lodi Police
15 Department. Plaintiffs seek not to discredit or discard the government’s unquestionable
16 interest in doing that task for which it was instituted – protecting the citizenry. But, as is
17 often true in times of crisis and fear, Plaintiffs respectfully submit that in an effort to
18 uphold their sworn duties, Defendants have – perhaps unwittingly – stepped over a line
19 the Constitution does not permit. Therefore, Plaintiffs bring this action to ensure that
20 this Court safeguard the cherished liberties for which millions have fought, bled, and
21 died. For, “[i]f the provisions of the Constitution be not upheld when they pinch as
22 well as when they comfort, they may as well be discarded.” *Home Bldg. & Loan*
23 *Ass’n v. Blaisdell*, 290 U.S. 398, 483 (1934) (Sutherland, J., dissenting) (emphasis
24 added). As John Adams opined in 1765, “Liberty must at all hazards be supported. We
25 have a right to it, derived from our Maker. But if we had not, our fathers have earned
26 and bought it for us, at the expense of their ease, their estates, their pleasure, and their
27 blood.”

28 ///

1 16. Plaintiffs pray unto the Court that it not permit their unalienable and
2 fundamental liberties enshrined in the Constitution to be another tragic casualty of
3 COVID-19.

4 **PARTIES – PLAINTIFFS**

5 17. Plaintiff CROSS CULTURE CHRISTIAN CHURCH (the “Church”) is a
6 domestic non-profit corporation Christian church organized exclusively for religious
7 purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. The
8 Church is located in the City of Lodi, San Joaquin County, California.

9 18. Plaintiff JONATHAN DUNCAN (“Pastor Duncan”) serves as the lead
10 pastor of the Church. He is 43 years old.

11 **PARTIES – DEFENDANTS**

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

16 20. Defendant XAVIER BECERRA is the Attorney General of California, and
17 is sued in his official capacity. Under California law, the Attorney General is the chief
18 law enforcement officer with supervision over all sheriffs in the state. Cal. Const. Art.
19 V, §13.

20 21. Defendant SONIA ANGELL is the California Public Health Officer. She is
21 sued in her official capacity only. Under the authority of the State Order, the State
22 Public Health Officer created California’s “Essential Critical Infrastructure Workers,”
23 discussed below.

24 22. Defendant MAGGIE PARK is the Public Health Officer, San Joaquin
25 County, California. She is sued in his official capacity only. She signed the San
26 Joaquin County “Stay at Home” Orders dated March 21, 2020 and March 26, 2020,
27 April 3, 2020, and April 14, 2020.

28 ///

1 23. Defendant MARCIA CUNNINGHAM is the Director of Emergency
2 Services, San Joaquin County, California. She is sued in her official capacity only. She
3 signed the San Joaquin County “Stay at Home” Orders dated March 21, 2020, March
4 26, 2020, and April 14, 2020.

5 24. Defendant CITY OF LODI is a municipality organized under the laws of
6 the State of California. The City of Lodi is subject to suit under 42 U.S.C. 1983 and
7 common law. Defendant TOD PATTERSON is the Chief of Police of the City of Lodi.
8 He is sued in his official capacity only. He is responsible for enforcing and has directed
9 the enforcement of the State Orders and the County Orders against religious institutions
10 including the Church.

11 **JURISDICTION AND VENUE**

12 25. This civil rights action raises federal questions under the United States
13 Constitution, specifically the First and Fourteenth Amendments, and under federal law,
14 particularly 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons
15 Act, 42 U.S.C. § 2000cc, *et seq.*

16 26. This Court has subject matter jurisdiction over the federal claims pursuant
17 to 28 U.S.C. §§ 1331 and 1343.

18 27. This action also arises under Article I, §§ 2, 3 and 4 of the California
19 Constitution (freedom of speech, right of assembly, and religious free exercise).

20 28. This Court has supplemental jurisdiction over the state claims pursuant to
21 28 U.S.C. § 1367.

22 29. This Court has authority to grant the requested declaratory relief under the
23 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, implemented through Rule 57
24 of the Federal Rules of Civil Procedure. This Court is also authorized to grant injunctive
25 relief and damages under 28 U.S.C. § 1343, pursuant to Rule 65 of the Federal Rules of
26 Civil Procedure, and reasonable attorney’s fees and costs under 42 U.S.C. § 1988.

27 ///

28 ///

30. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1)–(2) because Defendants are situated in this judicial district, and a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this district.

FACTUAL BACKGROUND

A. Executive and Administrative Response to COVID-19.

31. On March 4, 2020, California Governor Gavin Newsom declared a state of emergency for the entire State of California in response to COVID-19. On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic. On March 13, 2020, President Donald J. Trump declared COVID-19 a national emergency. On March 16, 2020, President Trump and the CDC issued “15 Days to Slow the Spread” guidance advising individuals, in part, to avoid **social** gatherings in groups of more than 10 people. On March 19, 2020, Governor Newsom issued the State Order, Executive Order N-33-20, a statewide stay at home order with exceptions for “critical infrastructure.” On March 21, 2020, San Joaquin County issued its own stay at home order. On March 26, 2020, San Joaquin County issued a revised “stay at home” order. On April 3, 2020 San Joaquin County issued a targeted Order, specifically naming the Church and declaring its ongoing use of the leased property in violation of the State and County Orders. This April 3 targeted Order declared the Church a “non-essential” entity and ordered it to cease all occupation and use of the leased buildings and the parking lot, while at the same time permitting a preschool to continue to meet on the property. On April 14, 2020, San Joaquin County issued another amended order allowing “non-essential businesses” to conduct “minimum basic operations.”

B. Governor Newsom’s Executive Order

32. On March 4, 2020, Governor Gavin Newsom proclaimed a State Emergency as a result of the threat of COVID-19.¹ Governor Newsom’s “stay at home” State Order included a multitude of exceptions for “critical infrastructure.” A true and

¹ As of the date of this filing, the Proclamation of a State of Emergency can be found online at: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

1 correct copy of this State Order is attached hereto as Exhibit 1. The State Order
2 provides, in pertinent part:

3 “**[A]ll residents are directed to immediately heed** the current State public
4 health directives, which I ordered the Department of Public Health to
5 develop for the current statewide status of COVID-19.”

6 “To protect public health, I as State Public Health Officer and Director of
7 the California Department of Public Health **order all individuals living in**
8 **the State of California to stay home or at their place of residence except**
9 **as needed to maintain continuity of operations of the federal critical**
10 **infrastructure sectors**, as outlined at [https://www.cisa.gov/identifying-](https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19)
11 [critical-infrastructure-during-covid-19](https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19). In addition, and in consultation with
12 the Director of the Governor's Office of Emergency Services, **I may**
13 **designate additional sectors as critical** in order to protect the health and
14 well-being of all Californians....this order is to go into effect immediately
15 and **shall stay in effect until further notice.**”

16 Exhibit 1 at Paragraph 1 (emphasis added).

17 33. Although the State Order references the “federal critical infrastructure
18 sectors,” on or about March 22, 2020, the California Public Health Officer published its
19 own list of “Essential Critical Infrastructure Workers” (“ECIW”)², discussed in detail
20 below. A true and correct copy of the ECIW is attached as Exhibit 6. When compared
21 to the federal list, the ECIW is significantly more restrictive of the religious clergy, only
22 allowing them to participate in “faith-based services that are provided through
23 streaming or other technology.” Exhibit 6. Accordingly, California prohibits all
24 religious leaders from conducting in-person and out-of-home religious services,
25 regardless of the “social distancing” measures taken to reduce or eliminate the risk of
26 spreading the virus.

27 34. Meanwhile, the ECIW list deems the continuity of services provided by
28 coffee baristas, burger flippers, laundromat technicians, pot dispensary operators, and
liquor store employees to be so “essential” for society that these activities are permitted

2 As of the date of this filing, the list of Essential Critical Infrastructure Workers (“ECIW”) can be found online at
<https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>

1 to continue under the State Order, despite the existence of the very same risk
2 Defendants rely on to stymie the Plaintiffs' exercise of fundamental rights.

3 35. Furthermore, the State Order delegates to the State Public Health Officer
4 and Director of the California Department of Public Health the authority to "**designate**
5 **additional sectors as critical...**" Exhibit 1 at paragraph 1 (emphasis added). Finally,
6 the State Order has no expiration date, as it "shall stay in effect until further notice."
7 Exhibit 1 at paragraph 1.

8 **C. First San Joaquin County Order Prohibiting All Non-Essential**
9 **Gatherings**

10 36. On March 21, 2020, San Joaquin County issued its own stay at home order,
11 a true and correct copy of which is attached hereto as Exhibit 2. This county order
12 provides, in pertinent part, mandated that:

13 **"ALL INDIVIDUALS LIVING IN THE COUNTY TO STAY AT**
14 **HOME OR AT THEIR PLACE OF RESIDENCE EXCEPT THAT**
15 **THEY MAY LEAVE TO PROVIDE OR RECEIVE CERTAIN**
16 **ESSENTIAL SERVICES OR ENGAGE IN CERTAIN ESSENTIAL**
17 **ACTIVITIES AND WORK FOR ESSENTIAL BUSINESSES AND**
18 **GOVERNMENTAL SERVICES; EXEMPTING INDIVIDUALS**
19 **EXPERIENCING HOMELESSNESS FROM THIS ORDER BUT**
20 **URGING THEM TO FIND SHELTER AND GOVERNMENT**
21 **AGENCIES TO PROVIDE IT; DIRECTING ALL BUSINESSES AND**
22 **GOVERNMENTAL AGENCIES TO CEASE NON-ESSENTIAL**
23 **OPERATIONS AT PHYSICAL LOCATIONS IN THE COUNTY;**
24 **PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF ANY**
25 **NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF**
26 **ALL NON-ESSENTIAL TRAVEL."**

27 Exhibit 2 at p. 1 (emphasis added).

28 37. The county's stay at home order prohibited all non-essential gatherings of
any number of individuals." Exhibit 2 at paragraph 6. However, there was an
exemption for those providing or receiving "essential services" or those engaging in
"essential activities" or working for "essential businesses and governmental services."

Exhibit 2 at paragraph 11. The order allowed individuals the unlimited ability to leave their residence to “engage in activities or perform tasks essential to their health and safety,” and perform “essential activities” including the following: “obtaining medical supplies and medication, visiting a health care professional, obtaining supplies they need to work from home...to obtain necessary services or supplies [including food or consumer products]....to engage in outdoor activities....to perform work as an Essential Critical Infrastructure worker....to care for a family member in or pet in another household...to attend private gatherings of not more than six relatives.” Exhibit 2 at paragraph 11. Individuals or businesses were warned of criminal penalties for not obeying the order. The order warned that “Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, et seq.)” Exhibit 2 at p. 1.

D. Second San Joaquin County Order Prohibiting All Non-Essential Gatherings

38. On March 26, 2020, San Joaquin County issued a revised “stay at home” order, a true and correct copy of which is attached hereto as Exhibit 3. Similar to the prior county order, it exempted those providing or receiving “essential services” or those engaging in “essential activities” or working for “essential businesses and governmental services” and “**prohibiting all non-essential gatherings of any number of individuals.**” Exhibit 3 at p. 1 (emphasis added).

39. The order, in pertinent part, directed:

“ALL INDIVIDUALS LIVING IN THE COUNTY TO STAY AT HOME OR AT THEIR PLACE OF RESIDENCE EXCEPT THAT THEY MAY LEAVE TO PROVIDE OR RECEIVE CERTAIN ESSENTIAL SERVICES OR ENGAGE IN CERTAIN ESSENTIAL ACTIVITIES AND WORK FOR ESSENTIAL BUSINESSES AND GOVERNMENTAL SERVICES; EXEMPTING INDIVIDUALS EXPERIENCING HOMELESSNESS FROM THIS ORDER BUT URGING THEM TO FIND SHELTER AND GOVERNMENT AGENCIES TO PROVIDE IT; DIRECTING ALL BUSINESSES AND GOVERNMENTAL AGENCIES TO CEASE NON-ESSENTIAL

1 OPERATIONS AT PHYSICAL LOCATIONS IN THE COUNTY;
2 PROHIBITING ALL NON-ESSENTIAL GATHERINGS OF ANY
3 NUMBER OF INDIVIDUALS; AND ORDERING CESSATION OF ALL
4 NON-ESSENTIAL TRAVEL.”

5 Exhibit 3 at p. 1 (emphasis added).

6 40. This new order emphasized the need for “social distancing” when, for any
7 reason, people left their homes. Social distancing was defined in the new order as
8 “maintaining at least six-foot social distancing from other individuals, washing hands
9 with soap and water for at least twenty seconds as frequently as possible or using hand
10 sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly
11 cleaning high touch surfaces, and not shaking hands.” Exhibit 3 at paragraph 11(f).

12 41. Just as before, the new county order allowed individuals the unlimited
13 ability to leave their residence to “engage in activities or perform tasks essential to their
14 health and safety,” including to “perform “essential activities” including, “obtaining
15 medical supplies and medication, visiting a health care professional, obtaining supplies
16 they need to work from home...to obtain necessary services or supplies [including food
17 or consumer products]....to engage in outdoor activities....to perform work as an
18 Essential Critical Infrastructure worker....to care for a family member in or pet in
19 another household.” Exhibit 3 at paragraph 11(a). Under the terms of County Order,
20 any [grocery, convenience, warehouse, or “big box”] store may operate without any
21 limit on the number of employees or customers present, as long as it insures social
22 distancing (6 feet) and other health practices for its employees, and otherwise promotes
23 social distancing (about 6 feet) and other best practices for non-employees.

24 42. However, the option “to attend private gatherings of not more than six
25 nonrelatives in a home or place of residence” was removed from the list of permitted
26 activities. Also, similar to the prior order, individuals and businesses were warned of
27 criminal penalties for not obeying the order. “Violation of or failure to comply with this
28

Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*)” Exhibit 3 at p. 1.

D. The April 3 Targeted County “Order Prohibiting Public Assembly” at Cross Culture Christian Center

43. On April 3, 2020, San Joaquin County Public Health Officer, Maggie Park, M.D. issued an “Order Prohibiting Public Assembly,” a true and correct copy of which is attached hereto as Exhibit 4. This order specifically referenced Plaintiff Cross Culture Christian Center’s lease and ongoing use of the facility owned by their landlord, Bethel Open Bible Church located at 760 S Ham Ln, in Lodi, California. The order states, in pertinent part:

“You are hereby ordered to close your facility located at 760 South Ham Lane, Lodi, California, and prevent future use of the facility, including the parking lot, for public assembly due to the outbreak of COVID-19 in the state of California and County of San Joaquin.

On March 19, 2020, the Governor of California issued an executive **order N-33-20** (the “Order”) **mandating 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 16 federal critical infrastructure sectors**. On March 26, 2020, the San Joaquin County Public Health Officer issued an order prohibiting public assemblies of any size that are not essential for life and safety.

On March 29, 2020, the City of Lodi reported to the County Public Health Officer that your tenant, Cross Culture Community Church was continuing to use your facility for public assembly, and that Cross Culture Community Church was aware of the County Order and intended to continue to meet in violation of the Order. As a facility for public assembly **neither the building or the parking lot is part of the essential critical infrastructure as defined by State and Federal agencies**. Continued operation, in violation of the Order, will hamper the County's ability to slow transmission of the disease and increase the risk to the public from COVID-19.

Any person who refuses or willfully neglects to comply with this emergency order is guilty of a misdemeanor, punishable by fine and/or

1 imprisonment. (Government Code section 8665; Health and Safety Code
2 section 120275.) In addition, there are civil and administrative penalties that
3 can be imposed upon you as a result of continued operation.”

4 The ability of Bethel Open Bible Church to operate a child-care
5 facility consistent with the order of the State Public Health Officer issued
6 March 22, 2020 is unaffected by this Order.”

7 Exhibit 4 (emphasis added).

8 44. The order targeted at the Church’s lawful use of Bethel Open Bible
9 Church’s facilities and threatening criminal and civil penalties against was signed by
10 Maggie Park, M.D., San Joaquin County Public Health Officer.

11 **E. Most Recent San Joaquin County Order Prohibiting All Non-Essential**
12 **Gatherings**

13 45. On April 14, 2020, San Joaquin County issued a revised “stay at home”
14 order, a true and correct copy of which is attached hereto as Exhibit 5. Similar to the
15 prior county orders, it exempted those providing or receiving “essential services” or
16 those engaging in “essential activities” or working for “essential businesses and
17 governmental services” and “**prohibiting all non-essential gatherings of any number**
18 **of individuals**”. Exhibit 5 at paragraph 5 (emphasis added).

19 46. This April 14, 2020 County Order allows “non-essential businesses” to
20 conduct “minimum basic operations,” but not be open to the public. Exhibit 5 at
21 paragraph 11(b) (emphasis added).

22 **F. California’s Definition of “Essential Critical Infrastructure” Workers**

23 47. On March 22, 2020, the State Public Health Officer created a list
24 designating those persons who were “Essential Critical Infrastructure Workers,” a true
25 and correct copy of which is attached hereto as Exhibit 6 (“State ECIW List”). The
26 purpose of the State ECIW List was to “help state, local, tribal, and industry partners as
27 they work to protect communities, while ensuring continuity of functions critical to
28 public health and safety, as well as economic and national security” Exhibit 5 at p. 2.

1 48. The fourteen-page State ECIW List is largely modeled on the Federal
2 ECIW List of recommended sector and jobs, which the government has deemed are
3 important for the continuity of operations during times of crisis and which may remain
4 open. The State CIW exempts thirteen sectors of workers from the State and County
5 “stay at home” orders: Healthcare/Public Health; Emergency Services Sector; Food and
6 Agriculture; Energy; Water and Wastewater; Transportation and Logistics;
7 Communications and Information Technology; Critical Manufacturing; Hazardous
8 Materials; Financial Services; Chemical; Defense Industrial Base and Other
9 Community-Based Government Operations. Exhibit 6 at pp. 1-14. This State ECIW
10 list is incorporated into the State and County Orders discussed above. See Exhibits 1-5.

11 49. The “Other Community-Based Government Operations” sector allowed to
12 remain open and whose workers are exempt from the “stay at home” orders includes a
13 wide variety of commercial retail stores: “Commercial Retail Stores, that supply
14 essential sectors, including convenience stores, pet supply stores, auto supplies and
15 repair, hardware and home improvement, and home appliance retailers.” Exhibit 6 at p.
16 11 (emphasis added).

17 50. The U.S. Department of Homeland Security Cybersecurity and
18 Infrastructure Agency updated guidance document, *Essential Critical Infrastructure*
19 *Workforce: Ensuring Community and National Resilience In COVID-19 Response*, Ver.
20 3.0 (April 17, 2020) (“CISA Guidance 3.0”) is incorporated by reference into the State
21 and County Orders (Exhibits 1-5). A true and correct copy of this CISA Guidance 3.0 is
22 attached hereto as Exhibit 7. It specifies “Clergy for essential support” as “essential
23 critical infrastructure workers” who are “needed to maintain the services and functions
24 Americans depend on daily and that need to be able to operate resiliently during the
25 COVID-19 pandemic response,” and whose ability “to continue to work during periods
26 of community restriction, access management, social distancing, or closure
27 orders/directives is crucial to community resilience and continuity of essential
28 functions.” Exhibit 7. The State ECIW also references faith-based organizations, but

1 the State of California strictly limits their activities only to online worship services:
2 “Faith based services that are provided through streaming or other technology” Exhibit
3 6 at p. 11.

4 51. The introduction to the State ECIW List acknowledges that Governor
5 Newsom’s State Order (Exhibit 1) has delegated to the “State Public Health Officer” the
6 discretion to designate “additional sectors...as critical to protect [sic] health and well-
7 being of aall [sic] Californians.” Exhibit 6 at p. 1. More than eleven states have
8 declared houses of worship as “essential services” or have otherwise exempted religious
9 services from the stay at home orders.³

10 52. Governor Gavin Newsom was asked to include houses of worship in
11 California as part of the State ECIW or as exempted from the “stay at home” orders, but
12 he has ignored this request and has thus far declined to do so. A true and correct copy of
13 the letter written to Governor Newsom from Plaintiffs’ counsel is attached hereto as
14 Exhibit 8.

15 53. Therefore, both the state of California and San Joaquin County have,
16 through their sweeping stay at home orders incorporating the State ECIW List have, on
17 their face and as applied, permitted virtually unrestricted public assembly with social
18 distancing at a multitude of commercial retail stores by deeming it as “essential.” At the
19 same time, the orders forbid any and all public assembly at houses or worship with
20 social distancing, simply by discretionarily deeming religious assembly as “non-
21 essential” and not including it on the State ECIW List. In California, a broad array of
22 commercial assembly is currently deemed lawful while, at the same time, any and all
23 religious assembly, even if social distancing is employed, is classified as a criminal
24 activity. It is this discretionary determination by State Officials which Plaintiffs
25 contend violates multiple provisions of the U.S. Constitution and similar provisions of
26 the Constitution of the State of California, as is discussed further below.

27 _____
28 ³ <https://abcnews.go.com/Health/states-crack-gatherings-due-coronavirus-exemptions-religious-groups/story?id=69847021>

G. The Religious Beliefs and Practices of the Church

54. The Church is led by Pastor Duncan and a church board of directors. The Church started as a home Bible study meeting in Pastor Duncan's home approximately twelve years ago.

55. In 2009, the growing group incorporated as a California non-profit religious corporation. From 2015 to 2019, the Church rented its own facility in an industrial area of Lodi, California. In March of 2019, the Church entered into a three-year lease and started renting space from Bethel Open Bible Church in Lodi, California.

56. Currently, the Church has approximately 27 adult attendees during its Sunday service, and even less attendees during its midweek Wednesday night service. The leased sanctuary where the Church meets can hold up to 400 people.

57. The Church describes itself as "a Community of the Rescued. Our heart is to truly be The Cross Culture, making the Love of God our priority. We as a Community are working through our struggles so we will better reflect Christ in our lives, home and world. Our desire is to love as Jesus loved, teach as Jesus taught, and give as Jesus gave."

58. The Church has a sincerely and deeply held religious belief that it is essential for them as Christians to assemble and regularly gather together in person for the teaching of God's Word, prayer, worship, baptism, communion and fellowship. This is based on scriptures from the Bible, including Hebrews 10:25, Acts 2:40-47, and Acts 5:40-42. These activities are primarily fulfilled in the gathering together of the Church body for Sunday worship services and Wednesday night worship services.

59. The Church believes that based on the Bible, they are eternal beings in this temporary world, and God's Word (the Bible) is even more essential than food based on the following scripture in Matthew 4:4: "[Jesus] answered, 'It is written, "Man shall not live by bread alone, but by every word that comes from the mouth of God."'" Indeed, the joyful duty to assemble together, in person, for worship services is a central tenet of the Christian faith, both believed and practiced by the Church according to the Bible, a

1 tenet that is especially important to maintain during times of turmoil and trouble in the
2 world: “And let us consider how to stir up one another to love and good works, not
3 neglecting to meet together, as is the habit of some, but encouraging one another,
4 and all the more as you see the Day drawing near.” Hebrews 10:24–25.

5 60. The joyful duty to love their neighbors is likewise a central tenet of the
6 Christian faith believed and practiced by the Church. They believe this is done first
7 through sharing the Gospel of Jesus Christ—that Jesus died for the forgiveness of our
8 sins, that He rose again to secure for us eternal life with God the Father, and that
9 whoever believes in Jesus Christ will share in that eternal life—and second through
10 good works, such as caring for the sick and hungry. And the Church believes, still
11 according to the Bible, that it is the very practice of regularly assembling together to
12 worship God through the preaching and teaching of God’s Word that inspires and
13 equips Christians to love their neighbors and perform such good works, as shown in the
14 passage quoted above (“let us consider how to stir up one another to love and good
15 works”), and also: “All Scripture is breathed out by God and profitable for teaching, for
16 reproof, for correction, and for training in righteousness, that the man of God may be
17 complete, equipped for every good work.” 2 Tim. 3:16–17.

18 61. Pastor Duncan was a police officer with the Stockton Police Department
19 before he was medically discharged due to a physical injury. As a public servant,
20 Pastor Duncan took the following oath:

21 “I, Jonathan Duncan, do solemnly swear (or affirm) that I will support and defend
22 the Constitution of the United States and the Constitution of the State of
23 California against all enemies, foreign and domestic; that I will bear true faith and
24 allegiance to the Constitution of the United States and the Constitution of the State
25 of California; that I take this obligation freely, without any mental reservation or
26 purpose of evasion; and that I will well and faithfully discharge the duties upon
27 which I am about to enter.”
28

1 62. The Church's congregation is multi-racial and represents a cross-section of
2 society, from rich to poor and of all ages. The Church's congregation also includes
3 members and visitors running the gamut of essential workers. These essential workers
4 and service providers receive spiritual support, comfort, guidance, and shelter from the
5 ministry of the Church's personnel, including Pastor Duncan.

6 **H. The Church's Worship Services Following State and County Executive**
7 **Orders and Enforcement Against the Church by the Lodi Police Department**

8 63. Even before the State and County "stay at home orders" went into effect,
9 the Church was already following CDC and state recommended "social distancing"
10 guidelines. Among other actions, Pastor Duncan counselled individuals to follow their
11 doctor's instructions, adhere to the CDC guidelines, and act in the best interest of
12 community health and safety.

13 64. After the State and County Orders were issued, in accordance with its
14 sincerely held religious beliefs and its practices consistent to those beliefs, the Church
15 elected to continue to conduct worship services on March 22, March 25, and March 29,
16 2020, while at the same time continuing to follow CDC and state recommended "social
17 distancing" guidelines. In addition to the CDC guidelines, the Church is willing to limit
18 the number of congregants in the sanctuary at the same time to 50 persons or less and
19 have multiple personnel present to ensure proper spacing between persons and orderly
20 compliance with all CDC guidelines.

21 65. On Wednesday March 25, 2020, two Lodi Police Officers disrupted The
22 Church's midweek service. On information and belief, their visit was triggered by
23 someone acting on behalf of Bethel Church (the landlord/lessor) who had informed
24 Lodi Police Department that the Church would be meeting that night, purportedly in
25 violation of the County Orders. Lodi Police Corporal Bradley and Officer Silva entered
26 the foyer of the building where the Church meets at approximately 7:30 p.m. Due to
27 their presence, Pastor Duncan was forced to communicate with them for an extended
28

1 period of time and was therefore prohibited from performing his regular pastoral duties
2 of leading the Church worship service that evening.

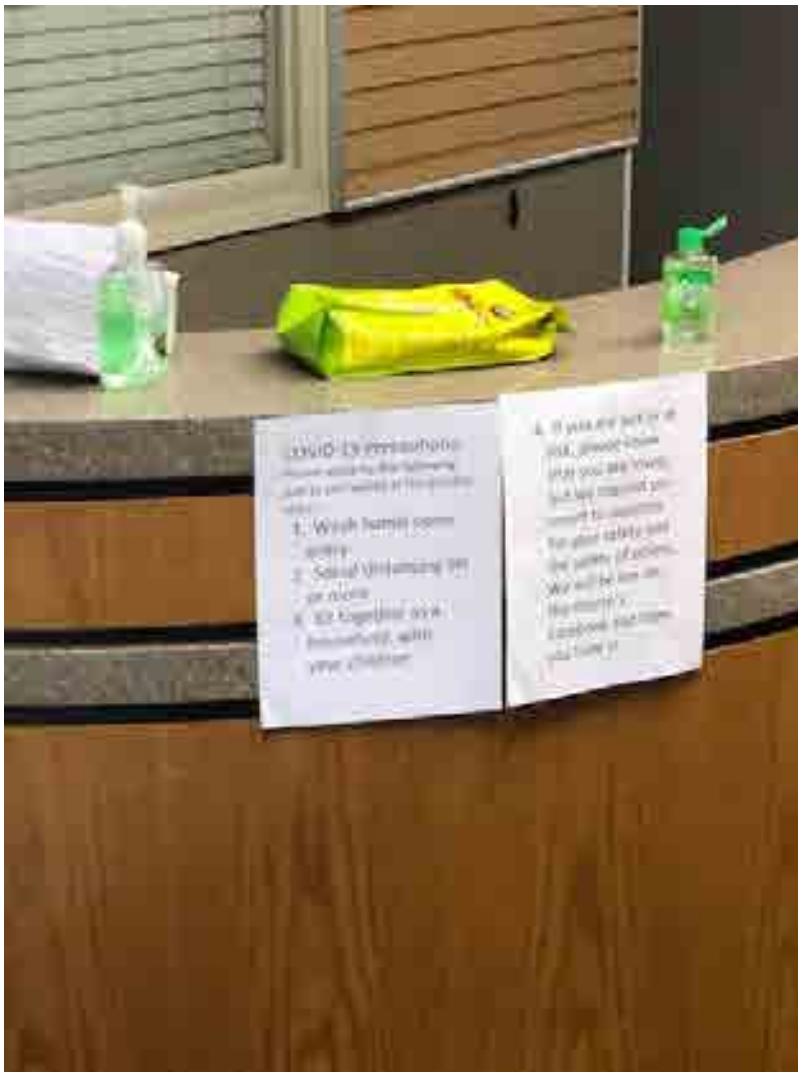
3 66. During the conversation, Corporal Bradley advised Pastor Duncan that he
4 was there to “educate” the Church about the San Joaquin County Order. However,
5 Corporal Bradley proceeded to warn Pastor Duncan about the steps the Police
6 Department was prepared to take against the Church following this initial “education”
7 procedure, including posting a written cease and desist notice on the building for non-
8 compliance. Bradley continued, that, if this were not heeded, the Lodi Police would
9 likely follow up with an enforcement action, purportedly for “disturbing the peace.”
10 Based on the totality of this conversation, it was Pastor Duncan’s understanding, who is
11 a retired law enforcement officer, that these Lodi Police officers had been dispatched
12 with orders to shut down the Church’s assembly and order them to vacate the building.

13 67. On March 27, 2020, counsel for Plaintiffs submitted a cease and desist
14 letter to the Lodi Police department and other city officials. The letter demanded that
15 government officials cease all enforcement actions and agree to honor and respect the
16 Church’s First Amendment rights to peaceably assemble, freedom of speech, and free
17 exercise of religion. The City of Lodi did not immediately respond to Plaintiffs’
18 counsel, but waited more than a week to reply.

19 68. On March 29, 2020, the Church met for its regular Sunday services.
20 Before the services started, the building was prepared to accommodate social
21 distancing.

22 69. Signs were posted on the Church doors and in the entry area advising
23 Church members of the following:

24 “COVID-19 Precautions: Please abide by the following, just as you would
25 at the grocery store- 1. Wash hands upon entry. 2. Social distancing 6 feet
26 or more. 3. Sit together as a household, with your children. 4. If you are
27 sick or at risk, please know that you are loved, but we request that you
28 resort to isolation for your safety and the safety of others. We will be live
on the church’s Facebook and hope you tune in.”



70. Hand sanitizer and sanitizing wipes were placed in the foyer near the signs (See photo above).

71. The drinking fountain was blocked off and covered.

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72. The rows of chairs in the sanctuary were separated from each other by more than six (6) feet (See pictures below).

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73. On April 1, 2020, Lodi Police officers posted a “public nuisance” notice on the building leased by the Church. A true and correct copy of this notice is attached as Exhibit 9. Printed on the City of Lodi’s letterhead, the notice stated that “the business activities conducted on these premises are illegal.” Exhibit 9. Referencing California Health and Safety Codes §§ 120130 and 12025, California Penal Code §373a, the State Order, and the County Order, the notice declared that “This posting constitutes written legal notice to discontinue **non-essential business activities** and **maintenance of a public nuisance** upon these premises.” Exhibit 9 (emphasis added). The notice listed the business name targeted as, “Cross Culture Church” [sic]. Exhibit 9. The notice threatened that “failure to discontinue **non-essential** business activities is a **misdemeanor**... that each violation was a “separate and distinct offence” the may be “**prosecuted** until the nuisance is abated.” Exhibit 9 (emphasis added). It was signed

1 by Sgt. Fritz, Sgt. Ambriz and Officer Stillman, of the Lodi Police Department, badge
2 numbers 56, 32, and 34.

3 74. Less than two days later, on April 3, 2020, San Joaquin County issued its
4 “Order Prohibiting Public Assembly” Exhibit 4 (discussed in detail above), which
5 specifically targeted the Church and forbade any use of the buildings or parking lot for
6 any reason, except for daycare.

7 75. On Sunday, April 5, 2020 when Pastor Duncan arrived at the Church to
8 open up for Palm Sunday services, he was greeted by a half dozen law enforcement
9 officers who informed him that the locks had been changed on the church building by
10 the landlord. They also advised him that if he were to access the parking lot and/or
11 church building that they would cite him for violating the public health orders, but
12 would not arrest him. The Church’s lease for the subject property is still in effect, it has
13 not expired, and no unlawful detainer proceedings have been filed to prevent the
14 Church’s legal occupancy and possession pursuant to the terms of the lease agreement.
15 The landlord changed the locks without a judicial order to do so.

16
17 **CONSTITUTIONAL CLAIMS**

18 **COUNT I**

19 **THE ORDERS VIOLATE PLAINTIFFS’ RIGHT TO FREE EXERCISE OF**
20 **RELIGION UNDER THE FIRST AMENDMENT**

21
22 76. Plaintiffs incorporate by reference the allegations in the preceding
23 paragraphs, as if fully set forth herein.

24 77. The Free Exercise Clause of the First Amendment to the United States
25 Constitution, as applied to the states by the Fourteenth Amendment, prohibits
26 Defendants from abridging Plaintiffs’ right to free exercise of religion.

27 78. Plaintiffs have sincerely held religious beliefs that the Bible is the
28 infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its
teachings.

1 79. Plaintiffs have sincerely held religious beliefs, rooted in the Bible, that
2 followers of Jesus Christ are not to forsake the assembling of themselves together, and
3 that they are to do so even more in times of peril and crisis.

4 80. The State Order and the County Orders, on their face and as applied,
5 prohibit all faith-based assemblies and gatherings in Plaintiffs' leased Church, including
6 the use of the leased parking lot, even if Plaintiffs follow CDC and state "social
7 distancing guidelines, which is a violation of Plaintiffs' right to the free exercise of
8 religion.

9 81. The State Order and the County Orders, on their face and as applied, target
10 Plaintiffs' sincerely held religious beliefs and practices by prohibiting all faith-based
11 gatherings.

12 82. The State Order and the County Orders, on their face and as applied,
13 impermissibly burden Plaintiffs' sincerely held religious beliefs, compel Plaintiffs to
14 either change those beliefs or to act in contradiction to them, and force Plaintiffs to
15 choose between the teachings and requirements of its sincerely held religious beliefs or
16 Defendants' imposed value system.

17 83. The State Order and the County Orders, on their face and as applied, place
18 Plaintiffs in an irresolvable conflict between compliance with the orders and
19 compliance with their sincerely held religious beliefs.

20 84. The State Order and the County Orders, on their face and as applied, put
21 substantial pressure on Plaintiffs to violate their sincerely held religious beliefs by
22 ignoring the fundamental teachings and tenets of the Bible concerning the assembling
23 together of the Church.

24 85. The State Order and the County Orders, on their face and as applied, are
25 neither neutral nor generally applicable, but rather specifically and discriminatorily
26 target the religious beliefs, speech, assembly, and viewpoint of Plaintiffs.

27 86. The State Order and the County Orders, on their face and as applied,
28 constitute a substantial burden on Plaintiffs' sincerely held religious beliefs.

1 87. Defendants lack a compelling, legitimate, or rational interest in the State
2 Order and County Orders' application of differential standards for churches and faith-
3 based gatherings than those applicable to other so-called "essential" businesses or
4 services, such as the preschool which continues to meet at the Church location and other
5 commercial establishments where people assemble and congregate.

6 88. Even if the State Order and the County Orders' restriction on faith-based
7 gatherings were supported by a compelling interest, which they are not, they do not
8 employ the least restrictive means to accomplish the government's purported interest.

9 89. The State Order and the County Orders fail to accommodate Plaintiffs'
10 sincerely held religious beliefs.

11 90. The State Order and the County Orders, specifically target Plaintiffs'
12 sincerely held religious beliefs, and the Orders set up a system of individualized
13 exemptions that permit certain other similarly situated businesses or services to
14 continue operations under certain guidelines while prohibiting faith-based gatherings,
15 such as Plaintiffs', from operating under similar guidelines.

16 91. The State Order and the County Orders, on their face and as applied,
17 constitute a religious gerrymander.

18 92. The State Order and the County Orders, on their face and as applied, have
19 caused, are causing, and will continue to cause Plaintiffs' immediate and irreparable
20 harm, and actual and undue hardship.

21 93. Plaintiffs have no adequate remedy at law to correct the continuing
22 deprivation of their constitutional rights.

23 94. WHEREFORE, Plaintiffs respectfully pray for the relief against
24 Defendants as hereinafter set forth in the prayer for relief.

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COUNT II

**THE ORDERS VIOLATE PLAINTIFFS' RIGHT TO FREEDOM OF
ASSEMBLY UNDER THE FIRST AMENDMENT**

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

96. The First Amendment to the United States Constitution, as applied to the states by the Fourteenth Amendment, prohibits Defendants from abridging the right of the people peaceably to assemble.

97. The State Order and the County Orders, on their face and as applied, prohibit all faith-based assemblies and gatherings in the Church, including Plaintiffs' use of the leased parking lot, even if Plaintiffs follow CDC and state "social distancing guidelines, which is a violation of Plaintiffs' right to peaceably assemble.

98. The State Order and the County Orders, on their face and as applied, are an unconstitutional prior restraint on Plaintiffs' right to assemble.

99. The State Order and the County Orders, on their face and as applied, unconstitutionally discriminate on the basis of viewpoint.

100. The State Order and the County Orders, on their face and as applied unconstitutionally discriminate on the basis of content.

101. Defendants lack a compelling, legitimate, or rational interest in the State Order and County Orders' application of differential standards for churches and faith-based gatherings than those applicable to other so-called "essential" businesses or services, such as the preschool with continues to meet at the Church location and other commercial establishments where people assemble and congregate.

102. The State Order and the County Orders, on their face and as applied, are not the least restrictive means to accomplish any permissible government purpose sought to be served by the Orders.

103. The State Order and the County Orders, on their face and as applied, are not narrowly tailored to serve the government's purported interest.

1 113. The Free Speech Clause of the First Amendment to the United States
2 Constitution, as applied to the states by the Fourteenth Amendment, prohibits
3 Defendants from abridging Plaintiffs' freedom of speech.

4 114. The State Order and the County Orders, on their face and as applied,
5 prohibit all faith-based assemblies, gatherings, and religious speech in Plaintiffs' leased
6 Church, including Plaintiffs' use of the leased parking lot for expressive activities, even
7 if Plaintiffs follow CDC and state social distancing guidelines, which is a violation of
8 Plaintiffs' right to the freedom of speech.

9 115. The State Order and the County Orders, on their face and as applied, are an
10 unconstitutional prior restraint on Plaintiffs' speech.

11 116. The State Order and the County Orders, on their face and as applied,
12 unconstitutionally discriminate on the basis of viewpoint.

13 117. The State Order and the County Orders, on their face and as applied,
14 unconstitutionally discriminate on the basis of content.

15 118. Defendants lack a compelling, legitimate, or rational interest in the State
16 Order and County Orders' application of differential standards for churches and faith-
17 based gatherings than those applicable to other so-called "essential" businesses or
18 services, such as the preschool with continues to meet at the Church location, and other
19 commercial establishments where people assemble and congregate.

20 119. The State Order and the County Orders, on their face and as applied, are
21 not the least restrictive means to accomplish any permissible government purpose
22 sought to be served by the Orders.

23 120. The State Order and the County Orders, on their face and as applied, are
24 not narrowly tailored to serve the government's purported interest.

25 121. The State Order and the County Orders, on their face and as applied, do not
26 leave open ample alternative channels of communication for Plaintiffs.

27 122. The State Order and the County Orders, on their face and as applied, are
28 irrational and unreasonable and imposes unjustifiable and unreasonable restrictions on

1 Plaintiffs' constitutionally protected speech.

2 123. The State Order and the County Orders, on their face and as applied,
3 impermissibly vest unbridled discretion in the hands of government officials, including
4 Defendants, to apply or not apply the Orders in a manner to restrict free speech.

5 124. The State Order and the County Orders, on their face and as applied, are
6 under-inclusive by limiting their prohibitions to only certain entities, organizations, or
7 businesses deemed "non-essential."

8 125. The State Order and the County Orders, on their face and as applied, are
9 unconstitutionally overbroad as they chill and abridge the free speech rights of
10 Plaintiffs.

11 126. On their face and as applied, the State Order and County Orders violation
12 of Plaintiffs' right to free speech has caused, is causing, and will continue to cause
13 Plaintiffs to suffer immediate and irreparable injury and undue and actual hardship.

14 127. Plaintiffs have no other adequate remedy at law to correct the continuing
15 deprivation of their constitutional rights.

16 128. WHEREFORE, Plaintiffs respectfully pray for the relief against
17 Defendants as hereinafter set forth in the prayer for relief.

18 **COUNT IV**

19 **THE ORDERS VIOLATE**

20 **THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT**

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

23 130. The Establishment Clause of the First Amendment to the United States
24 Constitution, as applied to the states by the Fourteenth Amendment, prohibits the
25 government from establishing a religion.

26 131. The Establishment Clause also prohibits excessive government
27 entanglement with religion.
28

1 not neutral, and specifically target Plaintiffs and other faith-based gatherings for
2 unequal treatment.

3 142. The State Order and County Orders, on their face and as applied, are an
4 unconstitutional abridgment of Plaintiffs' right to equal protection because they permit
5 Defendants to treat Plaintiffs differently from other similarly situated businesses and
6 organizations on the basis of content and viewpoint of Plaintiffs' gatherings.

7 143. The State Order and County Orders, on their face and as applied,
8 impermissibly discriminate between certain non-religious gatherings and religious or
9 faith-based gatherings.

10 144. Defendants lack a compelling, legitimate, or rational interest in the State
11 Order and County Orders' application of differential standards for churches and faith-
12 based gatherings than those applicable to other so-called "essential" businesses or
13 services, including the preschool that continues to meet at the Church site and other
14 commercial business where people assemble and congregate.

15 145. The State Order and County Orders, on their face and as applied, are not
16 the least restrictive means to accomplish any permissible government purpose sought to
17 be served.

18 146. The State Order and County Orders, on their face and as applied, do not
19 have a rational basis.

20 147. The State Order and County Orders, on their face and as applied, are
21 irrational and unjustifiable and impose irrational and unjustifiable restrictions on
22 Plaintiffs' religious and faith-based gatherings.

