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

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SOUTH BAY UNITED PENTECOSTAL CHURCH, AND
BISHOP ARTHUR HODGES III,

Applicants,

v.

GAVIN NEWSOM, in his official capacity as the Governor of California; XAVIER BECERRA, in his official capacity as the Attorney General of California, SANDRA SHEWRY, in her official capacity as Acting 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, County of San Diego, and WILLIAM D. GORE, in his official capacity as Sheriff, County of San Diego

Respondents.

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

—◆—
**Appendix to Emergency Application for Writ of Injunction
Relief Requested before Sunday, January 31, 2021**

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APPENDIX A

FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

JAN 22 2021

FOR THE NINTH CIRCUIT

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U.S. COURT OF APPEALS

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

Plaintiffs-Appellants,

v.

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

Defendants-Appellees.

No. 20-56358

D.C. No.

3:20-cv-00865-BAS-AHG

OPINION

Appeal from the United States District Court
for the Southern District of California
Cynthia A. Bashant, District Judge, Presiding

Argued and Submitted January 15, 2021
Pasadena, California

Before: Kim McLane Wardlaw and Richard R. Clifton, Circuit Judges, and

Timothy Hillman,* District Judge.

Opinion by Judge Wardlaw

The State of California is facing its darkest hour in its fight against the COVID-19 pandemic, with case counts so high that intensive care unit capacity is at 0% in most of Southern California. To slow the surging community spread, California’s public health and epidemiological experts have crafted a complex set of regulations that restrict various activities based on their risk of transmitting the disease and the projected toll on the state’s healthcare system. Under this framework, California permits unlimited attendance at outdoor worship services and deems clergy and faith-based streaming services “essential,” but has temporarily halted all congregate indoor activities, including indoor religious services, within the most at-risk regions of the state.

South Bay United Pentecostal Church challenged this restriction, along with others, under provisions of the Free Exercise Clause of the First Amendment of the United States and California Constitutions. In its challenge brought under the Free Exercise Clause of the First Amendment of the United States Constitution, South Bay argues that the current restrictions on indoor services prohibit congregants’ Free Exercise of their theology, which requires gathering indoors. The district

* The Honorable Timothy Hillman, United States District Judge for the District of Massachusetts, sitting by designation.

court made multiple findings of fact on an extensive evidentiary record and concluded that California’s restrictions on indoor worship are narrowly tailored to meet its compelling—and immediate—state interest in stopping the community spread of the deadly coronavirus. Because we conclude that the district court did not abuse its discretion, we affirm its denial of South Bay’s request to enjoin California’s temporary prohibition on indoor worship under the Regional Stay at Home Order and Tier 1 of the Blueprint. We also conclude that South Bay has not demonstrated a likelihood of success on the merits with respect to its challenge to California’s state-wide ban on indoor singing and chanting. We cannot, however, conclude that the 100- and 200-person attendance caps on indoor worship under Tiers 2 and 3 of the Blueprint survive strict scrutiny.¹

I.

A.

1.

California’s Early Response to COVID-19

In March 2020, ordinary life came to a grinding halt when the severe

¹ We grant California’s motion to take judicial notice of the updated county and state regulations and federal FAA regulations (ECF No. 26) because they are publicly available and neither party disputes their authenticity or accuracy. *See Kater v. Church Downs Incorp.*, 886 F.3d 784, 788 n.3 (9th Cir. 2018) (taking judicial notice of government documents on government website). We also grant the County of San Diego’s unopposed motion to file a supplemental brief (ECF No. 48).

respiratory syndrome coronavirus type-2 (“COVID-19”) reached the United States and infections began popping up across the country. Although much remains uncertain about this novel coronavirus, “there is consensus among epidemiologists that the most common mode of transmission of [COVID-19] is from person to person, through respiratory particles such as those that are produced when an infected person coughs or sneezes or projects his or her voice through speaking, singing, and other vocalization.” The scientific community also largely agrees that the virus can be “spread by individuals who are pre-symptomatic or asymptomatic,” i.e., difficult to identify, making it particularly “difficult to control.” But not all exposures to COVID-19 will cause an infection; an infection will occur only when there is a sufficient dose of the virus, known as a “viral load,” to overcome the body’s defenses.

California, in consultation with public health experts, has enacted an evolving series of restrictions on various activities and sectors as its understanding of the virus has improved and as the virus has spread throughout the state. On March 4, in an early attempt to limit the virus’s reach in California, Governor Gavin Newsom proclaimed a State of Emergency, thereby allowing him to exercise extraordinary executive powers. *See* Cal. Gov’t Code §§ 8625–8627.5. Two weeks later, within this authority, the Governor issued Executive Order N-33-20—the first Stay at Home Order—which required “all individuals living in the

State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors.”²

California’s Public Health Officer designated a list of “Essential Critical Infrastructure Workers,” which included “[c]lergy for essential support and faith-based services that are provided through streaming or other technologies that support physical distancing and state public health guidelines.” Accordingly, although the Stay at Home Order prohibited in-person worship services, the inclusion of clergy on the list of critical infrastructure workers allowed places of worship to conduct services by streaming them online.