23 148. The State Order and County Orders, on their face and as applied, have
24 caused, are causing, and will continue to cause Plaintiffs immediate and irreparable
25 harm, and actual and undue hardship.

26 149. Plaintiffs have no other adequate remedy at law to correct the continuing
27 deprivation of their constitutional rights.
28

1 possessing, and protecting property, and pursuing and obtaining safety, happiness, and
2 privacy. Cal. Const. Art. 1, §1.

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

9 171. California courts found that Public Health Officials could not quarantine
10 twelve (12) blocks of San Francisco Chinatown because of nine (9) deaths due to
11 bubonic plague. See *Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900), and *Wong Wai*
12 *v. Williamson*, 103 F. 1 (C.C. Cal. 1900). The court found it “purely arbitrary,
13 unreasonable, unwarranted, wrongful, and oppressive interference with the personal
14 liberty of complainant” who had “never had or contracted said bubonic plague; that he
15 has never been at any time exposed to the danger of contracting it, and has never been
16 in any locality where said bubonic plague, or any germs of bacteria thereof, has or have
17 existed”. *Jew Ho*, 103 F. 10 (C.C. Cal. 1900).

18 172. California courts have found that “a mere suspicion [of a contagious
19 disease], unsupported by facts giving rise to reasonable or probable cause, will afford
20 no justification at all for depriving persons of their liberty and subjecting them to virtual
21 imprisonment under a purported order of quarantine.” *Ex parte Arata*, 52 Cal. App. 380,
22 383 (1921) (emphasis added).

23 173. In *Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900), and *Wong Wai v.*
24 *Williamson*, 103 F. 1 (CC Cal. 1900), the California courts found that there were more
25 than 15,000 people living in the twelve blocks of San Francisco Chinatown who were to
26 be quarantined. The courts found it unreasonable to shut down the ability of over
27 15,000 people to make a living because of nine deaths. This was one death for every
28 1,666 inhabitants of Chinatown.

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

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

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

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

13 **COUNT VIII**

14 **THE GATHERING ORDER VIOLATES PLAINTIFFS' RIGHT TO** 15 **FREEDOM OF SPEECH UNDER ARTICLE 1, § 2 OF THE CALIFORNIA** 16 **CONSTITUTION**

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

19 179. Article I, Section 2 of the Constitution of the State of California states,
20 "Every person may freely speak, write and publish his or her sentiments on all subjects,
21 being responsible for the abuse of this right. A law may not restrain or abridge liberty of
22 speech or press."

23 180. The State Order and County Orders, on their face and as applied,
24 completely bar religious speech at religious gatherings, even if Plaintiffs fully comply
25 with the CDC and state social distancing guidelines. This violates Plaintiffs' right to the
26 freedom of speech.

27 181. The State Order and County Orders, on their face and as applied, are an
28 unconstitutional prior restraint on Plaintiffs' speech.

1 182. The State Order and County Orders, on their face and as applied,
2 unconstitutionally discriminate on the basis of viewpoint.

3 183. The State Order and County Orders, on their face and as applied,
4 unconstitutionally discriminate on the basis of content.

5 184. Defendants lack a compelling, legitimate, or rational interest in the State
6 Order and County Orders' application of differential standards for churches and faith-
7 based gatherings than those applicable to other so-called "essential" businesses or
8 services, including the preschool that continues to meet at the Church site and other
9 commercial business where people assemble and congregate.

10 185. The State Order and County Orders, on their face and as applied, are not
11 the least restrictive means to accomplish any permissible government purpose sought to
12 be served by the Orders.

13 186. The State Order and County Orders, on their face and as applied, are not
14 narrowly tailored to serve the government's purported interest.

15 187. The State Order and County Orders, on their face and as applied, do not
16 leave open ample alternative channels of communication for Plaintiffs.

17 188. The State Order and County Orders, on their face and as applied, are
18 irrational and unreasonable and impose unjustifiable and unreasonable restrictions on
19 Plaintiffs' constitutionally protected speech.

20 189. The State Order and County Orders, on their face and as applied,
21 impermissibly vest unbridled discretion in the hands of government officials, including
22 Defendants, to apply or not apply the Orders in a manner to restrict free speech.

23 190. The State Order and County Orders, on their face and as applied, are
24 under-inclusive by limiting their prohibitions to only certain entities, organizations, or
25 businesses deemed non-essential.

26 191. The State Order and County Orders, on their face and as applied, are
27 unconstitutionally overbroad as they chill and abridge the free speech rights of
28 Plaintiffs.

1 192. On their face and as applied, the State Order and County Orders have
2 caused, are causing, and will continue to cause Plaintiffs to suffer immediate and
3 irreparable injury and undue and actual hardship.

4 193. Plaintiffs have no other adequate remedy at law to correct the continuing
5 deprivation of its constitutional rights.

6 194. WHEREFORE, Plaintiffs respectfully pray for the relief against
7 Defendants as hereinafter set forth in the prayer for relief.

8 **COUNT IX**

9 **THE ORDERS VIOLATE PLAINTIFFS' RIGHT TO FREE EXERCISE**
10 **AND ENJOYMENT OF RELIGION UNDER ARTICLE I, §4 OF THE**
11 **CALIFORNIA CONSTITUTION**

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

14 196. Article I, § 4 of the Constitution of the State of California states, "Free
15 exercise and enjoyment of religion without discrimination or preference are
16 guaranteed."

17 197. "[T]he religion clauses of the California Constitution are read more
18 broadly than their counterparts in the federal Constitution." *Carpenter v. City and*
19 *County of San Francisco*, 93 F.3d 627, 629 (1996).

20 198. Plaintiffs have sincerely held religious beliefs that the Bible is the
21 infallible, inerrant word of the Lord Jesus Christ, and that they are to follow its
22 teachings.

23 199. Plaintiffs have sincerely held religious beliefs, rooted in the Bible's
24 commands, that followers of Jesus Christ are not to forsake the assembling of
25 themselves together, and that they are to do so even more in times of peril and crisis.

26 200. The State Order and County Orders, on their face and as applied,
27 completely bar Plaintiffs' faith-based religious gatherings and use of their parking lot,
28

1 even if Plaintiffs fully comply with the CDC and state social distancing guidelines, in
2 violation of Plaintiffs' right to the free exercise of religion.

3 201. The State Order and County Orders, on their face and as applied, target
4 Plaintiffs' sincerely held religious beliefs by prohibiting faith-based assemblies of any
5 number of people and the even the use of the Church parking lot, whether or not
6 Plaintiffs follows CDC social distancing guidelines.

7 202. The State Order and County Orders, on their face and as applied,
8 impermissibly burden Plaintiffs' sincerely held religious beliefs, compel Plaintiffs to
9 either change those beliefs or to act in contradiction to them, and force Plaintiffs to
10 choose between the requirements of their sincerely held religious beliefs or Defendants'
11 imposed value system, which deems religious assembly as non-essential.

12 203. The State Order and County Orders, on their face and as applied, place
13 Plaintiffs in an irresolvable conflict between compliance with the Orders and their
14 sincerely held religious beliefs.

15 204. The State Order and County Orders, on their face and as applied, put
16 substantial pressure on Plaintiffs to violate their sincerely held religious beliefs by
17 ignoring the fundamental teachings of Christianity concerning the assembling of church
18 members.

19 205. The State Order and County Orders, on their face and as applied, are
20 neither neutral nor generally applicable, but rather specifically and discriminatorily
21 target the religious beliefs, speech, assembly, and viewpoint of Plaintiffs.

22 206. The State Order and County Orders, on their face and as applied, constitute
23 a substantial burden on Plaintiffs' sincerely held religious beliefs.

24 207. Defendants lack a compelling, legitimate, or rational interest in the State
25 Order and County Orders' application of differential standards for churches and faith-
26 based gatherings than those applicable to other so-called "essential" businesses or
27 services, including the preschool that continues to meet at the Church site and other
28 commercial business where people assemble and congregate.

1 216. The Religious Land Use and Institutionalized Persons Act (“RLUIPA”)
2 states that “[n]o government shall impose or implement a land use regulation in a
3 manner that imposes a substantial burden on the religious exercise of a person,
4 including a religious assembly or institution.” 42 U.S.C. § 2000cc(a)(1). If the
5 government does impose such a restriction, it must then demonstrate that such a burden
6 on the religious assembly is supported by a compelling interest and is the least
7 restrictive means to further that alleged interest.

8 217. RLUIPA further mandates that no government “impose or implement a
9 land use regulation in a manner that treats a religious assembly or institution on less
10 than equal terms with a nonreligious assembly or institution.” 42 U.S.C. §2000cc(b)(1).

11 218. RLUIPA further states that “[n]o government shall impose or implement a
12 land use regulation that (A) totally excludes religious assemblies from a jurisdiction; or
13 (B) unreasonably limits religious assemblies, institutions, or structures within a
14 jurisdiction.” 42 U.S.C. §2000cc(b)(3).

15 219. The State Order and County Orders, on their face and as applied, bar
16 Plaintiff Church from assembling for worship in its leased facility and even from using
17 the parking lot, thereby imposing a land use regulation in a manner that imposes a
18 substantial burden on the religious exercise of the Church, a religious assembly or
19 institution, in violation of 42 U.S.C. § 2000cc(a)(1).

20 220. The State Order and County Orders, on their face and as applied, impose or
21 implement a land use regulation in a manner that treats a religious assembly or
22 institution on less than equal terms with a nonreligious assembly or institution, in
23 violation of 42 U.S.C. §2000cc(b)(1).

24 221. The State Order and County Orders, on their face and as applied, impose or
25 implement a land use regulation that totally excludes religious assemblies from a
26 jurisdiction or unreasonably limits religious assemblies, institutions, or structures within
27 a jurisdiction, in violation of 42 U.S.C. §2000cc(b)(3).
28

1 222. The Church has sincerely held religious beliefs that the Bible is the
2 infallible, inerrant word of the Lord Jesus Christ, and that Church members are to
3 follow its teachings.

4 223. Plaintiff Church has sincerely held religious beliefs, rooted in the Bible,
5 that followers of Jesus Christ are not to forsake the assembling of themselves together,
6 and that they are to do so even more in times of peril and crisis.

7 224. The State Order and County Orders, on their face and as applied, target the
8 Church's sincerely held religious beliefs by prohibiting faith-based gatherings of any
9 size, even if they follow CDC "social distancing" guidelines.

10 225. The State Order and County Orders, on their face and as applied,
11 impermissibly and substantially burdens the Church's sincerely held religious beliefs.

12 226. The State Order and County Orders, on their face and as applied, constitute
13 a substantial burden on the Church's sincerely held religious beliefs and religious
14 practice of regular assembly.

15 227. Defendants lack a compelling, legitimate, or rational interest in the State
16 Order and County Orders' application of differential standards for churches and faith-
17 based gatherings than those applicable to other so-called "essential" businesses or
18 services, including the preschool that continues to meet at the Church site and other
19 commercial business where people assemble and congregate.

20 228. Even if the State Order and County Orders' restriction on faith-based
21 gatherings were supported by a compelling interest, which they are not, the State Order
22 and County Orders do not employ the least restrictive means to accomplish the
23 government's purported interest.

24 229. The State Order and County Orders, on their face and as applied, have
25 caused, are causing, and will continue to cause the Church immediate and irreparable
26 harm, and actual and undue hardship, as they completely bar the Church's religious
27 assembly and worship.

1 230. The Church has no adequate remedy at law to correct the continuing
2 deprivation of its Constitutional and statutory rights, unless Defendants are enjoined
3 from implementing and enforcing the State Order and County Orders.

4 231. As the Church has found it necessary to engage the services of counsel to
5 vindicate its rights under the law, the Church is therefore entitled to an award of
6 attorney fees and costs pursuant to California Code of Civil Procedure Section 1021.5.

7 232. WHEREFORE, the Church respectfully prays for the relief against
8 Defendants as hereinafter set forth in its prayer for relief.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for relief as follows:

11 A. That this Court issue a Preliminary Injunction enjoining Defendants,
12 Defendants' officers, agents, employees, attorneys, and all other persons acting in active
13 concert or participation with them, from enforcing the State Order and County Orders
14 so that:

15 i. Defendants will not apply the State Order and County Orders in any
16 manner as to infringe Plaintiffs' constitutional and statutory rights by discriminating
17 against their right to assembly, speech, free exercise of religion, equal protection, and
18 all other constitutional and statutory rights outlined herein;

19 ii. Defendants will apply the State Order and County Orders in a manner that
20 treats Plaintiffs' faith-based gathering on equal terms and in an equal manner with that
21 afforded other non-faith-based gatherings;

22 iii. Defendants will permit faith-based gatherings to continue to meet so long
23 as they comply with the same social distancing and reasonable limitations Defendants
24 have placed on similar non-faith-based assemblies in the State Order and County
25 Orders; and

26 iv. Defendants will permit Plaintiffs the opportunity to comport their behavior
27 to any further limitations or restrictions that Defendants may impose in any future
28

1 modification, revision, or amendment of State Order and County Orders or similar
2 directive, instruction, ordinance, or other legally operative mechanisms.

3 B. That this Court issue a Permanent Injunction enjoining Defendants,
4 Defendants' officers, agents, employees, attorneys, and all other persons acting in active
5 concert or participation with them, from enforcing the State Order and County Orders
6 so that:

7 i. Defendants will not apply State Order and County Orders in any manner as
8 to infringe Plaintiffs' constitutional and statutory rights by discriminating against their
9 right to assembly, speech, free exercise of religion, equal protection, and all other
10 constitutional and statutory rights outlined herein;

11 ii. Defendants will apply the State Order and County Orders in a manner that
12 treats Plaintiffs' faith-based gatherings on equal terms and in an equal manner with that
13 afforded other non-faith-based gatherings;

14 iii. Defendants will permit faith-based gatherings to continue to meet so long
15 as they comply with the same social distancing, precautionary, and reasonably
16 limitations Defendants have placed on similar non-faith-based assemblies; and

17 iv. Defendants will permit Plaintiffs the opportunity to comport their behavior
18 to any further limitations or restrictions that Defendants may impose in any future
19 modification, revision, or amendment of the State Order and County Orders or similar
20 directive, instruction, ordinance, or other legally operative mechanisms.

21 C. That this Court render a Declaratory Judgment declaring that the State
22 Order and County Orders both on their face and as applied by Defendants are
23 unconstitutional under the United States Constitution and California Constitution, and
24 declaring that:

25 i. Defendants have violated Plaintiffs' right to free exercise of religion by
26 impermissibly prohibiting faith-based gatherings, substantially burdening their sincerely
27 held religious beliefs and applying criteria that are neither neutral nor generally
28 applicable to religious and non-religious gatherings;

1 ii. Defendants have violated Plaintiffs' right to freedom of assembly by
2 impermissibly prohibiting faith-based gatherings;

3 iii. Defendants have violated Plaintiffs' right to freedom of speech by
4 impermissibly prohibiting faith-based gatherings of more than ten people;

5 iv. Defendants have violated Plaintiffs' right to equal protection of the laws by
6 impermissibly prohibiting faith-based gatherings and applying criteria that treats faith-
7 based gatherings in a discriminatory and dissimilar manner than that applied to various
8 non-religious gatherings;

9 v. Defendants have violated the Establishment Clause by impermissibly
10 demonstrating hostility towards faith- based gatherings and by impermissibly showing
11 favoritism to certain non-religious gatherings;

12 vii. Defendants have violated the Religious Land Use and Institutionalized
13 Persons Act by substantially and impermissibly burdening the Church's sincerely held
14 religious beliefs and treating it in an unequal manner to other non-religious assemblies
15 or institutions, by imposing a substantial burden on the Church's sincerely held
16 religious beliefs without a compelling government interest, and without deploying the
17 least restrictive means to achieve any permissible government interest; and

18 D. That this Court award Plaintiffs nominal damages for the violation of
19 Plaintiffs' constitutional rights.

20 E. That this Court adjudge, decree, and declare the rights and other legal
21 relations within the subject matter here in controversy so that such declaration shall
22 have the full force and effect of final judgment.

23 F. That this Court retain jurisdiction over the matter for the purposes of
24 enforcing this Court's order.

25 G. That this Court declare Plaintiffs are a prevailing party and award Plaintiffs
26 the reasonable costs and expenses of this action, including a reasonably attorney's fees
27 in accordance with 42 U.S.C. §1988.

28 ///

1 H. That this Court grant such other and further relief as this Court deems
2 equitable and just under the circumstances.

3 Respectfully submitted,

4
5 NATIONAL CENTER FOR LAW &
6 POLICY

7 Dated: April 22, 2020

/s/ Dean R. Broyles, Esq.

8 Dean R. Broyles

9 Attorneys for Plaintiffs, **Cross Culture**
10 **Christian Center and Pastor Jonathan**
11 **Duncan**

12 ADVOCATES FOR FAITH & FREEDOM

13
14 Dated: April 22, 2020

/s/ Robert H. Tyler, Esq.

15 Robert H. Tyler

16 Attorneys for Plaintiffs, **Cross Culture**
17 **Christian Center and Pastor Jonathan**
18 **Duncan**

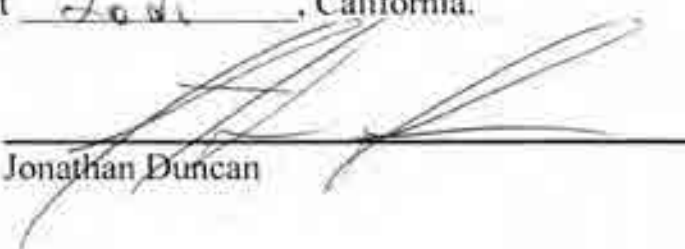
VERIFICATION

1, Jonathan Duncan, have read the foregoing Verified Complaint and know its contents.

1. I am a party to this action.
2. I have read the foregoing complaint and know of the contents thereof.
3. The same is true of my own knowledge, except as those matters which therein are stated on information as to information and belief. As to those matters, I believe them to be true.

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

Executed on Apr. 12, 2020, at Los Angeles, California.


Jonathan Duncan

VERIFICATION

1, Jonathan Duncan, Chief Executive Officer of Cross Culture Christian Center, declare as follows:

1. Cross Culture Christian Center, a California Domestic Nonprofit Corporation, is a party to this action. I am the Chief Executive Officer and am duly authorized to act on behalf of Cross Culture Christian Center.

2. I have read the foregoing Verified Complaint and know of the contents thereof.

3. The same is true of my own knowledge, except as those matters which therein are stated on information as to information and belief. As to those matters, I believe them to be true.

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

Executed on Apr. 22, 2020, at Los Angeles, California.



Cross Culture Christian Center
By: Jonathan Duncan
Its: Chief Executive Officer

Order Prohibiting Public Assembly
April 3, 2020

Pastor Michael Allison
Bethel Open Bible Church
760 South Ham Lane
Lodi, California

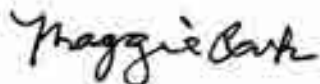
You are hereby ordered to close your facility located at 760 South Ham Lane, Lodi, California, and prevent future use of the facility, including the parking lot, for public assembly due to the outbreak of COVID-19 in the state of California and County of San Joaquin.

On March 19, 2020, the Governor of California issued an executive order N-33-20 (the "Order") mandating 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 16 federal critical infrastructure sectors. On March 26, 2020, the San Joaquin County Public Health Officer issued an order prohibiting public assemblies of any size that are not essential for life and safety.

On March 29, 2020, the City of Lodi reported to the County Public Health Officer that your tenant, Cross Culture Community Church was continuing to use your facility for public assembly, and that Cross Culture Community Church was aware of the County Order and intended to continue to meet in violation of the Order. As a facility for public assembly neither the building or the parking lot is part of the essential critical infrastructure as defined by State and Federal agencies. Continued operation, in violation of the Order, will hamper the County's ability to slow transmission of the disease and increase the risk to the public from COVID-19.

Any person who refuses or willfully neglects to comply with this emergency order is guilty of a misdemeanor, punishable by fine and/or imprisonment. (Government Code section 8665; Health and Safety Code section 120275.) In addition, there are civil and administrative penalties that can be imposed upon you as a result of continued operation.

The ability of Bethel Open Bible Church to operate a child-care facility consistent with the order of the State Public Health Officer issued March 22, 2020 is unaffected by this Order.



Maggie Park, M.D.
San Joaquin County
Public Health Officer

BRYAN GORDON

MAYOR & CLERK, Mayor
ALAN NICHOLSONMayor's Office
BRYAN GORDON
JONAS NICHOLSON

CITY OF LODI

2015 "Wine Region of the Year"

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WWW.LODI.CA GOVSTEPHEN SCHWABER
City ManagerPAMELA H. FARBER
Assistant City ClerkFRANCIS MAGOLLY
City Attorney**NOTICE OF PUBLIC NUISANCE****THE VIOLATIONS DESCRIBED IN THIS NOTICE CONSTITUTE
VIOLATIONS OF THE CALIFORNIA HEALTH AND SAFETY CODE AND
CALIFORNIA PENAL CODE**

THE BUSINESS ACTIVITIES CONDUCTED UPON THESE PREMISES ARE ILLEGAL. THEY ARE BEING CONDUCTED IN VIOLATION OF CALIFORNIA HEALTH AND SAFETY CODE, INCLUDING SECTIONS 120130 AND 120295, (VIOLATION OF CALIFORNIA EXECUTIVE ORDER N-25-20 AND ORDER OF THE SAN JOAQUIN COUNTY PUBLIC HEALTH OFFICER, DIRECTING ALL BUSINESSES TO CEASE NON-ESSENTIAL OPERATIONS), FURTHER, THE BUSINESS ACTIVITIES CONDUCTED UPON THESE PREMISES VIOLATE PENAL CODE SECTION 373a (EVERY PERSON WHO MAINTAINS, PERMITS, OR ALLOWS A PUBLIC NUISANCE TO EXIST UPON HIS OR HER PROPERTY OR PREMISES, AND EVERY PERSON OCCUPYING OR LEASING THE PROPERTY OR PREMISES OF ANOTHER WHO MAINTAINS, PERMITS, OR ALLOWS A PUBLIC NUISANCE TO EXIST THEREON).

THIS POSTING CONSTITUTES WRITTEN LEGAL NOTICE TO DISCONTINUE NON-ESSENTIAL BUSINESS ACTIVITIES AND MAINTENANCE OF A PUBLIC NUISANCE UPON THESE PREMISES.

FAILURE TO DISCONTINUE NON-ESSENTIAL BUSINESS ACTIVITIES IS A MISDEMEANOR (H.S.C. § 120295 AND P.C. § 373a). FAILURE TO DISCONTINUE THE NUISANCE MAY BE PUNISHED AS A MISDEMEANOR AND THE EXISTENCE OF SUCH NUISANCE FOR EACH AND EVERY DAY AFTER THE POSTING OF THIS NOTICE SHALL BE DEEMED A SEPARATE AND DISTINCT OFFENSE. ALL PERSONS GUILTY OF VIOLATING THESE SECTIONS MAY BE PROSECUTED UNTIL THE NUISANCE IS ABATED. (P.C. § 373A).

BUSINESS NAME: CROSS CULTURE CHURCHPROPERTY ADDRESS: 740 2nd Street W. Lodi, CALODI POLICE OFFICER: DETECTIVE [Signature]BADGE NO. 9432/81DATED 4/1/20 2020

EXHIBIT GG

1 TEROY SMITH, State Bar No. 107702
County Counsel, County of Ventura
2 JACLYN SMITH, State Bar No. 274311
Assistant County Counsel
3 800 South Victoria Avenue, L/C #1830
Ventura, California 93009
4 Telephone: (805) 654-2773
Facsimile: (805) 654-2185
5 E-mail: jaclyn.smith@ventura.org

6 Attorneys for Plaintiffs County of Ventura
and Robert Levin, M.D., in His Capacity as
7 Health Officer for Ventura County

RECEIVED
VENTURA SUPERIOR COURT

AL AUG 06 2020

VENTURA
SUPERIOR COURT
FILED

AUG 07 2020

MICHAEL D. PLANET
Executive Officer and Clerk
BY: *ADRIANA VELASCO* Deputy
ADRIANA VELASCO

(EXEMPT FROM FILING
FEES [Gov. Code, § 6103].)

10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

11
12 COUNTY OF VENTURA and ROBERT
LEVIN, M.D., in his capacity as Health
13 Officer for Ventura County.

14 Plaintiffs,

15 vs.

16 GODSPEAK CALVARY CHAPEL,
17 ROB MCCOY and DOES 1-1000,
inclusive,

18 Defendants.

Case No. 56-2020-00544086-CU-MC-VTA

Reservation No. 2523184

~~PROPOSED~~ ORDER GRANTING
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE
ISSUANCE OF PRELIMINARY
INJUNCTION

Verified complaint filed: August 5, 2020

19
20 The application of plaintiffs County of Ventura ("County") and Robert Levin,
21 M.D., in his capacity as Health Officer for Ventura County ("County Health Officer"), for
22 a temporary restraining order and order to show cause re issuance of a preliminary
23 injunction against defendants Godspcak Calvary Chapel, Rob McCoy and Does 1-1,000
24 came on for ex parte hearing on August 7, 2020, at 8:30 a.m., ~~or as soon thereafter as the~~
25 ~~matter could be heard~~, in Courtroom 20 of the above-entitled court, located at 800 South
26 Victoria Avenue, Ventura, California. Appearances were as stated in the record.

27 Based upon the papers submitted and argument of counsel, the court finds that
28 there is ^{an} immediate threat to public health and safety due to the 2019 novel coronavirus

(COVID-19) pandemic. The court further finds that plaintiffs are likely to prevail on the merits of their complaint and that the harm to the general public, including all residents of Ventura County, from the nonissuance of a restraining order outweighs the harm to defendants from the issuance of a restraining order. Accordingly, the application is GRANTED as follows:

TEMPORARY RESTRAINING ORDER

IT IS HEREBY ORDERED that defendants Godspcak Calvary Chapel, Rob McCoy and Does 1-1,000, and each of them, and their agents, employees, representatives, members, and volunteers, and all persons acting under, in concert with or for them, are hereby enjoined and prohibited from:

1. Conducting, participating in, or attending any indoor worship services at 320 Via Las Brisas, Newbury Park, Ventura County, California (hereafter "Property") or any other place within Ventura County; and
2. Conducting, participating in, or attending any outdoor worship services at the Property or any other place within Ventura County unless, at all times during the services, they (a) fully comply with all applicable state and local health orders, including the State Stay at Home Order (including the Statewide Public Health Officer Order issued July 13, 2020) and the Order of the Ventura County Health Officer Closing Specified Indoor Industries and Activities effective July 14, 2020 (collectively, the "Health Orders"), (b) comply with the mandate of the State Public Health Officer to wear face coverings and practice physical distancing and (c) do not permit or allow any violations of these orders or mandates.

IT IS FURTHER HEREBY ORDERED that the County and its personnel, including employees of the Sheriff's Department, Code Compliance Division and Department of Public Health, and other applicable governmental agencies are hereby authorized to enter onto the Property to post notice of this Order in visible locations on the Property, including, but limited to, on exterior fences, gates, structures, doors or any

///

1 other structure thereupon, and to distribute this Order to defendants and/or any other
2 persons present on the Property.

3 **ORDER TO SHOW CAUSE**

4 **IT IS HEREBY ORDERED** that defendants are to appear on August 31, 2020,
5 at 10:00 a.m., in Courtroom 20 of the above-entitled court, located at 800 South Victoria
6 Avenue, Ventura, California, to show cause why a preliminary injunction should not be
7 ordered, prohibiting, restraining and enjoining defendants, and each of them, and their
8 agents, employees, representatives, members, and volunteers, and all persons acting
9 under, in concert with or for them, from:

- 10 1. Conducting, participating in, or attending any indoor worship services at the
11 Property or any other place within Ventura County; and
12 2. Conducting, participating in, or attending any outdoor worship services at the
13 Property or any other place within Ventura County unless, at all times during the services,
14 they (a) fully comply with all applicable state and local health orders, including the Health
15 Orders, (b) comply with the mandate of the State Public Health Officer to wear face
16 coverings and practice physical distancing and (c) do not permit or allow any violations of
17 these orders or mandates.

18 This Order Granting Temporary Restraining Order and Order to Show Cause re
19 Issuance of Preliminary Injunction shall be served on defendants no later than August
20 11, 2020, by personal service, overnight courier, facsimile or electronic mail. Proof of
21 service shall be filed no later than August 13, 2020.

22 Any opposition papers to the Order to Show Cause shall be filed and served on
23 plaintiffs by ~~personal service, overnight courier, facsimile or~~ electronic mail no later than
24 August 21, 2020 at 4:00 p.m.

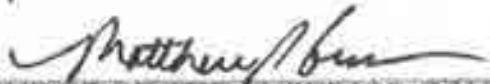
25 Any reply papers to the Order to Show Cause shall be filed and served on
26 defendants by ~~personal service, overnight courier, facsimile or~~ electronic mail no later
27 than August 28, 2020 at 4:00 p.m.

28 The Temporary Restraining Order granted herein shall expire on August 31, 2021
at conclusion of hearing.

The Court finds good cause to extend TRO and continue
IT IS SO ORDERED. Hearing on OSC to 8/31/20 beyond
15 days.

Dated:

AUG 07 2020


JUDGE OF THE SUPERIOR COURT

MATTHEW P. GUASCO

EXHIBIT HH

MENU NEWS SPORTS BEST OF VIDEO WEATHER CONTESTS/MORE

'Great Concern': LA County Warns Churches Could Face Fines For Indoor Services

By CBSLA Staff July 30, 2020 at 6:42 pm Filed Under: Church Services, COVID-19



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LOS ANGELES (CBSLA) - Investigators are looking into reports of religious institutions in Los Angeles County that continue to hold indoor services despite coronavirus restrictions barring such gatherings, officials revealed Thursday.

MOST VIEWED

LA Angels Employee Arrested In Connection With Death Of Pitcher Tyler Skaggs



Los Angeles County's health officer Dr. Muntu Davis said notices will be issued to any offenders who are in violation of health orders banning large gatherings.

Associated Press



Speaking to reporters online, Davis said there are exceptions allowing outdoor church services and political protests, but attendees are required to wear face coverings and practice social distancing.

"Unfortunately we've heard reports of some faith organizations operating outside of those health and safety requirements," Davis said. "From a health and safety perspective this is of great concern given the large number of COVID-19 cases that continue to be diagnosed in Los Angeles County."

"... For those (violators) for which we are aware of and are able to confirm, we will send a notice of violation requesting their adherence," he said. "... We're hoping that institutions that are in violation of the health officer order will follow the example of so many other faith institutions who hold their services outdoors with safety protocols in place."

There was no suggestion by Davis that any of the roughly 1,000 active virus outbreaks being investigated by the county involve any religious institutions.

Davis referenced a Washington state choir practice in March that led to 87% of the attendees becoming infected with the virus, and ultimately two deaths doctors linked to COVID-19.



Swim Coach Arrested In Connection With Teen's Disappearance, Girl Found Safe



Riverside County Sheriff's Department Investigating Several Disappearances In Idylwild Area



LAPD Cautioned To Homebody Hi's Wedding After Noise Complaints Hours After Garcetti Warned Utilities Could Be Shut Off To Party Houses



Gunshot Victim Dies After Being Found Wounded At Orange Crash Site



Hasbro Pulls Toys' Do-Over Video Alluding Hidden Button Promotes Pedophilia



Hacienda Heights Rifle-Wielding Robbery Suspect Wounded By Deputies After Wild Pursuit, Multiple Shootouts



LAUSD Offers Glimpse Into What Schools Will Look Like Once Students Return



One Rescued After Car Pinned Under Big Rig In Santa Clarita



WATCH: Stolen Car Suspects Arrested After Wild Chase



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Comments

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CCPA Notice

California Food

These New Assisted Living Apartments Near Oceanside Are A Dream Come True! Research Senior Assisted Living Oceanside

Senior Living / Apartments / Living / Retirement

The Dead Giveaway That Tells You When Amazon's Giving You A Better Price Than Other Retailers

Willing / Sponsored

Here's Why This \$70 Respirator is Better Than Your Face Mask

COVID Canada / Sponsored

New Black KN-95 Masks [Buy Here] - Ships From California

Respirator / Essential Supplies / Sponsored

Closing Time: Here's All The Restaurant Chains Closing in 2020

California / Sponsored

New Assisted Living Near Oceanside Coming in 2020

Assisted Living / Senior / Adult / Sponsored

California : Launches New Policy For Cars Used Less Than 59 Miles/Day

HR Cooper (Comment)

Southern California Parents Sue Gov. Newsom Over Restrictions On In-Person Schooling

Swim Coach Arrested In Connection With Teen's Disappearance, Girl Found Safe

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EXHIBIT II

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

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**VERIFIED COMPLAINT FOR
TEMPORARY RESTRAINING ORDER,
DECLARATORY RELIEF, INJUNCTIVE
RELIEF AND DAMAGES**

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COMPLAINT

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INTRODUCTION

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**COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES**

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**COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES**

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**COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES**

Case 3:20-cv-00683-BAS-AHG Document 1 Filed 04/09/20 PageID.4 Page 4 of 12

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COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES

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(\OVK^ONROX^O^KSXWON]^d^VK_XN\YWQY]!OXWOPKMSVS^OOP`s]SYK^SYXfNSY
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Ä]^K^SYXRZ\O!]WOX^ROKVPRMSVSKSO]]cMRsk^BSMSVS^SO]#

':X KNNS^SYX^ROWY\O^RKXYXO"R_XN\ON^KXNA^SP%L\YKNMK^OOYSMKV
!
! ObOWZ^SYXJSQXKLONRQB^K^@_LV9MKV^PPSMO^RO\NOKV]YOPO^YL_]SXO]]QXN
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" KM^S^S^SO]\OXMOBOM^S^YNO\>(("%"! aRSMROPO\MO]sb^OODXYKKXNXNOPSXON

gPONO\KMS^SMKY[K]^_M^]OM^Y]\ENOX^SPSONRO5OZK^WOWXP9YWovKBOM_\S^c!
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\$ SXMV_NEXQWWO\MSKMSVS^BOM^YaRSMRRGOZK^WOWXP9YWovKBOM_\S]^k^O]
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% MYX]SJYPOSQA- _L]OM^Y]\$XMV_NSXQNYy6^OX^]ÄEQ#ROWKXKW_]OWOXK[U!]
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& PKS\JKWZQ^Y_XBKNO]KXNg_LVSM]OWLVA#Q#OXK]^KNS_WK[_K_S_W]dYY!]
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' W_]O_W!]MYX`OX^SMOX^O]KVYXq\$RgOX^O^KSXWONWOSK!gQKWSXQg^O^KSV!h
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(g]ZY^]VOKQ_O]TKNaYY^RO\YKNMK^OOY\SO]#

!Ä
!Ä ':# FRSVObOWZ^SMRO]CKXN^ROgO]]OX^SKY SXO]]FYWR_O_VZ\YRSLS^SXQ
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! QK^RO\SXQINO[_S^SXQ^OcYXOY]^Kc^K^"RYWBS]NOPSSYZVKMK]VSWs^X^RO\OO
!!
!! 6bo[MS]OPAovSQSYKKS]XYZVKMONKXcY^ROKM^S^S^YXVObOWZ^SYQPIKSLK]ON
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!" JO^SMO]BP RogK\Z^Y`SNON^Y_QR^OKWSXQY^RO^OMRVVYQc#h
!
!# (%# CRSJVsws^K^SYXQ_CXNO[_S\O]]YWObZVKXK^SRSMR K]Z^Y`SNOSK
!\$
!\$ VO^^PYWR@_LV9MKV^PPSMOY^RO@K]^YPRQR_MRaRSMR[K]^KMRQjbsRLS^
!%
!% KXN^K^QfcY_KXNY_OWZVyCARYK\O]]OX^SKYROZO^K^SYXO[_SZWOXOMO]]K/c
!&
!& ^Y]_ZZY^RQ^OKWSXQcY_JO^SMOYKc^K^OVYcY_PKMSVS^Y^O^O! WOWLOWPrY_
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!' MYXQ_OQKSOXYKVvYaON^K^OVYcY_|S^OERSaY VNLOKX XVKaPQK^RO\SXCOXP

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**COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES**

Case 3:20-cv-00683-BAS-AHG Document 1 Filed 04/09/20 PageID.6 Page 6 of 12

^ROcOWKSSX^ROSORSMVQJ^ROcSNVKJ^_XNKcf:P^ROWOWLO^YR^Y_MYXQ\OQKNSYX
! XYKLSNwc?^NO!^ROBRO\SBVVKUOM^SYXQMOJ]K^VOXPY\MRO^NO^#h
" (&# CRO^NO\KVVYQ^K^RO\SPQ^KW_V^S^_MPL_]SXOJ]C^XNM^S^S^SQKK\O
XY^MYX]^S^_SYXKV^OM^OMV^O[_S^SXQROWYOXKM^YMSKNS]^KXMSXQ^XSM^OKJON
\$]KXS^K^S^YKXNK\N^Y^aO^O! S^NYOXY^KVVYK4R_MR^aRSN^S]Z^Y^OM^DN^RO7S\]^
% 2WOXNWOP^R^YX]^S^_SYXQK^RO^OX^S^OXKM^R^Q^SM^Q^YJ]SLV^OM^S^NS]^KXMSXQ
& KXNR^ORSQRO^YJ]SLV^OX^S^K^\$^YKXNK\N]^

The Church's Efforts

(('# CRO4R_MRKJ]Y_QR^YaY\UaS^R4Y_X^cYPPSMSKX^MV_NSRQ_LV9OKV^R
Ä ?PPSMOKXNR^O^Y_X^cBRO\SP^YPSXNaKc ^YKJ]OWL^ORSOKN^KXMSXQ^Y^O^XWOX^J]
SX^O^OJ]SX^MV_NOXQ^M^\$^XMSNS]^KXMSXQ^XSM^OKJ]OX^S^K^\$^YKXNK\N]^#
! ((# CRO4R_MRKJ]WKNOR^OQZOMSE^SMZY]K^S^a^S^O^Y^W^K^X^N^X_WLOYP
" KXMSV^Z^Y^Y]K^S^X^MV_NOXQ^Y^M^\$^XMSNS]^KXMSXQ]O^SMOJ]O^S^X^M^Y^X^Q^OQKX^]
aOK\Z^Y^OM^SOK^ASXMV_R^K^Q^V^S^]^KJ]OWLVS^XQORSMV^EJ]OWLVS^XQPKWSV^X^S^]
\$]Z^OKN^_Y^O^KVK^Q^K^OKXN^Y^Z^O^WS^O^Y^S^X^O^K^a^RKXc^Y^R^CPKWSV^X^S^]^ERO^R^OO
%]ZOMSE^SMZY]K^K]CK^K^MR^Q^b^RSLS^Q^) KXN^#

& (0# <O^O^Q^bMRKXQ^ONaOO^R^4R_MRKXN676>52>CB \OVK^ONRO]OPPY^]
' K\CK^K^MR^Q^b^RSLS^Q^!, KXN^#

((*# CRO4R_MRKJ]KV]^Y^PPO^ON^KJ]OWL^WS^WS^ON^KXcQ_SNKXMO]^SM^SYX]
!Ä SWZY]ON^4Y_X^cYPPSMSKV]^#

! (+# CRO676>52>CB RK^OSXPY^WONOR_MR^RKSP^RO^KJ]OWL^V^Y^WK^O^O^
!! aRK^Z^OMK_SYRQ^c^KUORO^aSV^LOSXSYVK^SYXRO^NO^KXNR^O^NO^aSV^LOOXPY^MON
!" KQKSX^ROWSXMV_NSQ^NOWOKMRK^Q^K^X^YJ]SLV^O^OJ]PSX^EXN^SWZ^S^YXWOX^#

!# (,# ?X2Z^SV^! '%^%!4Y_X]O^Y^R^4R_MRKJ]UON^R^676>52>C BaY_VNLO
!\$ aSVVSX^WOOC^S^R^R^4R_MR^YNS]M_K^V^O^XK^SK^ON^O^676>52>CB \OP_]ONYWOO^
!% aS^R^R^4R_MR^#

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COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES

FIRST CLAIM

(First and Fourteenth Amendment – Free Exercise)

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(-# @VKSPDLKVVOQONSMY\ZYKLOJPO\OXMMRXNO'OcKVVOQK^SYX
# MYX^KSXZK\KQ\KR\Y_QR YP\RSZYWZVKX\^RY_QR_VVJQ^PY^R\OSX#
$ (.# CRO7S\]^2WOXNWOX\PR\ODXS^OB^K^Q\YX\]^S^_SZY`SNOJRKg4YXQ\O]]
% JRKVWKUCKYVKaf Z\YRSLs^S\ROP\OOObO\MSJ\DP\OVVSQS\Y\DXNO^RO7Y_`^OOX^R
& 2WOXNWOX\RS\Z\YRSLs\Q'Oc VO`OVP\^K^CKXNVYMKQV`O\WOXP\YWWKUSX\QVKa
' Z\YRSLs^S\RP\OOObO\MSJ\DP\OVVSQS\YX#
( )%# ?X S^JPKM\O\K]KZZVSONO\NO`SYVK^Q\O7S\]^2WOXNW\O7\OO6bO\MS]O
Ä 4VK_]DOMK_]OMYX\]^S^_KQY`O\L\YK\O\]^SM^SYXRO\OO6bO\MS]DPAOVVSQS\X\X^RO
MY\YVV\K\Q\]^2WOXNWOX\SQR^YK]]OVLVc#
! )&# ?X S^JPKM\O\K]KZZVSONO\NO`SYVK^Q\O7\OO6bO\MS]QVK_]DOMK_]O
" SWZO\WS]]SLZVKM\O\Y\O\^SXQOX\O\]^SM^SYX\^RO4R_\MR^RK\K\OZVKM\O\X\JOM_VK\
# L_]SXO]]O]#
$ )# ?X S^JPKM\O\K]KZZVSONO\NO`SYVK^Q\O7\OO6bO\MS]QVK_]DOMK_]O
% KVVYK\VK\QO_WLOY\JOM_VK\K^RO\SX\QSV\O\YRSLs^S\Q\QSV\Q\K^RO\SXQ\]#
& )(# ?X S^JPKM\O\K]KZZVSONO\NO`SYVK^Q\O7\OO6bO\MS]QVK_]DOMK_]O]
' XY^XK\Y\YaVcKSVY\QXNS^S\ XY^ROVOK\O\]^SM^SWOK\X^YKMMYWZ\KSMYWZO\VSXQ
( QY`O\XWOXSK\O\O\]^#
!Ä ))# ?X S^JPKM\O\K]KZZVSONO\NO`SYVK^Q\O7\OO6bO\MS]QVK_]DOMK_]O
! MYX\]^S^_KQ\SY\O\]^KSX\X^ROObO\MSJ\DP^R4R_\MRj\^OO6bO\MS]SQR^]#
!! )*# ?X S^JPKM\O\K]KZZVSONO\NO`SYVK^Q\O7\OO6bO\MS]QVK_]DOMK_]O
!" ObOWZ\K\VK\QO_WLOYPL_]SXO]]Q\XNM^S^S^SR\K\OXYZ\Y^OM^Q\NRO\YX\]^S^_SYX!
!# aRSV\QY\Z\Y`SNS\XQ_PPSMSO\O\VS^KVOObOWZ^SPYZ\Y^OM^Q\N]^2WOXNWOKM^S^S^c#
!$ )+# ?X S^JPKM\O\K]KZZVSONO\NO`SYVK^Q\O7\OO6bO\MS]QVK_]DOMK_]O
!% Z\YRSLs^R\O\OO6bO\MS]DPAOVVSQS\KXNK\SNQO\ROSQR^YK]]OVLV\KXNOZ\S^O\RO
!& 4R_\MRKXNS^JWOWLO\J\PSLO\as^RY_N_OZYMO]]PVK#
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**COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES**

),# ?X S^PKMOKJZZVSONO\NO\`SYVK^QO\OO6bO\MS]QVK_]QOMK_\$O]
L_\NOX]RQ\OO6bO\MS]QPAOVSSQS^XKS]`KQ_CXN^O\L\YK#
)-# ?X S^PKMOKJZZVSONO\NO\`SYVK^QO\OO6bO\MS]QVK_]QOMK_\$O]
XYXO_^\KZ!ZY^SXQ^OKOVSSQS^KM^S`MSPPQ\OXYRKO^OeY^ROMK^OQY^KMS^S^c#
),# ?X S^PKMOKJZZVSONO\NO\`SYVK^QO\OO6bO\MS]QVK_]QOMK_\$O]
XYQOXOKKZZVSMKZVRSLS^SQQSQSYQ]`SMQPSVObOWZ^SXQ]^KX^SMYWZK\KLVO
MYXN`RKS]XY\OVSSQSY`WY^S^K^ON#

SECOND CLAIM

(First and Fourteenth Amendment; California Const., Article I, § 3(a) – Assembly)

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*%# @VKSXPDLKVVQOQJ$XMY\ZY\KLOJPO\OXMMRXN`O`cKVVOQK^SYX
MYX^KSSXK\KQ^KZP`RY QR YPRS4YWZVK$X^RY QR VVO^PY\^RO\OSX#
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*&# CRO7S\]2WOXNWOX^P^RDXS^OB^K^G[YX]^S^_SZX`SNO]RKg4YXQ\O]]
]RKWVKUWYVKaf KL\SNQSXQROSQRYP^RCZOYZVOKMOKYK]IOWLVO#
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*!# 2^\SMV:OBOM^S(\AK YP^RQKVSPY\XSK]^S_^SYX`SN0]CROZYOYZV\K`O
^ROSQR^Yf K]]OWL^OOV\MYX] PY^ROMYWW\QYN#h
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*(# ?X S^PKMOKJZZVSONO\NO\YZO\K^KJ]aOOZSXQLSNQOWOY^PROSQR^
YPRZOYZZVOKMOKLWK]OWLVCXXSKOgQK^RO\SXQKK\XYObOWZ^ON^RO\NO#
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*)# ?X S^]PKMOKJZZVSONO\NO`SYVK^QO2]]OWLVAMV]KLOLMK_SONYO|
XYVOK^VOZXPPSMSGX^OXKMRKXXOVYRGR\MRYObO\MSOISQR^Y2]]OWLV0#

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**# ?X S^PKMOK]KZZVSONO\NO\`SYVK^CQ2]]JOWLVMV]LOLOMK_3O\OK^]
[YWCK]]OWLVSOWY@]]OX^SRKX^ROIKIONXKLS^K\OK]YX|#

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*+##?X S^PKMOK]KZZVSONO\NO\`SYVK^CQ2]]OWLV^MVKLOMK_SO\OK^]
KaSNOK\SO^YPIOM_VQK^RO\XQKK\OXY^Y^RO\asJ]OYOM^ON^RQYX]^S^_SKTWYO
O]]OX^SRKKQK^RO\SSQObO\MSYD^RQR \MRj7\OObOMS]CQR^#
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*,#    ?X S^]PKMOKJZZVSONC\NO\`SYVK^Q]O]]OVLV^MVL]LOMK_]S]XY^
MYX^OXO ^\KV#
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**COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES**

*-# ?X S^]PKMOK]KZZVSONO\NO\`SYVK^OQO]]OVLVMV]LOLOMK_#S]XY^
XK\\YaVeKSVYVONS]XY^RO\OK]O]^\SM^SWOKX]YKMMWZVSRMYWZOVQSQXWOX^KV
SX^O\O]^#
*.# ?X S^]PKMOK]KZZVSONO\NO\`SYVK^OQO]]OVLVMV]LOLOMK_#
P_XM^SYX]KZ\SY\O]^KSXP^RGR_MRj]SQR^Y2]]OVLVYXS^YaxZYZO^c#
+/%# ?X S^]PKMOK]KZZVSONO\NO\`SYVK^OQO]]OVLVMV]LOLOMK_#
KL\SNQOROSQR^Y2]]OVLVaS^RY_K]RYaSXQPMVOKXNZO]OXNKXQOSX^O\PO\OASMR
Z_LVSMYZO^Y\Y^RCSWWONSKROK^YZ_LVSMPO^Y\YNO#
+&# ?X S^]PKMOK]KZZVSONO\NO\`SYVK^OQO]]OVLVMV]LOLOMK_#
Z\Y^SNOXYT_]^\SPSMKPSYarC S^\OK^JYWO2]]OVLVSOQ]O]]OX^SKVNY^RO^K]XYX'
O]]OX^SKV#
+'# ?X S^]PKMOK]KZZVSONO\NO\`SYVK^OQO]]OVLVMV]LOLOMK_#OS]
'KQ CKXN^O\L\YKN#

THIRD CLAIM

(Fifth Amendment – Due Process)

+(# @VKSXSPDLKVVQOQJNSXMYZY\KLOJPO\OXMMKRXN`OeKVVOQK^SYX
MYX^KSXK\KQ\KZR\RY_QR`YP`RSJYWZVKXJ^RY_QR_VJ@PY^RRO\OSX#
+)# ?X S^]PKM\KJ]KZZVSONO\NO\`SYVK^QJG_O @\YMO4]VK_]DOMK_#
NOZ\S`O]RGR\_\MRKXN^]WOWLO\]P`RO\SLO^YK]]OWIDKXN`OOVbO\MS]ROS\VSQSYX
aS^RY_PS\]Z\Y`SNSXQOWKXYZZY^_XS^LOROK\N#
+*# ?X S^]PKM\KJ]KZZVSONO\NO\`SYVK^QJG_O @\YMO4]VK_]DOMK_#
NOZ\S`O]RGR\_\MRKXN^]WOWLO\]P`RO_]OKXNOXTYcWOXP`ROSZYZO\PYKVKaP_V
Z_\ZY]QS^RY_PS\]Z\Y`SNSXQOWKXYZZY^_XS^LOROK\N
++# ?X S^]PKM\KJ]KZZVSONO\NO\`SYVK^QJG_O @\YMO4]VK_]DOMK_#
`SYVK^QJX]^S^\_`SY]KZK^K^SYKZYaO\Z\SXMSZ\LOJSXQYV_VQK`KXNXPY\MDN^RO
]KWQY`O\XWOXP`PSMSKV#

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**COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES**

(Unlawful Order – Arbitrary, Unreasonable and Oppressive)

FIFTH CLAIM

(Unlawful Order – Exceeds Statutory Authority)

**COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES**

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**COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES**

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" 5OPOXNKKPYVYVYa]/
&# 8\KX^SX^Q@VKSX^SPPjM_\O\PSWOWY^SY^K^OWZK\c\O]^KXSX^Q\O\0
\$ '# 5OMVK\SOXPY\MOWYPRO\NO\KQKSX^RQR_\MR^YLO_XKaP_VKN\$K
% `SYVK^SY^RQR_\MRj]SQR^]0
& (# 8\KX^SX^QXY\NOZ\OVSWSXKKSV\RO\OKP^ZO!WKXOXOW^SXSXQ
' 5676>52>CB KXN\$676>52>CBj YPPSMOQOXKPPSVSHOOJKXj!
(]_MMOj]YQ\WZVYcOQXKXcY^RCZO\jYXjRYK\OSXKM^SMOYXMO\^
Ä ZK^SMSZKaSYRKXcYP^RO^PYOQYSXQjYXj^YWOXPYMSRQ\NO\KQKSX]^
@VKSX^SPP0
!)# 6X^cYPT_NQWOWY^@VKSX^KSPKQKSX^5POXNKKPYNOZ^K^SY^PSQR^]!
" SXMV_NKXQaK\NYPNKWKQSKXKXWY_XYLONO^O\WSXONRQY_^\0
*# 2aK\NSX^Q_XS^S^CKWKQOQKSX^X^SOPOXNKKPY_XNY^YLOKM^SXKX
\$ YPPSMMSKZKM^ROXNOZ\S^SXQ@VKSX^SPR\SQR^]0
% +# 2aK\NSXQ@VKSX^SPPj]KXK^Y^XOdPOOKjK_^RY^SdON7ON#4S^#@#)!)'
& D#B#4# &!--! KXN\$KXcY^RCZZVSMKKK^0
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Attorney for Plaintiff
ABIDING PLACE MINISTRIES

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**COMPLAINT FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF,
INJUNCTIVE RELIEF AND DAMAGES**

ABIDING PLACE MINISTRIES
Plan for Assembly

WHEREAS on March 19, 2020, Gavin Newsom, the Governor of California, issued an executive order, styled Executive Order N-33-20, directing the citizens of California to heed the current State public health directives, and to “stay-at-home.”

WHEREAS on March 27, 2020, Wilma J. Wooten, the Public Health Officer for the County of San Diego, issued an order prohibiting gatherings of more than ten (10) people.

WHEREAS the Abiding Place Ministries, and its Pastor, and all members, believe that they must comply with the command of God “not to forsake the assembling of yourselves together,” and that the assembly must take place in “one place” on the “Lord’s Day” as directed by the Holy Scriptures.

WHEREAS the Abiding Place Ministries, and its Pastor believe they must do everything possible to obey Law Enforcement Officers, as long as their orders do not conflict with the commandments of God.

WHEREAS the Abiding Place Ministries is a small congregation, and ordinarily has less than one-hundred (100) members in attendance at its meetings, and no household of more than ten (10) people.

ABIDING PLACE MINISTRIES PROPOSES:

- (1) We will assemble as a congregation on our 427 Acre Mission Base, located at 2155 N. Campo Truck Trl., Campo, CA 91906.
- (2) We will assemble by household, each household comprised of only individuals who share a residential address, and each household comprising no more than ten (10) people (hereinafter “Family Unit”).
- (3) We will strictly enforce social distancing guidelines between each Family Unit, requiring each Family Unit to stay ten (10) feet apart from each other Family Unit during the service.
- (4) We have a tent that is 5400 square feet, with less than four-hundred (400) square feet reserved for the platform. With each Family Unit placed at the center of a one-hundred square feet area, each family unit will be approximately ten (10) feet from each other Family Unit, which is a greater distance than required by current social distancing guidelines.
- (5) If there are more than fifty (50) family units, any additional Family Unit will be required to participate in the assembly from outside of the tent, and to maintain the same social distancing as each Family Unit in the tent.
- (6) Our members will be instructed by the Pastor to return to their home after the Assembly has ended, without stopping on the way, and to fully heed and follow the orders of the Governor and the County.

ABIDING PLACE MINISTRIES
Proposed Plan for Assembly

WHEREAS on March 19, 2020, Gavin Newsom, the Governor of California, issued an executive order, styled Executive Order N-33-20, directing the citizens of California to heed the current State public health directives, and to “stay-at-home.”

WHEREAS on March 27, 2020, Wilma J. Wooten, the Public Health Officer for the County of San Diego, issued an order prohibiting gatherings of more than ten (10) people.

WHEREAS the Abiding Place Ministries, and its Pastor, and all members, believe that they must comply with the command of God “not to forsake the assembling of yourselves together,” and that the assembly must take place in “one place” on the “Lord’s Day” as directed by the Holy Scriptures.

WHEREAS the Abiding Place Ministries, and its Pastor believe they must do everything possible to obey Law Enforcement Officers, as long as their orders do not conflict with the commandments of God.

WHEREAS the Abiding Place Ministries, and its Pastor, have been working with the San Diego County Sheriff’s Office to find the least restrictive means to achieve their objectives, while avoiding arrest or criminal charges for obeying the Holy Scriptures.

ABIDING PLACE MINISTRIES PROPOSES:

- (1) We will assemble as a congregation on our 427 Acre Mission Base, located at 2155 N. Campo Truck Trl., Campo, CA 91906 (hereinafter “Mission Base”).
- (2) We will assemble by household, each household comprised of only individuals who share a residential address, and each household comprising no more than ten (10) people (hereinafter “Family Unit”).
- (3) We will strictly enforce social distancing guidelines between each Family Unit, requiring each Family Unit to stay ten (10) feet apart from each other Family Unit during the service.
- (4) This social distancing will be accomplished by arranging chairs, or marking areas, in such a way that each Family Unit has an area that is at least ten (10) feet away from each other Family Unit.
- (5) There are multiple large fields on the Mission Base, and we are proposing to use the field marked in Exhibit A.
- (6) From that field, we are proposing to set up the service in the area marked in Exhibit B.
- (7) Our members will be instructed by the Pastor to maintain social distancing, and return to their home after the Assembly has ended, without stopping on the way, and to fully heed and follow the orders of the Governor and the County.

EXHIBIT A



EXHIBIT B



ABIDING PLACE MINISTRIES
Proposed Plan for Assembly in Vehicles

WHEREAS on March 19, 2020, Gavin Newsom, the Governor of California, issued an executive order, styled Executive Order N-33-20, directing the citizens of California to heed the current State public health directives, and to “stay-at-home.”

WHEREAS on March 27, 2020, Wilma J. Wooten, the Public Health Officer for the County of San Diego, issued an order prohibiting gatherings of more than ten (10) people.

WHEREAS the Abiding Place Ministries, and its Pastor, and all members, believe that they must comply with the command of God “not to forsake the assembling of yourselves together,” and “to assemble all the more” in light of the coming day of the Lord, and that the assembly must take place in “one place” on the “Lord’s Day” as directed by the Holy Scriptures.

WHEREAS the Abiding Place Ministries, and its Pastor believe they must do everything possible to obey Law Enforcement Officers, as long as their orders do not conflict with the commandments of God.

WHEREAS the Abiding Place Ministries, and its Pastor, have been working with the San Diego County Sheriff’s Office to find the least restrictive means to achieve the Church’s objectives, while complying with the Orders of the Health Office.

ABIDING PLACE MINISTRIES PROPOSES:

- (1) We expect approximately thirty (30) vehicles to attend our one service, which will be held at 11:00 a.m. on Sunday.
- (2) We will assemble as a congregation on our 427 Acre Mission Base, located at 2155 N. Campo Truck Trl., Campo, CA 91906 (hereinafter “Mission Base”).
- (3) We will assemble by vehicle, each vehicle to be parked and arranged in such a way that resembles a drive-in movie theater, each member of the Church to attend the service from inside their vehicle.
- (4) We will maintain adequate spacing between cars to ensure the safety of the passengers, and otherwise maintain as much space as may be suggested by authorities when granting this proposal.
- (5) Our members will be instructed to remain in their cars during the service, and not to leave their cars after the service has ended.
- (6) The service will be broadcast to each vehicle by radio, or internet, and any amplified sound will be done at reduced levels that are significantly below any local sound ordinance, to avoid creating a nuisance for our neighbors.
- (7) Our members will be instructed by the Pastor to maintain social distancing, and return to their home after the Assembly has ended, without stopping on the way, and to fully heed and follow the orders of the Governor and the County.



County of San Diego

NICK MACCHIONE, FACHE
AGENCY DIRECTOR

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) 542-4188

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

April 4, 2020

Pastor Mark Spitsbergen
Abiding Place Ministries
2155 N Campo Truck Trail
Campo, CA 91906

Dear Pastor Spitsbergen,

Thank you for reaching out to San Diego County officials regarding your church services. By way of background, Executive Order N-33-20 issued by the Governor of the State of California ordered all individuals living in the State of California to stay home or at their place of residence, except as otherwise allowed, including services needed to maintain continuity of operations of sectors designated in the document available at:
<https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>.

I appreciate that this is a very difficult situation for you and your congregation. The inability to physically gather in one place for religious services—particular during these uncertain times—has been a hard sacrifice for faith communities throughout San Diego, the nation, and the world. These orders are designed to prevent the unprecedented spread of a communicable disease—and are temporary in nature. This is hopefully a once in a lifetime event and with the shared sacrifice of all San Diego county residents we can avoid the widespread illness and death that other parts of the nation and the world are experiencing.

It is my understanding that you are making well intentioned efforts to limit interaction at your services; but from a public health perspective, and based on the orders in place, you must stay at home and not congregate. This is vital to protect the health of your congregation and the health of the entire community. Considering the gravity of the situation, and the risk to the public's health, I am hopeful that you will reconsider your decision to proceed with having a gathering. I ask that you continue your ministry by using technology to conduct services for the temporary period that these orders are in place.

Since gatherings are a violation of the State and local orders, when gatherings do occur, it results

Abiding Place Ministries

April 4, 2020

Page 2

in calls to, and requires responses from, law enforcement. Due to the impact that this pandemic has had on local resources, it is my hope that the Sheriff's Department will not be required to intervene. However, they are prepared to do so for the planned April 12, 2020 gathering. Due to the public health crisis in our region we cannot make an exception for your congregation that would be inconsistent with how this is interpreted and enforced countywide.

Sincerely,

A handwritten signature in blue ink, appearing to read "Wilma J. Wooten".

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

Public Health Officer

County of San Diego

ABIDING PLACE MINISTRIES

Dr. Wilma J. Wooten, M.D., M.P.H.
Public Health Officer
Health and Human Services Agency
for the County of San Diego
3851 ROSECRANS STREET, MAIL STOP P-578
SAN DIEGO, CA 92110-3134
(619) 531-5800

VIA REGULAR MAIL AND E-MAIL

Re: Our Requests for Permission to Assemble in Light of Covid-19

Dear Dr. Wooten -

Thank you for your letter dated April 4, 2020, and for taking the time to respond to our inquiries about complying with all government directions, and still being able to assemble. I have forwarded it to Pastor Mark, who also wants to thank you for taking the time to reach out to him. First off, I want to assure you that we are taking the pandemic seriously, and do not want to do anything that will jeopardize the County.

Our congregation has been instructed by Pastor Mark to stay-at-home and fully heed and follow your Countywide Order, and the Governor's Order, both of which we have reviewed extensively. In fact, we understand the importance of doing everything we can to stop the spread of COVID-19, and have been taking precautionary measures to that effect since we first became aware of the disease in January. While those measures include all the things you would expect, including proper hygiene, social distancing, self-isolation, and all the best practices described on Covid19.ca.gov; above all of those things (which we began to teach and enforce in a heightened manner starting in January), our congregation depends on and values two things: (1) the Assembly, commonly referred to as "Church," and (2) Prayer. We have learned that those two things do more than all the other precautionary methods combined.

Our Pastor is actually a former full-time clinical scientist who worked at Eli Lilly and Company for fourteen years and has extensive experience studying infectious diseases. That is part of the reason why he became aware of this disease in January, and immediately began instructing the congregation in the best practices for avoiding it. We also knew about the severity of the disease, because God revealed it to us as a congregation, in the Assembly, in January, and we immediately began to take precautionary measures as a congregation under the direction of our Pastors. In fact, in January we were instructed to cease going to restaurants, limit trips outside our home and community and to entirely avoid spreading our germs even if we felt healthy.

As a congregation, we also practice divine healing and dependency on God for our health, and that is the most essential part of the maintenance of our health and well-being as a community. It is so important and essential because we have learned that the Assembly is the best preventative against disease. This is not just our opinion and experience, it is supported by the entirety of human history, including extensive coverage in the Holy Scriptures.

Not only is our Assembly the best cure and preventative for disease, it is an absolutely essential part of our interaction with God, and cannot be replaced by technology. I do not think it is necessary to lay out all the scriptural proofs of our faith for you, but suffice it to say that

every time the word "Church" is used in the New Testament, it is actually a translation of the Greek word for "Assembly" or "Gathering," and it is defined in "one place" and cannot be forsaken for any reason, and must be done all the more in the face of "pestilences."

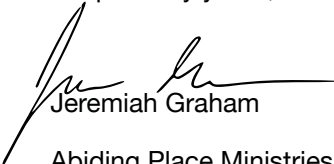
Not only are we a Church, we are also an organization dedicated to serving endangered people groups throughout the world. My family and I are actually missionaries to Kashmir, and many of our members have participated in assemblies in conflict regions of the world, under threat of death. We are faced, then and now, with the same question that has faced those of like precious faith for millennia, "is it better to obey man, or to obey God?"

We believe it is our duty to obey and comply with your orders as much as we possibly can, but cannot, under any circumstance, forsake the assembling of ourselves together, even if it means fine, imprisonment or death. However, we think that there is a less-restrictive means, and that is conducting our Assemblies in a manner that complies with all the required social distancing guidance, and more. We are willing to meet in our vehicles (as we did this past Sunday), or in Hazmat Suits, if that is the only way we can be permitted to meet.

To that end, we have made three specific proposals to the County Sheriff's Office (all of which I have attached here, and the third being the one we followed this past Sunday), and we know that they have been in communication with your office to try to find a way in which we would be permitted to obey God without fine or imprisonment. We are willing to consider any precautionary methods your office recommends, or allows - only, we must be permitted to meet on the Lord's Day, especially this coming Sunday, which is the most important celebration of the year and a time we come together to rededicate our lives to God.

Both Pastor Mark Spitsbergen and I are willing to speak with you this week, and try to reach some kind of arrangement. We are not interested in setting a precedent for the rest of the County, even though we desire for all men to come to know the saving and healing work of Christ Jesus that has so blessed our lives. We are simply looking for a way to serve God freely.

Respectfully yours,

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

Abiding Place Ministries
2155 N. Campo Truck Trl.,
Campo, CA 91906

(619) 633-5110

THIRD PROPOSAL

ABIDING PLACE MINISTRIES
Proposed Plan for Assembly in Vehicles

WHEREAS on March 19, 2020, Gavin Newsom, the Governor of California, issued an executive order, styled Executive Order N-33-20, directing the citizens of California to heed the current State public health directives, and to “stay-at-home.”

WHEREAS on March 27, 2020, Wilma J. Wooten, the Public Health Officer for the County of San Diego, issued an order prohibiting gatherings of more than ten (10) people.

WHEREAS the Abiding Place Ministries, and its Pastor, and all members, believe that they must comply with the command of God “not to forsake the assembling of yourselves together,” and “to assemble all the more” in light of the coming day of the Lord, and that the assembly must take place in “one place” on the “Lord’s Day” as directed by the Holy Scriptures.

WHEREAS the Abiding Place Ministries, and its Pastor believe they must do everything possible to obey Law Enforcement Officers, as long as their orders do not conflict with the commandments of God.

WHEREAS the Abiding Place Ministries, and its Pastor, have been working with the San Diego County Sheriff’s Office to find the least restrictive means to achieve the Church’s objectives, while complying with the Orders of the Health Office.

ABIDING PLACE MINISTRIES PROPOSES:

- (1) We expect approximately thirty (30) vehicles to attend our one service, which will be held at 11:00 a.m. on Sunday.
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- (3) We will assemble by vehicle, each vehicle to be parked and arranged in such a way that resembles a drive-in movie theater, each member of the Church to attend the service from inside their vehicle.
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- (5) Our members will be instructed to remain in their cars during the service, and not to leave their cars after the service has ended.
- (6) The service will be broadcast to each vehicle by radio, or internet, and any amplified sound will be done at reduced levels that are significantly below any local sound ordinance, to avoid creating a nuisance for our neighbors.
- (7) Our members will be instructed by the Pastor to maintain social distancing, and return to their home after the Assembly has ended, without stopping on the way, and to fully heed and follow the orders of the Governor and the County.

SECOND PORPOSAL

ABIDING PLACE MINISTRIES
Proposed Plan for Assembly

WHEREAS on March 19, 2020, Gavin Newsom, the Governor of California, issued an executive order, styled Executive Order N-33-20, directing the citizens of California to heed the current State public health directives, and to “stay-at-home.”

WHEREAS on March 27, 2020, Wilma J. Wooten, the Public Health Officer for the County of San Diego, issued an order prohibiting gatherings of more than ten (10) people.

WHEREAS the Abiding Place Ministries, and its Pastor, and all members, believe that they must comply with the command of God “not to forsake the assembling of yourselves together,” and that the assembly must take place in “one place” on the “Lord’s Day” as directed by the Holy Scriptures.

WHEREAS the Abiding Place Ministries, and its Pastor believe they must do everything possible to obey Law Enforcement Officers, as long as their orders do not conflict with the commandments of God.

WHEREAS the Abiding Place Ministries, and its Pastor, have been working with the San Diego County Sheriff’s Office to find the least restrictive means to achieve their objectives, while avoiding arrest or criminal charges for obeying the Holy Scriptures.

ABIDING PLACE MINISTRIES PROPOSES:

- (1) We will assemble as a congregation on our 427 Acre Mission Base, located at 2155 N. Campo Truck Trl., Campo, CA 91906 (hereinafter “Mission Base”).
- (2) We will assemble by household, each household comprised of only individuals who share a residential address, and each household comprising no more than ten (10) people (hereinafter “Family Unit”).
- (3) We will strictly enforce social distancing guidelines between each Family Unit, requiring each Family Unit to stay ten (10) feet apart from each other Family Unit during the service.
- (4) This social distancing will be accomplished by arranging chairs, or marking areas, in such a way that each Family Unit has an area that is at least ten (10) feet away from each other Family Unit.
- (5) There are multiple large fields on the Mission Base, and we are proposing to use the field marked in Exhibit A.
- (6) From that field, we are proposing to set up the service in the area marked in Exhibit B.
- (7) Our members will be instructed by the Pastor to maintain social distancing, and return to their home after the Assembly has ended, without stopping on the way, and to fully heed and follow the orders of the Governor and the County.

FIRST PROPOSAL

ABIDING PLACE MINISTRIES
Plan for Assembly

WHEREAS on March 19, 2020, Gavin Newsom, the Governor of California, issued an executive order, styled Executive Order N-33-20, directing the citizens of California to heed the current State public health directives, and to “stay-at-home.”

WHEREAS on March 27, 2020, Wilma J. Wooten, the Public Health Officer for the County of San Diego, issued an order prohibiting gatherings of more than ten (10) people.

WHEREAS the Abiding Place Ministries, and its Pastor, and all members, believe that they must comply with the command of God “not to forsake the assembling of yourselves together,” and that the assembly must take place in “one place” on the “Lord’s Day” as directed by the Holy Scriptures.

WHEREAS the Abiding Place Ministries, and its Pastor believe they must do everything possible to obey Law Enforcement Officers, as long as their orders do not conflict with the commandments of God.

WHEREAS the Abiding Place Ministries is a small congregation, and ordinarily has less than one-hundred (100) members in attendance at its meetings, and no household of more than ten (10) people.

ABIDING PLACE MINISTRIES PROPOSES:

- (1) We will assemble as a congregation on our 427 Acre Mission Base, located at 2155 N. Campo Truck Trl., Campo, CA 91906.
- (2) We will assemble by household, each household comprised of only individuals who share a residential address, and each household comprising no more than ten (10) people (hereinafter “Family Unit”).
- (3) We will strictly enforce social distancing guidelines between each Family Unit, requiring each Family Unit to stay ten (10) feet apart from each other Family Unit during the service.
- (4) We have a tent that is 5400 square feet, with less than four-hundred (400) square feet reserved for the platform. With each Family Unit placed at the center of a one-hundred square feet area, each family unit will be approximately ten (10) feet from each other Family Unit, which is a greater distance than required by current social distancing guidelines.
- (5) If there are more than fifty (50) family units, any additional Family Unit will be required to participate in the assembly from outside of the tent, and to maintain the same social distancing as each Family Unit in the tent.
- (6) Our members will be instructed by the Pastor to return to their home after the Assembly has ended, without stopping on the way, and to fully heed and follow the orders of the Governor and the County.



County of San Diego

NICK MACCHIONE, FACHE
AGENCY DIRECTOR

HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH SERVICES
3851 ROSECRANS STREET, MAIL STOP P-378
SAN DIEGO, CA 92116-3134
(619) 531-5800 • FAX (619) 542-4186

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

Pastor Mark Spitsbergen
Abiding Place Ministries
2155 N Campo Truck Trail
Campo, CA 91906

Dear Pastor Spitsbergen,

On April 4, 2020, I sent you a letter outlining all of the reasons it is important for your church to comply with the Orders I have issued to protect the public from the spread of COVID-19. I am in receipt of a response today with proposals attached from Jeremiah Graham. The proposals, while well intentioned, are not within the parameters of the State and local orders.

I am sure you and your congregation share my concern for the health and well-being of the community. We are at the point where we need the entire community to come together to fight the spread of the virus by staying home whenever possible. This is needed to save lives. In my April 4, 2020 letter I expressed my expectation you would comply with the orders by April 12, 2020. I am writing to confirm this expectation in the strongest terms.

I have attached a copy of the latest version of the Order of the Health Officer and Emergency Regulations. You will see that I have prohibited all gatherings of any size and even where done in vehicles. Also, members of the public, including members of your congregation should be staying at home unless they are travelling to an essential business for work or conducting essential tasks such as shopping for food or receiving medical care. Faith based services are on the list of essential businesses created by the California Department of Public Health if the services "are provided through streaming or other technology." I understand you stream your services via the internet. Therefore, you and your employees who are essential for the operation of equipment necessary to support the streaming of your services may travel to your facility. However, members of your congregation need to participate in your services by viewing the services at home. Members of your congregation are not allowed to travel to your site. This would be an unlawful gathering, even if they remain in their vehicles as they did last Sunday.

While the ability to view the service via the internet helps to mitigate the impacts to your congregation, I understand prohibiting your congregation from gathering together is a significant sacrifice. Unfortunately, the spread of the coronavirus requires that we all make sacrifices and I am counting on you and your congregation to do their part and voluntarily abide by my Order.

If the members of your congregation do not abide my Order, the Sheriff will take actions necessary to enforce the Order.

Thank you for your anticipated cooperation in this matter.

Date: April 8, 2020



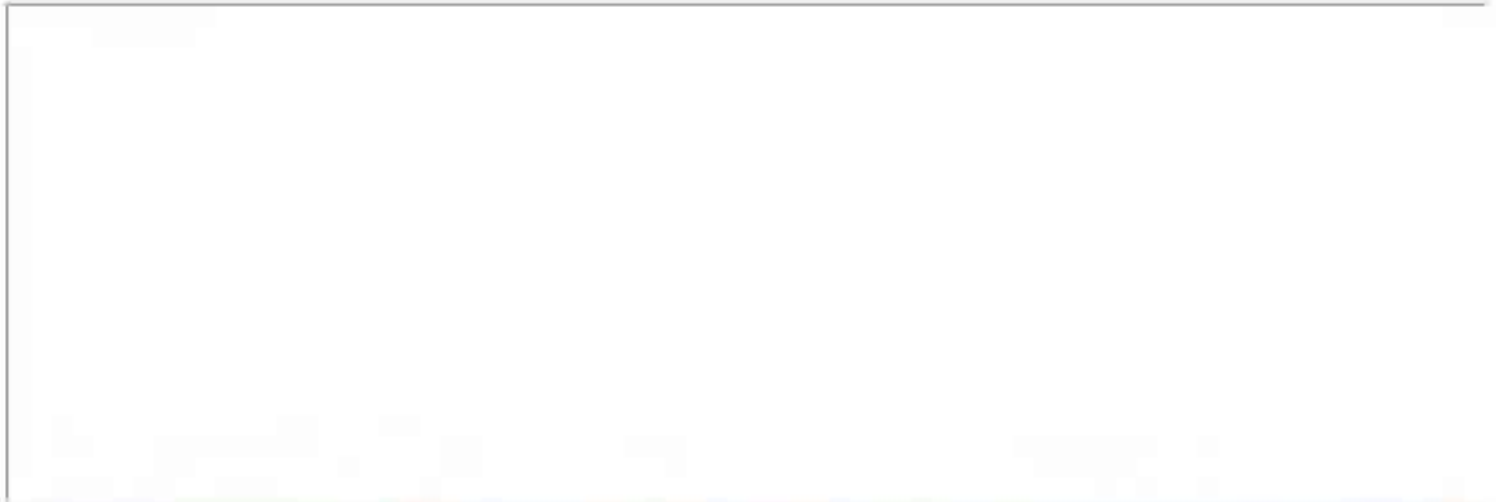
Wilma J. Wooten, M.D., M.P.H.
Public Health Officer
County of San Diego

cc: Jeremiah Graham

EXHIBIT JJ



CHURCHES





The San Diego County Public Health Officer has sent strongly worded notices to at least three churches that have either violated or have voiced an intention to violate current public health orders restricting indoor services.

The notices, which are all posted below, were signed by Dr. Wilma Wooten and are dated July 17, warning that the failure to comply could result in a misdemeanor citation and \$1,000 fine for each violation.

Two churches, Lighthouse Baptist Church on Skyline Drive, and Skyline Church on Campo Road, received notices that are virtually identical.

Local



JUN 27

Latest Coronavirus Impacts: 282 New COVID-19 Cases, 5 Additional...



20 MINS AGO

Forensic Investigation: City Failed To Conduct Basic Review Of 101...

"It has been reported that your church intends to conduct indoor services at multiple locations in violation of the Order of the State Health Officer and the County Order of the Health Officer and Emergency Regulations," begins the notice.

The notice goes on to express regret and acknowledges the impact of the restrictions. But they also state that the activity puts many people at risk.

"I hope that your consideration and concern for the health and safety of your congregation and the general public will convince you to move in-person services outdoors in compliance with the orders"



Meanwhile, a cease-and-desist order was sent to the Awaken Church's Balboa Campus in Kearny Mesa.

In the order, Wooten said she has viewed video from a local news station showing the church conducting an indoor service in violation of health orders.

NBC 7 aired video of the indoor service on July 15.

The church, in further defiance, then held an outdoor event the following week in its parking lot. Dozens gathered for a concert without wearing masks or social distancing.

The county has not made public any further action taken against the church.

In a message posted to Awaken Church's Facebook page on July 17, Pastor Jurgen Matthesius bemoaned Gov. Gavin Newsom's order "dictating and regulating how worship can be conducted." The pastor noted the critical role of the church in aiding residents who are managing the physical, emotional and psychological toll brought on by the pandemic.

"The church is a place that provides healing, relief and hope from these situations," Jurgen wrote in the post.

Jurgen said the church will go above and beyond to make sure it is following regulations – to an extent.

"However, there's an expiration date on how long a church can function online and still meet all the aspects of the health, the physical and emotional and spiritual needs of our people," Jurgen added in the post.

Jurgen also said that restrictions have become much worse than the virus itself, downplaying the ratio of deaths to population in San Diego County.

"While every death is a tragedy, the impact of these shutdowns extends far beyond the disease itself," Jurgen wrote.

To print the document, click the "Original Document" link to open the original PDF. At this time it is not possible to print the document with annotations.

DOCUMENT

TEXT



County of San Diego

NICK RACCHIONE, PACHE
COUNTY SHERIFF

HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH SERVICES

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

Pastor John Heinrichs
Pastor Becky Heinrichs
Awaken Church-Balboa Campus
7620 Balboa Avenue
San Diego, CA 92111

ORDER OF THE HEALTH OFFICER TO CEASE AND DESIST

I have viewed a video reported on a local news station showing your church conducting an indoor service operating in violation of the Order of the State Health Officer and the County Order of the Health Officer and Emergency Regulations. I appreciate and deeply regret the impact these restrictions have on your congregation. However, the State has found, and I concur, that indoor services create a significant risk of spreading COVID-19. Nationwide, there have been a number of outbreaks stemming from indoor church services resulting in hospitalizations and death. The activity shown on the video creates a very significant risk of viral spread, given the lack of face coverings, close contact, and singing. I am sure you share my concern for the health of your parishioners, your staff and members of the public who come in contact with them. This activity puts all of them at risk. It also puts the rest of the business and faith community at risk by increasing the likelihood of increasing COVID-19 cases and hospitalizations which will require further restrictions to control the spread. You may continue your services outdoors, with the appropriate social distancing and use of face coverings, which will minimize the risk to your parishioners and the public.

Therefore, I am ordering you to **cease and desist the indoor operations** of your church services and that your outdoor operations comply with social distancing, face covering and sanitation requirements. I hope that your concern for the health and safety of your congregation and the general public will result in your compliance with the Orders' requirements. As the responsible party for your facility it is your duty to ensure that the Orders' are complied with at your facility. However, if you do not comply we will take actions necessary to enforce the Orders. Failure to comply may result in criminal misdemeanor citations with a \$1,000 fine for each violation.

Date: July 17, 2020


Wilma J. Wooten, M.D., M.P.H.
Public Health Officer
County of San Diego

DOCUMENT

TEXT

Search



County of San Diego

NICK MACCHIONE, FACHE
AGENCY DIRECTOR

HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH SERVICES

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

Pastor Doug Fisher
Lighthouse Baptist Church
1345 Skyline Drive
Lemon Grove, CA 91945

ORDER OF THE HEALTH OFFICER

It has been reported that your church intends to conduct indoor services in violation of the Order of the State Health Officer and the County Order of the Health Officer and Emergency Regulations. I appreciate and deeply regret the impact these restrictions have on your congregation. However, the State has found, and I concur, that indoor services create a significant risk of spreading COVID-19. Nationwide, there have been a number of outbreaks stemming from indoor church services resulting in hospitalizations and death. I am sure you share my concern for the health of your congregation, your staff and members of the public who come in contact with them. This activity puts many people at risk. It also puts the rest of the business and faith community at risk by increasing the likelihood of increasing COVID-19 cases and hospitalizations, which will require further restrictions to control the spread. You may continue your services outdoors, with the appropriate social distancing and use of face coverings, which will minimize the risk to your parishioners and the public. In the unincorporated area of the County, you may wish to use parks and recreation areas for such activities, if another suitable outdoor location is unavailable.

I hope that your consideration and concern for the health and safety of your congregation and the general public will convince you to move in-person services outdoors in compliance with the Orders' requirements. As the responsible party for your facility it is your duty to ensure that the Orders' are complied with. If you do not comply, we will take actions necessary to enforce the Orders. Failure to comply may result in criminal misdemeanor citations with a \$1,000 fine for each violation.

Date: July 17, 2020

Wilma J. Wooten, M.D., M.P.H.
Public Health Officer
County of San Diego

DOCUMENT

TEXT

Q Search



County of San Diego

NICK MACCHIONE, FACHE
AGENCY DIRECTOR

HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH SERVICES

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

Dr. Jeremy McGarity
Lead Pastor
Skyline Church
1130 Campo Road
La Mesa, CA 91941

ORDER OF THE HEALTH OFFICER

It has been reported that your church intends to conduct indoor services at multiple locations in violation of the Order of the State Health Officer and the County Order of the Health Officer and Emergency Regulations. I appreciate and deeply regret the impact these restrictions have on your congregation. However, the State has found, and I concur, that indoor services create a significant risk of spreading COVID-19. Nationwide, there have been a number of outbreaks stemming from indoor church services resulting in hospitalizations and death. I am sure you share my concern for the health of your congregation, your staff and members of the public who come in contact with them. This activity puts many people at risk. It also puts the rest of the business and faith community at risk by increasing the likelihood of increasing COVID-19 cases and hospitalizations, which will require further restrictions to control the spread. You may continue your services outdoors, with the appropriate social distancing and use of face coverings, which will minimize the risk to your parishioners and the public. In the unincorporated area of the County, you may wish to use parks and recreation areas for such activities, if another suitable outdoor location is unavailable.

I hope that your consideration and concern for the health and safety of your congregation and the general public will convince you to move in-person services outdoors in compliance with the Orders' requirements. As the responsible party, it is your duty to ensure that the Orders' are complied with at your facilities. If you do not comply, we will take actions necessary to enforce the Orders. Failure to comply may result in criminal misdemeanor citations with a \$1,000 fine for each violation.

Date: July 17, 2020


Wilma J. Woolen, M.D., M.P.H.
Public Health Officer
County of San Diego

EXHIBIT KK

FULL CORONAVIRUS COVERAGE



CA health official: Glitch fixed, but backlog of 300K records

SFUSD, teachers union reach agreement for distance learning

2:51 PM 4 Big Sur roads closed due to 'overwhelming increase in visitors'

74-year-old Bay Area sports bar faces closure amid pandemic

Airlines tougher on masks with new zero tolerance policies

New York schools cleared to open statewide

SFGATE

<https://www.sfgate.com/politics/article/Gavin-Newsom-protests-coronavirus-July-Fourth-ask-15383112.php>

Gavin Newsom asked to reconcile support for protests with new warnings on gatherings

By **Eric Ting**, SFGATE Updated 1:58 pm PDT, Thursday, July 2, 2020



In this photo taken Friday, June 26, 2020, Gov. Gavin Newsom speaks about the coronavirus pandemic as he gives an update on the state's response to it at a news conference in Rancho Cordova, Calif.

During his Thursday press conference, California Gov. **Gavin Newsom** was asked why Californians should heed his new warnings against gatherings for Fourth of July weekend when he was previously supportive of protests against police brutality, where officials did not enforce mask-wearing or social-distancing.

Over the past week, Newsom has told residents not to gather with individuals outside their households and to avoid large crowds for any Fourth of July parades or demonstrations, while adding the state will "mitigate" any large crowds.

CONTINUE >

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"As always, we've had a mandate for a consistent period of time as it relates to large crowd gatherings," he **said on Wednesday**. "Please, avoid those crowds. We're going to do our best to try to mitigate people congregating and doing what we can to encourage good behavior."



On Thursday, KCBS Radio's Doug Sovern asked the governor, "I've heard from a number of people who don't understand why they're being told you can't go see grandpa this weekend, you can't see Uncle Joe, you can't have a barbecue with your neighbors but then they turn on the TV and see hundreds or thousands of people protesting. So can you explain the selective enforcement or preferential treatment given based on political persuasion? Can you explain to people why they should listen to these messages when they do see that happening and no one is getting tickets, no one is even being told to enforce the masks or social distancing?"