In late April, California released a four-stage “Resilience Roadmap” for reopening various sectors of the economy based on the risk that any given “workplace” posed in transmitting the virus. Stage 2 included “lower-risk workplaces,” such as curbside retail, manufacturing, and dine-in restaurants. In Stage 3, “higher-risk workplaces” were permitted to reopen, which included religious services and movie theaters. The Roadmap also imposed guidelines that applied to *all* sectors (e.g., disinfecting protocols and physical distancing), as well as mandatory industry-specific guidance. On May 25, California issued industry-specific guidance for places of worship and providers of religious services. This

² State of California, *Executive Order N-33-20* (Mar. 19, 2020) <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf>.

initial guidance explained that “[e]ven with adherence to physical distancing, convening in a congregational setting of multiple different households to practice a personal faith carries a relatively higher risk for widespread transmission of the COVID-19 virus.” Accordingly, in-person indoor worship services were limited to the lesser of 100 attendees or 25% of building capacity. On June 12, as scientific understanding of the virus revealed that transmission risk dropped significantly outdoors, California removed capacity restrictions on outdoor and drive-in religious services.³

In mid-June, California issued a state-wide mandate requiring face masks be worn in most public spaces, settings, and workplaces to reduce transmission risk. The scientific community largely agrees that wearing a face covering reduces—but does not eliminate—the risk that a person infected with COVID-19 will infect others, and likely reduces the risk that the wearer will become infected by someone else.

But the mask mandate and industry-specific guidance proved incapable of preventing a summer spike in cases, and California once again began to tighten restrictions. In July, California prohibited singing and chanting at *all* indoor gatherings—including places of worship, protests, schools, and restaurants—because when a person sings or otherwise loudly vocalizes, droplets are expelled

³ Identical restrictions were placed on political protests.

with greater force, travel farther, and thus present a greater danger of transmitting the virus. But despite these additional restrictions, cases continued to rise. On July 13, in light of the “significant increase in the spread of COVID-19,” California issued an order reimposing many previously relaxed restrictions on indoor activities. In addition, counties that demonstrated “concerning levels of disease transmission, hospitalizations, insufficient testing, or other critical epidemiological markers” were placed on a “County Monitoring List.” Counties on this list were required to close certain indoor activities, including worship services, protests, gyms, and personal care services. Throughout the state, however, outdoor worship services continued without any restrictions on attendance or singing regardless of the individual county’s case level.

*California’s Current Restrictions:
The Blueprint & Regional Stay at Home Order*

On August 28, 2020, California enacted the Blueprint for a Safer Economy (the “Blueprint”), which serves as the current framework underlying California’s COVID-19 restrictions and which South Bay challenges in this case. The Blueprint provides “revised criteria for loosening and tightening restrictions on activities” based on (1) the prevalence of COVID-19 in the relevant county, and (2) an activity’s calculated risk level.

The Blueprint assigns each county to one of four tiers, ranging from Tier 1 (“Widespread”) to Tier 4 (“Minimal”), which reflect COVID-19’s transmission

risk in each county. In assessing to which tier a county belongs, California analyzes a county's case rate (number of individuals who have the virus per 100,000) and the test positivity rate. California reevaluates each county's tier status on a weekly basis; as local conditions improve, counties are eligible to move to a less-restrictive tier with more permissive policies.

Within each tier, activities are subject to different restrictions based on the activity's risk level. Risk level is determined using seven objective criteria, including the ability to (1) accommodate face coverings at all times; (2) allow for physical distancing; (3) limit the duration of exposure; (4) limit the amount of mixing of people from differing households and communities; (5) limit physical interactions; (6) optimize ventilation; and (7) limit activities known to increase spread such as shouting, singing, and heavy breathing.

In any given tier, the greater the transmission risk an activity poses, the greater the restrictions California imposes on it. The Blueprint permits higher capacity limits and attendance caps for activities that present lower transmission risks—that is, do not involve a large number of people congregating in close proximity for sustained periods. Some sectors, such as retail and grocery stores, are permitted to operate with greater capacity limits indoors subject to the limitations imposed by statewide requirements (e.g., mask-wearing and social distancing) and industry-wide guidance (e.g., frequent disinfecting of shopping

carts).

The Blueprint imposes “greater restrictions on congregate activities involving groups of people, and particularly indoor congregate activities, because, even after applying precautions required by general and industry-specific guidelines, they pose greater transmission risk.” For example, indoor worship services, political protests, and movie theater attendance are prohibited in counties where COVID-19 is rampant (i.e., Tier 1), but permitted in Tier 2, 3, and 4 counties, albeit subject to limitations on attendance. Notably, however, these activities are permitted to operate outdoors without attendance limits regardless of a county’s tier because “transmission is significantly lower due to airflow and dissipation of any virus particles.” Certain activities—such as bars, live audience sports, and cardrooms—have been deemed to present so great a transmission risk that they are not permitted to reopen, even outdoors, until a county reaches Tier 3 or 4.

The Blueprint’s assessment of indoor worship services reflects the widely shared consensus in the scientific community that this activity presents an “especially risky type of public gathering.” This is because worship services bring together (1) a large number of people from different households, (2) in the same place for an extended period of time, (3) to participate in a communal activity, which necessarily allows respiratory droplets exhaled by an infected, but

asymptomatic, individual to accumulate in doses large enough to infect others. Moreover, religious services often involve singing and chanting, which propel respiratory droplets farther thereby increasing transmission risk. In other words, indoor worship services “involve large groups of people who are coming together for the purpose of being together.”

Initially, the Blueprint appeared effective; new COVID-19 infection rates fell as summer came to a close. But in late October, case rates began to climb, then to skyrocket exponentially. In an attempt to curb the rising case numbers, California’s Department of Public Health issued additional guidance pertaining to private gatherings.⁴ The guidance prohibited gatherings that involved more than three households and prohibited indoor private gatherings in Tier 1 counties. In all remaining Tiers, indoor gatherings are “strongly discouraged.” The guidance also prohibited “singing, chanting, shouting, cheering, and similar activities” at indoor gatherings.

Recently, Southern California has been described as the epicenter of the global pandemic.⁵ From mid-November to mid-December, the number of new

⁴ Cal. Dep’t of Pub. Health, *CDPH Guidance for the Prevention of COVID-19 Transmission for Gatherings* (Nov. 13, 2020), <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Guidance-for-the-Prevention-of-COVID-19-Transmission-for-Gatherings-November-2020.aspx> (last visited Jan. 21, 2021).

⁵ New York Times, ‘*Our New York Moment*’: Southern California Reels as Virus Surges (Jan. 9, 2021), <https://www.nytimes.com/2021/01/09/us/california-coronavirus.html> (last visited Jan. 21, 2021); L.A. Times, *1 in 3 L.A. County*

cases per day in California jumped from 8,743 to more than 35,000. The number of COVID-19 patients hospitalized statewide grew from 777 on November 15 to 13,645 on December 14. In the time since this appeal was filed, there have been reports that paramedics in Los Angeles County have been instructed to conserve oxygen in treating patients and not to bring patients to the hospital who have little chance of survival.⁶ As of January 19, California became the first state to record more than three million cases.⁷ On January 21, 2021, the State recorded a record 736 deaths in a single day,⁸ bringing the total of Californians who have died from the virus to 35,004.⁹

Residents Have Been Infected by Coronavirus Since Pandemic Vegan, New Estimate Shows (Jan. 14, 2021) <https://www.latimes.com/california/story/2021-01-14/one-in-three-la-county-residents-infected-coronavirus> (last visited Jan. 21, 2021); Reuters, *For Los Angeles-Area Ambulance Crews, the COVID-19 Calls Never Stop* (Jan 15, 2021), <https://www.reuters.com/article/health-coronavirus-los-angeles-ambulance/for-los-angeles-area-ambulance-crews-the-covid-19-calls-never-stop-idUSL1N2JP08D> (last visited Jan. 21, 2021).

⁶ National Public Radio, *LA County Paramedics Told Not To Transport Some Patients With Low Chance of Survival* (Jan. 5, 2021), <https://www.npr.org/sections/coronavirus-live-updates/2021/01/05/953444637/1-a-paramedics-told-not-to-transport-some-patients-with-low-chance-of-survival> (last visited Jan. 21, 2021).

⁷ New York Times, *California Coronavirus Map and Case Count*, <https://www.nytimes.com/interactive/2020/us/california-coronavirus-cases.html> (last updated Jan. 21, 2021).

⁸ L.A. Times, *California Sees Record-Breaking COVID-19 Deaths, a Lagging Indicator of Winter Surge* (Jan. 22, 2021) <https://www.latimes.com/california/story/2021-01-22/california-sees-record-breaking-covid-19-deaths-a-lagging-indicator-of-winter-surge> (last visited Jan. 22, 2021).

⁹ Update for January 21, 2021, *Tracking COVID-19 in California*, <https://covid19.ca.gov/state-dashboard/>.

The strain on California’s healthcare system is undeniable. Following the October case surge, intensive care unit (“ICU”) capacity decreased, then began to disappear in many counties. On December 3, in an attempt to prevent the “overwhelm[ing of] the state’s hospital system,” California implemented the Regional Stay at Home Order.¹⁰ The new mandate divided the state into five hospital regions.¹¹ For any region in which adult ICU bed capacity has fallen below 15%, the Regional Stay at Home Order requires “[a]ll individuals living in the Region [to] stay home or at their place of residence except as necessary to conduct activities associated with the operation, maintenance, or usage of critical infrastructure.” When operative in a region, the Regional Stay at Home Order supersedes any prior guidance from the State, including the Blueprint.

The Regional Stay at Home Order shuts many businesses that were previously allowed to operate with restrictions under Tier 1 of the Blueprint, such

¹⁰ Cal. Dep’t of Pub. Health, *Regional Stay at Home Order* (Dec. 3, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/12/12.3.20-Stay-at-Home-Order-ICU-Scenario.pdf>.