Newsom responded with, "If they care about their grandfather, their uncle, their aunt, that's why they should listen."

The governor then stated that no one will be cracking down on social gatherings in backyards before returning to commenting on the protests.

"I maybe was unique in my household but I don't think I was, I think it was universally taught: Just because someone else is doing it, doesn't mean you should," Newsom said. "People know what the right thing to do is. I encourage them to do the right thing. And people also understand that we have a Constitution, we have a right to free speech and we are all dealing with a moment in our nation's history that is profound and pronounced... but I recognize the dichotomy and to the extent the dialectic between those examples and all I can offer is this consideration: Do what you think is best not only for you but for the health of the people you love."



It is unclear to what extent the protests contributed to the spread of the virus. An **Associated Press investigation found little evidence** the demonstrations are primarily responsible for recent upticks, but Los Angeles County public health director Barbara Ferrer **has stated it is "highly likely"** the protests led to an increase in positive cases.

When the protests first started, Newsom **told the demonstrators**, "You've lost patience, so have I. You are right to feel wronged. You are right to feel the way you are feeling" and **retweeted images of** protests in praise. After police used rubber bullets and tear gas to disperse crowds, **he tweeted**, "Protesters have the right to protest peacefully — not be harassed."

MORE CORONAVIRUS COVERAGE:

Sign up for 'The Daily' newsletter for the latest on coronavirus **here**.

- **Newsom announces new restrictions in 19 California counties**
- **The virus didn't stop a socialite from throwing a backyard soiree. Then tests came back positive.**
- **These metrics suggest the coronavirus is indeed back on the upswing in the Bay Area**
- **Why coronavirus cases in California are suddenly surging**
- **Gavin Newsom: Californians should 'reconsider' July 4th plans, state will 'mitigate' big gatherings**

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Twitter: **[@_ericting](https://twitter.com/_ericting)**

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H E A R S T

EXHIBIT LL



Gavin Newsom  @GavinNewsom · May 30

Millions of people are lifting their voices in anger -- rightfully outraged at the systemic racism that persists in America.

Our state and nation must build from this moment -- united and more resolved than ever -- to address the reality of racism and its root causes.



3.6K



4K



19.5K



Gavin Newsom  @GavinNewsom · Jun 5

Protesters have the right to protest peacefully -- not be harassed. Not be shot at by rubber bullets or tear gas.

Today I am calling for the creation of a new statewide standard for use of force in protests. Acts of violence against peaceful protestors will not be tolerated.



8.5K



26.6K



122.4K



Gavin Newsom Retweeted



ABC30 Fresno @ABC30 · Jun 19

A day before Juneteenth, the City of Fresno officially made June 18th "Black Lives Matter Day" in the city - and hundreds came together to paint the street in front of City Hall.



Hundreds gather to paint Black Lives Matter street art

Hundreds of people grabbed their brushes and their chalk and gathered to paint "Black Lives Matter" on a normally busy street in Fresno.

abc30.com

73

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EXHIBIT MM

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4:44pm EDT June 26, 2020

Recent protests have contributed to California's coronavirus case increase, state official says

From CNN's Chief Medical Correspondent



What you need to know

- More than half of US states are **seeing an increase** in Covid-19 cases. In Texas, some bars have been ordered to close as officials fear "apocalyptic" surges if current trends continue. Meanwhile, Florida reported its highest single day of cases.
- Travelers from the United States are **"unlikely" to be allowed** into the European Union, several EU officials told CNN.
- Dr. Anthony Fauci says the White House coronavirus task force is **"seriously considering"** a new testing strategy.
- Number of Covid-19 cases in Latin America has tripled in the past month, surpassing 2 million infections, the Pan American Health Organization said.

Our live coverage of the coronavirus pandemic has ended for the evening

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Did we coverage of the coronavirus pandemic has ended for the evening

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Protesters pourgegate-ELITE engine at the-entertainment of Hollywood and the-entertainment of Hollywood on April 5. David Mitchell/Getty Images

People commingling during recent racial justice protests are believed to be a contributing factor to the rise in coronavirus cases in California, according to Dr. Sonia Angell, the state's health director.

"We don't have exact numbers, but we do know from speaking to our counties that it is a contributor. Of course it is difficult to tease out exactly because at the same time, the people were going out for these protests, we were also seeing increased movement for other reasons," Angell said in a news conference.

Angell stressed that with community spread, health officials may not be able to distinguish exactly where someone may have been exposed.

"It's highly likely given the increased numbers that we're seeing, that some of this is in fact people who may have been in a crowded situation at one of the protests where there was spread," Los Angeles Health Director Barbara Ferrer said earlier this week.

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Africa

Americas

Asia

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Middle East

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Protesters converge in Los Angeles, as the coronavirus outbreak and its effects on June 2. David McNew/Getty Images

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"It's highly likely given the increased numbers that we're seeing, that some of this is in fact people who may have been in a crowded situation at one of the protests where there was spread," Los Angeles Health Director Barbara Ferrer said earlier this week.

Sacramento County reported at least three individual cases that are apparently linked to recent demonstrations, according to California Department of Public Health.

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:20-cv-865-BAS

**Supplemental Declaration of
 George Delgado, M.D. in
 Support of Plaintiffs' Renewed
 Motion for a Temporary
 Restraining Order / Preliminary
 Injunction**

Judge: Hon. Cynthia Bashant

1 I, George Delgado, M.D., declare and state as follows:

2 1. I am a physician, licensed by the Medical Board of the State of California
3 since 1989. I submit this declaration in support of Plaintiffs' Renewed Motion for a
4 Temporary Restraining Order / Preliminary Injunction. I have personal knowledge of
5 the matters set forth below, and could and would testify competently to them if called
6 upon to do so.

7 **PROFESSIONAL BACKGROUND**

8 2. I graduated from St. Mary's College of California with a Bachelor of
9 Science degree, summa cum laude and received my Doctor of Medicine degree from
10 the University of California, Davis. I completed my family residency at Santa Monica
11 Hospital/UCLA and I am board certified in family medicine and hospice and
12 palliative medicine.

13 3. Currently, I serve as a Medical Analyst for COVID Planning Tools, a
14 multi-disciplinary group offering analysis of the COVID-19 pandemic as well as
15 rational solutions and strategies for managing our public health response. Our group
16 has developed a Monte Carlo COVID Decision Model that has proven to be more
17 accurate than models more commonly being used to predict the pandemic.

18 4. Since 2005, I have been the medical director of a family medical group.
19 Additionally, I am the chief medical officer of a large hospice.

20 5. Post-residency I have practiced medicine in the State of California for 29
21 years. During that time, I have treated many people with infectious diseases including
22 viral illnesses such as influenza which tend to occur in epidemics. I have been
23 intimately involved in planning for the current coronavirus disease 2019 (COVID-19)
24 pandemic, caused by the severe acute respiratory syndrome coronavirus 2 (SARS-
25 CoV-2) for my family medical group and hospice.

26 6. I have also provided expert advice in multiple litigations involving the
27 COVID-19 pandemic. I provided an expert declaration in the action *Soos v. Cuomo*,
28 No. 1:20-cv-651 (GLS/DJS) (N.D.N.Y. June 10, 2020) (injunction granted).

1 **THE FLATTENING OF THE CURVE AND THE RECENT UPTICKS**

2 7. It is clear that due to early mitigation measures carried out throughout
3 California, the trajectory of the COVID-19 pandemic was altered; the “curve was
4 flattened.” Mitigation measures, like any medical treatment, have untoward
5 consequences, some foreseeable, some not. When they are imprecise they can lead to
6 civil liberty infringements. Furthermore, the “treatment” that got us to where we are
7 now, is not the “treatment” that is indicated for us now.

8 8. In the clinical practice of medicine, we acknowledge that people have
9 spiritual, psychological and physical dimensions. We know that spiritual and
10 psychological stress and trauma can lead to physical problems, including immune
11 system dysfunction. Arbitrarily declaring religious services to be “non-essential,”
12 besides being unconstitutional, also carries with it certain profound spiritual and
13 psychological risks that, ironically, could actually lead to an increase in mortality from
14 COVID-19 by negatively impacting immune function and by destabilizing the support
15 systems of vulnerable people.

16 9. According to Robert Redfield, MD, the director of Centers for Disease
17 Control and Prevention (CDC), at this point in the pandemic, both suicides and drug
18 overdose deaths are outnumbering deaths due to the coronavirus, itself.¹ The social
19 side effects of mitigation measures are rearing their ugly head.

20 10. The Reproduction measure (R) gives an indication of how many
21 additional persons an infected person can infect during an epidemic. When R drops
22 below one, an outbreak loses steam and begins to subside. According to Rt Live, R is
23 currently 0.88 in California, which is in agreement with the model of my COVID
24 planning group.²

25 _____
26 ¹ *Transcript of COVID Webinar Series interview of Robert Redfield, MD*, BUCK INSTITUTE (Jul. 14,
27 2020), <https://www.buckinstitute.org/covid-webinar-series-transcript-robert-redfield-md/>
(accessed Aug. 5, 2020).

28 ² *Rt COVID-19*, RT LIVE (as of Aug. 7, 2020), <https://rt.live/>.

1 11. In California, cases and hospitalizations have increased since about
2 June 1, but the median age of those infected and hospitalized has decreased. Our
3 conclusion, supported by the COVID-19 Decision Model is that the recent increases
4 are related to two distinct but related phenomena. One was the tolerance and even
5 encouragement of public protests whereby participants often did not wear masks and
6 clearly did not respect social distancing. The other is what I have termed “mitigation
7 fatigue.” Members of the age 20–50 demographic have stopped heeding the calls of
8 the governor and other government officials to decrease mobility and contacts. They
9 have resumed socializing without social distancing and wear masks only when
10 required. They intuitively recognize that imprecise, arbitrary COVID-19 mitigation
11 measures are inappropriate and disproportionate.

12 12. The figure below, obtained from CDC website, uses CDC data to
13 explain how the early COVID-19 mitigation measures led to an approximate 40–50%
14 decrease in mobility of California’s residents in the transit, workplace, retail and
15 recreation spheres. Over the ensuing weeks, mobility gradually increased to a level of
16 about 60–80% of baseline (20–40% decrease from baseline). New restrictions were
17 instituted by Governor Newsom on July 1 and July 13. The CDC data does not show
18 any change in the mobility curves, nor was the cumulative death curve affected. This
19 suggests that the measures were not followed by the populace, in my opinion due to
20 mitigation fatigue.

21 13. Not only are the current mitigation efforts futile, they are directed
22 against the wrong activities and gatherings. The most likely drivers of the current
23 increase in California cases are the 20–50 year old group that has resumed
24 socializing—not worshippers attending church. Furthermore, most of the California
25 and US church-related outbreaks occurred before June or in congregations that failed
26 to follow commonsense recommendations, such as the ones I list below.

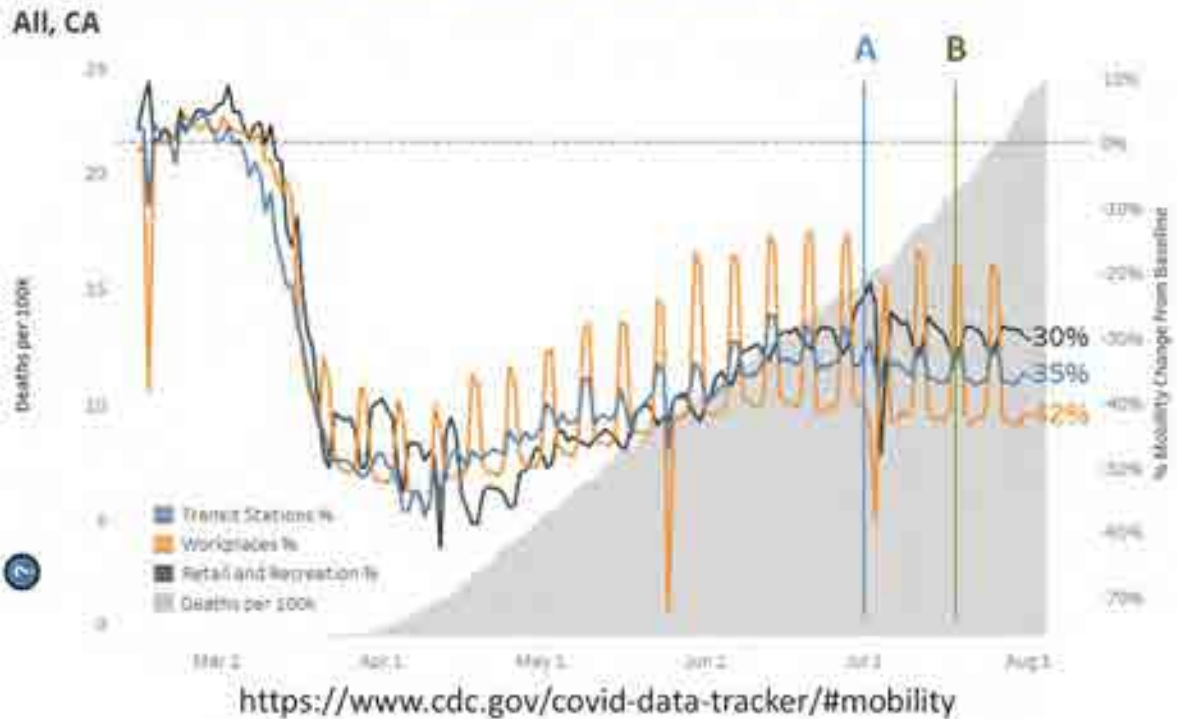
27 ///

28 ///

Mitigation Fatigue in California: Closures and Lockdowns Lose Effectiveness

A: Closure of most indoor business in 19 CA Counties 7/1/20

B: Re-imposition of statewide stay at home order in CA 7/13/20



INDOOR WORSHIP SERVICES WITH SINGING

14. I am confident that a resumption of religious services can take place, with singing and indoors, in a manner that does not jeopardize public health. In fact, I feel that going to one's church, synagogue or mosque should be much safer than going to the grocery store, participating in a protest, or working at a manufacturing facility.

15. The CDC released interim guidelines in May advising faith communities on how to best hold services while minimizing the risk of spreading COVID-19. It is important to note that the statement includes the following: "CDC offers these suggestions for faith communities to consider and accept, reject, or modify, consistent with their own faith traditions, in the course of preparing to reconvene for in-person gatherings while still working to prevent the spread of COVID-19." Thus, in no way are the guidelines to be taken as requiring an infringement on First

1 Amendment-protected rights.³

2 16. Many have expressed concern that worship services could become
3 hotbeds of COVID-19 contagion, mostly because of the well-publicized case in
4 Washington State last March where, out of 61 attendees, up to 53 people became ill
5 after a two and a half hour choir practice where they were exposed to a person who
6 was ill but did not realize he had COVID-19. Thirty three of those who were ill had
7 tests confirming they were infected with SARS-CoV-2.⁴ The participants were in a
8 relatively small room with poor ventilation. Much of the time, they were only seated
9 6–10 inches apart. They practiced for two and a half hours and shared food,
10 afterwards. Patient zero knew he was sick.

11 17. Fortunately, since that fateful day in March, we have learned much
12 about the virus and how it spreads. The lessons learned will allow Californians to
13 safely worship indoors while singing. Certainly, things would have turned out very
14 differently in Washington and in other locales if our current recommendations (listed
15 below) were implemented.

16 18. Singing does present some challenges, but none of them are
17 insurmountable. A comprehensive report produced by a collaboration between a
18 university and three music institutes in Germany, titled “Risk Assessment of a
19 Coronavirus Infection in the Field of Music” was updated in July.⁵ Citing research
20 conducted by them and others, the medical, engineering and vocal experts concluded

21 _____
22 ³ *Considerations for Communities of Faith*, CDC (May 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/faith-based.html> (accessed Aug. 7, 2020).

23 ⁴ Lea Hamner, MPH, et al., *High SARS-CoV-2 Attack Rate Following Exposure at a Choir Practice — Skagit County, Washington, March 2020*, CDC (May 15, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e6.htm> (accessed Aug. 6, 2020).

25 ⁵ Claudia Spahn, Ph.D., M.D. & Bernhard Richter, M.D., *Risk Assessment of a Coronavirus Infection in the Field of Music*, UNIVERSITY OF FREIBURG (Jul. 17, 2020 update), <https://www.mh-freiburg.de/fileadmin/Downloads/Allgemeines/RisikoabschaetzungCoronaMusikSpahnRichter17.7.2020Englisch.pdf> (translated by Kirk D. Moss, Ph.D. & Scott S. Swope, D.M.A) (accessed Aug. 6, 2020).

28

1 that singing only slightly increases the dispersion of respiratory droplets. It can,
 2 however, increase the production of aerosol particles, which are smaller (<5
 3 microns). The group concludes that singing can safely take place in houses of
 4 worship, provided that singers are spaced about two meters apart (close to our
 5 standard of six feet), that masks are worn, and that ventilation is adequate.

6 19. Both the German group and an article by Naunheim, et al. in the Journal
 7 of Voice emphasize that as spacing increases and the amount of time spent singing
 8 decreases, the risk of spread of the virus diminishes.⁶ Worship services generally have
 9 songs interspersed with sermons and prayers. The breaks in the singing action allow
 10 droplets to fall to the ground and aerosols to be dispersed and diluted.

11 20. A May webinar sponsored by the National Association of Teachers of
 12 Singing and other groups left viewers with the unequivocal message that singing with
 13 others could not safely resume until a SARS-CoV-2 vaccine or effective therapeutics
 14 were available.⁷ As Naunheim, et al. make clear, this fear-based conclusion is not
 15 based on any scientific evidence.⁸

16 21. Ventilation is an important component in any plan to decrease the risk of
 17 viral transmission in an indoor venue with singing. Modern heating, ventilation and
 18 air conditioning (HVAC) can be very helpful. Another fear-based rumor is that
 19 HVAC systems can actually spread viral transmission, not diminish it. This is not the
 20 case with modern HVAC systems. There was a case in China of viral spread through
 21 a ventilation system, but it had more to do with the poor design of the system than
 22

23 ⁶ Matthew R. Naunheim, et al., *Safer Singing During the SARS-CoV-2 Pandemic: What We Know and*
 24 *What We Don't*, J. OF VOICE (Jul. 1, 2020), <https://www.jvoice.org/action/showPdf?pii=S0892-1997%2820%2930245-9> (accessed Aug. 6, 2020).

25 ⁷ *A Conversation: What Do Science and Data Say About the Near Term Future of Singing May 5, 2020*
 26 *Webinar*, NAT'L ASS. OF TEACHERS OF SINGING, INC. (May 5, 2020),
 27 [https://www.nats.org/cgi/page.cgi/_article.html/Featured_Stories_/NATS_COVID_Resources](https://www.nats.org/cgi/page.cgi/_article.html/Featured_Stories_/NATS_COVID_Resources_Page)
 28 [_Page](https://www.nats.org/cgi/page.cgi/_article.html/Featured_Stories_/NATS_COVID_Resources_Page) (accessed Aug. 6, 2020).

⁸ Naunheim, et al., *supra* n. 6.

1 with HVAC systems in general, according to HVAC experts⁹ and a second scientific
 2 article that corrected some of the misinterpretation of data in the original article
 3 reporting on the transmission.¹⁰

4 22. Having as many windows and doors open as possible, as well as running
 5 the ventilation will effectively dilute aerosols containing viral particles. CDC suggests
 6 running the HVAC at the highest level (with air intake from outside) for two hours
 7 before and two hours after occupied times.¹¹ Industry experts recommend that, if
 8 possible, HVAC filters be minimum efficiency reporting values (MERV) 13 or better,
 9 which would remove most of the aerosol particles that could carry the coronavirus.¹²

10 **COMPARISON WITH GROCERY STORE**

11 23. One could easily compare an average grocery store, which serves 1,000
 12 customers per day, to a house of worship, in terms of risk of contagion. Even with
 13 planned flow of foot traffic, the movement of people in the grocery store is relatively
 14 uncontrolled. The aisles are not designed to allow six-foot social distancing. People
 15 touch merchandise that they never buy. By the time a person puts an item in his or
 16 her cart, it may have been touched by several, if not hundreds of people in the three
 17 previous days (the coronavirus may survive up to three days on smooth surfaces).
 18 The cart, may have had its handle sanitized but the carriage itself likely was not.
 19 Next, the items are placed on the conveyer belt which has contacted hundreds of

20
 21 ⁹ Joanna R. Turpin, *Can HVAC Systems Spread COVID-19?*, ACHR NEWS (May 31, 2020),
 22 <https://www.achrnews.com/articles/143255-can-hvac-systems-spread-the-covid-19-virus>
 (accessed Aug. 6, 2020).

23 ¹⁰ Yuguo Li, Ph.D., et al., *Aerosol transmission of SARS-CoV-2: Evidence for probable aerosol*
 24 *transmission of SARS-CoV-2 in a poorly ventilated restaurant*, MEDRXIV (Apr. 22, 2020),
 25 <https://www.medrxiv.org/content/10.1101/2020.04.16.20067728v1.full.pdf> (accessed Aug. 6,
 2020).

26 ¹¹ *COVID-19 Employer Information for Office Buildings*, CDC (Jul. 9, 2020 update),
 27 <https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html> (accessed Aug. 6,
 2020).

28 ¹² Turpin, *supra* n. 9.

1 items that others have touched. The clerk wears gloves but does not change gloves
2 between customers. He touches nearly every item as well as money.

3 24. The house of worship, on the other hand will likely have far fewer than
4 1,000 attendees and windows and doors can be open. The participants will be
5 stationary for all or most of their services and their movements can be very
6 controlled, planned and prescribed, as opposed to the uncontrolled movements in the
7 grocery stores. Worshipers will not be touching multiple items. There will be time
8 after each service to thoroughly clean the chairs or pews that they do touch.

9 25. We can calculate the risk of contagion at the house of worship, if the
10 guidelines listed below are followed, compared to a grocery store. A relative value
11 greater than 1 makes the house of worship riskier, while a relative risk less than 1
12 makes the house of worship safer.

13 o Being in the same building with others at any one time: relative risk is 2
14 (100 in the house of worship; 50 in grocery store).

15 o People touching multiple objects: relative risk is 0.25. People touch far
16 fewer objects in the house of worship; 1,000 people per day touch many
17 things in the grocery store. Chairs and pews can be sanitized after each
18 service. It is impracticable, if not impossible, to sanitize all items in a
19 store.

20 o Close contact with others: relative risk is 0.25. Worshipers are stationary
21 and socially distanced. They enter and exit in a controlled, spaced
22 manner. Shoppers move about as they wish, even if flow is one way.

23 26. The calculation is: **Risk in House of Worship** = Risk in Grocery Store x
24 $2 \times 0.25 \times 0.25 = 0.125$, which is less than 1.

25 27. **Therefore, the calculated risk of contracting COVID-19 at the house**
26 **of worship is 0.125 or 12.5% the risk at the grocery store.**

27 ///

28 ///

COMPARISON WITH PUBLIC PROTESTS

28. Public protests have abounded in California since George Floyd was killed by a Minneapolis police officer. The protests have been allowed and/or tolerated by public officials. We can compare the risk of spreading the coronavirus in a house of worship and at a public protest. Social distancing has not been maintained at public protests. Many of the protestors may be wearing masks, however, they likely are not observing directives that all should be wearing masks in public. Many photos of protestors show them to be of different ages, however the main demographic represented is the age group of 20–50.

29. On the other hand, indoor religious services can (and have been conducted in California and other states) with great care and control. Social distancing can be maintained, all participants wear masks and movement of people can be directed carefully.

30. Religious service congregants will generally all be facing in the same direction, while public protestors may be looking around and sometimes facing or walking in different directions. A droplet released by an unknowingly infected worshipper is most likely to hit the back of the person seated in front of him or her, and will be unlikely to infect that person. Alternatively, in a protest situation, a droplet released by an unknowingly infected person is more likely to be inhaled by another facing the infected protestor.

31. We can calculate the risk of contagion at the house of worship, if the guidelines listed below are followed, compared to a public protest. A relative value greater than 1 makes the house of worship riskier, while a relative risk less than 1 makes the house of worship safer.

- o Being in the same area with others at any one time: relative risk is 0.01 (100 in the house of worship; 10,000 at a public protest).
- o Being in a well-ventilated house of worship compared to outside: relative risk is 4.

- o People touching multiple objects: relative risk is 1. People touch pews and chairs in the house of worship compared to people at the protest touching railings, poles, signs, etc. The pews and chairs can be sanitized.
- o Close contact with others: relative risk is 0.5. Worshipers are stationary and socially distanced. They enter and exit in a controlled, spaced manner. Protesters are close to one another and even rubbing against each other. They move at different rates which exposes them to more people.
- o Yelling: relative risk is 0.5. Protestors and leaders yell full-throated slogans. Worship leaders use electronic amplification and evidence-based strategies that decrease the risks of singing.

32. The calculation is: **Risk in House of Worship** = Risk in public protest x $1 \times 0.01 \times 4 \times 1 \times 0.5 \times 0.5 = \mathbf{0.01}$, which is far less than 1.

33. **Therefore, the calculated risk of contracting COVID-19 at the house of worship is 0.01 or 1% the risk at public protests** that have been allowed and or tolerated by public officials.

COMPARISON WITH MANUFACTURING FACILITIES

34. Some manufacturing facilities were deemed “essential” and remained open in California; others have opened as mitigation measures were relaxed. One could easily compare an average manufacturing plant to a house of worship, in terms of risk of contagion. Even with planned flow of foot traffic, the movement of people in the manufacturing plant is dependent on immediate needs and therefore sub-optimally controlled. The walkways are not designed to allow six-foot social distancing. Workers have to touch equipment and products as part of the normal workflow. By the time an item reaches the end of a production line, it may have been touched by several, if not hundreds of people.

35. In a production facility, employees must sometimes work in close proximity to one another, often at a distance of less than six feet and often facing each

1 other. Although wearing masks decreases risks of contagion, it does not change the
2 fact that members of different households are clustered together for long periods of
3 time. Furthermore, the job may require that employees move about, potentially
4 contacting other employees.

5 36. Manufacturing facilities may have large and very expensive equipment.
6 Modifying or moving such equipment in order to create social distancing
7 opportunities may be prohibitively expensive, impractical or impossible.

8 37. Workers spend 8-12 hours per day at manufacturing plants. Obviously,
9 they need to move about to use the restrooms, eat and rest. The movement and visits
10 to places away from their work stations create opportunities for spread of the virus.

11 38. Suppliers and contractors must visit manufacturing facilities in order to
12 keep those facilities running efficiently and effectively. Visitors may not be familiar
13 with a particular facility's procedures and protocols for minimizing exposure to the
14 coronavirus. Unfamiliar visitors may increase the risk of transmission.

15 39. Religious services can be held in well ventilated buildings, while
16 factories may not have that luxury. The participants at the house of worship will be
17 stationary for all or most of their services and their movements can be very
18 controlled, planned and prescribed, as opposed to the less controlled movements in
19 manufacturing facilities.

20 40. Religious service congregants will generally all be facing in the same
21 direction, while manufacturing workers may be face-to-face by necessity of the work.
22 Worshipers will not be touching multiple items as they might in manufacturing
23 plants. There will be ample time after each service to thoroughly clean the chairs or
24 pews that they do touch.

25 41. We can calculate the risk of contagion at the house of worship, if the
26 guidelines listed below are followed, compared to a manufacturing facility. A relative
27 value greater than 1 makes the house of worship riskier, while a relative risk less than
28 1 makes the house of worship safer.

- o Being in the same building or part of a building with others at any one time: relative risk is 1 (100 in the house of worship; 100 in facility).
- o People touching multiple objects: relative risk is 0.5. People touch fewer things in the house of worship.
- o Close contact with others: relative risk is 0.5. Worshipers are stationary and socially distanced. They enter and exit in a controlled, spaced manner. Manufacturing workers move about as their jobs demand. Some jobs require workers to be closer than six feet, some workers must face each other, and some work stations cannot be modified to allow social distancing.

42. The calculation is: **Risk in House of Worship** = Risk in manufacturing facility x 1 x 0.5 x 0.5 = **0.25**, which is less than 1.

43. **Therefore, the calculated risk of contracting COVID-19 at the house of worship is 0.25 or 25% the risk at the manufacturing facility** and manufacturing facilities are open in California.

RECOMMENDATIONS

44. The following commonsense recommendations will allow a safe return to meaningful, spiritually rich religious services, with singing, for the millions of Californians who cherish their religion and do not deem it unessential.

- a. Have a questionnaire that the attendees self-administer before entering. Any who have symptoms of COVID-19 or contact with someone infected should be told to not enter.
- b. Check temperatures of all who enter. A temperature of 100 degrees Fahrenheit (37.8 Celsius) should preclude admission.
- c. All who enter the house of worship should sanitize their hands.
- d. More services should be offered to allow limiting congregation sizes. There should be no arbitrary limit on congregation size, however, as long as six-foot social distancing can be maintained.

- e. Shorter sermons and shorter services will allow clergy to offer more services while maintaining their spiritual and physical stamina.
- f. Houses of worship should be well ventilated, with many doors and windows open. HVAC systems should be run as high as comfortably possible during services, and as high as possible two hours before and after services to “flush” and dilute the air. There is less chance of contagion in well ventilated areas.
- g. If possible, filters should be upgraded to MERV 13 or higher. An HVAC professional should be consulted since higher rated filters may increase the load for fan motors.
- h. During services, people should sit together as families, with six feet between families. Only allow seating in every other pew or row, leading to six-foot spacing.
- i. Choir members, cantors and clergy should use amplification, if possible, in order to allow the use of less than full-throated singing.
- j. Choir members should be as far as possible from the general congregation.
- k. Face coverings or face masks should be worn by attendees and choir members. The clergy person, being at greater than six-feet away, need not wear a face covering, unless he or she is talking in a loud voice without amplification, or is singing.
- l. No hugging, kiss of peace, hand holding or hand shaking should be allowed.
- m. Where communion is offered, lines can be spaced with families at six-foot intervals.
- n. The minister who distributes communion should sanitize his or her hands, and take great care not to touch any recipient’s mouth or hand. If an inadvertent contact occurs, the minister should re-sanitize his or her

1 hands, immediately.

2 o. Worship aids and prayers should be projected, if possible. Reusable
3 prayer books should be removed from the building.

4 p. Foot traffic entering and exiting the worship area should be designed as a
5 one-way flow loop.

6 q. Egress after the service should be row by row, commencing with row
7 closest to the door.

8 r. After each service, chairs, benches and pews should be sanitized.

9 45. Like the CDC guidelines, these guidelines should be followed to the
10 extent which the demands of any particular faith allow. They should not be
11 deemed—like California’s requirements—as a prerequisite to the exercise of one’s
12 constitutional right to engage in worship.

13 I declare under penalty of perjury under the laws of the United States and the
14 State of California that the foregoing is true and correct. Executed on August 8,
15 2020.

16 

17 _____
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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:20-cv-865-BAS

**Declaration of Charles Cicchetti
 in Support of Plaintiffs'
 Renewed Motion for a
 Temporary Restraining Order /
 Preliminary Injunction**

Judge: Hon. Cynthia Bashant

1 I, Charles J. Cicchetti, declare and state as follows:

2 1. I am a resident of the State of California. I am a Managing Director at
3 Berkeley Research Group, Inc. The views are my own and do not reflect the views of
4 any entities with which I am affiliated. I submit this declaration in support of
5 Plaintiffs' Renewed Motion for a Temporary Restraining Order / Preliminary
6 Injunction. I have personal knowledge of the matters set forth below, and could and
7 would testify competently to them if called upon to do so.

8 2. I am an economist with a BA from Colorado College (1965) and a Ph.D.
9 from Rutgers University (1969), and three years of Post Graduate Research at
10 Resources for the Future (RFF). I was formally trained in statistics and econometrics
11 and accepted as an expert witness in statistics and econometrics in federal court.¹ In
12 the course of my work I regularly use epidemiology models and advanced statistical
13 techniques. I have written expert reports analyzing toxic chemical and health effects,
14 including three reports used in settlements related to the health and cancer risks
15 related to TCP in drinking water. I have written three monographs in support of
16 litigation related to federal regulations based on morbidity and mortality risks from air
17 pollution: *Why EPA's Mercury and Air Toxics Rule is Good for the Economy and*
18 *America's Workforce*, July 2011; *Expensive Neighbors: The Hidden Cost of Harmful*
19 *Pollution to Downwind Employers and Businesses*, January 2011; *The True Cost of*
20 *Harmful Pollution to Downwind Families and Business*, November 2010.² In much of
21 my work I design surveys, draw random samples and test the data for statistically

22 ¹ For example, I analyzed the American Cancer Society's million-person health data
23 and a Meta study of the combined health risks of smoking and asbestos exposure for a
24 deposition in California Court in *Raybestos-Manhattan of Whiteley v. Raybestos-*
25 *Manhattan*, Case No. 303184, November 30, 1999. More recently, I provided an
26 expert report in *San Diego Unified Port District v. Monsanto*, No. 3:15-CV-0578 (S.D.
Cal. Apr. 5, 2019).

27 ² The last two monographs were prepared for Exelon in response to EPA's proposed
28 Transport Rule under the Clean Air Act.

1 significant differences. I also have been asked to evaluate the work of other experts
2 and to opine on the data used to draw conclusions and the significance of omitted
3 variables and ignored facts.

4 3. I testified as an expert hundreds of times since my first testimony in 1967
5 before regulators, arbitration panels, state and federal courts in Canada and the
6 United States. Much of my work involves data analysis and interpretation, sampling
7 and survey design.

8 4. I commenced my professional career after completing my academic and
9 post-doctoral studies and eventually became a tenured Professor of Economics and
10 Environmental Studies at the University of Wisconsin from 1972 to 1985. For the
11 first three years I also served as the first economist for the Environmental Defense
12 Fund (EDF). From 1975 through 1976, I served as the Director of the Wisconsin
13 Energy Office and as Special Energy Counselor for the Governor. In 1977, I was
14 appointed by the Governor as Chair of the Public Service Commission of Wisconsin
15 (“PSCW”) and held that position until 1979 and served as a Commissioner until
16 1980.

17 5. I am a consultant and expert witness. During much of my career I taught
18 economics and public policy. From 1987 until 1990, I served as Deputy Director of
19 the Energy and Environmental Policy Center at the John F. Kennedy School of
20 Government at Harvard University. After teaching part time, in 1998, I accepted the
21 Jeffrey J. Miller Chair in Government, Business and the Economy at the University
22 of Southern California, which I held until 2006. I returned to a part time role at USC,
23 where I currently meet with students who study lectures that I pre-recorded. I served
24 on the California Governor’s Market Advisory Group responding to the California
25 Energy Crisis in 2000. I joined Berkeley Research Group as Managing Director in
26 2016. A true and correct copy of my *c.v.* is attached as Exhibit 1.

27 6. The purpose of my Declaration is to explain California’s regulations that
28 place certain counties on a “monitoring list,” and if so placed, require restrictions on

1 how houses of worship may operate. I show that California's exclusive reliance on the
2 number of COVID-19 "cases" to quantify health risks is too narrow a focus. Very
3 importantly the number of cases tracks the level of testing, which has been ramped-
4 up. This quantum omits other measures of morbidity and mortality that are better
5 indicators of health risks and provide much more accurate measures of changes in
6 health risks over time.

7 7. California's recent actions seem predicated partially on a belief that
8 California is experiencing a worsening in COVID-19 related health conditions. The
9 primary data used to support the conclusion that things are worse in California is the
10 dramatic rise in positive cases reported daily. More recently, even this data is
11 trending down in California. No death or serious illness should be ignored. California
12 has its share of both. That said, trade-offs are mostly necessary to achieve the Public
13 Interest reflecting a sober balance of benefits and costs. Very importantly, other data
14 related to testing and health must be considered. I teach my students and testify
15 routinely explaining that "omitting variables" biases conclusions. Facts ignored
16 result in flawed public policy.

17 8. In practical terms, concentrating on a single measure of health risk to
18 determine the best response omits a great deal, which leads to biased conclusions and
19 can result in faulty policy choices. California relies heavily, if not exclusively on
20 COVID-19 case counts (cases), to determine the stage or phase of recovery, if various
21 counties should slow down, accelerate or reverse opening businesses, gathering
22 places and more. More specifically, the California Department of Public Health
23 (CDPH) issued "Guidance on Closure of Sectors in Response to COVID-19" on July
24 1, 2020. The state monitors counties to determine what can open, remain shuttered,
25 and closed after reopening.

26 9. The current Guidance continues the May 7, 2020 Order of the State
27 Public Health Officer that relies on confirmed cases requiring "stable rates of
28 infections", based on new infections, hospitalizations, surge capacity, improved

1 ability to test, contract trace, isolate and provide support to individuals exposed. Two
2 refer to medical matters directly. “Cases” mean people who test positive for a
3 COVID-19 infection. “Hospitalizations” refers to available capacity including
4 standard non-Covid-19 patients, current Covid-19 patients in hospital care and
5 potential surges in patients needing hospital care. The description of hospitalizations
6 anticipates that some treatments and surgeries can be postponed. This makes the
7 potential supply of beds, ICU and ventilator resources somewhat elastic because it is
8 reasonable to free-up resources if an “acute care surge” in COVID-19 patients were
9 to hit California’s hospitals. (I explain below that California counties mostly satisfy
10 the standards based on maintaining hospital capacity.)

11 10. The CDPH formulates its “opening” or the more pessimistic
12 “shuttering” criteria for counties and sub-political units with a variance form,
13 “Covid-19 County Variance Attestation Form”. This provides a roadmap that allows
14 political sub-divisions to seek to alter the state’s rules on what can open in either
15 direction.

16 11. The CDPH publishes its data that monitors its “opening” criteria daily.
17 As of July 23, 2020. Only 6 of 58 counties exceeded the 3-day criteria for increased
18 hospitalizations for COVID-19 and other patients by more than 10%. Two of the six
19 were 10.5% or less. None of the counties had less than the 25% of stand-by ventilator
20 capacity criteria. Only 12 of the 58 counties missed the stand-by ICU bed availability
21 criteria of 20%. Based on hospital resource availability criteria, virtually all counties in
22 California could re-open.

23 12. The number of new cases being reported is the criteria that drives
24 county closures in California. Most counties are performing the required number of
25 tests. Four counties had fewer than the CDPH criteria of 150 tests performed per
26
27
28

1 100,000 people based on a 7-day average with a 7-day lag. Nevertheless, three³
2 passed at least one of the “Case Rate” criteria based on less than 100 per 100,000
3 over 14 days, or less than a 25 case rate and positivity less than 8%. The other 54
4 counties exceeded the number of tests per day criteria, but could not satisfy the case
5 level criteria for re-opening. There were 23 counties with case rates that exceeded
6 both the CDPH threshold elevated case rate criteria. There were another 14 counties
7 that did not CDPH’s case rate per 100,000 (14 day) criteria. These 37 counties could
8 not seek a variance. Others would need to file a variance to re-open.

9 13. It is logical to expect that the number of tests performed and cases
10 reported would be highly correlated. Put simply more testing will yield more positive
11 cases being reported. The only exceptions would reflect differences in demographic
12 and medical conditions in the additional people being tested. In the early days of
13 covid-19 most testing was done at hospitals where people who were very sick were
14 omitted and for first responders and medical-care providers. The former were almost
15 certainly infected. The first responders were often healthy and relatively younger
16 than the senior citizens who were very prone to being infected and becoming sick.

17 14. By mid-April testing was ramping up. Prior testing samples were not
18 random. The initial expanded testing involved self-selecting and this skewed early
19 results, but the initial bias was reduced. By mid-May there were 10 million tests
20 performed and a month later in mid-June the total number of tests doubled. In July
21 total testing nationwide approaches 50 million. Testing remains mostly self-selection.
22 Nevertheless, with the number of tests approximating 15% of the population the “law
23 of large numbers” results in the sample mean moving closer to the average of the
24 whole population. For this reason, with more testing the underlying statistics related
25 to infection rates and deaths become more stable. Nationally, the 7-day average
26

27 ³ Glenn county with a population of about 28,000 did not satisfy the state’s number
28 of testing and case level criteria.

infection rate per test using the Johns Hopkins University (JHU) data is 8.5%. The current national death rate across all demographic groups is about 43 people per 100,000. The deaths per infected case nationwide average 3.7%.

15. California is a state with about 40 million people. The number tested is about 6.7 million, or nearly 17%. California has a lower corresponding infection rate of about 7.6% than the national average. Current deaths for all demographic groups are 19.9 people per 100,000 or less than half the national rate. In California the deaths per infected case averages less than 2.0%.

16. The JHU and CDC data show that between mid-May through late July that as testing was ramped up cases reported and thus infections 100,000 increased proportionally. The CDPH criteria for seeking a variance to open businesses and houses of worship is based on the cases reported at a county level. With high and growing levels of testing this effectively means shuttering businesses and houses of worship.

17. Other states have not implemented what is in effect a statewide ban on religious worship. This is despite the fact that California has not suffered as much as the rest of the nation and other large states. See the following table⁴. Further, since early July confirmed new cases and deaths have stabilized in California based on moving average data.

Politico Summary top five states (July 22, 2020)

	Deaths	Pos Cases	Tests	Population
NY (all)	25,506	407,326	5,164,812	19 million
CA	7,694	391,538	6,414,321	40 million
FL	5,183	360,394	3,052,106	21 million
TX	4,020	332,434	2,984,554	29 million
NJ	15,715	176,963	1,802,874	8.9 million

⁴ Politico data is used because CDC data separate New York and New York City.

1 18. At the end of July, California had less mortality and morbidity relative to
2 its population size compared to national data and the other large states shown except
3 for Texas with respect to deaths relative to population. California's infection rate of
4 positive cases divided by the number of tests using the Politico data is 6.1%.
5 Nationwide there are about 4.17 million positive cases with about 4.86 million cases
6 for an infection rate nationally of 8.6%. California has less than half the national
7 mortality rate and lower infection rates.

8 19. Things are improving in California. On August 9, 2020 the tracking data
9 published in the New York Times shows a 33% drop in cases for the past week
10 compared to the average reported two earlier weeks despite more testing. CDPH data
11 show declining positivity or infection rates, as well as a downward trend in reported
12 deaths.

13 20. While health statistics are improving across the reported metrics, there
14 is no scientific evidence that supports California continuing to restrict religious
15 worship. At the very least, California should begin to ease the ban on the 25% of space
16 occupancy and 100 persons attending religious gatherings. Regardless, easing
17 restrictions is simply a cautious step. In reality, there is insufficient evidence or facts
18 to justify the exceptional decision to continue to shutter houses of worship unless
19 they can take their services outdoors. The use of the number of cases to drive this
20 policy obfuscates matters and yields a flawed statistic and a costly policy choice all
21 things considered.