¹¹ Because hospitals draw resources from regional areas that necessarily cross county lines, the Regional Stay at Home Order is premised on five hospital regions, rather than individual counties. The five regions are: Northern California, Bay Area, Greater Sacramento, San Joaquin Valley, and Southern California. *See About COVID-19 Restrictions*, <https://covid19.ca.gov/stay-home-except-for-essential-needs> (last updated Jan. 15, 2021).

as outdoor dining, barbershops, and nail salons.¹² Retail and grocery stores may continue operating at 20% and 35% of capacity, respectively. Outdoor worship services and political protests may continue without capacity restrictions. Once triggered, the Regional Stay at Home Order is effective for a minimum of three weeks, only to be lifted when projected ICU capacity meets or exceeds 15%.

Currently, the Regional Stay at Home Order remains in effect in three of California's five hospital regions, including the Southern California region, which encompasses both San Diego County and Los Angeles County.¹³

2.

South Bay United Pentecostal Church is located in the City of Chula Vista, County of San Diego, within the hard-hit Southern California region. Bishop Arthur Hodges III has served as Senior Pastor and Bishop of South Bay for the past thirty-five years. South Bay's "model is the New Testament church founded and described in the book of the Acts of the Apostles: 'And when the day of Pentecost was fully come, they were *all with one accord in one place.*' (Acts: 2:1) (emphasis added)." Thus, fundamental to the church's creed is that all gather together in one place to worship.

¹² Attached as Appendix A is a chart comparing the restrictions imposed on various activities and sectors under the Regional Stay at Home Order and the Blueprint.

¹³ Current Tier Assignments as of January 19, 2021, *Tracking COVID-19 in California*, <https://covid19.ca.gov/state-dashboard/>.

Pre-COVID-19, South Bay held five to seven services each Sunday, with average attendance at some services reaching between 200 and 300 congregants. These services are focused on worshipping together “both spiritually and physically,” including gathering around the altar, the laying of the hands around the altar, anointment of the sick, and baptism by immersion. South Bay’s services conclude with preaching, “followed by a challenge to physical action, where the congregation is challenged to approach the altar to ‘come believing, come praying.’” Congregants then participate in “fellowship both inside and outside the sanctuary . . . ‘in the breaking of bread, and in prayers.’ (Acts 2:42).”

According to Bishop Hodges, “singing is at the heart” of South Bay’s services, and to ban singing in Pentecostal worship “has the effect of banning those worship services outright.” Thus, given the particular religious doctrine and practices of the church, South Bay asserts that California’s orders prohibiting indoor religious worship and singing and chanting in indoor venues has “dramatically curtailed” its ability to carry out its ministry.

B.

On May 11, 2020, Plaintiffs South Bay United Pentecostal Church and Bishop Hodges (collectively, “South Bay”) filed a complaint alleging that the four-stage Resilience Roadmap violated the First Amendment’s Free Exercise, Establishment, Free Speech, and Assembly Clauses; the Fourteenth Amendment’s

Due Process and Equal Protection Clauses; and rights enumerated in Article 1, sections 1 through 4, of the California Constitution. South Bay then moved for a temporary restraining order and an order to show cause regarding a preliminary injunction, seeking to prevent enforcement of “any prohibition on Plaintiffs’ engagement in religious services, practices, or activities at which the County of San Diego’s Social Distancing and Sanitation Protocol and Safe Reopening Plan is being followed.” Then followed a series of rulings at every rung of the federal judiciary denying South Bay’s request for preliminary injunctive relief.

Initially, the district court denied the motion, concluding that South Bay was unlikely to prevail on the merits of its claims. South Bay quickly appealed and filed an emergency motion for an injunction that would allow it to hold in-person religious services pending appeal. On May 22, a motions panel of our court denied South Bay’s request, observing that “[w]here state action does not ‘infringe upon or restrict practices because of their religious motivation’ and does not ‘in a selective manner impose burdens only on conduct motivated by religious belief,’ it does not violate the First Amendment.” *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938, 939 (9th Cir. 2020) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 533, 543 (1993)).

The Supreme Court also denied South Bay’s application for injunctive relief. *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020). Chief

Justice Roberts concurred in the denial of the application, writing that the Roadmap “appear[ed] consistent with the Free Exercise Clause of the First Amendment.” *Id.* at 1613 (Roberts, C.J., concurring). The Chief Justice emphasized that:

The precise question of when restrictions on particular social activities should be lifted during the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement. Our Constitution principally entrusts “[t]he safety and the health of the people” to the politically accountable officials of the States “to guard and protect.” When those officials “undertake[] to act in areas fraught with medical and scientific uncertainties,” their latitude “must be especially broad.” Where those broad limits are not exceeded, they should not be subject to second-guessing by an “unelected federal judiciary,” which lacks the background, competence, and expertise to assess public health and is not accountable to the people.

Id. at 1613–14 (internal citations omitted).

On July 10, while South Bay’s interlocutory appeal was pending before us, South Bay moved in the district court for an indicative ruling to revisit the denial of its first motion. South Bay had amended its complaint to challenge California’s revised restrictions, and it sought to present additional evidence to the district court. The district court granted the request, reasoning that South Bay had raised a substantial issue. We, in turn, remanded the case “for the limited purpose of permitting the district court to consider [South Bay’s] request in light of the events and case law that have developed since May 15, 2020.”

On October 15, the district court issued an order again denying South Bay’s

motion for preliminary injunctive relief, concluding that South Bay remained unlikely to succeed on its Free Exercise claim. The district court observed that “the evidence shows the [Blueprint] [is] based on the elevated risk of transmission of the novel coronavirus in indoor settings, particularly congregate activities and those involving singing and chanting.” In reaching this conclusion, the court relied heavily on the state’s experts—Dr. Rutherford¹⁴ and Dr. Watt¹⁵—whose

¹⁴ As recapped by the district court: “Dr. George Rutherford is the Salvatore Pablo Lucia Professor of Epidemiology, Preventive Medicine, Pediatrics, and History at the University of California, San Francisco School of Medicine. He also leads the Division of Infectious Disease and Global Epidemiology in the Department of Epidemiology and Biostatistics. Further, Dr. Rutherford is an adjunct professor at the University of California, Berkeley School of Public Health. He also serves as the ‘Director of Global Strategic Information Group in the Institute for Global Health Sciences at U.C. San Francisco.’ Dr. Rutherford received his doctor of medicine from the Duke University School of Medicine in 1978. He also received training in epidemiology in the CDC’s Epidemic Intelligence Service and spent ten years in various public health positions before entering academia. Since the novel coronavirus emerged, Dr. Rutherford has ‘devoted substantial time to researching and studying the virus’ as part of his epidemiology roles and has ‘spoken extensively on topics related to the novel coronavirus and the disease it causes during 2020,’ including through presentations to the California Medical Association and the California Health and Human Services Agency.”

¹⁵ Dr. James Watt is similarly highly qualified in epidemiology. He “is the Chief of the Division of Communicable Disease Control of the Center for Infectious Diseases at the California Department of Public Health (‘CDPH’). He received his doctor of medicine from the University of California, San Diego in 1993 and a master’s degree in public health from the University of California, Berkeley in 1995. Dr. Watt previously worked for the Centers for Disease Control and Prevention (‘CDC’) as an Epidemic Intelligence Service Officer in the Respiratory Diseases Branch. He is also an Associate at the Johns Hopkins Bloomberg School of Public Health and a Clinical Professor at the University of California, San Francisco School of Medicine, where he teaches graduate students

qualifications and expertise in epidemiology and public health are undisputed. “[M]inimal weight,” however, was assigned to South Bay’s expert Dr. George Delgado, a family medicine doctor with no purported training, credentials, or experience in public health or epidemiology. The district court was troubled by Dr. Delgado’s “lack[] [of] significant experience in epidemiology,” his failure to explain the basis for his comparative risk model, and his failure to “provide any supporting data for his conclusions.” Accordingly, the court dismissed Dr. Delgado’s comparative risk assessment as likely inadmissible under *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 F.3d 1311 (1993).

Meanwhile, as scientific understanding of the virus evolved, the legal landscape for resolving COVID-19-related First Amendment issues also shifted. On November 25, the Supreme Court issued its decision in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) (per curiam), which elevated the level of scrutiny that courts are to apply to Free Exercise claims. In light of the Supreme Court’s decision, South Bay again moved this court for an injunction pending appeal. We denied the request but vacated the district court’s October 15

in public health and medical students about communicable disease control. His professional commendations include the U.S. Public Health Service Achievement medal in 2000, the National Center for Infectious Diseases Honor Award in 2001, and Outstanding Achievement Awards from the CDPH in 2015 and 2016. Dr. Watt has been ‘very involved’ in the CDPH’s response to the COVID-19 pandemic, ‘working full time for approximately 60–70 hours per week to address the pandemic’ from January 2020 to the date of his declaration.”

order and remanded the case for further consideration. *S. Bay United Pentecostal Church v. Newsom*, 981 F.3d 765 (9th Cir. 2020).¹⁶

On remand, the district court again denied South Bay’s request for preliminary injunctive relief, this time applying the higher level of scrutiny as required by the Supreme Court. The district court concluded that under *Roman Catholic Diocese and Calvary Chapel Dayton Valley v. Sisolak*, 982 F.3d 1228 (9th Cir. 2020), the Regional Stay at Home Order was not a neutral, generally applicable regulation because its burden on indoor religious services differed from retail establishments.¹⁷ Applying strict scrutiny, it nonetheless found that South Bay was “not likely to show that the Regional Stay at Home Order restricts more than is necessary to advance California’s compelling interest in reducing community spread.” The court noted that to the extent South Bay sought a 20% capacity limitation like that applicable to retail,¹⁸ California had already tried percentage of capacity restrictions, which had “proved insufficient to prevent

¹⁶ On November 24, South Bay also filed a petition for a writ of certiorari before judgment with the Supreme Court. Petition for Writ of Certiorari, *S. Bay United Pentecostal Church*, 959 F.3d 938 (No. 20-746). On January 14, 2021, the Supreme Court ordered California to file a response.