22 21. California effectively bans houses of worship from reopening because it
23 adopted a nearly impossible to achieve "variance" application process. Virtually
24 every county could pass the hospitalization and critical medical resource availability
25 criteria the CDPH adopted for reopening. However, a relatively constant and now
26 improving infection rate, regardless of having lower infection rates than other states,
27 means that maintaining daily testing levels will yield more cases. Expanding testing as
28 planned in some counties will actually further increase the number of reported cases.

22. Medical treatments are reportedly showing improvements in recovery and reducing the time COVID-19 patients need to be hospitalized and given extensive treatment. This is good news and deaths in California are also stabilizing since early July. Such successes are mostly good news. Nevertheless, they mask some important data that should affect the reasonableness of shuttering houses of worship.

Charles Cicchetti

EXHIBIT 1

Curriculum Vitae



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SUMMARY

Charles J. Cicchetti, Ph.D. is a Managing Director at Berkeley Research Group. Dr. Cicchetti is an economist and former Chair of the Wisconsin Public Service Commission (PSCW). He was a tenured Full Professor of Economics and Environmental Studies at the University of Wisconsin, Madison, Deputy Director of the Energy and Environmental Policy Center at the John F. Kennedy School at Harvard University, and The Miller Chair of Government, Business and the Economy at The University of Southern California (USC). He currently lectures graduate students in the Electricity Engineering Department at the University of Southern California.

He testified extensively and written a number of books and articles on electricity economics. He co-authored *Perspective on Power* and the *Marginal Cost and Pricing of Electricity*, which is widely referenced worldwide. He also authored *Restructuring Electricity Markets*, discusses market economic principles developed for the World Bank, and *The California Electricity Crisis*, that expanded his discussion of electricity market liberalization and things to avoid. His most recent books are *Going Green and Getting Regulation Right* (2009), and *Climate Change and Regulation* (2019).

Dr. Cicchetti has served as an expert advisor in complex litigation and arbitration related to wholesale markets in Canada and the United States. He was the sole author of an *Amicus Curiae Brief for the US Supreme Court* on expanding wholesale markets to include demand-side management. Much of his work throughout his career includes valuing benefits and costs and estimating damages related to environmental preservation and injury and preservation.

EDUCATION

Ph.D., Economics	Rutgers University, 1969
B.A.	Colorado College, 1965
	US Air Force Academy, 1961 to 1964

PRESENT EMPLOYMENT

Managing Director and Member, Berkeley Research Group (BRG) 2017

Adjunct Instructor, Department of Electrical Engineering, USC Viterbi School of Engineering 2016 to present



PREVIOUS ACADEMIC POSITIONS

2009- Present	Instructor in Electric Engineering, University of Southern California
1991-2008	Adjunct Professor, University of Southern California
1998-2006	Jeffrey J. Miller Professor in Government, Business, and the Economy, University of Southern California
1987-1990	Deputy Director, Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University
1979-1986	Tenured Professor of Economics and Environmental Studies, University of Wisconsin-Madison
1974-1979	Associate Professor, Economics and Environmental Studies, University of Wisconsin-Madison
1972-1974	Visiting Associate Professor, Economics and Environmental Studies, University of Wisconsin-Madison
1972	Associate Lecturer, School of Natural Resources of the University of Michigan
1969-1972	Post-Doctoral Research Resources for the Future, Washington, D.C.
1968-1969	Instructor, Rutgers University

PROFESSIONAL AWARDS, RECOGNITION, AND PRIZES

1965 Leo Mohl Award for Best Senior Thesis in Economics, Colorado College
1965 Kaye Prize for Outstanding Student in Economics, Colorado College

EXTERNAL GRANTS

1966 to 1969 US Department of the Interior (DOI), Bureau of Outdoor Recreation, financed PhD Thesis.
1972 to 1975 Environmental Defense Fund (EDF)
1972 to 1975 National Science Foundation and Upper Great Lakes Regional Commission
1973 to 1974 Ford Foundation Energy Policy Project and Public Interest Economic Foundation
1975 to 1977 National Science Foundation and Planning and Conservation Foundation

PROFESSIONAL AFFILIATIONS

PRIOR EDITORIAL BOARDS



Journal of Environmental Economics and Management, Former Member;

Energy Systems and Policy, Former Member

Land Economics, Former Editor

BUSINESS AND NOT-FOR-PROFIT AFFILIATIONS

2013-Present	Co-Founder and Board Member, Sally's Rescue Inc., dog rescue 501 3(c) Foundation
1996-2016	Co-Founder, Pacific Economics Group, a California LLC
2008-2016	Senior Advisor to Navigant Consulting, Inc.
1992-1996	Managing Director, Arthur Andersen Economic Consulting
1991-1992	Co-Chairman, Putnam, Hayes & Bartlett, Inc.
1988-1991	Managing Director, Putnam, Hayes & Bartlett, Inc.
1984-1987	Senior Vice President, National Economic Research Associates
1980-1984	Co-Founder and Partner, Madison Consulting Group
1977-1979	Chairman, Public Service Commission of Wisconsin, Appointed by Governor Patrick J. Lucey (member until 1980)
1975-1976	Director, Wisconsin Energy Office and Special Energy Counselor for Governor Patrick J. Lucey, State of Wisconsin

PUBLICATIONS

BOOKS AND MONOGRAPHS

Climate Change and Regulation: Going Green II. Vienna, Virginia: Public Utilities Report, Inc. 2019.

Amicus Curiae Brief of Charles J. Cicchetti (sole author) before the Supreme Court of the United States related to including Demand Side Bidding in wholesale electricity markets on behalf of Petitioners in *Federal Energy Regulatory Commission v. Elec. Power Supply Association*, 135 S. Ct. 2049 (2015).

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- Going Green and Getting Regulation Right: A Primer for Energy Efficiency*. Vienna, Virginia: Public Utilities Report, Inc. 2009.
- Natural Gas: The Other California Energy Crisis*, Pacific Economics Group Working Paper, with Colin M. Long, February 2007.
- The California Electricity Crisis: What, Why, and What's Next*, with Jeffrey A. Dubin & Colin M. Long, 2004.
- A Tarnished Golden State: Why California Needs a Public/Private Partnership for its Electric Supply System*, with Colin M. Long, August 2003.
- Restructuring Electricity Markets: A World Perspective Post-California and Enron*, with Colin M. Long & Kristina M. Sepetys, 2003.
- Energy Deregulation: The Benefits of Competition Were Undermined by Structural Flaws in the Market, Unsuccessful Oversight, and Uncontrollable Competitive Forces*, 2001.
- Restructuring Electricity Markets: A World Perspective*, with Kristina M. Sepetys, 1996.
- The Economic Consequence of Independent Film Making*, with W.B. Peale, Stefan Boedeker, Jeffrey Dubin & Jeff Truitt, 1995.
- The Application of U.S. Regulatory Techniques to Spain's Electric Power Industry, Energy and Environmental Policy Center, Harvard University*, with Irwin M. Stelzer, March 1988.
- The Economic Theory of Enhanced Natural Gas Service to the Industrial Sector: An Applied Approach*, Vol. II, with L.D. Kirsch, 1982 (prepared for the Gas Research Institute, Contract No. 5080-380-0349)
- The Economic Theory of Enhanced Natural Gas Service to the Industrial Sector: An Applied Approach*, Vol. I, with L.D. Kirsch, 1981 (prepared for the Gas Research Institute, Contract No. 5080-380-0349).
- The Economic Effects of Deregulating Natural Gas*, with R.H. Haveman, M. Lowry, M. Post & R. Schmidt, for the Northeast Coalition for Energy Equity, 1981.
- The Marginal Cost and Pricing of Electricity: An Applied Approach*, with W. Gillen & P. Smolensky, Cambridge: Ballinger Publishing Company, 1977.
- The Costs of Congestion: An Econometric Analysis of Wilderness Recreation*, with V.K. Smith, Cambridge: Ballinger Publishing Company, 1976.
- Energy System Forecasting, Planning and Pricing*, ed. with W. Foell for the National Science Foundation, Madison: University of Wisconsin Monograph, 1975.
- Studies in Electric Utility Regulation*, ed. with J. Jurewitz for the Ford Foundation Energy Policy Project, Cambridge: Ballinger Publishing Company, 1975.
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A Primer for Environmental Preservation: The Economics of Wild Rivers and Other Natural Wonders, New York: MSS Modular Publication, 1973.

Forecasting Recreation in the United States: An Economic Review of Methods and Applications to Plan for the Required Environmental Resources, Lexington: Lexington Books, June 1973.

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The Demand and Supply of Outdoor Recreation: An Econometric Analysis, Ph.D. Thesis: Rutgers University, 1969. Also, with J.J. Seneca & P. Davidson, Washington, D.C.: U.S. Department of Interior, Bureau of Outdoor Recreation, Contract No. 7-14-07-4, 1969.

The Impact of Mine Drainage on Recreation (Appendix E, Appalachian Regional Commission, 1969). Consultant to Robert R. Nathan Associates, State of New York: an analysis recreation participation to develop the recreational attributes of Finger Lakes (1969). (Assisted John Carson of RRNA.)

Visitor Industry and Hawaii's Economy: A Benefit Cost Analysis, MATHEMATICA, Inc., Princeton, NJ 1969. Consultant to Mathematica Inc. (Princeton, NJ) assisted William Baumol to estimate an econometric model for the visitor industry in Hawaii to design state tax and tourist policy.

The Demand for Water Oriented Recreation, assisted Paul Davidson and Joseph Seneca of the Wharton School of Finance, RFF Mimeo, 1967.

A Neo Keynesian Equilibrium Analysis For an Open Economy, A.B. Thesis, Colorado College, Colorado, Springs, Colorado, May 1965.

ARTICLES

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"Residential Demand Charges: A Bad Choice," *Public Utilities Fortnightly*, December 2016.

"Response to Brown Re: Net Metering," *Public Utilities Fortnightly*, April 2016.

"Order 745: Challenges Plain Old Electricity Markets," *Public Utilities Fortnightly*, April 2016.

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- “Measuring the Effects of Natural Resource Damage and Environmental Stigma on Property Value,” *Environmental Law*, September/October 1995.
- “The Route Not Taken: The Decision to Build the Trans-Alaska Pipeline and the Aftermath,” *The American Enterprise*, Vol. 4, No. 5, September/October 1993.
- “A Micro-Econometric Analysis of Risk-Aversion and the Decision to Self-Insure,” with Jeffrey Dubin, *Journal of Political Economy*, Revised, July 1993. (Vol. 102, No. 1, February 1994.)
- “Energy Utilities, Conservation, Efficiency,” with Vinayak Bhattacharjee & William Rankin, *Contemporary Policy Issues*, Vol. XI, No. 1, January 1993.
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- “The Use and Misuse of Surveys in Economic Analysis: Natural Resource Damage Assessment Under CERCLA,” with Jeffrey Dubin & Louis Wilde, *California Institute of Technology*, July 1991.
- “The Federal Energy Regulatory Commission’s Proposed Policy Statement on Gas Inventory Charges (PL-89-1-1000),” *Energy and Environmental Policy Center*, Harvard University, Discussion Paper E-89-11, July 1989.
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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:20-cv-865-BAS

**Declaration of Sean G.
 Kaufmann in Support of
 Plaintiffs' Renewed Motion for a
 Temporary Restraining Order /
 Preliminary Injunction**

Judge: Hon. Cynthia Bashant

1 I, Sean G. Kaufman, declare and state as follows:

2 1. I am a certified public health professional (CPH), behaviorist, health
3 education and infectious disease specialist, with particular expertise in both
4 behavioral-based training and infectious disease risk mitigation in clinical, laboratory
5 and other public health settings. I make this declaration of personal, firsthand
6 knowledge, and if called and sworn as a witness could and would testify competently
7 thereto.

8 2. I received my Bachelor of Arts and Sciences in Psychology in 1996 from
9 San Diego State University in San Diego, California. In 1999, I received my Master in
10 Public Health in Health and Human Behavior, also from San Diego State University
11 in San Diego California.

12 3. From 1997 to 1999, I was employed as a Project Manager and Health
13 Education Specialist at San Diego State University in San Diego, California, serving
14 in the Student Health Services Office of Health Promotion. In that role, I provided
15 training programs, counseling and patient services for a variety of health issues.

16 4. From 1999 through 2006, I worked for the Centers for Disease Control
17 and Prevention ("CDC") in Atlanta, Georgia, serving during my tenure in CDC's
18 National Center for HIV, AIDS and Tuberculosis, CDC's National Center for
19 Infectious Diseases, CDC's Office of Terrorism and Emergency Response and the
20 Office of the Director of the CDC. While with the CDC, I assisted with the CDC's
21 response to HIV, the 9/11 and 2001 anthrax attacks, the West Nile Virus, SARS and
22 monkeypox. I received a Distinguished Service Award from the United States
23 Department of Health and Human Services in 2002 for outstanding contributions
24 and public health activities in response to the 9/11 and subsequent anthrax attacks. I
25 also received a Distinguished Service Award from the United States Department of
26 Health and Human Services in 2003 for outstanding contributions and public health
27 activities in response to the 2003 SARS outbreak.

1 5. From 2004 through 2014, I served as Senior Associate and Director of
2 the Science and Safety Training Program in the Rollins School of Public Health at
3 Emory University in Atlanta, Georgia. During my association with Emory University,
4 I developed and directed the Biosafety Laboratory 3 (“BSL3”) and BSL4 Science and
5 Safety Training Program along with the ONSITE program, all of which programs
6 trained individuals both domestically and internationally to work safely in and
7 support high-containment laboratories equipped to handle the most infectious and
8 dangerous biological agents in the world. While associated with Emory University, I
9 trained and managed those who clinically treated the first two Ebola patients in the
10 United States working at the Emory University Isolation Unit during the 2014 Ebola
11 outbreak.

12 6. From 2011 through the present, I have served as the Founding Partner,
13 President and Chief Executive Officer of Safer Behaviors (USA), where I serve as an
14 expert consultant in behavioral-based training around infectious diseases in clinical
15 and laboratory settings. In that role, I develop, manage, implement, and deliver a
16 wide range of services for people working with and around infectious diseases,
17 including those in laboratories, healthcare settings, and high-containment work
18 environments, Applied Laboratory Emergency Response Training (ALERT)
19 Programs for first responders, Personal Protective Equipment (“PPE”) Training
20 Programs, Emergency Communication Leadership Programs, and Biological Risk
21 Mitigation Training for those serving on the frontline of emerging infectious diseases.

22 7. Since 2014, I have provided Advanced Biological Risk Mitigation
23 Training Programs with the American Society for Microbiology (ASM), National
24 Institutes of Health (NIH), Fogarty International Center, CRDF Global throughout
25 Pakistan, Egypt and Malaysia. I have consulted for the World Health Organization
26 (WHO) and developed its Shipping of Infectious Substances Training and its
27 Identification of Polio Samples for Eradication Efforts. In 2015, I received the John
28 H. Richardson Special Recognition Award from the American Biological Safety

1 Association, recognizing outstanding contributions that have enhanced ABSA and
2 the profession of biological safety.

3 8. My publications include the following: (a) *Anthrax in New Jersey: A*
4 *Health Education Experience in Bioterrorism Response and Preparedness*, HEALTH
5 PROMOT. PRACT. 6:430-36 (2005); (b) *Biosafety Behavioral Based Training for High*
6 *Biocontainment Laboratories: Bringing Theory into Practice for Biosafety Training*,
7 APPLIED BIOSAFETY J. 12:3 (2007); (c) *Review of the Emory University Applied*
8 *Laboratory Emergency Response Training (ALERT) Program*, APPLIED BIOSAFETY J.
9 14:1 (2009); (c) *Surviving Biosafety: Coping with Occupational Stressors of Serving the*
10 *Profession*, APPLIED BIOSAFETY J. 17:4 (2012); (d) *Chapter12: Strategies for*
11 *Communicating with the General Public About High-Containment Laboratories*, ANTH.
12 OF BIOSAFETY XIII, AM. BIOLOGICAL SAFETY ASSOCIATION (2012); (e) *Viral*
13 *Hemorrhagic Fevers: Chapter 9 – BSL4 Workforce Preparedness in Hemorrhagic Fever*
14 *Outbreaks*, TAYLOR & FRANCIS (2013); (f) *Bioerror and Safety Culture: The Leadership*
15 *Commitment to the Preparedness, Protection and Promotion of Scientists*, CULTURE: A
16 PUBLICATION OF THE AMERICAN SOCIETY FOR MICROBIOLOGY (2014); (g) *Biological*
17 *Safety Principles and Practices: Chapter 28 – A One-Safe Approach. Continuous Safety*
18 *Training Initiatives*, ASM PRESS (2017); and (h) *Prepare and Protect: Safer Behaviors in*
19 *Laboratories and Clinical Containment Settings*, ASM & WILEY PRESS (2020).

20 9. I am an International Federation of Biosafety Professionals Certified
21 Professional in Biorisk Management, am certified as an MBTI Certified Provider by
22 GS Consultants, hold a Certification in Public Health provided by the National Board
23 of Public Health Examiners and have been accredited as a Certified Health Education
24 Specialist by the National Commission for Health Education Credentialing.

25 10. In or about November 2019, while directing a Leadership Program in
26 Biological Risk Mitigation in Islamabad, Pakistan, I first became aware of an outbreak
27 of what was ultimately determined to be a novel coronavirus, SARS COV-2, in
28 Wuhan, China, that the world has since come to commonly refer to as COVID-19.

1 11. Over the ensuing months, as part of my biosafety work and regular
2 professional development, I have engaged in a thorough review of WHO and CDC
3 data and the reams of international and domestic scientific data that have been
4 published regarding COVID-19 in *The Lancet*, *Dispatch*, *The New England Journal of*
5 *Medicine*, *JAMA*, *Clinical Infectious Diseases* and other publications, as well as the
6 outcomes of prevailing international and domestic and international biosafety
7 protocols associated with COVID-19. I have also facilitated multiple trainings,
8 discussions, and assisted organizations with strategies minimizing risks to health and
9 safety specific to COVID-19.

10 12. Through that process, I have become readily familiar with COVID-19's
11 droplet (micro and macro) and surface transmission, the risks and likelihood of
12 symptomatic and pre-symptomatic transmission, reproduction rates, signs,
13 symptoms, mortality, risks and other infectious disease characteristics of COVID-19
14 across the population – including in both children and adults, as well as those with co-
15 morbidities. I have put that ongoing review, as well as my education and twenty-five
16 years of public health experience, to use in implementing and evaluating COVID-19
17 public health and safety protocols, including with respect to public health expertise I
18 am currently providing to, among others, large-scale venues and film and television
19 productions on safe operating procedures and protocols.

20 13. I understand that the State of California currently claims that there is no
21 way, consistent with science and public health, for houses of worship located within
22 any county that is either on or any less than 14 days removed from the State of
23 California's COVID-19 "monitoring list" – the precise criteria for which
24 "monitoring list" are opaque but appear to require some combination of what the
25 state deems to be a COVID-19 "surge" in infections or hospitalizations, what the
26 state deems to be "stretched" ICU bed or ventilator capacity, or what the state
27 deems to be "insufficient" COVID-19 testing – to open their doors to in-person
28 worship and to do so safely. As such, I understand that the default position of the

1 State of California is that the science of public health dictates that no church,
2 mosque, synagogue, or other house of worship located in California counties on the
3 “monitoring list” can open for in-person instruction at all.

4 14. Despite the state’s claim, there is no rational and legitimate scientific or
5 public health basis supporting the sweeping breadth and scope of the State of
6 California’s above-described closure mandate. Rather, given the real and significant
7 public health and other harms—including especially psychological harms—known to
8 be associated with restricting religious freedom, such unprecedented restriction
9 should only ever be properly wielded as a disease control mechanism when the risks
10 are far greater; when such closures are far more targeted – often at the individual
11 church level; and far more limited in time. None of these criteria are met by the State
12 of California’s closure mandate.

13 15. With respect to risks, everything that we know as public health and
14 infectious disease professionals about the likelihood of symptomatic and
15 presymptomatic transmission, reproduction rates, signs, symptoms, mortality, risks
16 and other infectious disease characteristics of COVID-19 both domestically and
17 internationally does not rationally comport with what I understand the state is
18 claiming to be true in attempting to justify its mandate. Indeed, commonly utilized
19 Susceptible, Infectious, and Recovered – or “SIR” – disease transmission modeling
20 associated with COVID-19, together with WHO and CDC public health metrics,
21 suggest that California’s mandate is likely to make the overall public health situation
22 worse and not better by, *inter alia*, enlarging the population of susceptible individuals.

23 16. With respect to targeting, the sweeping nature of the State of
24 California’s closure mandate shows that it is not rationally targeted as an infectious
25 disease control mechanism. There is no public health reason that a house of worship
26 in an unaffected portion of a California county must be prohibited from operating
27 because of an outbreak in an affected portion of a California county. Moreover, it is
28 simply not true for the State of California to claim that there is no way to safely

1 operate as a house of worship in a county that meets the state's criteria for placement
2 on its "monitoring list." While nothing is ever free from any risk, the data shows that
3 any house of worship in any California county that (1) removes from the in-person
4 church environment for between 5-7 days any individual that (i) reports having been
5 in contact with a person who is COVID-19 positive; or (ii) has exhibited COVID-19
6 symptoms; (2) engages in temperature screening of all attendees, staff and visitors at
7 points of entry, denying such entry to anyone who has a fever; (3) quickly and
8 aggressively tests, isolates and contact traces any child or staff member presenting
9 with COVID-19 symptoms; and (4) teaches, enforces and engages in frequent
10 handwashing, sanitization and decontamination of high travel points within the
11 church environment, may be said to meet commonly accepted public health
12 definitions of safe operating that minimize risks. From a public health and infectious
13 disease control perspective, all of these features are both feasible and sustainable at
14 minimum cost.

15 17. And with respect to being limited in time, the State of California's
16 church closure mandate is not properly time-limited as a matter of public health and
17 infectious disease control. To the extent the State of California may expect a vaccine
18 at some point in the future, it should be noted that a vaccine has never been
19 developed for a coronavirus like COVID-19. And even if developed and sufficiently
20 adopted, any COVID-19 vaccine is likely to be similar to influenza vaccines that have
21 been shown to quickly lose effectiveness. The latest COVID-19 data shows that the
22 disease is not likely to ever be eradicated.

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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:20-cv-865-BAS

**Declaration of James Lyons-
 Weiler in Support of Plaintiffs'
 Renewed Motion for a
 Temporary Restraining Order /
 Preliminary Injunction**

Judge: Hon. Cynthia Bashant

1 I, James Lyons-Weiler, declare as follows:

2 1. My name is James Lyons-Weiler. I am a resident of Allison Park,
3 Pennsylvania; I am over 18 years-old; and I am otherwise competent to make this
4 declaration.

5 **PROFESSIONAL BACKGROUND**

6 2. I am currently CEO and Director of The Institute for Pure and Applied
7 Knowledge in Pittsburgh, PA, a registered not-for-profit organization that conducts
8 biomedical research in the public interest. I was formerly Senior Research Scientist at
9 the University of Pittsburgh, where I served as the Scientific Director of the University
10 of Pittsburgh's Bioinformatics Analysis Core. Prior to that, I had been faculty in the
11 Departments of Pathology and Biomedical Informatics, where I conducted grant-
12 funded research, taught courses and advised graduate students and medical and post-
13 doctoral fellows. I have over 54 peer-reviewed publications and have served as
14 Associate Editor and Editor-in-Chief on two journals. I currently serve as the
15 Founding Editor-in-Chief of the journal *Science, Public Health Policy & the Law*. I
16 append a biosketch (a form a curriculum vitae) should it be helpful to the Court. I
17 have no stake in the current case, as I am not involved in and do not profit from
18 vaccine manufacture as a non-worshipping Scientist I hope to bring objectivity to the
19 considerations being deliberated.

20 3. Plaintiffs contacted me and asked if I would be willing to offer my expert
21 opinion about the risks associated with in-person worship services with social
22 distancing. Children are at very low risk of serious or critical illness and death from
23 SARS-CoV-2 infection, and they do not pose a severe risk of transmission to adults.

24 4. The CDC estimate of the population-wide death rate of COVID-19 is
25 0.26%.¹ However, the vast majority of this risk is in the elderly and in people whose
26

27 ¹ USA Today, <https://www.usatoday.com/story/news/factcheck/2020/06/05/fact-check-cdc-estimates-covid-19-death-rate-0-26/5269331002/>
28

1 overall health has been significantly deteriorated prior to infection (e.g., individuals
2 with pre-existing chronic pulmonary illness, whose death rate is 6.3%, cardiovascular
3 illness (10.5%), high blood pressure (6%), adults with diabetes (7.3%), and cancer
4 (5.6%).²

5 5. However, these frightening rates—which are from the earliest reports in
6 the outbreak, from Wuhan City in Hubei Province, China—are massively inflated
7 because they are only symptomatic case fatality rates, not infection case fatality rates.
8 After the peak infection wave subsided in China, scientists there estimated that as
9 many as 85% of COVID-19 cases were undetected.³

10 6. Even the attribution of death to COVID-19 is still in question, and it is
11 unlikely that we will be able to determine an accurate count of those who “died
12 from” the infection, as opposed to “died with” the infection. In Italy, 99% of deaths
13 have had a significant comorbid condition.⁴ Also, late-stage treatment of patients
14 critically ill with COVID-19 initially involved ventilator use, which may have
15 exacerbated the mortality rate. It has been observed that high-pressure “per
16 protocol” use of ventilators in COVID-19 patients with severe infections, showing
17 inflammation to the periphery of the alveoli, may cause further tissue damage to the
18 patients’ already inflamed and thinned-out lung epithelial layers.^{5,6}

19 7. The original overall death rate estimate from COVID-19 – 3% - and the
20 percentage of overall deaths attributed to COVID-19 – would appear to be a cause of
21 concern worthy of drastic measures designed to reduce community transmission. We

22 ² [https://markets.businessinsider.com/news/stocks/coronavirus-age-differences-millennials-](https://markets.businessinsider.com/news/stocks/coronavirus-age-differences-millennials-parents-health-social-distancing-2020-3-1029000036)
23 [parents-health-social-distancing-2020-3-1029000036](https://markets.businessinsider.com/news/stocks/coronavirus-age-differences-millennials-parents-health-social-distancing-2020-3-1029000036)

24 ³ <https://www.medpagetoday.com/infectiousdisease/covid19/85448>

25 ⁴ [https://www.bloomberg.com/news/articles/2020-03-18/99-of-those-who-died-from-virus-had-](https://www.bloomberg.com/news/articles/2020-03-18/99-of-those-who-died-from-virus-had-other-illness-italy-says)
26 [other-illness-italy-says](https://www.bloomberg.com/news/articles/2020-03-18/99-of-those-who-died-from-virus-had-other-illness-italy-says)

27 ⁵ <https://time.com/5820556/ventilators-covid-19/>

28 ⁶ [https://www.wsj.com/articles/some-doctors-pull-back-on-using-ventilators-to-treat-covid-19-](https://www.wsj.com/articles/some-doctors-pull-back-on-using-ventilators-to-treat-covid-19-11589103001)
[11589103001](https://www.wsj.com/articles/some-doctors-pull-back-on-using-ventilators-to-treat-covid-19-11589103001)

1 now know the Infection Case Fatality Rate is about 0.26% (compared to CDC's
2 "influenza" death rate of 0.1%). There is, however, new information revealing
3 serious problems with the rates of diagnosis and the rates of attribution of deaths
4 attributed to COVID-19 – all of which likely caused a per capita diagnosis and death
5 rate overestimation.

6 PROBLEMS WITH RATES OF DIAGNOSIS

7 8. The use of mass screening of populations using the Reverse
8 Transcriptase Polymerase Chain Reaction (RT-PCR), such as the test used by the
9 Centers for Disease Control, is problematic. This test serves as the gold-standard
10 against which other RT-PCR tests are validated. Unfortunately, US CDC's test
11 appears to be inaccurate. Dr. Sin Hang Lee (Milford, CT) determined the nucleotide
12 sequence of the PCR product of a test designed to detect RT-PCR. To evaluate the
13 test, he requested and received clinical samples from patients whose diagnosis had
14 been confirmed by CDC's PCR test. These samples included "CDC-test-positive"
15 and "CDC-test-negative" samples. His experiments showed that the SARS-CoV-2
16 virus PCR products from the two sample sets did not match their labels; some of the
17 "CDC-test-negative" samples could yield amplified PCR product that matched the
18 target sequence of the SARS-CoV-2 genome. He also found that some of the "CDC-
19 test-positive" samples did NOT contain SARS-CoV-2 nucleotide sequence. His
20 experiments included positive and negative controls, and the sequence from the
21 "CDC-test-negative" samples actually matched a new mutation strain of SARS-
22 CoV-2 isolated from NYC. (See *Businesswire*: "CDC Coronavirus Test Kits Generate
23 False Positive and 20% False Negative Results - Connecticut Pathologist's Newly Published
24 Findings Confirm.")⁷ I append Dr. Lee's peer-reviewed publication "Testing for

25
26
27 ⁷ <https://www.businesswire.com/news/home/20200717005397/en/CDC-Coronavirus-Test-Kits-Generate-30-False>
28

1 *SARS-CoV-2 in cellular components by routine nested RT-PCR followed by DNA*
 2 *sequencing*” published July 17, 2020.⁸

3 9. This means that both the rate of diagnosis and the rate of deaths
 4 attributed to COVID-19 are both now in serious question.

5 **PROBLEMS WITH ATTRIBUTION OF CAUSE OF DEATH**
 6 **(DIED WITH VS. DIED FROM)**

7 10. Different states have been counting and reporting COVID-19 deaths
 8 differently. On April 16, 2020, *The Washington Post* reported that in Alabama,
 9 officials had “ruled that one of every 10 people who died with Covid-19 did not die of
 10 Covid-19,” contrasting the practice in Colorado, which was counting all deaths
 11 involving respiratory complications without any type of molecular diagnostic test.⁹

12 11. On April 8, 2020, Dr. Deborah Birx announced that the CDC was
 13 classifying all deaths of patients who die with coronavirus as “COVID-19 deaths”
 14 regardless of cause.¹⁰

15 12. On May 27, 2020, *National Geographic* reported that “Regardless of
 16 whether a death is due to a car crash or COVID-19, the process remains largely the same”
 17 when reporting COVID-19 deaths, citing the CDC’s policy that also includes using
 18 symptom-only diagnosis of COVID-19.¹¹

19
 20
 21
 22 ⁸ [http://www.int-soc-clin-geriat.com/info/wp-content/uploads/2020/03/Dr.-Lees-paper-on-](http://www.int-soc-clin-geriat.com/info/wp-content/uploads/2020/03/Dr.-Lees-paper-on-testing-for-SARS-CoV-2.pdf)
 23 [testing-for-SARS-CoV-2.pdf](http://www.int-soc-clin-geriat.com/info/wp-content/uploads/2020/03/Dr.-Lees-paper-on-testing-for-SARS-CoV-2.pdf)

24 ⁹ [https://www.washingtonpost.com/investigations/which-deaths-count-toward-the-covid-19-](https://www.washingtonpost.com/investigations/which-deaths-count-toward-the-covid-19-death-toll-it-depends-on-the-state/2020/04/16/bca84ae0-7991-11ea-a130-df573469f094_story.html)
 25 [death-toll-it-depends-on-the-state/2020/04/16/bca84ae0-7991-11ea-a130-](https://www.washingtonpost.com/investigations/which-deaths-count-toward-the-covid-19-death-toll-it-depends-on-the-state/2020/04/16/bca84ae0-7991-11ea-a130-df573469f094_story.html)
 26 [df573469f094_story.html](https://www.washingtonpost.com/investigations/which-deaths-count-toward-the-covid-19-death-toll-it-depends-on-the-state/2020/04/16/bca84ae0-7991-11ea-a130-df573469f094_story.html)

26 ¹⁰ [https://www.foxnews.com/politics/birx-says-government-is-classifying-all-deaths-of-patients-](https://www.foxnews.com/politics/birx-says-government-is-classifying-all-deaths-of-patients-with-coronavirus-as-covid-19-deaths-regardless-of-cause)
 27 [with-coronavirus-as-covid-19-deaths-regardless-of-cause](https://www.foxnews.com/politics/birx-says-government-is-classifying-all-deaths-of-patients-with-coronavirus-as-covid-19-deaths-regardless-of-cause)

27 ¹¹ [https://www.nationalgeographic.com/science/2020/05/what-we-need-to-find-true-coronavirus-](https://www.nationalgeographic.com/science/2020/05/what-we-need-to-find-true-coronavirus-death-toll/#close)
 28 [death-toll/#close](https://www.nationalgeographic.com/science/2020/05/what-we-need-to-find-true-coronavirus-death-toll/#close)

1 13. On May 15, 2020, *The Washington Examiner* reported that a San Diego
2 County supervisor reported that only six of 194 “confirmed” COVID-19 deaths to
3 date at that time were “pure, solely coronavirus deaths.”¹²

4 14. On July 16, 2020, FOX 35 Orlando reported that the Florida
5 Department of Health had confirmed that it had counted a death of a victim of a
6 motorcycle accident as a COVID-19 death.¹³

7 15. On March 18, 2020, *Bloomberg* reported that 99% of people who died
8 from the SARS-CoV-2 virus in Italy had other illnesses.¹⁴

9 16. Verified reports of individuals being sent positive test responses but
10 having never been tested exist;¹⁵ most these are individuals in queue for testing who
11 leave the queue, leading to incorrectly paired test results for themselves and everyone
12 in queue following them.

13 17. The complications of testing accuracy on top of the lack of consistent
14 diagnosis and attribution of death makes assessment of the actual risk of death due to
15 coronavirus difficult if not impossible.

16 18. In May, 2020, a *Medpage* article proposed that excess deaths would
17 provide an accurate estimate,¹⁶ but we now know that deaths due to non-specific
18 effects of society’s response to COVID-19 outnumber the deaths that might be due to
19 COVID-19: deaths from suicides due to job loss and social isolation and deaths from
20 lack of access to healthcare.

21
22 ¹² <https://www.washingtonexaminer.com/news/san-diego-county-supervisor-says-six-of-194-confirmed-deaths-are-pure-solely-coronavirus-deaths>

23 ¹³ <https://www.fox35orlando.com/news/fox-35-investigates-questions-raised-after-fatal-motorcycle-crash-listed-as-covid-19-death>

24 ¹⁴ <https://www.bloomberg.com/news/articles/2020-03-18/99-of-those-who-died-from-virus-had-other-illness-italy-says>

25 ¹⁵ <https://www.mysuncoast.com/2020/07/19/concerns-arise-some-receive-positive-covid-results-never-got-tested/>

26 ¹⁶ <https://www.medpagetoday.com/blogs/working-stiff/85925>

19. It is now understood that deaths in the US and elsewhere from COVID-19 are restricted to individuals that have potential indicators of expected severity. The medical literature of factors that place individuals at risk of serious illness and mortality from COVID-19 include an altered immune system (specifically Th2-skewed immunity vs. Th1/Th2 balanced immunity).¹⁷ Patients who progress to serious COVID-19 in need of critical care undergo a type of inflammatory response known as a cytokine storm, involving cytokines IL-1 β , TNF- α and IL-6.

20. Clinical care does not yet make use of an assay to determine patients' Th2/Th1 balance, but a combined risk model that includes comorbidity, age and Th2/Th1 cell counts could be useful in predicting the clinical course of SARS-CoV-2 infections, reducing mortality and streamlining resource allocation. This means we can expect dramatically improved clinical care of COVID-19 patients and lower serious illness and death as effective and tailored treatments come online.

CURRENT CASE FATALITY RATES AND INFECTION CASE FATALITY RATES ARE DROPPING

21. Although immunity to SARS-CoV-2 following infection was originally in doubt due to waning presence of antibodies in people previously infected,¹⁸ this concern is likely overblown; long-term immunity of COVID-19 is now suspected to involve memory B-cell and T-cell immunity, like other viruses. The very best resource available on this complex issue of antibody vs. T- and B-cell immunity for the layperson is the July 20th, 2020 article in *The Atlantic* by Mr. Derek Thompson.¹⁹ In short, the fear over re-infection is false, anecdote-based and rejected by the absences of millions of repeat diagnoses of COVID-19 among those previously

¹⁷ <https://www.biocentury.com/article/304604/how-covid-19-vaccine-developers-can-lower-the-risk-of-being-derailed-by-antibody-dependent-enhancement>

¹⁸ <https://www.reuters.com/article/us-health-coronavirus-antibodies-vaccine-idUSKCN24F261>

¹⁹ <https://www.theatlantic.com/ideas/archive/2020/07/could-covid-19-immunity-really-disappear-months/614377/>

1 infected.²⁰ Due to a surge in testing, more asymptomatic COVID-19 “cases” are
 2 being detected. Cross-protection from prior exposure to coronaviruses, including the
 3 common cold, is now highly suspected to already have conferred immunity from
 4 COVID-19 symptomatic disease. The cross-protection may be so effective that in the
 5 UK, herd immunity may already have been achieved.²¹ Herd immunity is general
 6 immunity in the population achieved when a sufficient number of individuals are
 7 immune, either through natural infection or via vaccination to cause viral
 8 transmission to end. One estimate from the UK is that only 10% infection in a
 9 population might provide herd immunity due to such high prior cross-protection due
 10 to exposure to other coronaviruses.¹⁸ Eventually, with or without a vaccine, the
 11 population will achieve herd immunity, and during that process, the vulnerable –
 12 those with comorbid conditions, those with Th2-skewed immunity, and the elderly,
 13 should be cautious about exposure and become educated and ask their doctors for
 14 recently reported, safer, potentially highly effective treatment options.^{22,23,24}

15 22. The only elevated risks to healthy adults appear to be a hypothetical
 16 possibility of increased risk of miscarriage if a woman is pregnant and becomes
 17 infected with SARS-CoV-2, and a potential increased risk of hospitalization relative
 18 to the full population if pregnant.²⁵ However, CDC has supported (without FDA
 19 approval) the use of both the influenza vaccine and the Tdap vaccine during
 20 pregnancy. A study has found that military personnel who received the flu vaccine
 21

22 _____
 23 ²⁰ <https://www.sciencedirect.com/science/article/pii/S1521661620305106>

24 ²¹ <https://www.dailymail.co.uk/news/article-8532935/Britain-herd-immunity-against-coronavirus.html>

25 ²² <https://academic.oup.com/jid/article/191/12/2033/839720>

26 ²³ <https://www.mediterranean-infection.com/wp-content/uploads/2020/03/COVID-IHU-2-1.pdf>

27 ²⁴ <https://www.publichealthpolicyjournal.com/clinical-and-translational-research>

28 ²⁵ <https://www.cnn.com/2020/06/25/health/coronavirus-pregnant-risks-cdc-study/index.html>

1 had 36 percent increased risk for coronavirus.²⁶ Other studies support the conclusion
 2 of increased risk of viral infections, especially respiratory viral infections – following
 3 the influenza shot.^{27,28,29} According to the chief medical officer for England, people in
 4 the UK who have received the influenza vaccine for this flu season were cautioned to
 5 self-isolate for 12 weeks because they fall into the government’s “high risk” category
 6 for acquiring a SARS-CoV-2 infection.³⁰ This “disease enhancement” from a
 7 vaccine is known as “pathogenic priming”³¹ which is expected to occur with
 8 vaccination against SARS-CoV-2 coronavirus due to its occurrence in animal trials of
 9 vaccines against SARS-CoV-1 and MERS (Middle Eastern Respiratory Syndrome
 10 Virus). This may occur in part due to antibody dependent enhancement. It has
 11 inaccurately been referenced as “immune enhancement.”

12 23. Contrary to the representation of risk in the mainstream media, there is
 13 minimal risk to adults and children attending worship services due to Coronavirus.
 14 Women receiving vaccinations during pregnancy may be at higher risk to
 15 complications if they are vaccinated and become infected with SARS-CoV-2, but this
 16 is only a hypothetical risk unsupported by data.

17 THE SWEDEN MODEL

18 24. For some time, the world has had their eye on Sweden, which never
 19 used “lock-down” as a tool to fight SARS-CoV-2. Instead, they created special
 20 protections for those at highest risk of death and serious illness – the elderly, people
 21 with diabetes, and people with cardiovascular disease. Schools and churches

22 _____
 23 ²⁶ <https://www.sciencedirect.com/science/article/pii/S0264410X19313647?via%3Dihub>

24 ²⁷ <https://www.sciencedirect.com/science/article/pii/S0264410X18303153>

25 ²⁸ <https://insights.ovid.com/pediatric-infectious-disease/pidj/2011/02/000/vaccine-effectiveness-against-laboratory-confirmed/4/00006454>

26 ²⁹ <https://academic.oup.com/cid/article/54/12/1778/455098>

27 ³⁰ <https://www.mirror.co.uk/news/uk-news/coronavirus-top-medic-warns-anyone-21708701>

28 ³¹ <https://www.sciencedirect.com/science/article/pii/S2589909020300186?via%3Dihub>

1 remained open, allowing the virus to spread throughout the population, conferring
 2 immunity to those who acquired the infection. Countries (like ours) that did employ
 3 lock-down are now experiencing a “second surge.” Part of the surge in cases is due to
 4 more aggressive testing, and it is known that Sweden’s increase in cases in June
 5 coincided with more aggressive testing. While cases in Sweden are not zero, they are
 6 not experiencing any increase in COVID-19 deaths.

7 25. *US News and World Report* outlined on July 7, 2020 that how, after a
 8 false “surge” in cases due to increased testing in June 2020, during which the
 9 number of deaths due to COVID-19 continued to fall, the Swedes reported the lowest
 10 daily new case report since May.³²

11 26. *Euromomo* reports that this, the 32nd week of 2020 (first week of
 12 August), Sweden has no excess deaths – this achieved without a lock-down.³³

13 27. Initially, Sweden did limit gatherings in churches to 20 people at a time,
 14 but *America Magazine* cites “voluntary social distancing, appropriate hygiene and
 15 self-isolation by members of high-risk groups” as the secret to their success.³⁴
 16 Sweden’s R_0 , the basic reproduction number, has been <1 for over a month, meaning
 17 they are benefiting from herd immunity without a vaccine- and without draconian
 18 physical isolation measures.