¹⁷ The district court limited its analysis to the Regional Stay at Home Order then in effect in San Diego County.

¹⁸ South Bay no longer seeks the lesser restriction of 20% capacity for its indoor services. On appeal, South Bay seeks an injunction allowing churches to hold indoor worship services at “100% occupancy with social distancing and the other health protocols.”

outbreaks at houses of worship in the San Diego County and the Southern California Region.” Accordingly, the district court denied South Bay’s motion.

On December 22, South Bay appealed and filed an emergency motion for an injunction pending appeal. We denied the emergency request without prejudice and expedited the appeal. We have jurisdiction pursuant to 28 U.S.C. § 1292(a)(1), and we affirm the denial of the requested injunction.

II.

Our review of the district court’s denial of a preliminary injunction is “limited and deferential.” *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (en banc). We review such denials for abuse of discretion. *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118, 1123 (9th Cir. 2014). “[A] district court abuses its discretion if the court rests its decision on a clearly erroneous finding of fact.” *Id.* “To determine whether a district court abused its discretion in this way, we review factual findings for clear error.” *Id.* “Clear error results ‘from a factual finding that was illogical, implausible, or without support in inferences that may be drawn from the facts in the record.’” *Id.* (quoting *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012)).

III.

“A preliminary injunction is ‘an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of

persuasion.’” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (per curiam)). To make this showing, South Bay must demonstrate “that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

We turn first to South Bay’s challenge to the prohibition on indoor worship under the Regional Stay at Home Order and Tier 1 of the Blueprint under the Free Exercise Clause of the First Amendment.¹⁹ Given the strong evidentiary record before it, we conclude that the district court did not abuse its discretion by denying South Bay’s motion for a preliminary injunction and upholding the restrictions on indoor religious worship services under the Regional Stay at Home Order and Tier 1 of the Blueprint.²⁰ Although South Bay has demonstrated irreparable harm, it has not demonstrated that the likelihood of success, the balance of equities, or the public interest weigh in its favor.

¹⁹ The district court did not consider the likelihood of success of South Bay’s other claims brought under provisions of the United States and California Constitutions, and we decline to do so in the first instance here.

²⁰ We note that the district court’s analysis was confined to the Regional Stay at Home Order. Because the State considered the same neutral risk criteria in formulating both the Regional Stay at Home Order and the Blueprint, however, we consider the framework as a whole. The parties have briefed, and seek a determination on the validity of, both restriction regimes.

A.

The Free Exercise Clause of the First Amendment provides that the government “shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” U.S. Const. amend. I; *see Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (incorporating the Free Exercise Clause against the states). “In determining whether a law prohibits the free exercise of religion, courts ask whether the law ‘is neutral and of general applicability.’” *Dayton Valley*, 982 F.3d at 1232 (quoting *Church of Lukumi*, 508 U.S. at 531). If the law is neutral and of general applicability—that is, the law does not “single out houses of worship for especially harsh treatment,” *Roman Catholic Diocese*, 141 S. Ct. at 66—then the law need only survive rational basis review, even if it “has the incidental effect of burdening a particular religious practice,” *Church of Lukumi*, 508 U.S. at 531. Any law burdening religious practices that is not neutral or of general application, however, “must undergo the most rigorous of scrutiny.” *Id.* at 546.

1.

Accordingly, we must first determine whether the Blueprint and the Regional Stay at Home Order are neutral laws of general application. California contends that its framework employs neutral, generally applicable risk criteria, such as the ability to allow physical distancing and limit the number of people

mixing from different households, to calculate an activity's transmission risk, and that these risk criteria apply to religious and non-religious activities alike. Thus, in the State's view, because the restrictions do not single out religious practices for harsh treatment, but rather only incidentally affect indoor worship, they are subject to rational basis review.

But the Supreme Court has recently instructed that we apply strict scrutiny review whenever a state imposes different capacity restrictions on religious services relative to non-religious activities and sectors. *Roman Catholic Diocese*, 141 S. Ct. at 66–67. In *Roman Catholic Diocese*, two houses of worship in New York City sought relief from Governor Cuomo's executive order that placed attendance caps on religious services. *Id.* at 65–66. In designated “red zones,” religious services were limited to 10 people, and in orange zones, services were limited to 25. *Id.* at 66. However, the order allowed “essential businesses” in both zones to “admit as many people as they wish[ed].” *Id.* Included in the list of businesses deemed “essential” were “acupuncture facilities, camp grounds, garages, . . . plants manufacturing chemicals and microelectronics and all transportation facilities.” *Id.* Moreover, in “orange zones,” “*non-essential* businesses [could] decide for themselves how many persons to admit.” *Id.* (emphasis added).