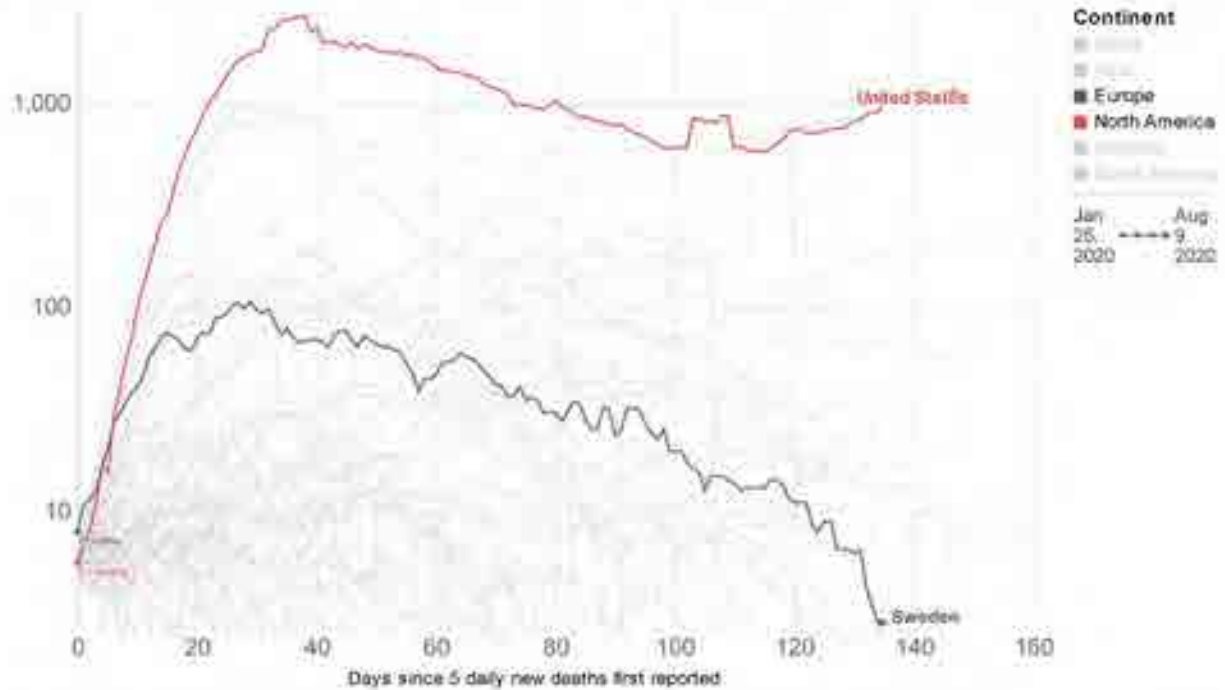
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 25 ³² <https://www.usnews.com/news/world/articles/2020-07-07/swedens-daily-tally-of-new-covid-19-cases-falls-to-lowest-since-may>

26 ³³ <https://www.euromomo.eu/graphs-and-maps>

27 ³⁴ <https://www.americamagazine.org/politics-society/2020/05/25/how-parish-sweden-responds-coronavirus-it-will-all-work-out>
 28

Daily new confirmed COVID-19 deaths

Shown is the rolling 7-day average. Limited testing and challenges in the attribution of the cause of death means that the number of confirmed deaths may not be an accurate count of the true number of deaths from COVID-19.



Source: European CDC – Situation Update Worldwide – Last updated 9 August, 10:33 (London time), Our World in Data.

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Figure 1. Comparison of numbers of deaths with United States and Sweden highlighted. Note the log scale and absolute numbers. Data Source: Our World in Data.

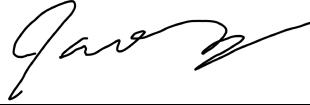
28. In the US, numerous nodes of transmission have been attributed to in-person church services, however, not all have been confirmed via contact tracing. The transmission of the virus in a church service can be minimized by appropriate social distancing, as is done in restaurants, and modifications to church services like mass via preparation of individual servings of ingested sacrament. More importantly, those at high risk of serious illness or death from COVID-19 should be protected via appropriate actions taken at the level of the individual citizen, who should know whether they have likely been exposed to SARS-CoV-2 as the population moves toward herd immunity via community transmission. It is worth keeping in mind that medical procedures, not COVID-19, were likely the cause of the majority of deaths

29. The increase in cases in the US are not as large of a concern as they were in the beginning of the pandemic. With an infection case fatality rate estimated by independent means and by CDC at 0.26% that is falling fast, COVID-19 is not the monster we initially thought it was. The overall case fatality rate was overestimated by an order of magnitude due to insufficient testing. We now know that many people have immunity to COVID-19 due to prior exposure to other coronaviruses; this immunity is so valuable that the US government is spending billions of dollars in a bid to create a vaccine for COVID-19, a venture fraught with its own slate of serious problems, not the least of which is the high likelihood of pathogenic priming (disease enhancement) caused by secondary exposure to viral proteins following vaccination.

30. Given that herd immunity seems the most likely outcome ending the transmission of the virus, and that other segments of society are allowed to assemble (protestors, shoppers, diners, etc.) the special, undue and ineffectual burden placed upon religious members of society who would otherwise be free to worship as they see fit, the harm visited upon the co-worshipping citizens of California exceeds those required of other identifiable categories of people. This arbitrary and limited physical isolation would seem to merely delay the biological inevitability.

1 spite of the cost of the investment in COVID-19 vaccines that any will be both
2 sufficiently effective and sufficiently safe to act as a proxy for the otherwise inevitable
3 herd immunity that need not come at the significant cost of human life given
4 treatment protocols that are proving far more effective than earlier deadly medical
5 protocols. A rational response to COVID-19 will not dismantle the foundations of
6 freedom we have inherited intact from prior generations, which includes the rights to
7 peaceable assemble, freedoms of expression, and the freedom of religion.

8 I declare until penalty of perjury under the laws of the United States and the
9 State of California that the foregoing is true and correct. Executed on August 10,
10 2020.



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12 James Lyons-Weiler
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EXHIBIT 1

Program Director/Principal Investigator (Last, First, Middle): Lyons-Weiler, James

BIOGRAPHICAL SKETCH

Provide the following information for the Senior/key personnel and other significant contributors in the order listed on Form Page 2.
Follow this format for each person. **DO NOT EXCEED FOUR PAGES.**

NAME James Lyons-Weiler	POSITION TITLE CEO/President/Director/Scientist Institute for Pure and Applied Knowledge		
eRA COMMONS USER NAME (credential, e.g., agency login) jameslyonsweiler			
EDUCATION/TRAINING <i>(Begin with baccalaureate or other initial professional education, such as nursing, include postdoctoral training and residency training if applicable.)</i>			
INSTITUTION AND LOCATION	DEGREE <i>(if applicable)</i>	MM/YY	FIELD OF STUDY
State University of New York, Oswego, NY	B.A.	8, 1991	Biology
Ohio State University	M. Sc.	6, 1993	Zoology
The University of Nevada, Reno	Ph.D.	6, 1998	Ecology, Evol & Conservation Biology
Pennsylvania State University	Postdoctoral	2000	Computational Molecular Biology

A. Personal Statement

My research program is focused on improving healthcare via the development of treatment efficacy and risk biomarkers, optimizing clinical interventions after adverse events, and understanding the neurological and immunological basis of vaccine injuries. I have been performing collaborative research with DNA sequence data since 1996, microarray gene expression data since 1998, proteomic data since 2003, and next generation sequencing since 2009 in cancer, immunology and neurobiology. I have participated in program-level consortia including the NCI's Early Detection Research Network, caBIG, and managed a large multi-institutional consortium in Proteomics and Bioinformatics (funded via TATRC). With a deep understanding of the effects of data preprocessing algorithms on the validity of downstream statistical inferences, and fundamental comprehension of principles of ecology and evolutionary theory, I have developed novel paradigms for high-dimensional -omic analyses, including advances in statistical methods for variant calling, transcriptional profiling, machine-learning based prediction modeling, integrative translational research via decision modeling, covariate matching for case/control selection, and for the statistical evaluation of survivorship prediction models. These advances are applied via intelligent methods optimization, in which empirically optimized data analysis protocols are arrived at routinely via systematic comparative evaluative methodological research & development to insure reproducibility. I have directed the successful analysis of at least twenty-five Next Generation Sequence data sets with various applications from whole microbial and mouse genome sequencing to from various platforms for transcriptomics, variant detection, ChipSeq, methylomics, and whole genome/exome sequencing. The algorithms I have developed are current in use by many labs as they provide information measures reflective of both data quality and algorithm performance using objective evaluation measures. I have written books on Ebola, Translational Research and Autism. I founded the Institute for Pure and Applied Knowledge to conduct biomedical and translational research in the public interest.

Positions and Honors

1998-2000 AP Sloan/US Department of Energy Postdoctoral Fellow in Computational Molecular Biology
 1998-2001 (Awarded but declined) NIH National Research Service Award in Bioinformatics
 2000-2002 Assistant Professor, University of Massachusetts, Lowell, Department of Biological Sciences
 2000-2002 Co-Director, Center for Bioinformatics and Computational Biology, University of Massachusetts, Lowell
 2002-2007 Assistant Professor, University of Pittsburgh School of Medicine, Department of Biomedical Informatics; Core Faculty Member, Biomedical Informatics Training Program; Department of Pathology; Fully Associated Faculty Member, University of Pittsburgh Cancer Institute
 2007-2014 Scientific Director, Bioinformatics Analysis Core Service, University of Pittsburgh; Adjunct Assistant Professor, Department of Biomedical Informatics, University of Pittsburgh
 2014-present CEO/Director/Scientist, Institute for Pure and Applied Knowledge

Program Director/Principal Investigator (Last, First, Middle): Lyons-Weiler, James

Other Experience and Professional Membership

2019-present Editor in Chief, *Science, Public Health Policy & the Law*

2016-2019 Editorial Board, *Cancer Research*

2004-present Member, *Society for Experimental Biology*

2004-2006 Associate Editor, *Applied Bioinformatics*

2006-2007 Founding Editor-in-Chief, *Cancer Informatics*

2002-2012 NIH Grant reviewer

2008-2010. Grant Review Committee, New Jersey Commission on Cancer Research

2009 Member, The Society for Clinical and Translational Science

B. Selected Peer-Reviewed Publications

Most relevant to the current application

Lyons-Weiler J. 2020. Pathogenic Priming Likely Contributes to Serious and Critical Illness and Mortality in COVID-19 via Autoimmunity. *J Transl Autoimmun.* 2020 Apr 9:100051. doi: 10.1016/j.jtauto.2020.100051.

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EXHIBIT 2

Testing for SARS-CoV-2 in cellular components by routine nested RT-PCR followed by DNA sequencing

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Abstract: Currently, molecular tests for SARS-CoV-2 infection are primarily based on reverse transcription-quantitative polymerase chain reaction (RT-qPCR) on cell-free fluid samples of respiratory tract specimens. These tests measure the rate of fluorescent signal accumulation as a surrogate for direct DNA sequence determination and are known to generate false-negative and false-positive results. The author has developed a routine protocol to test the cellular components of respiratory tract specimens instead of cell-free fluids only and to use conventional nested RT-PCR to amplify the target nucleic acid for high detection sensitivity. A 398-bp heminested PCR amplicon is used as the template for direct DNA sequencing to ensure no false-positive test results. Using this protocol to re-test 20 reference samples prepared by the Connecticut State Department of Public Health, the author found 2 positives among 10 samples classified as negative by RT-qPCR assays. One of these two positive samples contained a mutant with a novel single nucleotide insertion in the N gene and a wild-type parental SARS-CoV-2. Of the 10 samples classified as positive by RT-qPCR assays, only 7 (7/10) were confirmed to contain SARS-CoV-2 by heminested PCR and DNA sequencing of a 398-bp amplicon of the N gene. One of the latter 7 positive SARS-CoV-2 isolates belongs to a newly discovered mutant first isolated from a specimen collected in the State of New York on March 17, 2020, according to information retrieved from the GenBank database. Routine sequencing of a 398-bp PCR amplicon can categorize any isolate into one of 6 clades of SARS-CoV-2 strains known to circulate in the United States. The author proposes that extremely accurate routine laboratory tests for SARS-CoV-2 be implemented as businesses attempt to return to normal operation in order to avoid raising false alarms of a re-emerging outbreak. False-positive laboratory test reports can easily create unnecessary panic resulting in negative impacts on local economies.

Keywords: Nested RT-PCR; DNA sequencing; cellular components; SARS-CoV-2; false-negative RT-qPCR; false-positive RT-qPCR; single nucleotide insertion; 398-base; mutant; parental virus

1. Introduction

Accurate diagnosis and isolation of infectious patients without delay are the key steps in reducing the spread of emerging highly contagious diseases, like COVID-19. False-negative laboratory test results allow infected patients with mild clinical symptoms to spread SARS-CoV-2 among susceptible persons. False-positive test results may lead to placement of non-infected persons in the same isolation rooms with COVID-19 patients; eventually the non-infected individuals may become true-positive patients.

The lack of timely appropriate response from the Centers for Disease Control and Prevention (CDC) to the need of an accurate laboratory test for SARS-CoV-2 has been reported to be a factor contributing to the pandemic of COVID-19 in the United States in 2020 [1]. On February 2, 2020 the CDC was the only

place in the country that could perform SARS-CoV-2 tests. But on February 12, the CDC announced that the test was providing inconclusive results. By then, the United States had reported 11 COVID-19 cases.

The CDC designed its own test in March 2020. The Food and Drug Administration (FDA) picked a conservative testing strategy, allowing laboratories to use only the CDC test kits distributed under the Emergency Use Authorization (EUA) authority. When the CDC test kits failed by generating many false-positive results, neither a new strategy nor a new test was available for more than two weeks [1]. Eventually, the pandemic COVID-19 spread widely and rapidly throughout the country [2].

After an investigation, the lawyers from Department of Health and Human Services of the U. S. government concluded that the faulty CDC test kits were likely contaminated due to “time pressure” [3].

However, independent scientists have reported that at least two sets of the N primers used in the CDC test kits were found to give false positive signals even in the absence of cDNA (no template control condition) [4], indicating possible faulty designs. Yet from February 4 to July 7, 2020, the FDA issued 104 individual EUAs for Molecular Diagnostic Tests for SARS-CoV-2 to device manufacturers [5]. These commercial devices are almost all based on RT-qPCR using the CDC primers and probes or using undisclosed primers and probes which cannot be independently verified.

One group of scientists in Australia tested a commercial RT-qPCR test kit and found its positive predictive value to be only 55.56%. The authors suggested that any positive results derived from one commercial test kit should be confirmed using another nucleic acid test or nucleotide sequencing [6].

Another attempt to mitigate false-positive results generated by commercial RT-qPCR kits was to develop more conventional PCR-based protocols, using the primers of the RT-qPCR kits or newly developed primers, and apply a multiplex PCR-based protocol that allowed the simultaneous testing of primer sets for RdRP, N, E, and S genes all in one reaction [7]. However, the authors offered no means to verify the various PCR products. In diagnostic virology, the optimization of multiplex PCRs can pose several difficulties, including poor sensitivity or specificity and/or preferential amplification of certain specific targets. The presence of more than one primer pair in the multiplex PCR increases the chance of obtaining spurious amplification products, primarily because of the formation of primer dimers. These nonspecific products may be amplified more efficiently than the desired target, consuming reaction components and producing impaired rates of annealing and extension [8].

False-positive RT-qPCR for SARS-CoV-2 in preoperative screening has caused unnecessary delay of urgent otolaryngology surgeries in a university hospital [9].

When a false-negative RT-qPCR for SARS-CoV-2 is generated, the tendency is to lay blame on faulty specimen collection and handling [10]. But the cause may be more complex.

The RT-qPCR test kits distributed by the CDC, also known as the CDC 2019-Novel Coronavirus (2019-nCoV) Real-Time RT-PCR Diagnostic Panel [11], depend on using commercial viral RNA purification devices for sample preparation. Nasopharyngeal or oropharyngeal samples should be obtained by using a Nylon flocked swab, if available, to enhance the collection and release of sufficient human cellular material to be tested.

However, these commercial viral RNA preparation kits, for example, the QIAamp® Viral RNA Mini Kit (Qiagen), are for purification of viral RNA from 180 µL of plasma, serum, cell-free body fluids and culture supernatants. Samples collected in viral transport media or saline need to be centrifuged or filtered

to remove the cellular components for proper viral RNA sample preparation [12]. The Roche DNA and Viral NA Small Volume Kit is for purifying nucleic acids from up to 200 μ L sample volumes using the MagNA Pure 96 Instrument.

SARS-CoV-2 must grow and replicate in a living cell. The viral particles are primarily located in intra-cytosolic vacuoles of the infected cell [13]. The number of SARS-CoV-2 particles per infected cell has not been published. But according to the studies on other viruses, such as the human immunodeficiency virus (HIV) [14] and the human papillomavirus (HPV) [15], one infected cell in a patient's specimen may contribute several thousands of copy numbers of viral genome equivalents to be tested. Therefore, testing the cellular components of a nasopharyngeal swab rinse or bronchoalveolar lavage rather than the cell-free supernatant may raise the detection sensitivity of nucleic acid-based tests for molecular diagnosis of SARS-CoV-2 infection. An additional advantage of testing the host cells for virus is to assure that a positive result is an indication of having detected viral particles capable of causing infection, not merely non-infective free viral RNA residues floating in the extracellular fluid.

Nucleic acid-based diagnostics for infectious diseases are designed to determine the nucleotide sequence in a unique segment of the genome of the pathogen. Methodologies available to diagnostic laboratories for sequence determination include restriction fragment length polymorphism (RFLP), probe hybridization, and direct DNA sequencing.

The CDC RT-qPCR assay panel uses TaqMan® probes to bind 2 or 3 target DNA sequences if such sequences are present in the sample. The probes are labeled at the 5'-end with a fluorescent dye reporter molecule 6-carboxyfluorescein (FAM) and with the quencher, Black Hole Quencher 1 (BHQ-1) at the 3'-end. The principle of this test relies on the 5'–3' exonuclease activity of *Taq* polymerase to cleave and degrade the dual-labeled probes which have annealed to the complementary target sequences during hybridization. Degradation of the probe releases the fluorophore from it and breaks its proximity to the quencher, thus relieving the quenching effect and allowing fluorescence of the fluorophore. It is assumed that the intensity of fluorescence detected in the qPCR thermal cycle is directly proportional to the fluorophore released and the amount of DNA template present in the PCR. However, even when a probe anneals to a partially matching sequence, enzymatic primer extension may take place with release of the fluorophore and the quencher thereafter as the probe degrades. Therefore, the fluorescent signals accumulated in RT-qPCR are merely a surrogate of the probe sequence, not the true image of the target nucleotide sequence of the template which may not exist in the sample being tested.

In contrast, automated DNA sequencing is considered the gold standard technology for nucleotide sequence determination because each fluorescent signal is emitted from a specific fluorescent dye coupled to a specific nucleotide molecule, reporting the actual position of the labeled nucleotide in a DNA sequence during capillary electrophoresis. The computer-generated sequence electropherogram represents a true image of the alignment of the 4 nucleic acid bases in the template.

According to the guidance of the U.S. Food and Drug Administration (FDA) on molecular diagnosis of viral infection caused by human papillomavirus (HPV), if the performance of a newly introduced molecular diagnostic device deviates from an FDA-approved device on the market, a conventional PCR detection followed by Sanger sequencing on both strands of the PCR amplicon (bi-directional sequencing) which contains a minimum of 100 contiguous bases is acceptable as valid diagnostics for HPV infection provided the sequence matches the reference or consensus sequence, *e.g.* with an Expected Value (E-Value) $<10^{-30}$ for the specific HPV DNA target based on a BLAST search of the GenBank database [16]. It

implies that nucleotide sequencing of a PCR amplicon of certain size with supportive GenBank BLAST search results is a *de facto* gold standard.

The DNA probes used in the CDC RT-qPCR test kits for SARS-CoV-2 assay are about 25 bases long. This design of RT-qPCR with multiple short probes does not meet the FDA requirement for nucleic acid-based molecular diagnostics for viral disease infections. In molecular diagnostics for infectious diseases when complex human specimens are tested, the significance of detecting 4 short sequences each of 25 bases long by hybridization does not equate to that of a DNA sequence composed of 100 contiguous bases that matches a signature sequence of the genome of the pathogen. Unconnected short DNA fragments may come from different sources in a complex human specimen.

The crucial step in most nucleic acid-based assays is to amplify the target DNA or cDNA in a complex clinical sample. PCR amplification always faces problems caused by inhibitors carried over from the clinical sample. Real-time PCR or qPCR is no exception. No commercial viral RNA extraction kits can remove all PCR inhibitors from the human respiratory tract specimens. For example, the QIAamp Viral RNA Mini Kit is not designed to separate viral RNA from cellular DNA [12]. The CDC test panel [11] also requires demonstration of human DNA in the test samples. Non-target nucleic acid molecules and other PCR inhibitors are usually co-extracted and co-purified along with SARS-CoV-2 RNA [17]. Inhibition of PCR by host DNA is a well-recognized problem in molecular diagnosis of bacterial infections [18]. These PCR-inhibitory molecules may come from the host cells, and from other viruses, bacteria and fungi normally residing in the human respiratory tract. The nature and quantity of these nucleic acids and inhibitors in the respiratory tract vary from one person to another, and are totally unpredictable. Non-template nucleic acids can affect PCR amplification efficiency, the fluorescent signal growth curve and the cycle threshold (Ct) value in qPCR assays [19].

This paper introduces a protocol developed for conventional nested PCR amplification followed by sequencing of a 398-base cDNA amplicon of the nucleocapsid (N) protein gene to be used as a method for the detection of SARS-CoV-2 RNA, using cellular components of the specimens as the test material to raise the sensitivity of detection. The inhibitors carried over from the test material are greatly diluted in a nested PCR setting. Routine sequencing of the unique 398-bp nested PCR amplicon guarantees no-false positive test results. DNA sequencing of the PCR amplicon of the genomic nucleic acid of the pathogen is a well-established molecular test for detection of infectious agents which are difficult to culture [20].

2. Results

2.1. Single target sequencing for molecular diagnosis of SARS-CoV-2

An in-depth study of the region of the SARS-CoV-2 nucleocapsid (N) gene which the CDC selected to design its N1, N2 and N3 probes revealed that there is a highly conserved ~400-base segment of sequence with 5 single nucleotide polymorphisms between the N2 and N3 probes. Selection of a 398-base segment from this region for PCR detection and to prepare the template for DNA sequencing would be able to satisfy the FDA requirement for molecular diagnosis of viral infection [16]. The positional relationship between this 398-base sequence and those of the N1, N2 and N3 probes is illustrated in Figure 1.

International Journal of Geriatrics and Rehabilitation 2(1):69- 96, July 17, 2020

Figure 1 A segment of the N gene sequence of SARS-CoV-2 retrieved from the GenBank database, sequence ID# LC528233, highlighted to show the sequences and positions of the 3 probes N1, N2 and N3 (in red) with their respective flanking primers (highlighted in yellow) and a 398-base segment (in bold and underlined; position: 28728-29125) with 5 single nucleotide polymorphisms (SNPs) highlighted in green. The sequence of the N gene targeted for SARS-CoV-2 RT-qPCR detection in China [21] is shaded in gray

```

28261 catctaaacg aacaaactaa aatgtctgat aatggaccac aatcagcg aaatgcacc N1
28321 cgcattacgt ttggtggacc ctgagattca actggcagta accagatgg agaagcaggt
28381 ggggagcgat caaaacaacg tcggcccca ggtttaccca ataatactgc gtcttggttc
28441 acogctctca ctcaacatgg caaggaagac cttaaattcc ctogaggaca aggogttcca
28501 attaacacca atagcagtc agatgaccaa attggtact accgaagagc taccagacga
28561 attcgttggt gtgacggtaa aatgaaagat ctgagtccaa gatggtattt ctactaccta
28621 ggaactgggc cagaagctgg acttccctat ggtgctaaca aagacggcat catatgggtt
28681 gcaactgagg gagccttgaa tacaccaaaa gatcacattg gcaccggcaa tcttgctaac N3
28741 aatgctgcaa tctgtctaca acttctctca ggaacaacat tgccaaaagg cttctacgc
28801 gaagggagca gaggcggcag tcaagcctat tctgttctct catcacgtag tgcgaacagt
28861 taagaaatt caactccagg cagcatagg ggaactctc ctgctagaat ggttgccaat
28921 ggggtggtg ctgctcttgc ttgtctctg cttgacagat tgaaccagct tgagagcaaa
28981 atgtctgta aaggccaaca acaacaaggc caaactgtca ctaagaaatc tctgtctgag
29041 gcttotaaga agcctggca aaaacgtact gccactaaag catacaatgt aacacaagct
29101 ttggcagac gtggtccaga acaaacccaa ggaattttt gggaccagga actaatcaga
29161 caaggaactg attacaaaca ttggcgggaa attgcacaaat ttgccccag cgcttcagcg N2
29221 ttatttggaa tctctgggat tggcatggaa gtacacactt cgggaacgtg gttgacctac

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The 398-base prototype sequence underlined is identical to the corresponding sequence in the N gene of the strain first isolated in Wuhan in December 2019 — GenBank Sequence ID: NC_045512.2. This version of sequence is present in most strains of SARS-CoV-2 subsequently isolated worldwide. However, strains with the 5 single nucleotide polymorphisms (highlighted in green) were first isolated in the United States. The dates and locations of the first sample collection for these 5 strains are summarized as follows, based on information retrieved from the GenBank database.

28800 A-to-T. Nasopharyngeal swab, CA, USA, 01-23-2020. Sequence ID: MN994467
 28829 C-to-A. Nasal swab, NY, USA, 03-17-2020. Sequence ID: MT370913
 28862 C-to-T. Oropharyngeal swab, MA, USA, 01-29-2020. Sequence ID: MT039888
 28886 G-to-A. Nasopharyngeal swab, CA, USA, 02-06-2020. Sequence ID: MT106052
 29103 C-to-T. Sputum of patient, TX, USA, 02-11-2020. Sequence ID: MT106054

Based on information retrieved from the GenBank database, this 398-base N gene nucleic acid sequence is specific for SARS-CoV-2. Except in the receptor-binding domain (RBD) where there is a 97.4% amino acid similarity between Guangdong pangolin coronaviruses and SARS-CoV-2, bat coronavirus RaTG13 is most closely related to SARS-CoV-2 in the remainder of the viral genome [22]. As illustrated below, alignment of the 398-base nucleic acid segment of the N gene of bat coronavirus RaTG13 (GenBank: MN996532, in red) against that of SARS-CoV-2 (in black) shows a 96.0% (1-16/398) similarity (the 16 nucleotide dissimilarities are highlighted green).

```

CAATCCTGCTAACAATGCTGCAATCGTGCTACAACCTCCTCAAGGAACAACATTGCCAAAAGGCTTCTACGCAGAAGGGAGCAGAG
CAATCCTGCTAACAATGCTGCAATCGTGCTACAACCTCCTCAAGGAACAACATTGCCAAAAGGCTTCTACGCAGAAGGGAGCAGAG
GGGAGTCAAGCTTCTTCTCGTCTTCATCACGTAGTCGCAACAGTTCAAGAAATCAACTCCAGGCAGCAGTAGGGGAACCTTC
GCGGAGTCAAGCTTCTTCTCGTCTTCATCACGTAGTCGCAACAGTTCAAGAAATCAACTCCAGGCAGCAGTAGGGGAACCTTC
CCTGCTAGATGGCTGGCAATGGCCTGTATGCTGCTCTTGCTTTGCTGCTGCTTGACAGATTGAACAGCTTGAGAGCAAAATGTC
CCTGCTAGATGGCTGGCAATGGCCTGTATGCTGCTCTTGCTTTGCTGCTTGACAGATTGAACAGCTTGAGAGCAAAATGTC
TGGTAAAGGCCAACAAACAAGGCCAAACTGTCACTAAGAAATCTGCTGCTGAGGCTTCTAAGAAACCTCGGCCAAAACGTACTG
TGGTAAAGGCCAACAAACAAGGCCAAACTGTCACTAAGAAATCTGCTGCTGAGGCTTCTAAGAAACCTCGGCCAAAACGTACTG
CCACAAACATAACAATGTAACACAAGCTTTGGCAGACGTGGTCCAGAACAAA
CCACAAAGCATACAATGTAACACAAGCTTTGGCAGACGTGGTCCAGAACAAA

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The pair of PCR primers (underlined) defining this 398-base segment of amplicon are highly conserved among all known strains of SARS-CoV-2 and have not undergone mutations, based on search of the GenBank database. A single base mutation within a 21-base primer usually does not affect the result of heminested PCR unless the mutation occurs at the position binding the 3' terminus of the primer.

SARS-CoV-1 gene (GenBank: AY274119.3) is not amplified by the primary PCR primer pair used in this protocol and there is < 90% similarity between the 398-base N gene sequence of the SARS-CoV-1 genome and that of the SARS-CoV-2 genome. Molecular misdiagnosis of SARS-CoV-2 based on nucleotide sequencing of this segment of the N gene is extremely unlikely.

2.2. Nested RT-PCR of cell lysates is needed to raise sensitivity for SARS-CoV-2 detection

In PCR research, a theoretically 100% efficient exponential amplification of the target DNA during repeated thermal cycling cannot be achieved even under strictly controlled experimental conditions. In the hands of most researchers, a properly designed PCR in the absence of any identifiable interfering substances in the sample matrix may amplify target DNA with a 90% efficiency [23, 24]. In molecular diagnosis of infectious diseases, there is always a possibility of false-negative results even when target DNA molecules are plentiful in the patient samples. After DNA purification steps are used before PCR, a 14% false-negative rate has been observed for hepatitis B virus detection, most probably due to incomplete removal of PCR inhibitors [25].

A high template/non-template nucleic acid ratio is one of the determinant factors in successful real-time PCR assays [19]. For example, persistent human papillomavirus (HPV) infection is the key factor in cervical carcinogenesis. During the long course of cancerous development, the viral load decreases from several thousand viral copies to about double digit per infected cell [15]. Virologic DNA real-time PCR assay is reported to be effective in identifying cervicovaginal cytology samples containing low-grade lesions with koilocytes which can have thousands of copies of human papillomavirus (HPV) per cell with a sensitivity rate of 95.5%. But the same real-time PCR test kit was only 58.26% effective in detecting high-grade CIN 3 lesions in which the viral load can be as low as 10 copies per cell [15, 26]. Non-template nucleic acids are potent PCR inhibitors which can greatly raise the Ct values of a qPCR assay when a non-template/template ratio is high in the reaction mixture.

False-negative test results for SARS-CoV-2 are expected in any PCR assays, including RT-qPCR when the viral load is low in the sample being tested. In testing low viral load samples, the laboratories must use highly sensitive assays to increase the detection sensitivity without causing false positives.

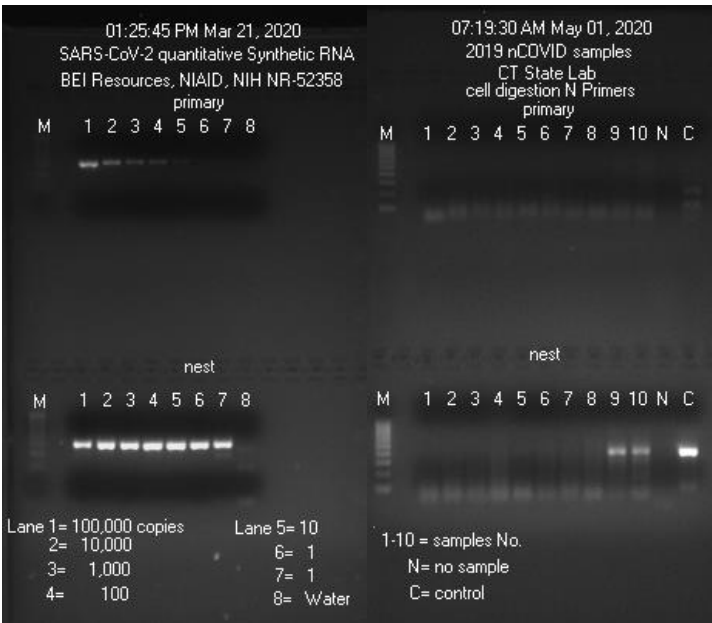
All diagnostic PCR assays depend on fluorescence intensity for evaluation. In the CDC RT-qPCR Assay Panel, the intensity of fluorescence emitted by a dye is measured by fluorometer, an instrument. In conventional PCR, the intensity of fluorescence emitted by a DNA/ethidium bromide complex is observed and evaluated with human eyes. A fluorometer used in qPCR is more sensitive than human eyes in measuring fluorescent signals, but it does not measure fluorescence emitted from a DNA complex. There are no products generated by the CDC RT-qPCR assays for further analysis whereas an amplicon of conventional PCR is composed of a mass of DNA molecules. The heminested PCR amplicon can be used as the template for DNA sequencing validation. Therefore, conventional PCR followed by DNA sequencing is the more appropriate testing platform for SARS-CoV-2 if a reliable test result is desired for patient management.

Nested, or two-round PCR, is a proven technique to mitigate the low sensitivity of conventional PCR in molecular diagnosis of infectious diseases, such as HPV infections [27] and borrelial spirochetemia [28]. This technique can be used for SARS-CoV-2 tests to increase detection sensitivity, as shown in Figure 2.

The left panel of Figure 2 is an image of agarose gel electrophoresis of the products of primary RT-PCR (upper half) and heminested PCR (lower half) showing that heminested PCR increased the sensitivity of one-round RT-PCR by ~1,000 fold in detecting a 398-base N gene segment of synthetic SARS-CoV-2 RNA. The number of copies of synthetic viral RNA added to each 25 μ L primary RT-PCR mixture was calculated based on the analysis data supplied by BEI Resources, NIAD, NIH, Cat. No. NR-52358. As demonstrated, a single copy of viral RNA was detected with a robust amplicon band observed in lane 6 and lane 7 (lower half). In contrast, it needed 100-1,000 copies of viral RNA to generate a weak band in primary PCR, barely visible in lane 4 and lane 3 (upper half). The primary and heminested PCR primers and the PCR conditions are detailed in the Methods section.

The right panel of Figure 2 is an image of agarose gel electrophoresis showing two (2) positive heminested PCR products in lanes 9 and 10. There are no visible primary PCR products in any lanes. These 10 “negative” samples, each consisting of 0.5-1 mL of fluid (See Materials and Methods), were prepared and used as reference material by the Connecticut State Department of Public Health, Microbiology Laboratory Division on April 30, 2020 to assist local laboratories for developing their nucleic acid-based tests for SARS-CoV-2 under the CLIA program. Although these 10 samples were classified as negative by RT-qPCR, no Ct values were given. The cell lysates were extracted by phenol/chloroform and the RNAs were precipitated in ethanol as the test material (See Methods)

Figure 2 Agarose gel electrophoresis: Heminested PCR raises the sensitivity for detection of a 398-bp N gene segment in synthetic SARS-CoV-2 RNA (Left) and of viral RNA extracted from infected human cells in respiratory tract specimens (Right: Amplicons of cDNA of viral RNA detected in lanes 9 and 10 from reference samples #1-10 classified as negative by RT-qPCR assays)



International Journal of Geriatrics and Rehabilitation 2(1):69- 96, July 17, 2020

The laboratory data presented in Figure 2 show that two-round PCR is needed for the detection of amplicons when this technology is used for molecular identification of SARS-CoV-2 in respiratory tract samples. The material to be tested should include cellular components of the specimen for maximizing the sensitivity of detection.

2.3. False positives of RT-qPCR assay for SARS-CoV-2

PCR, including qPCR, is known to generate both false-negative and false-positive results when this DNA replication tool is used for the diagnosis of infectious diseases.

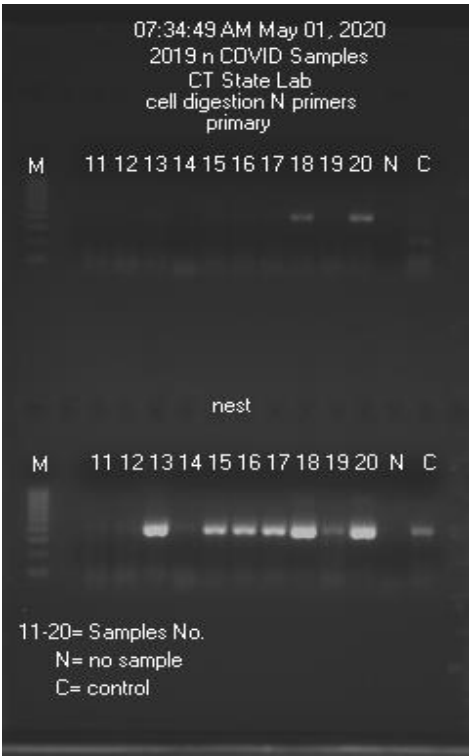
In an international external quality assessment proficiency testing program for MERS-CoV, a Coronavirus, laboratories using RT-qPCR assay on simulated samples with viral load equivalent to throat swab MERS-CoV RNA concentrations generated an 84.6% detection sensitivity and 8.1% false-positive results [29]. False-negative and false-positive rates are usually much higher in routine testing than those observed in regulatory proficiency test programs.

It is not unexpected to find false-positive results generated by RT-qPCR when this tool is used to test for SARS-CoV-2.

On April 30, 2020, in addition to the 10 negative samples referenced above the Connecticut State Department of Public Health, Microbiology Laboratory Division also prepared 10 reference samples, which were diagnosed as positive for SARS-CoV-2 by the CDC RT-qPCR assays, in support of the local laboratories to develop their tests for the virus.

According to the documents accompanying these 10 positive samples, they all generated an N1 Ct value between 16 and 29.78 and an N2 Ct value between 15.05 and 29.4 except one with an N2 Ct 67.86. The R. P. (RNase P gene) Ct values for these 10 samples ranged from 3.31 to 25.13. Based on these Ct values, all samples were interpreted as confirmed positive and used as standard reference material for developing SARS-CoV-2 assays. However, only 7 of these 10 samples were found to be positive by nested PCR amplification (Figure 3).

Figure 3 Agarose gel electrophoresis showing that only 7 of the 10 samples classified as positive for SARS-CoV-2 by RT-qPCR could be confirmed by conventional nested PCR followed by DNA sequencing of a 398-bp cDNA amplicon of the N gene



As demonstrated in Figure 3, primary PCR products after amplification of 30 thermal cycles were only visualized on 2 of 7 validated positive samples (lanes 18 and 20). Five of the 7 positives (5/7) needed nested PCR for detection. All seven positive nested PCR products were proven to consist of a 398-base segment of SARS-CoV-2 N gene by DNA sequencing. Six (6/7) were of the prototype (See Section 2.4. Figures 4 and 5). Sample #13 belongs to a newly discovered mutant first isolated from a human specimen collected in the State of New York on March 17, 2020 (See Section 2.4. Figures 6 and 7).

2.4. Routine sequencing for PCR product validation and single nucleotide polymorphisms

For emerging serious virus infectious diseases, such as Ebola, the European CDC’s laboratory criteria of case definition are 1) Detection of virus nucleic acid in a clinical specimen and confirmation by sequencing or a second assay on different genomic targets; or 2) Isolation of Ebola virus from a clinical specimen [30].

A recent “Report from the American Society for Microbiology COVID-19 International Summit” on the Value of Diagnostic Testing for SARS-CoV-2/COVID-19 pointed out that one of the new challenges in the current molecular diagnostics is to optimize the current multiple targets to a single target [31].

By following these recommendations and the FDA’s guidance for molecular diagnosis of another viral infection [16], routine bi-directional sequencing of a >100-bp PCR amplicon of the viral genome was designed as the proper molecular testing platform for SARS-CoV-2. Examples are presented by analysis of the computer-generated 398-base N gene sequences on the reference samples supplied by the Connecticut State Department of Public Health Microbiology Laboratory Division as follows.

Figure 4 Electropherogram showing DNA sequence of the nested PCR amplicon visualized in Lane 20 of Figure 3. Forward Co4 PCR primer was the sequencing primer. Note: the base C in position 14 is underlined

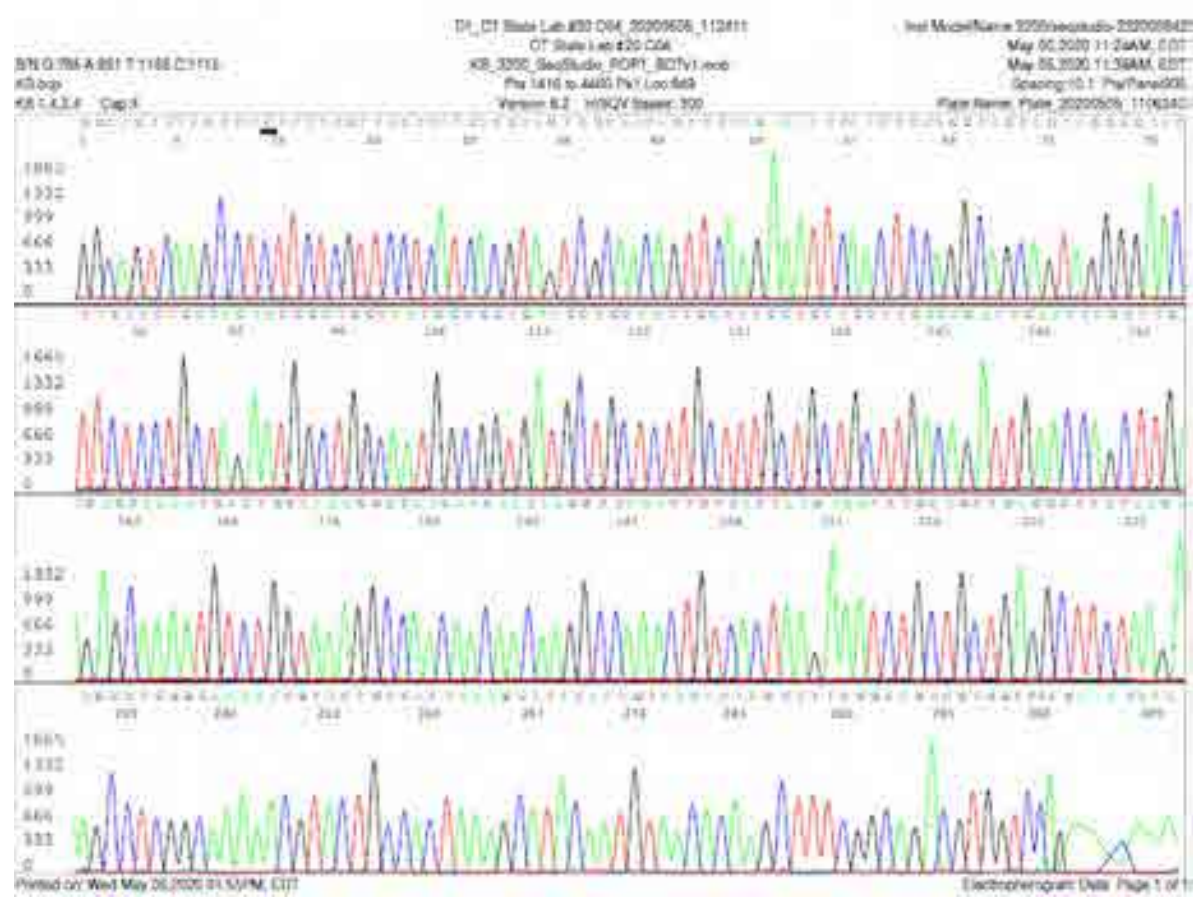
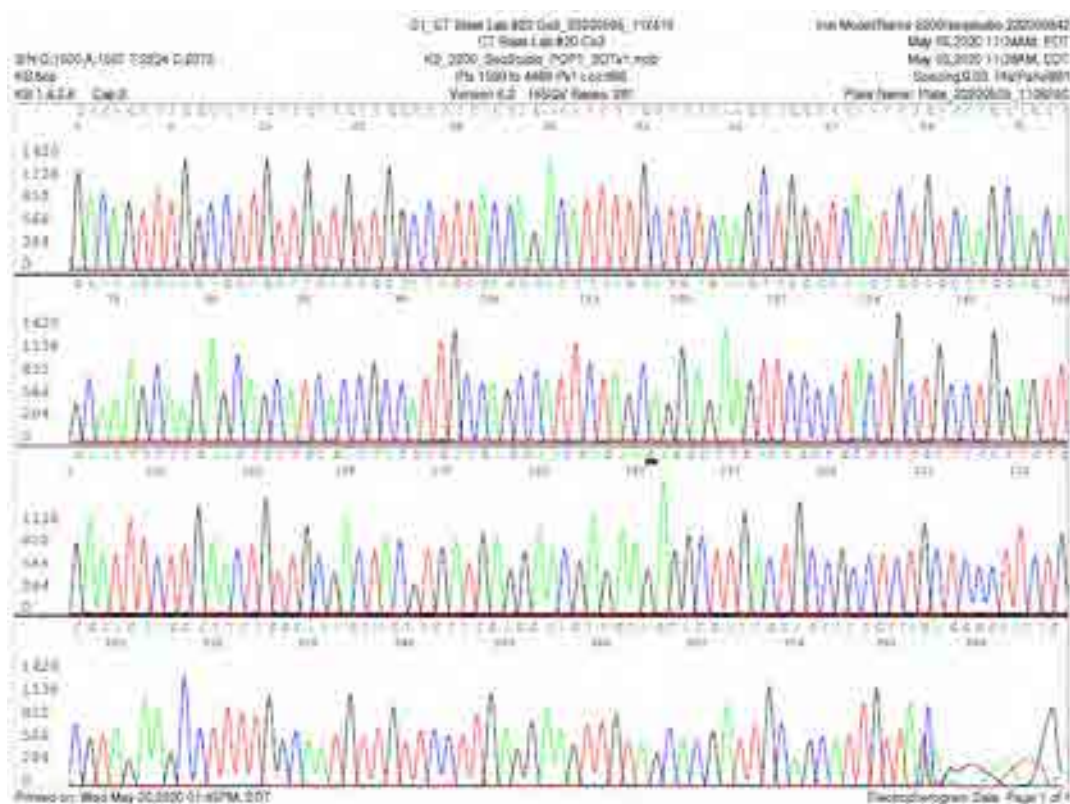


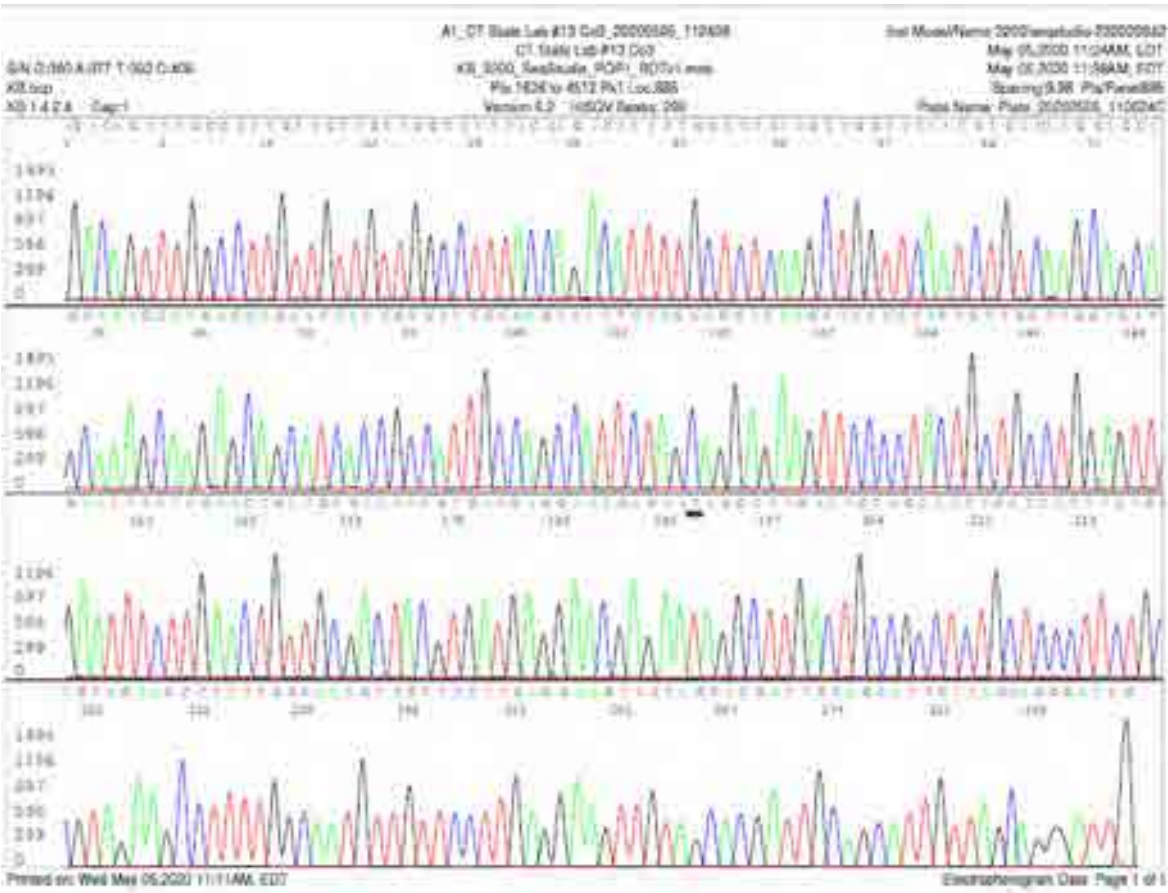
Figure 5 Electropherogram showing DNA sequence of the nested PCR amplicon visualized in Lane 20 of Figure 3. Reverse Co3 PCR primer was the sequencing primer. Note: the base G in position 191 is underlined



Connecting the two sequences illustrated in Figures 4 and 5 after all the complementary bases were converted to those for a 5'–3' reading resulted in a composite sequence fully matching a 398-base sequence illustrated in Figure 1, position 28728-29125 which is generally accepted as the prototype sequence for SARS-CoV-2.

Figure 6 Electropherogram showing DNA sequence of the nested PCR amplicon visualized in Lane 13 of Figure 3. Forward Co4 PCR primer was the sequencing primer. Note: the base A in position 14 is underlined

Figure 7 Electropherogram showing DNA sequence of the nested PCR amplicon visualized in Lane 13 of Figure 3. Reverse Co3 PCR primer was the sequencing primer. Note: the base T in position 191 is underlined



Connecting the two sequences illustrated in Figures 6 and 7 after all the complementary bases were converted to those for a 5'–3' reading resulted in a composite sequence fully matching a 398-base sequence illustrated in Figure 1, position 28728-29125 except for a single base mutation of C-to-A in position 28829, as annotated in GenBank Sequence ID: MT370913.

International Journal of Geriatrics and Rehabilitation 2(1):69- 96, July 17, 2020

Figure 8 Electropherogram showing two superimposed SARS-CoV-2 N gene sequences in the nested PCR amplicon visualized in Lane 10 of Figure 2, right panel. Forward Co4 PCR primer was the sequencing primer. One sequence was from a novel mutant with a single nucleotide A insertion at position 250, and the other was from a wildtype parental virus



The computer-generated electropherogram illustrated in Figure 8 shows one prototype N gene sequence of SARS-CoV-2 from position 1 to position 249. But there was a single nucleotide A insertion at position 250 in the second N gene, creating a mutant while the wildtype parental virus was infecting the human host. The chance for one patient being infected by two SARS-CoV-2 strains from the very beginning is extremely low. A virus mutant with a nucleotide A insertion in this segment of the N gene has not been reported in the literature nor deposited into the GenBank. In Figure 8, the extra nucleotide in the mutant gene caused a frameshift in DNA sequencing after the nucleotide A insertion. The two components of each double peak in different colors are aligned against each other in sequence and presented immediately below the electropherogram. The inserted base A is underlined.

This sequencing pattern showing an “A” insertion in one of the two templates at position 250 was reproduced for 3 times to rule out possible sequencing artifacts. Sequencing from the opposing direction on this amplicon composed of two homeologous DNA templates failed to generate a readable sequence due to insertion of the “A” nucleotide into the mutant gene too close to the site of the reverse Co3 sequencing primer.

In summary, the results of re-testing the cellular components of 20 reference samples of nasopharyngeal and oropharyngeal swab rinses by heminested RT-PCR amplification followed by

International Journal of Geriatrics and Rehabilitation 2(1):69- 96, July 17, 2020

nucleotide sequencing showed that SARS-CoV-2 was not found in 3 of the 10 (3/10) reference samples classified as positive by RT-qPCR, and that 2 of the 10 (2/10) reference samples classified as negative by RT-qPCR in fact contained SARS-CoV-2.

Among the 9 positive samples, one isolate showed a C-to-A single nucleotide mutation in the 398-base segment of the N gene targeted for amplification. According to information retrieved from the GenBank database, this mutation was discovered first in a specimen collected in New York State on March 17, 2020. And only 5 cases with this mutation were reported to the GenBank as of May 13, 2020.

In addition, one of the two positive isolates from the 10 RT-qPCR-negative samples in fact contained two viral genomes, one from a mutant with a single nucleotide insertion in the N gene which was not found in the GenBank database, and one from a wildtype parental virus. Co-infection of one patient by two strains of SARS-CoV-2, a mutant and the wildtype parental virus, has not been reported and may pose a challenging problem in molecular diagnosis of SARS-CoV-2

2.5. Unintended primer extension in RT-qPCR

The CDC 2019-Novel Coronavirus (2019-nCoV) Real-Time RT-PCR Diagnostic Panel [11] advises to use cell-free samples prepared by the QIAamp Viral RNA Mini Kit as the material to be tested. But it also requires proof of human genomic nucleic acids in the same samples for a valid negative SARS-Cov-2 RNA result. As proof of the presence of sufficient human cell nucleic acids in the material being tested, the CDC protocol sets a cycle threshold (Ct) value within 40.00 cycles (< 40.00 Ct) in the human RNase P gene RT-qPCR channel for positive cut-off.

The sequences of the primers and probe for the RNase P gene RT-qPCR as an Internal Process Control (IPC) are given as follows [32] (color-highlighted for discussion convenience).

RNase P Forward Primer 5'-AGA TTT GGA CCT GCG AOC G-3'
 RNase P Reverse Primer 5'-AAA GGG GGG TCT TCG TGA GT-3'
 RNase P Probe 5'-FAM - TTC TGA CCT GAA GGC TCT GCG CG - BHQ-1-3'

These primers and probe were designed to amplify a 65-base segment of *Homo sapiens* ribonuclease P/MRP subunit p30 (RPP30). Sequence ID: NM_001104546. The relevant sequence in this segment of the gene is retrieved from the GenBank database and pasted below with primer-matching colors to indicate the positions of the CDC-recommended primers and the probe which is typed in red in reverse complement (Figure 9).

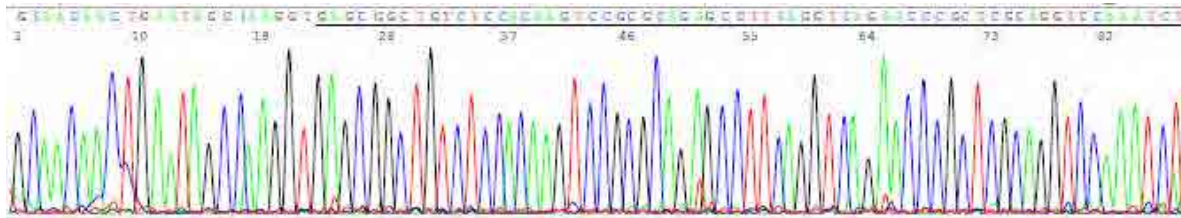
Figure 9 Segment of DNA sequence retrieved from the GenBank database (NM_001104546) showing the color-highlighted positions of primers and probe used in the CDC RT-qPCR assay kit and the sequence of the 160-bp (underlined) amplicon used as the template to generate the sequence illustrated in Figure 10

240 CTAGTTAAATTTTAATTGGTCTTGATTTCCTGTACAATTGGCAAAGTTGTGAAGAGT 181
 180 TCAGAAACAGCTACTGGTTTTCATTTTCCTGTTTCTTTTCCTTAAAGTCACGATATGA 121
 120 TTGATAGCAACAACCTGAATAGCCAAGGTGAGCGGCTGTCTCCACAAGTCCGCGCAGAGCC 61
 60 TTCAGGTCAGAAACCGCTCGCAGGTCCAAATCTGCAAAACACCGCCATGCTGAAGTCCCAT 1

It was assumed that a 65-base segment of the RPP30 gene defined by the two primers would be amplified as shown in Figure 9 in the RT-qPCR testing platform. However, it has never been

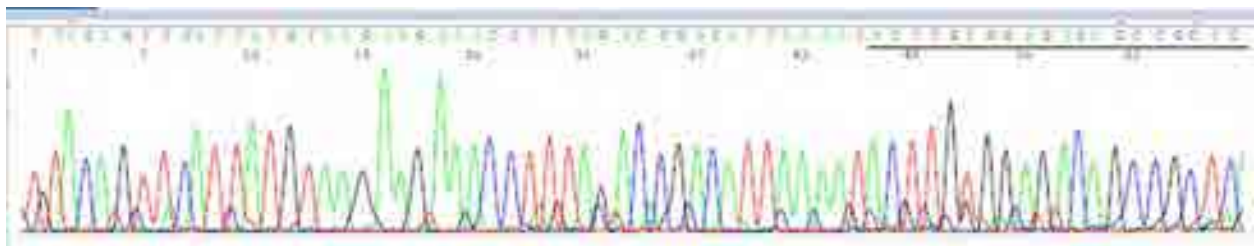
demonstrated that this sequence has actually been amplified in real practice because the inter-primer sequence is too short for the currently used sequencing technologies. To prove that this 65-base sequence is actually present in the clinical sample, a longer amplicon (160-base, underlined in Figure 9) is needed to be used as the sequencing template to generate a sequence illustrated in Figure 10.

Figure 10 Electropherogram of a 65-base sequence (underlined) presumed to be generated during RT-qPCR using the CDC SARS-CoV-2 test kit, but it has never been shown in real practice



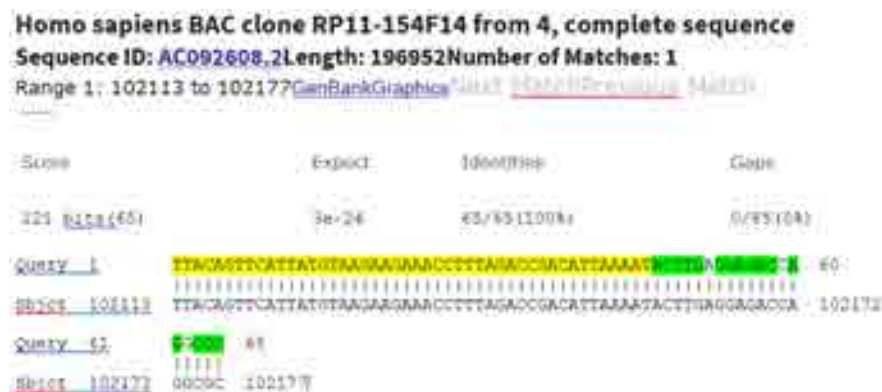
There is a single copy of RPP30 DNA sequence located at 10q23.31 locus on chromosome 10 in each haploid human genome and there are two copies in a diploid human cell [33]. RPP30 has been used as a reference for the autosomal chromosomes in research when there is abundant human chromosomal material in the sample [33, 34]. However, in cell-free fluids derived from respiratory tract specimens there are no intact human cells in the sample being tested. RPP30 gene is detected in the viral RNA extracts only when some broken human cell nuclear parts have not been completely removed from the cell-free samples. In the absence of a preferred template, the PCR primers may anneal to a non-target DNA with partially matching sequence and initiate an unintended primer extension or PCR. Such an example is illustrated in Figure 11.

Figure 11. Sequencing electropherogram showing PCR amplification of an unintended DNA segment by the CDC RNase P Reverse Primer (underlined)



The sequence illustrated in Figure 11 was generated during an attempt of using the CDC RNase P primers to induce a 65-bp PCR amplicon for further analysis as an internal control which can be validated by DNA sequencing. In this electropherogram, the binding site for the CDC RNase P reverse primer is underlined. Submission of this sequence to GenBank for BLAST algorithmic analysis led to a return illustrated in Figure 12 (yellow and green added by author).

Figure 12 In the absence of a fully matching template, the primers designed for the CDC RT-qPCR assay kit may anneal to partially matching DNA and initiate an unintended PCR



As shown in Figure 11, PCR amplification as often applied in clinical diagnostics is not absolutely specific. There are always some irrelevant products, visible or invisible, generated as a result of enzymatic DNA replications in addition to those represented in the main sequence. The main sequence in this electropherogram shows that the CDC RNase P reverse primer found and annealed to a segment of DNA which shares 16 (highlighted in green, Figure 12) of its 20 bases in sequence to initiate an unintended PCR (compare the green-highlighted sequence in Figure 12 with the primer sequence underlined in Figure 11). The sequence highlighted in yellow is totally different from that of the probe (Figure 9).

The findings described in this section suggest that non-specific hybridization or annealing between non-target DNA and the primer or probe used in the CDC RT-qPCR test kits for SARS-CoV-2 may have contributed to the causes for false-positive results especially when the Ct cut-off value has been set as high as 40.0 [11].

Other investigators also reported that the CDC N2 and N3 primer sets can amplify irrelevant nucleic acids in RT-qPCR and in conventional PCR [4].

In an FDA publication titled "Real-Time Fluorescent RT-PCR Kit for Detecting SARS-CoV-2", the Instructions for Use repeatedly emphasize that the Ct values for positive result on all controls and samples should be no higher than 37 [35]. Setting a 40.00 Ct value as the cut-off point for the presence of RNase P gene or for the presence of SARS-CoV-2 N gene in the sample being tested deviates from common practice and from the FDA guidance. Accepting a questionable Ct value as evidence for the presence of RNase P gene in the sample being tested may have allowed many invalid test results to be reported as negatives.

2.6. Human BRCA1 gene as internal extraction control

Since the segment of RNase P gene selected for the CDC RT-qPCR test panel was not always PCR-amplifiable for validation by conventional PCR followed by sequencing, a segment of human BRCA1 gene was selected as the internal cellular extraction control.

A pair of AG1 and R2 PCR primers (see Materials and Methods section) was designed to initiate a 409-bp *BRCA1* gene primary PCR. The primary PCR product was re-amplified by a pair of AG2/R2 heminested PCR primers to generate a 323-bp amplicon which can be used as the template for sequencing validation. Demonstration of a segment of *BRCA1* gene amplicon was accepted as reliable physical evidence to confirm that sufficient human nucleic acids had been extracted into the sample being tested in the SARS-CoV-2 negative cases. While the RNase P gene in the 20 reference samples supplied by the Connecticut State Department of Public Health Microbiology Laboratory Division could not be detected, the *BRCA1* gene was demonstrated in all these samples as shown in Figures 13 and 14.

Figure 13 Image of agarose gel electrophoresis showing a 323-bp heminested PCR amplicon of human *BRCA1* gene in all 20 reference samples tested. Lane 11=water negative control. Lane 12= known human cell extract positive control

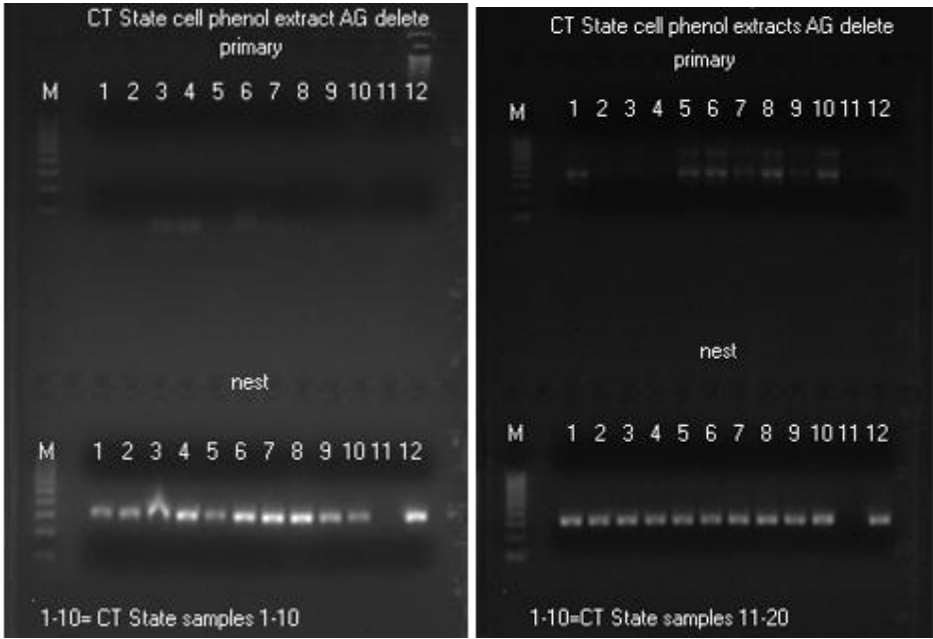
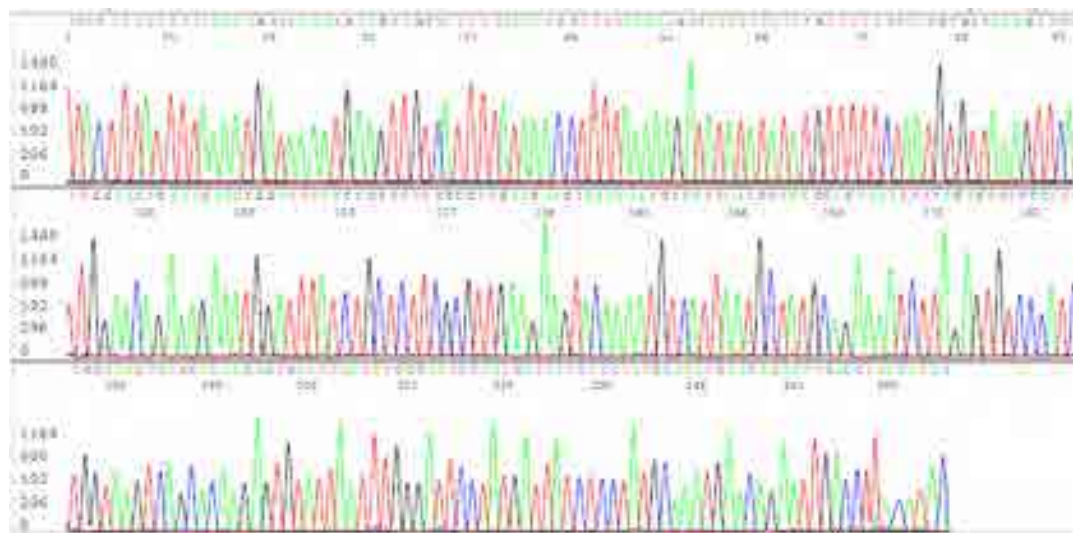


Figure 14 Sample of electropherograms confirming a segment of human *BRCA1* gene sequence of the nested PCR amplicons shown in lower half of Figure 13. The 21 bases in the end are the binding site for R2 primer (5'-GTATGTAAGGTCAATTCTGTTC-3')



3. Discussion

This article has demonstrated that for molecular diagnosis, testing the cellular components for SARS-CoV-2 rather than cell-free fluids only on respiratory tract specimens by conventional nested PCR and using the traditional phenol/chloroform method for RNA sample preparation can reduce the number of false-negatives. Using nucleotide sequencing to validate every positive PCR amplicon practically eliminates all false-positive results. For timely accurate molecular diagnosis and characterization of infectious agents, concerned scientists have been urging to bring microbial sequencing to the hospital laboratories to improve individual and population health [36, 37].

Nested PCR is a simple method to increase the detection sensitivity of the conventional PCR technology. Cross contamination which is often used as a reason to object using nested PCR in diagnostic laboratories can be mitigated by elimination of transferring PCR products by micropipettes and proper training of the testing staff. Cross contamination is a function of the laboratory performing PCR, not an inherent part of the nested PCR technology [28].

RT-qPCR tests are known to generate both false-negative and false-positive results [4, 6, 7, 9]. Highly sensitive and accurate laboratory tests for SARS-CoV-2 are needed for certain populations, especially for the people of advanced age living in long-term care facilities and their care takers. Patients with false-negative test results may transmit the virus to family, friends, or care-givers. Uninfected residents in long-term care facilities with false-positive results may be isolated in rooms with Covid-19 patients, which puts them at risk of becoming true positives. Convalescent hospitalized patients must be tested by an extremely sensitive, no false-positive nucleic acid test prior to being discharged into the communities.

Long-term care facilities with exceptionally high COVID-19 death tolls among their residents may consider re-testing the residues of the respiratory tract samples of the deceased collected and tested prior to their death. If false-negative and false-positive test results were found, the false test results might have contributed to spreading of SARS-CoV-2 in the institution. Then corrective measures can be made in the infection control practices to lower the rate of cross infection among the residents.

Highly sensitive, no-false positive SARS-CoV-2 tests are needed in hospitals with head-and-neck surgical department to screen patients before admission for protection of the medical staff involved [9].

Extremely accurate SARS-CoV-2 laboratory tests are especially important as businesses attempt to return to normal operation in order to avoid raising false alarms of a re-emerging outbreak. False-positive test reports can easily create unnecessary panic resulting in negative impacts on local economies.

The current SARS-CoV-2 nucleic acid test platforms overly depend on the supply of commercial RNA extraction devices, such as the QIAamp viral RNA preparation kits. However, better options are readily available. For example, the abilities of QIAamp blood kit (Qiagen, Inc., Hilden, Germany) and another commercial kit to extract the hepatitis B virus (HBV) DNA template from serum for amplification by PCR were evaluated and compared with that of the standard phenol-chloroform method. Differences in the sensitivities of the three methods were revealed by nested PCR of HBV DNA extracted from serially diluted hepatitis B e antigen (HBeAg)-positive (high-titer) serum. Phenol-chloroform was found to be a 10^6 times more sensitive extraction method than the QIAamp blood kit; and nested PCR was found to be 10^6 times more sensitive than one-round PCR in detection of HBV DNA in serum samples [25]. In nested PCR, the PCR inhibitors carried over from the sample into the primary PCR are further diluted by about 100-fold. The value of nested PCR followed by DNA sequencing for detection of SARS-CoV-2 was previously reported by Nao and colleagues [38].

As demonstrated in the Results section of this article, using the standard phenol-chloroform method to prepare viral RNA from cell lysates and nested RT-PCR amplification followed by DNA sequencing for SARS-CoV-2 detection, 2 false negatives and 3 false positives were found in 20 reference samples which had been tested by the CDC RT-qPCR kits.

In addition, one of the seven (1/7) RT-qPCR positive samples was found unexpectedly to contain an isolate which belongs to a strain of SARS-CoV-2 with single C-to-A mutation in the 398-bp N gene segment targeted for amplification. This newly discovered strain was first recognized in a specimen collected in the State of New York on March 17, 2020, and then found in specimens collected in the District of Columbia and Connecticut in the next two weeks, according to information retrieved from the GenBank database. It is not known how many of the Covid-19 patients were caused by this locally developed “mutant” in the tri-state area of New York, Connecticut and New Jersey.

Another surprise in testing the 20 reference samples prepared by the Connecticut State Department of Public Health Microbiology Laboratory Division was the finding of a SARS-CoV-2 mutant with a novel single nucleotide A insertion within the 398-base DNA segment sequenced. This novel mutant and the wildtype parental virus apparently co-infected the host cells collected for testing and their N genes were co-amplified in the nested PCR process. This novel viral mutant was present in a person with a false-negative test result and was capable of infecting the host cells as the parental virus. It is not known if such a mutant can be transmitted to another individual to cause a new infection as the wildtype parental virus can.

As of early May 2020, there were at least 198 recurrent mutations identified among global isolates of SARS-CoV-2 [39]. For patient management, it is neither practical nor necessary to routinely check all these known mutations in the genome of every isolate for diagnostic purpose.

However, it is feasible to routinely perform a bi-directional DNA sequencing of a 398-bp PCR amplicon of the N gene on every positive sample to categorize each isolate into one of the 6 SARS-CoV-2 clades which are known to circulate in the United States to track real-time movement of these viral strains in order to facilitate studies of their possible relevancy to transmissibility and pathogenicity.

The major limitation of this method is that the nested PCR and nucleotide sequencing technologies cannot be readily automated. The test takes 24 to 48 hours to generate a result because the procedures of cell digestion, two PCR amplifications and DNA sequencing take more than 10 hours of instrument time to complete. As for all PCR-based nucleic acid detection methods, unexpected mutation of the N gene in the SARS-CoV-2 genome affecting the binding site for the 3' terminus of any of the PCR primers may cause false-negative results. If a patient does not have SARS-CoV-2 infected cells in the upper respiratory tract, or the specimen does not contain any virus-infected cells, this method may generate false-negative test results.

4. Materials and Methods

4.1. Test materials

The specimens used for this study were 10 negative and 10 positive reference samples which were specially prepared by the Connecticut State Department of Public Health, Microbiology Laboratory Division, on April 30, 2020 and packaged in a Styrofoam box containing dry ice to be used in support of the local diagnostic laboratories in the State of Connecticut to develop their laboratory tests for detecting SARS-CoV-2 virus in respiratory tract specimens. All samples were in 0.5-1 mL of saline as the media in plastic vials with screw caps and processed on the same day in Milford Molecular Diagnostics Laboratory, in Milford, Connecticut.

According to the Connecticut State Department of Public Health, Microbiology Laboratory Division, these samples were all clinical specimens, namely nasopharyngeal or oropharyngeal swabs placed in saline, that were received at the Connecticut State Department of Public Health, Microbiology Laboratory Division for the purpose of testing for SARS-CoV-2. No culture, spiking/or diluents were added or performed on these specimens. These 20 samples were previously tested by the CDC 2019-Novel Coronavirus (2019-nCoV) Real-Time RT-PCR Diagnostic Panel as negative for SARS-CoV-2 or positive for SARS-CoV-2, and were used as reference samples for evaluation of other laboratory-developed assays for SARS-CoV-2 in nasopharyngeal and oropharyngeal swab specimens.

4.2. RNA extraction

The entire content of each sample was transferred to a graduated 1.5 mL microcentrifuge tube and centrifuged at $\sim 16,000\times g$ for 5 min to pellet all cells and cellular debris. The supernatant was discarded except the last 0.2 mL which was left in the test tube with the pellet.

To each test tube containing the pellet, 200 μL of digestion buffer containing 1% sodium dodecyl sulfate, 20mM Tris-HCl (pH 7.6), 0.2M NaCl and 700 $\mu\text{g/mL}$ proteinase K, modified from a protocol for releasing cellular RNase P genes from HeLa cells [40], was added. The mixture was digested at 47°C for 1 hr in a shaker.

An equal volume (400 μL) of acidified 125:24:1 phenol:chloroform:isoamyl alcohol mixture (Thermo Fisher Scientific Inc.) was added to each tube. After vortexing for extraction and centrifugation at $\sim 16,000\times$

g for 5 min to separate the phases, 200 μ L of the aqueous supernatant without any material at the interface was transferred to a new 1.5 mL microcentrifuge tube.

To the 200 μ L of phenol/chloroform-extracted aqueous solution, 20 μ L of 3M sodium acetate (pH 5.2) and 570 μ L of 95% ethanol were added. The mixture was placed into a cold metal block in a -15 to -20°C freezer for 20 min. The precipitated nucleic acids were centrifuged at $\sim 16,000\times$ g for 5 min and washed with 700 μ L of cold 70% ethanol.

After a final centrifugation at $\sim 16,000\times$ g for 5 min, the 70% ethanol was completely removed by a fine-tip pipette, and the microcentrifuge tubes with opened caps were put into a vacuum chamber for 10 minutes to evaporate the residual ethanol. The nucleic acid in each tube was dissolved in 50 μ L of M.B. grade water. All samples were tested immediately.

As positive control, a 0.2 mL aliquot of suspension of nasopharyngeal and oropharyngeal cells previously collected from normal individuals, tested negative for SARS-CoV-2, and stored in normal saline at -20°C was spiked with 400 copies of Quantitative Synthetic RNA from SARS-Related Coronavirus 2, Cat. No. NR-52358 supplied by BEI Resources, NIAD, NIH. This positive control tube was processed along with the reference samples for digestion and extraction.

The negative control consisted of 0.2 mL aliquot of suspension of nasopharyngeal and oropharyngeal cells previously collected from normal individuals, tested negative for SARS-CoV-2, and stored in normal saline at -20°C.

4.3. PCR primers

Based on the sequence retrieved from the GenBank database and presented in Figure 1, 3 primers were designed for primary and heminested PCR amplification of a 398-bp cDNA fragment to be used as the template for nucleotide sequencing confirmation of nucleic acid from the SARS-CoV-2. Their sequences and positions are listed below (see Figure 1).

Primary PCR primers

Forward primer Co1	5'-ACATTGGCACCCGCAATCCTG-3'	28715-28735
Reverse primer Co3	5'-TTTGTTCTGGACCACGTCTGC-3'	29105-29125

Heminested PCR primers

Forward primer Co4	5'-CAATCCTGCTAACAATGCTGC-3'	28728-28748
Reverse primer Co3	5'-TTTGTTCTGGACCACGTCTGC-3'	29105-29125

The Sequences of the primary and heminested PCR primers for the *BRCA1* gene are listed as follows.

Primary PCR primers for a 409-bp *BRCA1* gene amplicon are:

Forward AG1 primer	5'-AAGGGGTTGGCAGCAATATGTG-3'
Reverse R2 primer	5'-GTATGTAAGGTCAATTCTGTTC-3'

Heminested PCR primers for a 323-bp *BRCA1* gene amplicon are:

Forward AG2 primer	5'-GACGTTGTCATTAGTTCTTTGG-3' (also for sequencing)
Reverse R2 primer	5'-GTATGTAAGGTCAATTCTGTTC-3'

4.4. Primary RT-PCR conditions for SARS-CoV-2 gene amplification

To initiate the primary RT-PCR, a total volume of 25 µL mixture was made in a PCR tube containing 20 µL of ready-to-use LoTemp® PCR mix with denaturing chemicals (HiFi DNA Tech, LLC, Trumbull, CT, USA), 1 µL (200 units) of Invitrogen SuperScript III Reverse Transcriptase, 1 µL (40 units) of Ambion™ RNase Inhibitor, 0.1 µL of Invitrogen 1 M DTT (dithiothreitol), 1 µL of 10 µmolar Co1 forward primer in TE buffer, 1 µL of 10 µmolar Co3 reverse primer in TE buffer and 1 µL of sample RNA extract, synthetic N gene RNA extract as positive control or water as negative control.

The ramp rate of the thermal cycler was set to 0.9 °C/s. The program for the temperature steps was set as: 47°C for 30 min to generate the cDNA, 85°C 1 cycle for 10 min, followed by 30 cycles of 85°C 30 sec for denaturing, 50°C 30 sec for annealing, 65°C 1 min for primer extension, and final extension 65°C for 10 minutes.

4.5. Heminested PCR conditions for SARS-CoV-2 gene amplification

The heminested PCR mixture was a 25 µL volume of complete PCR mixture containing 20 µL of ready-to-use LoTemp® mix, 1 µL of 10 µmolar Co4 forward primer, 1 µL of 10 µmolar Co3 reverse primer and 3 µL of water.

To initiate the heminested PCR, a trace (about 0.2 µL) of primary PCR products was transferred by a micro-glass rod to the complete heminested PCR mixture. The thermocycling steps were programmed to 85°C 1 cycle for 10 min, followed by 30 cycles of 85°C 30 sec for denaturing, 50°C 30 sec for annealing, 65°C 1 min for primer extension, and final extension 65°C for 10 minutes.

The crude heminested PCR products showing an amplicon of 398 bp in size at agarose gel electrophoresis were subject to Sanger reaction without further purification.

4.6. Primary and heminested PCR conditions for BRCA1 gene amplification

The primary PCR mixture contained 20 µL of ready-to-use LoTemp® PCR mix with denaturing chemicals (HiFi DNA Tech, LLC, Trumbull, CT, USA), 2 µL of water, 1 µL of 10 µmolar forward AG1 primer, 1 µL of 10 µmolar reverse R2 primer and 1 µL of sample RNA extract. For thermocycling, the temperature steps were programmed for an initial heating at 85 °C for 10 min, followed by 30 cycles at 85 °C for 30 s, 50 °C for 30 s and 65 °C for 1 min. The final extension was 65 °C for 10 min.

The heminested PCR mixture contained 20 µL of ready-to-use LoTemp® PCR mix, 1 µL of forward AG2 primer, 0.5 µL of reverse R2 primer and 3.5 µL of water in a total 25 µL volume. About 0.2 µL of the primary PCR products was transferred into the corresponding heminested PCR mixture with a micro-glass rod. The thermocycling steps were identical to those used for the primary PCR.

4.7. Interpretation of PCR results

As described above, 1 µL of RNA extract of patient sample, 1 µL of SARS-CoV-2 synthetic N gene RNA extract as positive control (P) and 1 µL of negative cell extract control (N) were used to initiate a set of primary PCR for viral nucleic acid detection.

International Journal of Geriatrics and Rehabilitation 2(1):69- 96, July 17, 2020

In addition, 1 μ L of each sample was used to initiate a *BRCA1* gene primary PCR; and 1 μ L of negative cell extract and 1 μ L of water were used in the N and P control (see gel electrophoresis image below), respectively, for the *BRCA1* primary PCR.

In routine testing, only the heminested PCR products were subjected to agarose gel electrophoresis because most primary PCR amplicons are not visible to the naked eyes.

An aliquot of 5 μ L of each heminested PCR product was pipetted for agarose gel electrophoresis to detect the bands of the target DNA amplicons. As illustrated in the agarose gel image pasted below, for example, the negative control in Lane N of the SARS-CoV-2 series (upper half) and the water control in the P Lane of the *BRCA1* (lower half) must show no amplicons. A 398-bp amplicon must be visualized in the P Lane of the SARS-CoV-2 series (upper half) and a 323-bp amplicon must be visualized in the N Lane of the *BRCA1* series (lower half). Otherwise, the assay results are not valid.



As shown in the above image of gel electrophoresis, when the control amplicons on the P and N lanes are correctly visualized, there will be 4 possible combinations in the sample lanes. Sample 1 and 4 patterns are considered presumptive-positive for SARS-CoV-2 RNA. Sample 2 pattern is negative for SARS-CoV-2 as human *BRCA1* gene is demonstrated in the sample. Sample 3 pattern indicates that no human cell genetic material was present in the sample being tested; the test result is invalid. Sample 4 pattern indicates that there is SARS-CoV-2 RNA in the test sample, but the human DNA has been extracted by the acidified phenol chloroform mixture. In some samples, there are more copies of viral genome equivalents than human genome copies. Since human genomic DNA is a potent PCR inhibitor, acidified phenol chloroform is used to remove most of the DNA from the sample to be tested.

The presumptive-positive crude heminested PCR products showing an amplicon of 398 bp in size in the SARS-CoV-2 series and the negative samples showing an amplicon of 323 bp in size in the *BRCA1* series at agarose gel electrophoresis are subjected to Sanger reaction and automated sequencing for validation without further purification.

4.8. DNA Sequencing

The 398-bp SARS-CoV-2 heminested PCR product (about 0.2 μ L), if detected at gel electrophoresis, was transferred by a micro-glass rod into a Sanger reaction tube containing 1 μ L of 10 μ M sequencing primer (Co3 or Co4), 1 μ L of BigDye® Terminator (v 1.1/Sequencing Standard Kit), 3.5 μ L 5 $\times$ buffer, and 14.5 μ L water in a total volume of 20 μ L for 20 enzymatic primer extension/termination reaction cycles according to the protocol supplied by the manufacturer (Applied Biosystems, Foster City, CA, USA). For the SARS-CoV-2 negative samples, the 323-bp heminested PCR product was transferred by a micro-glass rod into a Sanger reaction tube containing 1 μ L of 10 μ M forward AG2 primer, 1 μ L of BigDye® Terminator (v 1.1/Sequencing Standard Kit), 3.5 μ L 5 $\times$ buffer, and 14.5 μ L water in a total volume of 20 μ L for 20 enzymatic primer extension/termination reaction cycles according to the protocol supplied by the manufacturer (Applied Biosystems, Foster City, CA, USA). After a dye-terminator cleanup with a Centri-Sep column (Princeton Separations, Adelphia, NJ, USA), the reaction mixture was loaded in an Applied Biosystems SeqStudio Genetic Analyzer for sequence analysis. Sequence alignments were performed against the standard sequences stored in the GenBank database by on-line BLAST alignment analysis.

5. Conclusions

Testing the cellular components of respiratory tract specimens instead of cell-free fluids only and using conventional nested RT-PCR to amplify the target nucleic acid can reduce the number of false negatives in molecular testing for SARS-CoV-2. Routine sequencing of the nested PCR products not only can eliminate false positives, but also can categorize the positive isolate into one of the six clades of SARS-CoV-2 known to exist in the United States, based on single nucleotide polymorphisms in a 398-base segment of the N gene. Extremely accurate routine laboratory tests for SARS-CoV-2 are needed in long-term care facilities and as businesses attempt to return to normal operation. Molecular diagnosis of SARS-CoV-2 infection will become a serious matter and a positive test result must be substantiated by a DNA sequencing electropherogram showing the genomic fingerprints of the virus. False-positive test reports can easily create unnecessary panic resulting in negative impacts on local economies.