New York's restrictions thus created circumstances in which “hundreds of

people” could shop at “a large store in Brooklyn” on any given day, but a “nearby church or synagogue would be prohibited from allowing more than 10 or 25 people inside for a worship service.” *Id.* at 67. Such dichotomous and “troubling results” led the Court to conclude that the challenged restrictions were “not ‘neutral’ and of ‘general applicability,’” and therefore subject to strict scrutiny. *Id.* at 66–67 (quoting *Church of Lukumi*, 508 U.S. at 546).

We recently applied the Supreme Court’s directive in *Calvary Chapel Dayton Valley v. Sisolack*, 982 F.3d at 1233, where we considered whether Nevada’s COVID-related restrictions violated the Free Exercise Clause. Under the Nevada directive, “indoor in-person [religious] services” were capped at 50 people. *Id.* at 1230–31. Nevada’s directive also imposed a 50% attendance cap on other activities, including casinos, retail, bowling alleys, gyms, restaurants, and body-art and piercing facilities. *Id.* We held that strict scrutiny review applied because, like the New York order at issue in *Roman Catholic Diocese*, the Nevada directive “treats numerous secular activities and entities significantly better than religious worship services.” *Id.* at 1233. For example, “[c]asinos, bowling alleys, retail businesses, restaurants, arcades, and other similar secular entities are limited to 50% of fire-code capacity, yet houses of worship are limited to fifty people regardless of their fire-code capacities.” *Id.*

Here, under California’s Regional Stay at Home Order and Tier 1 of the

Blueprint, religious services are permitted only outdoors. Although these restrictions do not allow casinos, bowling alleys, or restaurants to operate at greater capacity limits than religious services, the restrictions do permit grocery stores and retail establishments to operate at 35% and 20% of capacity, respectively, under the Regional Stay at Home Order and at 50% and 25% of capacity, respectively, under Tier 1 of the Blueprint. Tier 1 also permits certain personal care services, such as hair and nail salons, to open indoors subject to additional modifications and strict industry guidance. This “‘disparate treatment’ of religion triggers strict scrutiny review.” *Dayton Valley*, 982 F.3d at 1233 (quoting *Roman Catholic Diocese*, 141 S. Ct. at 66).²¹

2.

To satisfy strict scrutiny, California must demonstrate that the Regional Stay at Home Order and the Blueprint are “‘narrowly tailored’ to serve a ‘compelling’ state interest.” *Roman Catholic Diocese*, 141 S. Ct. at 67 (quoting *Church of*

²¹ In finding that strict scrutiny applies, we note that we, like the district court, find no record evidence of animus toward religious groups. *Cf. Roman Catholic Diocese*, 141 S. Ct. at 66 (noting “a variety of remarks made by the Governor” that the restrictions were intended to “specifically target[] the Orthodox Jewish community”). In repeating Governor Newsom’s answer to why “churches and salons are in Stage 3 and not Stage 2” of the Resilience Roadmap, South Bay again cites only the Governor’s statement that “we’re looking at the science, epidemiology, looking again at frequency, duration time, uh, and low risk-high reward, low risk-low reward.” In the same exchange, however, the Governor also explained that the State was “very sensitive to those that want to get back into church” and that the State planned to “see what [it] can do to accommodate that.”

Lukumi, 508 U.S. at 546).

California asserts a compelling state interest in reducing community spread of COVID-19, protecting high-risk individuals from infection, and preventing the overwhelming of its healthcare system as a result of increased hospitalizations. South Bay disputes the veracity of these interests, arguing that the allegedly underinclusive nature of the restrictions undermines the State's proffered purposes.

This argument is foreclosed by *Roman Catholic Diocese*, where the Supreme Court held that "[s]temming the spread of COVID-19 is unquestionably a compelling interest." 141 S. Ct. at 67; accord *Dayton Valley*, 982 F.3d at 1234. This is especially true in California, where the state leads the nation with its seven-day average of total new cases.²² As of January 19, the state's test positivity rate sat at 15.2% and ICU capacity has disappeared.²³

South Bay's attempt to minimize the deaths of 35,004 Californians to COVID-19²⁴ in the face of the 62,000 Californians who die each year from heart disease is unavailing. There is a vast difference between the non-contagious nature of heart disease, which poses no greater risk when large groups are permitted to

²² New York Times, *Coronavirus in the U.S.: Latest Map and Case Count*, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last updated Jan. 22, 2021).

²³ Current Tier Assignments as of January 19, 2021, *Tracking COVID-19 in California*, <https://covid19.ca.gov/state-dashboard/>.

²⁴ Update for January 21, 2021, *Tracking COVID-19 in California*, <https://covid19.ca.gov/state-dashboard/>.

congregate, and COVID-19, which is lethal for precisely that reason.

Because we conclude that California has a compelling interest in reducing community spread of COVID-19, South Bay's likelihood of success on its Free Exercise claim turns on whether California can demonstrate that its restrictions on indoor worship are narrowly tailored to achieve that compelling interest. Narrow tailoring requires that the State employ the "least restrictive means" to advance its objective of stemming the virus's spread. *Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 718 (1981); *see also Roman Catholic Diocese*, 141 S. Ct. at 67.