Based on an official document dated March 15, 2020, the FDA issued a letter on February 4, 2020 authorizing emergency use of the CDC 2019-Novel Coronavirus (2019-nCoV, *renamed as SARS-CoV-2*) Real-Time Reverse Transcriptase (RT)-PCR Diagnostic Panel for the presumptive qualitative detection of nucleic acid from the 2019-nCoV in upper and lower respiratory specimens [41]. The methodology presented in this paper is for definitive qualitative detection of nucleic acid from the SARS-CoV-2 infecting the cells in upper and lower respiratory specimens. The FDA also advises that in performing Clinical Evaluation of newly developed RT-qPCR assays for the SARS-CoV-2, using Recommended Comparator Method for percent agreement performance calculations, false results can be investigated using an additional EUA RT-PCR assay, and/or Sanger sequencing [42]. Routine nucleotide sequencing of all detected 398-bp N gene amplicons guarantees no-false positive results in SARS-CoV-2 assays.

Author Contributions

S.H.L.: Conceptualization, study design, methodology, data analysis, manuscript preparation and final review

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DNA sequencing test for SARS-CoV-2. The author also thanks Wilda Garayua for her technical assistance in performing the nucleotide sequencing.

Conflicts of Interest: Sin Hang Lee is Director of Milford Molecular Diagnostics Laboratory specialized in developing DNA sequencing-based diagnostic tests implementable in community hospital laboratories. The reagents and equipment used in this work can be substituted with similar products from various suppliers. The technology presented is not patentable.

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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:20-cv-865-BAS

**Declaration of Dr. Jayanta
 Bhattacharya in Support of
 Plaintiffs' Renewed Motion for a
 Temporary Restraining Order /
 Preliminary Injunction; and
 Request for Leave to File Late
 Declaration**

Judge: Hon. Cynthia Bashant

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

PLEASE TAKE NOTICE that Plaintiffs South Bay United Pentecostal Church and Bishop Arthur Hodges III, by and through counsel, have retained Prof. Jayanta Bhattacharya, M.D., Ph.D. to provide an expert declaration in this action. Plaintiffs reviewed Dr. Bhattacharya's declaration filed in *Brach v. Newsom*, No. 2:20-cv-6472-SVW-AFM (N.D. Cal. Aug. 3, 2020), and concluded that many of his opinions directly relevant to this action. Specifically, the opinions which Dr. Bhattacharya made at paragraphs 1-14 and 31-43 are directly relevant. The opinions in paragraphs 15-42 also translate because California uses the same "monitoring list" to determine whether schools and churches must be shuttered. However, due to other commitments, Plaintiffs and Dr. Bhattacharya were unable to prepare a declaration for filing in this action by August 10, 2020. Thus, Plaintiffs respectfully request leave to file such declaration by no later than Friday, August 14, 2020. In the interim, Plaintiffs are submitting Dr. Bhattacharya's previously prepared declaration, which is consistent with the opinions Plaintiffs would have him provide in this action, and request that the Court take judicial notice of it. *See* Fed. R. Civ. P. 201; *ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 756 n.1 (9th Cir. 2014) (taking judicial notice of court documents); *Lozman v. City of Riviera Beach, Fla.*, 713 F.3d 1066, 1076 n.9 (11th Cir. 2013) (same).

Dated: August 10, 2020

By:

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13 **UNITED STATES DISTRICT COURT FOR**
 14 **THE CENTRAL DISTRICT OF CALIFORNIA**

15 **MATTHEW BRACH**, an individual,
 16 *et al.*,

17 Plaintiffs,
 18 v.

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

22 Defendants.

Case Number: 2:20-CV-06472-SVW-AFM

**DECLARATION OF DR. JAYANTA
 BHATTACHARYA IN SUPPORT OF
 APPLICATION FOR TEMPORARY
 RESTRAINING ORDER**

Judge: Hon. Stephen V. Wilson
 Courtroom: 10A

23 I, JAYANTA BHATTACHARYA, declare as follows:

24 1. I am a resident of Los Altos, California. I am 52-years-old, and I am
 25 otherwise competent to render this declaration.

26 2. I am a Professor of Medicine at Stanford University and have worked on the
 27 Stanford University faculty since 2001. I had an MD and a Ph.D. in economics, both
 28 earned from Stanford University. I am the director of the Stanford Center for

1 Demography and Economics of Health and Aging. At Stanford, I teach courses on health
2 economics in the Economics department and on advanced statistical methods in the
3 School of Medicine.

4 3. My primary research area is health economics, including a focus on
5 economic epidemiology. Between 1996 and 2020, I have published 136 articles in peer-
6 reviewed journals, including top-ranked journals in the economics, statistics, public
7 health, epidemiology, medicine, and health policy literatures. I have published numerous
8 papers on the economics and medicine of infectious disease, including on the economics
9 and epidemiology of HIV, H1N1 flu, H5N1 flu, seasonal influenza, antimicrobial
10 resistance and antibiotic use, and COVID-19. I have written a popular textbook, *Health*
11 *Economics*, used to teach the subject in universities around the world. The textbook
12 includes a chapter on economic epidemiology that surveys the literature on disease
13 modeling, including compartment models such as the Susceptible-Infected-Recovered
14 (SIR) models, commonly in use to forecast the COVID-19 epidemic.

15 4. I have been actively researching the COVID-19 epidemic using my
16 expertise in infectious disease epidemiology and health economics. To date, I have
17 published two papers in peer-reviewed journals related to the epidemic. In addition, I
18 have written three articles that are currently under consideration at peer-reviewed
19 journals, and I have published three editorials on economic¹ and epidemiological² issues
20 related to the epidemic, including an editorial³ on optimal public health management of
21 the epidemic.

22
23 ¹ Jay Bhattacharya and Mikko Packalen, *Lives vs Lives: The Global Cost of Lockdown*,
24 Spectator USA, <https://spectator.us/lives-vs-lives-global-cost-lockdown/> (last visited
25 July 9, 2020).

26 ² Eran Bendavid and Jay Bhattacharya, *Is the Coronavirus as Deadly as They Say?*,
WSJ Opinion, [https://www.wsj.com/articles/is-the-coronavirus-as-deadly-as-they-say-](https://www.wsj.com/articles/is-the-coronavirus-as-deadly-as-they-say-11585088464)
27 [11585088464](https://www.wsj.com/articles/is-the-coronavirus-as-deadly-as-they-say-11585088464) (March 24, 2020).

28 ³ Jay Bhattacharya and Sanjiv Agarwal, Lift lockdowns, protect the vulnerable, treat
Covid like a health issue and not a disaster, The Print, <https://theprint.in/health/lift->

1 5. My published papers on COVID-19 includes the first published serological
2 study measuring the prevalence of the COVID-19 epidemic. This study, conducted in LA
3 County, uses evidence from a specific antibody response to SARS-CoV-2 (the virus that
4 causes COVID-19) infection in an adult community-dwelling sample picked to be
5 representative of the county. This piece was published in the *Journal of the American*
6 *Medical Association*, one of the leading peer-reviewed journals in medicine. This paper
7 finds that by April 10 - 11, 2020, 4.3% of LA County adults show specific antibody
8 evidence of prior or current COVID-19 infection. This prevalence rate represents a
9 multiple of 43.5 times the number of cases confirmed by the county public health
10 authority by that date. One important implication of this paper is that the infection fatality
11 rate from COVID-19 infection in LA County up to the date of the survey (that is, the
12 probability of dying given that a person is infected with SARS-CoV-2) is at least an order
13 of magnitude lower than the case fatality rate. The case fatality rate includes only patients
14 who were infected with SARS-CoV-2 and identified as a case in the denominator of the
15 calculation. Cases most typically include patients who have severe symptoms and thus
16 come to the attention of medical authorities. Our study shows that cases represent only a
17 small fraction of the set of people who have been infected with SARS-CoV-2. I served
18 as the senior author for this article.

19 6. I have also published a second peer-reviewed paper in the *Journal of Public*
20 *Health* on racial disparities in knowledge and attitudes regarding the danger posed by
21 COVID-19 infection and the efficacy of personal behaviors like hand washing and social
22 distancing in protecting against infection. I reviewed the literature cited in the paper
23 regarding best practices for personal protection to prevent exposure to SARS-CoV-2.

24 7. I currently have three unpublished papers on COVID-19 presently
25 undergoing peer review. These include two papers reporting on seroprevalence studies
26 and a third paper using data from seroprevalence studies in the context of an SIR model

27 [lockdowns-protect-the-vulnerable-treat-covid-like-a-health-issue-and-not-a-](#)
28 [disaster/466786/](#) (last visited July 26, 2020)

1 to forecast the spread of COVID-19 in a way that accounts for the large number of
2 asymptomatic patients.

3 8. First, I am the senior author of the Santa Clara County seroprevalence study.
4 It is the first seroprevalence study where the study team made a scientific paper available
5 (undergoing peer review), and it is still, to my knowledge, the largest community
6 seroprevalence survey in the US. The results from Santa Clara County (SCC) were
7 similar to the results from the LA County seroprevalence study. On April 3rd & 4th, 2020,
8 the seroprevalence of SARS-CoV-2 antibodies in the SCC sample, reweighted to match
9 the zip code of residence, sex, and race distribution of SCC, was 2.8%. The Santa Clara
10 study has been enormously influential and has served as a template for the many
11 seroprevalence studies that have followed it. The preprint article reporting on the Santa
12 Clara study, though not peer-reviewed, has generated 147 citations (according to Google
13 Scholar accessed on July 9, 2020) to date.

14 9. Second, I am the senior author of a study (still undergoing peer review)
15 measuring the seroprevalence of SARS-CoV-2 infection among employees of Major
16 League Baseball on April 14th & 15th, 2020. This is the first seroprevalence study of
17 national scope measuring the extent of COVID-19. The main finding from that study is
18 that, as of the date of data collection, the prevalence of current or prior COVID-19
19 infection in the MLB employee population was 0.7%.

20 10. Finally, I am a co-author of a preprint paper (still undergoing peer review)
21 titled "Visualizing the Invisible: The Effect of Asymptomatic Transmission on the
22 Outbreak Dynamics of COVID-19." This paper presents the first forecasting model that
23 accounts for data provided by seroprevalence studies such as the LA County, Santa Clara
24 County, and MLB studies. In particular, the model accounts for the vast population of
25 previously infected people identified by the seroprevalence studies and challenges the
26 notion that contact tracing can be a viable strategy to control the further spread of
27 COVID-19 infection.

28

1 11. In addition to my published work, over the past three months, I have been
2 invited to serve as a peer reviewer for several scientific journals to review COVID-19
3 related submissions by other scientists. These journals include the *British Medical*
4 *Journal*, *Health Affairs*, the *Journal of Infectious Disease*, and the *Annals of Internal*
5 *Medicine*. For these journals, I have provided scientific advice regarding the publication
6 of articles on topics related to the COVID-19 epidemic.

7 12. In May 2020, I testified at a virtual roundtable organized by Senator Pat
8 Toomey on the subject of the potential reopening of youth baseball leagues while
9 protecting the safety of participants. At this roundtable, I reviewed the evidence regarding
10 the relatively low mortality and morbidity risk that SARS-CoV-2 infection poses to
11 children and adolescents, and I discussed social distancing and other protocols to make
12 youth baseball safer for coaches, umpires, and other adult participants.

13 13. In July 2020, I was invited to testify at a House Oversight Briefing to the
14 Economic and Consumer Policy Subcommittee on SARS-CoV-2 vaccine development.
15 My testimony focused on the randomized trials and other studies currently underway to
16 produce a safe and effective vaccine to SARS-CoV-2 infection, and in particular on the
17 confidence that the public can have on the US Food and Drug Administration's (FDA)
18 evaluation of the scientific evidence regarding new vaccines.

19 14. Plaintiffs in this case contacted me about providing expert testimony
20 regarding the risks of opening schools in California this Fall, and I agreed to provide an
21 affidavit with my professional opinion on these matters. I am not taking any personal
22 payments for my COVID-19 related work, so my work on this affidavit is pro-bono.

23 15. To prepare this affidavit, I have reviewed the Governor's Executive Order
24 N-60-20 and the July 17, 2020 "COVID-19 Industry Guidance: School and School-Based
25 Programs." I have also closely studied the scientific data on COVID-19. I have
26 compared the Governor's July 17th order against guidelines provided by both the World
27 Health Organization (WHO) and the US Centers for Disease Control (CDC) for school
28

1 reopening. My main conclusion is that there is no scientific basis for closing schools
2 across the state this Fall.

3 16. The World Health Organization (WHO) guidance⁴ on school opening
4 emphasizes that school opening decisions be based on the “Current understanding about
5 COVID-19 transmission and severity in children”, the “Local situation and epidemiology
6 of COVID-19 where the school(s) are located “, and the “School setting and ability to
7 maintain COVID-19 prevention and control measure”. The WHO guidance explicitly
8 recommends the consideration of “what harm might occur due to school closure (e.g. risk
9 of non-return to school, widening disparity in educational attainment, limited access to
10 meals, domestic violence aggravated by economic uncertainties etc.), and the need to
11 maintain schools at least partially open for children whose caregivers are ‘key workers’
12 for the country.”

13 17. The US Centers for Disease Control (CDC) March 12th, 2020 interim
14 guidance⁵ concurs with the WHO guidance document, with an emphasis on accounting
15 for local conditions regarding disease spread and providing concrete guidance on steps
16 to take (masks, social distancing, staff training, and the like) to open schools safely. The
17 interim guidance suggests keeping schools open even if there is moderate community
18 spread of SARS-CoV-2 infection, with school closures limited only to communities with
19 “substantial” community spread.

20
21
22
23
24 ⁴ World Health Organization (2020) Considerations for school-related public health
25 measures in the context of COVID-19.

26 [https://www.who.int/publications/i/item/considerations-for-school-related-public-
27 health-measures-in-the-context-of-covid-19](https://www.who.int/publications/i/item/considerations-for-school-related-public-health-measures-in-the-context-of-covid-19)

28 ⁵ Centers for Disease Control (2020) Interim Guidance for Administrators of US K-12
Schools and Child Care Programs. [https://www.cdc.gov/coronavirus/2019-
ncov/community/schools-childcare/guidance-for-schools.html](https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-schools.html)

18. The US CDC July 23rd, 2020 guidance⁶ on school opening (entitled “The Importance of Reopening Schools this Fall”) emphasizes the well-documented benefits of keeping schools open. Among the harms of extended school closure include: (1) “severe learning loss” for all students, but especially students with special needs and disabilities; (2) widening of income and racial disparities in educational outcomes for children; (3) hampered development of social and emotional skills by children and potential harm to child mental health; (4) exposure of children to heightened risk of “physical, sexual, and emotional maltreatment and abuse” at home from some families; (5) nutritional deprivation of poor children due to the cessation of school meal programs; and (6) sharp reduction in regular physical activity by children in the absence of physical education programs. Crucially, the CDC recommends that these harms be taken into account in school closure decisions. The guidance document closes by suggesting that “[r]eopening schools creates opportunity to invest in the education, well-being, and future of one of America’s greatest assets—our children—while taking every precaution to protect students, teachers, staff and all their families.”

19. Governor Newsom’s Executive Order N-60-20⁷, issued on May 4th, 2020, did not specifically mention schools, but invested power in the State Public Health Officer to make determinations about the re-openings of “businesses and spaces” that are more restrictive than those made by local county public health authorities. Under this authority, on July 17th, 2020, the California Department of Public Health forced the closure of all schools in California counties that have been on the state’s county monitoring list.⁸

⁶ Centers for Disease Control (2020) The Importance of Reopening America’s Schools this Fall. <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html>

⁷ Newsom G (2020) Executive Order N-60-20. <https://www.gov.ca.gov/wp-content/uploads/2020/05/5.4.20-EO-N-60-20-text.pdf>

⁸ California Department of Public Health (2020) COVID-19 and Reopening In-Person Learning: Framework for K-12 Schools in California, 2020-2021 School Year.

20. The state places a county on this list if it meets at least one of six criteria related to the number of COVID-19 PCR tests conducted or positivity rate, number of cases and growth in cases, growth in hospitalizations, or inadequate hospital ICU or ventilator capacity. None of these criteria are related to the risks to children or to teachers that arise from reopening schools for in-person teaching. The scientific evidence indicates that a county could meet all six criteria for closing schools, and the marginal public health risk from conducting school in-person would be small. In particular, the order ignores the evidence that the mortality risk and severe adverse health outcome risk to children from COVID-19 disease is small or negligible. The order ignores the fact that children are exceedingly unlikely to pass the virus on to adults. The evidence on these points are covered extensively below. The order ignores the fact that keeping schools closed results in public health harm to children outlined in the WHO's guidance on school opening discussed in paragraph 16 above, and the CDC's guidance on school opening discussed in paragraph 18 above. The governor's executive order thus ignores the recommendations of both the CDC and the WHO that school reopening decisions take account of the latest scientific evidence on risk to children and viral transmission dynamics, relevant local conditions, and the public health harm arising from keeping schools closed.

21. In the paragraphs that follow, drawn both from my own work and from the scientific literature on COVID-19, I discuss (1) the relative risk that young people (below age 25) with active SARS-CoV-2 infection pose with regard to infecting older people; (2) the mortality risk from COVID-19 infection for patients of different ages; and (3) the public health community's approval of the principle that individuals and groups may appropriately take actions that raise the risk of COVID-19 infection if the value provided by those actions to participants is sufficiently large to outweigh the infection-related harms.

<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/Schools%20Reopening%20Recommendations.pdf>

22. The overwhelming weight of scientific data suggests that the risk of transmission of the virus from younger people aged 20 and below to older people is small or negligible, and the risk of transmission from people 20 to 25 to older people is small relative to the risk of transmission from people older than 25 to others older than 25.

23. The most important evidence on childhood spread of the disease comes from a study conducted in Iceland and published in the New England Journal of Medicine.⁹ The data for this study come from Iceland's systematic screening of its population to check for the virus. The study reports on both a population-representative sample and a sample of people who were tested because of the presence of symptoms consistent with COVID-19 infection. The study team isolated SARS-CoV-2 virus samples from every positive case, sequenced the genome of the virus for every case, and tracked the mutation patterns in the virus. This analysis, along with contact tracing data, allowed the study team to identify who passed the virus to whom. From this analysis, the senior author of the study, Dr. Kari Stefansson, concluded¹⁰ that "[E]ven if children do get infected, they are less likely to transmit the disease to others than adults. We have not found a single instance of a child infecting parents. There is amazing diversity in the way in which we react to the virus."

24. A French study,¹¹ conducted by scientists at the L'Institut Pasteur, examined data from school-teachers, students, and their parents in Crepy-en-Valois in France. Collecting data in late April 2020, the authors found that 61% of the parents of infected

⁹ Daniel F. Gudbjartsson, Ph.D., Agnar Helgason, Ph.D., et al., *Spread of SARS-CoV-2 in the Icelandic Population*, The New England Journal of Medicine, <https://www.nejm.org/doi/full/10.1056/NEJMoa2006100> (June 11, 2020).

¹⁰ Roger Highfield, *Coronavirus: Hunting Down COVID-10*, Science Museum Group, <https://www.sciencemuseumgroup.org.uk/blog/hunting-down-covid-19/> (April 27, 2020).

¹¹ Arnaud Fontanet, MD, DrPH, Rebecca Grant, et al., *SARS-CoV-2 Infection in Primary Schools in Northern France: A Retrospective Cohort Study in an Area of High Transmission*, Institut Pasteur, <https://www.pasteur.fr/fr/file/35404/download> (last visited July 9, 2020).

1 students were infected by SARS-CoV-2, while 6.9% of parents of non-infected students
 2 were infected. The schools in France were closed from the end of January on, at first
 3 because of February holiday and then the late February lockdown. The authors found
 4 three cases among kids in January using antibody tests but found no evidence of virus
 5 spread to other kids or teachers from those early cases. Any spread between the end of
 6 January and the end of April (when the authors collected samples) must have occurred
 7 during the lockdown. The kids who tested antibody positive at the end of April, because
 8 of the circumstances of the lockdown, must have become positive from a source other
 9 than their school. The main contacts of the young children were their parents, of whom
 10 61% were positive, which is consistent with parent to child spread. Also consistent is the
 11 fact that only 6.9% parents tested positive in April for the virus among the kids who were
 12 antibody negative. The authors' main conclusion¹² from these facts is that parents were
 13 the source of infections in school children; children were not the source. This finding
 14 bolsters the conclusion from the Icelandic study that the disease spreads less easily from
 15 children to adults than it does from adults to adults.

16 25. Researchers in Ireland conducted a similar but smaller study¹³ that
 17 exhaustively tracked the contacts of three schoolchildren (10-15 years old) and three
 18 adults (including one teacher and two adult students). All six patients had confirmed cases
 19 of COVID-19 disease but were found to have contracted the virus from contacts outside
 20 of the school setting. Despite identifying a total of 722 contacts, the study authors
 21 reported finding no instance of an infected child infecting another child. The infected
 22

23 ¹² *COVID-19 In Primary Schools: No Significant Transmission among Children or*
 24 *From Students to Teachers*, Institut Pasteur, [https://www.pasteur.fr/en/press-area/press-](https://www.pasteur.fr/en/press-area/press-documents/covid-19-primary-schools-no-significant-transmission-among-children-students-teachers)
 25 [documents/covid-19-primary-schools-no-significant-transmission-among-children-](https://www.pasteur.fr/en/press-area/press-documents/covid-19-primary-schools-no-significant-transmission-among-children-students-teachers)
 26 [students-teachers](https://www.pasteur.fr/en/press-area/press-documents/covid-19-primary-schools-no-significant-transmission-among-children-students-teachers) (June 23, 2020).

27 ¹³ Laura Heavey, Geraldine Casey, et al., *No Evidence of Secondary Transmission of*
 28 *COVID-19 from Children Attending School in Ireland, 2020*, Eurosurveillance,
[https://www.eurosurveillance.org/content/10.2807/1560-](https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.21.2000903#html_fulltext)
[7917.ES.2020.25.21.2000903#html_fulltext](https://www.eurosurveillance.org/content/10.2807/1560-7917.ES.2020.25.21.2000903#html_fulltext) (May 28, 2020).

1 adults, by contrast, had many fewer contacts – 102 – but did pass on the infection to a
2 few adult contacts.

3 26. A report¹⁴ by the ministry of health in the Netherlands, based on contact
4 tracing data, finds almost no disease spread by infected patients 20 and under at all, and
5 only limited spread by adults 20-25 to others outside their own age category. The authors
6 of the study concluded: “Data from the Netherlands also confirms the current
7 understanding: that children play a minor role in the spread of the novel coronavirus. The
8 virus is mainly spread between adults and from adult family members to children. The
9 spread of COVID-19 among children or from children to adults is less common.”

10 27. A German¹⁵ study reports a strikingly similar finding on the likelihood of
11 pediatric disease spread. The German Society for Pediatric Infectious Diseases collected
12 on all children and adolescents admitted to a hospital for COVID-19 treatment between
13 mid-March and early May 2020 – 128 patients in all, admitted to 66 different hospitals.
14 The authors were able to find the source of infection for 38% of these patients, which
15 turned out to be a parent 85% of the time. Though the authors document a limitation of
16 small sample size, they conclude that “In contrast to other epidemic viral respiratory
17 infections, the primary source of infection with SARS-CoV-2 appears not to be other
18 children.” The authors reported a single death among these 128 pediatric patients.

19 28. The National Academies of Sciences, Engineering, and Medicine convened
20 the Committee on Guidance for K-12 Education on Responding to COVID-19 in May
21 2020 to review the science regarding the public health costs and benefits of school
22 reopening and to make recommendations about best practices for reopening, completing
23

24 ¹⁴ *Children and COVID-19*, National Institute for Public Health and the Environment,
25 <https://www.rivm.nl/en/novel-coronavirus-covid-19/children-and-covid-19> (July 2,
26 2020).

27 ¹⁵ Armann, J. P., Diffloth, N., Simon, A., Doenhardt, M., Hufnagel, M., Trotter, A.,
28 Schneider, D., Hübner, J., & Berner, R. (2020). Hospital Admission in Children and
Adolescents With COVID-19. *Deutsches Arzteblatt international*, 117(21), 373–374.
<https://doi.org/10.3238/arztebl.2020.0373>

its report¹⁶ in July 2020. The report emphasizes the need to balance the public health risk from school re-opening against the long term harm arising children missing in-person instruction. The report points to the inequitable harm posed on minority students from closing schools. The report recommends prioritizing in-person instruction for K-5 students and special needs students and provides concrete mitigation strategies (such as masks) to support school reopening. Though the report calls for further research on the likelihood of disease spread, it does not review many of the European studies that I review in my declaration.

29. A recent South Korean contact tracing study¹⁷ was cited in the New York Times as providing evidence that “Older Children Spread the Coronavirus Just as Much as Adults.” The study authors traced the 59,073 contacts of 5,706 COVID-19 patients, confirmed by PCR to be infected. The authors divide up their patients into 10-year age bins, and report the fraction of contacts in each bin who also tested positive. The authors report that among 0-9-year-old cases, 5.3% of household contacts tested positive, while among 10-19-year-old cases, 18.6% of household contacts tested positive (in both groups, only about 1% of non-household contacts tested positive).

30. Contrary to the interpretation of the NYT headline, this pattern of evidence does not imply that older children spread the corona virus as much as adults. First, the authors define an index case as “the first identified laboratory-confirmed case or the first documented case in an epidemiologic investigation within a cluster.” In other words, they cannot tell whether an index case was the first person within a cluster to be infected – just that they were the first to come to the attention of public health authorities. Unlike the

¹⁶ National Academies of Sciences, Engineering, and Medicine. 2020. Reopening K-12 Schools During the COVID-19 Pandemic: Prioritizing Health, Equity, and Communities. Washington, DC: The National Academies Press. <https://doi.org/10.17226/25858>.

¹⁷ Park YJ, Choe YJ, Park O, Park SY, Kim YM, Kim J, et al. Contact tracing during coronavirus disease outbreak, South Korea, 2020. *Emerg Infect Dis*. 2020 Oct (accessed online July 27, 2020) . <https://doi.org/10.3201/eid2610.201315>

1 Icelandic study, referenced in paragraph 23, the authors of the South Korean study do not
2 sequence the genome of the viruses identified to document mutation patterns.
3 Consequently, they cannot distinguish whether the index patient passed the virus to the
4 contact or the other way around. Second, the authors report that children 0-9 years old
5 represented only 0.5% of their index cases and children 10-19 years old represented only
6 2.2% of their index cases. The vast majority of their cases were 20 years old or older. The
7 study data collection took place during a period of strict lockdown and school closure in
8 South Korea. It is highly unlikely that these few index children spread the disease
9 throughout their cluster. The authors document that adults are more likely to have
10 contacts outside their household than children during this period. It is far more likely that
11 older members of households were the true index cases and spread the infection to
12 children within the household. Third, the authors report that 7% of household contacts of
13 20-29 year olds were infected. This is less than the positive case rate for 10-19 year olds.
14 If the higher rate of infections among household contacts of 10-19 year olds is evidence
15 of increased transmissibility, then the low rate of infections among households of 20-29
16 year olds should be taken as evidence of decreased transmissibility for patients in that
17 age group. A better interpretation is that the study methods of this paper do not permit
18 any inference whatsoever about the relative propensity of children and adults to transmit
19 the disease.

20 31. In the paragraphs that follow, I review evidence on the size of the mortality
21 risk with respect to COVID-19 infection. The best evidence on the infection fatality rate
22 from SARS-CoV-2 infection (that is, the fraction of infected people who die due to the
23 infection) comes from seroprevalence studies. The definition of seroprevalence of
24 COVID-19 is the fraction of people within a population who have specific antibodies
25 against SARS-CoV-2 in their bloodstream. Seroprevalence studies provide better
26 evidence on the total number of people who have been infected than do case reports,
27 which miss infected people who are not identified by the public health authorities.
28

1 Because they ignore unreported cases in the denominator, fatality rate estimates based on
2 case reports are substantially biased upwards.

3 32. According to a meta-analysis¹⁸ by Dr. John Ioannidis of every
4 seroprevalence study conducted with a supporting scientific paper (50 estimates in total
5 from 32 different localities around the world), the median infection fatality rate from
6 COVID-19 infection is 0.27%. For COVID-19 patients under 70, the meta-analysis finds
7 an infection fatality rate of 0.05%, with a range between 0.00% to 0.57% in different
8 locations. A newly released meta-analysis¹⁹ by scientists independent of Dr. Ioannidis'
9 group, published in the National Bureau of Economic Research working paper series,
10 reaches qualitatively similar conclusions.

11 33. A recent US Centers for Disease Control (CDC) report²⁰ found that there
12 were between six and 24 times more SARS-CoV-2 infections than cases reported
13 between March and May 2020. This study is based on serological analysis of blood
14 samples incidentally collected by commercial laboratories in 10 cities nationwide.
15 Though the CDC does not provide the infection fatality rate estimate implied by their
16 seroprevalence estimate in their report, the multiplier to cases they report is in line with
17 the seroprevalence studies reviewed by Dr. Ioannidis above, which imply an infection
18 fatality rate between 2 and 3 in 1,000.

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21
22 ¹⁸ John P.A. Ioannidis, *The Infection Fatality Rate of COVID-19 Inferred from*
23 *Seroprevalence Data*, medRxiv,
24 <https://www.medrxiv.org/content/10.1101/2020.05.13.20101253v2.full.pdf> (July 14,
2020).

25 ¹⁹ Levin AT, Cochran KB, Walsh SP (2020) Assessing the Age Specificity of Infection
26 Fatality Rates for COVID-19: Meta-Analysis & Public Policy Implications. National
27 Bureau of Economic Research Working Paper #27597.

28 ²⁰ Havers FP, Reed C, Lim T, et al. Seroprevalence of Antibodies to SARS-CoV-2 in 10
Sites in the United States, March 23-May 12, 2020. *JAMA Intern Med*. Published online
July 21, 2020. doi:10.1001/jamainternmed.2020.4130

34. In May 2020, the CDC released guidance²¹ for pandemic planning scenario that included its best estimate of the infection fatality rate in the US, of 0.26%. The CDC's estimate of the symptomatic fatality rate among diagnosed cases was 0.4%, and they estimated about 65% of all cases are symptomatic, which implies an infection fatality rate estimate of $0.4\% * 0.65 = 0.26\%$.

35. By contrast, the CDC estimated²² that the symptomatic fatality rate from influenza infection of 0.13% and 0.10% during the 2017-18 and 2018-19 seasons, respectively. These figures should be compared against the symptomatic fatality rate for COVID-19 reported by the CDC (0.4%) rather than the infection fatality rate (0.26%). To my knowledge the CDC has not provided a publicly available estimate of the infection fatality rate for the flu during those seasons. Here, the symptomatic fatality rate represents the probability that a patient infected with the flu virus with some flu symptoms dies from the flu, while the infection fatality rate indicates the probability that a patient infected with influenza, either with or without symptoms, dies from the flu.

36. In mid-July, the CDC updated its pandemic planning site and revised its preferred estimate of IFR upward to 0.65%.²³ In support of this revision, the CDC cited an pre-print meta-analysis of 25 infection fatality rate estimates.²⁴ This meta-analysis includes IFR estimates provided in modeling papers (based on no direct empirical data)

²¹ *COVID-19 Pandemic Planning Scenarios*, Centers for Disease Control and Prevention, (May 20, 2020).

<https://web.archive.org/web/20200706205612/https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>. Accessed through the internet archive site, <https://web.archive.org>.

²² *Disease Burden of Influenza*, Centers for Disease Control and Prevention, <https://www.cdc.gov/flu/about/burden/index.html> (last visited on July 9, 2020).

²³ *COVID-19 Pandemic Planning Scenarios*, Centers for Disease Control and Prevention, (July 10, 2020). <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>

²⁴ Meyerowitz-Katz, G., & Merone, L. (2020). A systematic review and meta-analysis of published research data on COVID-19 infection-fatality rates. *medRxiv*. <https://www.medrxiv.org/content/10.1101/2020.05.03.20089854v4>

1 and observational studies that do not adequately consider undiagnosed infections.
 2 Though the meta-analysis does consider 9 seroprevalence studies among its sources, it
 3 arbitrarily restricts attention to only seroprevalence studies reported by a select set of
 4 governments, while ignoring the much larger set of seroprevalence studies (including
 5 peer-reviewed studies) cited by Prof. Ioannidis in his report cited in paragraph 30 above.

6 37. The mortality risk for those infected with SARS-CoV-2 is not the same for
 7 all patients. Older patients are at substantially higher risk of death if infected, while
 8 younger patients face a vanishingly small risk. The best evidence on age-specific
 9 infection fatality rates comes again from seroprevalence studies. Three such studies (of
 10 which I am currently aware) provide age-specific infection fatality rate estimates. The
 11 CDC's current best estimates are that the symptomatic fatality rate from COVID-19
 12 among patients less than 50 years old is 0.05%, or 5 in 10,000; 0.2% for patients between
 13 ages 50 and 64; and 1.3% for patients 65 and above. The infection fatality rates are lower
 14 than these numbers since only a fraction of patients is symptomatic.

15 38. A study of the seroprevalence of COVID-19 in Geneva, Switzerland
 16 (published in the *Lancet*)²⁵ provides a detailed age break down of the infection fatality
 17 rate in a preprint companion paper:²⁶ 0.0016% for patients 5 to 9 years old (16 deaths per
 18 100,000 infections); 0.00032% for patients 10 to 19 years old (3.2 deaths per million
 19 infections); 0.0092% for patients 20 to 49 years old (92 deaths per 100,000 infections);
 20 0.14% for patients 50 to 64 years old (14 cases per 10,000 infections); and 5.6% for
 21 patients above 65.

22
 23
 24 ²⁵ Silvia Stringhini, PhD, Ania Wisniak, MS, et al., *Seroprevalence of Anti-SARS-CoV-2 IgG Antibodies in Geneva, Switzerland (SEROCoV-POP): A Population Based Study*,
 25 The Lancet, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)31304-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)31304-0/fulltext) (June 11, 2020).

26
 27 ²⁶ Francisco Perez-Saez, Stephen Lauer, et al., *Serology-Informed Estimates of SARS-COV-2 Infection Fatality Risk in Geneva, Switzerland*, OSFPREPRINTS,
 28 <https://osf.io/wdbpe/> (June 15, 2020).

39. For this affidavit, I estimated the age-specific infection fatality rates from the Santa Clara County seroprevalence study²⁷ data (for which I am the senior investigator). The infection fatality rate is 0% among people between 0 and 19 years (there were no deaths in Santa Clara in that age range up to that date); 0.013% for people between 20 and 39 years (1.3 deaths per 10,000 infections); 0.16% for people between 40 and 69 years (1.6 deaths per 1,000 infections); and 1.3% for people above 70 years. In fact, in all of California²⁸ up through July 23rd, there have been no deaths at all among COVID-19 patients below 18. 77.5% of all COVID-19 related deaths occurred in patients 65 and older.

40. In the preceding paragraphs, I have presented evidence that the risk of disease spread from younger people to older people is small, and that the risk of mortality to people under the age of 65 is on the order of 1 in 1,000 if someone does become infected (lower with younger age). The final question I address in my affidavit is a vital principle promoted by public health experts and the public health community that implies that certain action may be justified despite some public health risk if the action is sufficiently important to warrant it.

41. The Black Lives Matter (BLM) protests started nationwide shortly after the killing of George Floyd in Minnesota on May 25th, 2020. One press account²⁹ suggests that more than 26 million Americans nationwide (primarily in big cities, but also

²⁷ Eran Bendavid, MD, Bianca Mulaney, MS, et al., COVID-19 Antibody Seroprevalence in Santa Clara County, California, medRxiv preprint, <https://www.medrxiv.org/content/10.1101/2020.04.14.20062463v2> (April 30, 2020)

²⁸ Age Group in California, *Cases and Deaths Associated with COVID-19*, California Department of Public Health, <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID-19-Cases-by-Age-Group.aspx> (July 23, 2020).

²⁹ Matthew Wright, *Black Lives Matter Protests May be the Largest in U.S. History as More Than 26 Million Americans Have Been at the More Than 4, 700 Demonstrations Around the Country*, DailyMail.com, <https://www.dailymail.co.uk/news/article-8488409/BLM-protests-largest-U-S-history-26MILLION-Americans-attended.html> (July 8, 2020).

elsewhere) have participated in at least one protest since the first protests started on May 26th, 2020. Protest organizers have manifestly not followed WHO or CDC guidelines regarding the conduct of large scale events during the COVID-19 epidemic. Prominent public officials, including Los Angeles Mayor Eric Garcetti, have participated in BLM protests that violate guidelines regarding the use of masks³⁰ and maintained social distancing during large events.

42. The reaction³¹ of many prominent voices³² within the public health community to the BLM protests has emphasized the importance of the right of Americans concerned about racial injustice to protest despite COVID-19. Nearly 1,300 public health experts signed a public letter³³ supporting the right of BLM protestors to gather publicly because of their (the protestors' and the public health experts') deeply held opposition to systemic racism. The letter explicitly acknowledged that social distancing and public masking would minimize the spread of COVID-19 and urged "to the extent possible" that these practices be followed by demonstrators while recognizing that protestors would not always be able to follow these guidelines. The signatories, in effect, weighed the costs of

³⁰ Jaclyn Cosgrove, et al., *Mayor Garcetti takes a knee amid chants of 'Defund police!'* at downtown L.A. protest, Los Angeles Times, <https://www.latimes.com/california/story/2020-06-02/mayor-garcetti-takes-a-knee-amid-chants-of-defund-police-at-downtown-l-a-protest> (June 2, 2020).

³¹ Rachel Weiner, *Political and Health Leaders' Embrace of Floyd Protests Fuels Debate Over Coronavirus Restrictions*, The Washington Post, https://www.washingtonpost.com/health/political-and-health-leaders-embrace-of-floyd-protests-fuels-debate-over-coronavirus-restrictions/2020/06/11/9c60bca6-a761-11ea-bb20-ebf0921f3bbd_story.html (June 11, 2020).

³² Dan Diamond, *Suddenly, Public Health Officials Say Social Justice Matters More Than Social Distance*, Politico, <https://www.politico.com/news/magazine/2020/06/04/public-health-protests-301534> (June 4, 2020).

³³ *Open Letter Advocating for an Anti-Racist Public Health Response to Demonstrations Against Systemic Injustice Occurring During the COVID-19 Pandemic*, Google Drive, <https://drive.google.com/file/d/1Jyfn4Wd2i6bRi12ePghMHtX3ys1b7K1A/view> (last visited July 9, 2020).

1 the protests (some risk of COVID-19 disease spread and mortality) against the benefits
2 (support for a cause they deem worthy) and concluded in favor of the BLM
3 demonstrations.

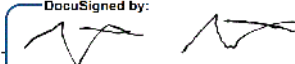
4 43. The principle the public letter supports is entirely reasonable: public health
5 recommendations regarding behavior by private actors (such as the decision to protest)
6 should weigh the benefits of that behavior against the public health costs. Though the
7 signatories of the letter express their own support for the cause underlying the BLM
8 protests, this principle cannot be contingent on their particular support of those activities.
9 If this contingency were necessary, the charge by other public health experts³⁴ that the
10 signatories are hypocritical in their support of masks, social distancing, and social
11 isolation to reduce COVID-19 spread would be correct. If the benefits of the undertaking
12 are important enough relative to the public health risks and care is taken to minimize
13 those risks by adhering to the extent possible to safe practice guidelines promulgated by
14 public health authorities, then the activity should receive approval by public health
15 experts.

16 44. Many of California's schools were preparing to resume in-person education
17 before the Governor issued his most recent guidance. The benefits of in-person schooling
18 are well documented in the CDC and WHO guidance on school reopening (see
19 paragraphs 16 and 18 above). Schools can adhere to the various CDC and WHO
20 guidelines to a much greater extent than the BLM protests, which drew the support of
21 public health experts despite the enhanced public health risk. Given these considerations
22 – and the scientific evidence cited in this affidavit regarding disease spread and the
23 COVID-19 infection fatality rate – I believe that it is a public health priority that most
24 schools in California open safely this Fall.

25
26
27 ³⁴ Joseph S. Ladapo, *The Coronavirus Credibility Gap*, WSJ Opinion,
28 <https://www.wsj.com/articles/the-coronavirus-credibility-gap-11593645643> (July 1,
2020).

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

3
4 Dated: July 27, 2020

DocuSigned by:

06C5AAC4D4174D0...
Jayanta Bhattacharya, M.D., F.R.C.P.

CERTIFICATE OF SERVICE

South Bay United Pentecostal Church, et al. v. Gavin Newsom, et al.
 USDC, Southern District Case No.: 3:20-cv-00865-BAS-AHG

I hereby certify that I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

- **Notice of Motion and Renewed Motion for a Temporary Restraining Order / Preliminary Injunction;**
- **Memorandum of Points & Authorities in Support of Renewed Motion for a Temporary Restraining Order / Preliminary Injunction;**
- **Second Supplemental Declaration of Bishop Arthur Hodges III in Support of Plaintiffs' Renewed Motion for a Temporary Restraining Order / Preliminary Injunction;**
- **Supplemental Declaration of Jeffrey M. Trissell, Esq. in Support of Plaintiffs' Renewed Motion for a Temporary Restraining Order / Preliminary Injunction;**
- **Supplemental Declaration of George Delgado, M.D. in Support of Plaintiffs' Renewed Motion for a Temporary Restraining Order / Preliminary Injunction;**
- **Declaration of Charles Cicchetti in Support of Plaintiffs' Renewed Motion for a Temporary Restraining Order / Preliminary Injunction;**
- **Declaration of Sean G. Kaufmann in Support of Plaintiffs' Renewed Motion for a Temporary Restraining Order / Preliminary Injunction;**
- **Declaration of James Lyons-Weiler in Support of Plaintiffs' Renewed Motion for a Temporary Restraining Order / Preliminary Injunction;**
- **Declaration of Dr. Jayanta Bhattacharya in Support of Plaintiffs' Renewed Motion for a Temporary Restraining Order / Preliminary Injunction; and Request for Leave to File Late Declaration; and**
- **[Proposed] Order on Plaintiffs' Renewed Motion For a Temporary Restraining Order / Preliminary Injunction.**

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

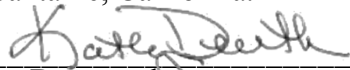
☒ **BY ELECTRONIC TRANSMISSION:** I electronically filed the above document(s) with the Clerk of the Court using the CM/ECF system. The CM/ECF system will send notification of this filing to the person(s).

☐ **BY MAIL:** By placing a copy of the same in the United States Mail, postage prepaid, and sent to their last known address(es).

☐ **BY ELECTRONIC MAIL:** I served a true copy, electronically on designated recipients via electronic transmission of said documents.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct.

Executed on August 10, 2020, at Rancho Santa Fe, California.


 Kathy Denworth