Relying on the declarations submitted by California's public health and epidemiological experts, the district court concluded that the Stay at Home Order was narrowly tailored to achieve its compelling interest in stemming the recent case surge. California presented evidence that its public health officials considered seven objective risk criteria in assessing the transmission risk of *all* activities and sectors: (1) the ability to accommodate face coverings at all times; (2) the ability to allow for physical distancing; (3) the ability to limit the duration of exposure; (4) the ability to limit the amount of mixing of people from differing households and communities; (5) the ability to limit physical interactions between individuals; (6) the ability to optimize ventilation; and (7) the ability to limit activities known to increase spread such as shouting, singing, and heavy breathing.

The district court found that by “[a]pplying these factors, California assigns a similar risk profile for religious gatherings, as it does for weddings, funerals, college lectures, and political expression.” Indeed, the state treats religious services more favorably than several of these comparable secular activities. For although the Regional Stay at Home Order generally prohibits “all gatherings with members of other households,” it specifically exempts *outdoor* religious worship from this prohibition. Only activities involving political expression or the use of outdoor recreation facilities receive a similar exemption. The Regional Stay at Home Order does *not* grant an exemption for other activities that similarly involve congregating *outdoors* for a prolonged period. For instance, restaurants must cease dine-in operations, both indoor and outdoor, and overnight stays at campgrounds are prohibited. Museums, zoos, and aquariums, which were previously permitted to operate outdoors under Tier 1 of the Blueprint, must close.

The Regional Stay at Home Order also permits essential workers in critical infrastructure to work on-site when remote work is not feasible. However, even these digitally unconvertable workplaces are subject to modifications furnished by the State’s strict and mandatory industry-specific guidance. The State has issued industry-specific guidance for every activity and workplace specifying measures

designed to deal with the unique risks posed by each environment.²⁵ For example, factories are required to screen workers, develop safety plans, and, where individuals must work in close proximity, install engineering controls such as plexiglass or other impermeable partitions.²⁶ Houses of worship are encouraged to “[c]onsider modifying” certain religious traditions that pose increased transmission risks, such as kissing ritual objects and sharing a communal cup.²⁷

As it did before the district court, South Bay does not dispute that the challenged restrictions treat worship services more favorably than those non-exempted activities with respect to gathering *outdoors*. Rather, because of the importance that the Pentecostal religion places on worshipping “in the temple,” South Bay’s argument centers on activities and sectors that are permitted to operate indoors while worship services remain confined to outdoor operation. South Bay contends that the Regional Stay at Home Order and the Blueprint are underinclusive because they “give[] numerous exemptions” for activities that involve large groups of people in close proximity for long durations (e.g., factories,

²⁵ See Cal. Dep’t of Pub. Health, *Industry Guidance to Reduce Risk*, <https://covid19.ca.gov/industry-guidance/> (last updated Jan. 19, 2021).

²⁶ Cal. Dep’t of Pub. Health, *COVID-19 Industry Guidance: Manufacturing* (July 29, 2020), <https://files.covid19.ca.gov/pdf/guidance-manufacturing--en.pdf>.

²⁷ Cal. Dep’t of Pub. Health, *COVID-19 Industry Guidance: Places of Worship and Providers of Religious Services and Cultural Ceremonies* (July 29, 2020), <https://files.covid19.ca.gov/pdf/guidance-places-of-worship--en.pdf>.

warehouses, transportation²⁸), that are impossible to conduct outdoors (e.g., retail) or that require loud vocalizations (e.g., professional sports and film production).

The district court carefully examined each activity and sector permitted to operate at greater capacity limits indoors than houses of worship, how those activities compared under the seven risk criteria, and concluded that California's restrictions are indeed narrowly tailored to meet its compelling interest in reducing community spread of COVID-19. The district court's thorough analysis and conclusions, which we examine below, are fully supported by the record and not contradicted by any evidence submitted by South Bay. We first describe the restrictions applicable to each activity and sector under California's framework, then assess whether the restriction is in fact the least restrictive means for regulating the activity.

Religious Services: To determine whether the restrictions are narrowly tailored, the district court began by assessing the risk profile of religious gatherings. California's public health officials deemed religious services to "involve[] an exceptionally high risk of COVID-19 transmission" because they

²⁸ Although South Bay included "political protests" in this category of allegedly "exempted" activities, the record evidence establishes that California imposes the same restrictions on political expression as it does on religious gatherings. Both are permitted only outdoors under the Regional Stay at Home Order and Tier 1 of the Blueprint, and are subject to the same indoor capacity restrictions in Tiers 2,3, and 4.

involve a “combination of many high risk factors.” As noted, indoor worship services typically bring together individuals from many different households, assembled in a series of rows or pews that are physically close together, making close proximity highly likely (Risk Factors 2, 4, 5). Moreover, services last for at least one hour, which increases the risk of a viral load sufficient to infect an individual (Risk Factor 3). Finally, religious services usually involve singing, chanting, and responsive reading, activities known to increase the spread by “negat[ing] the risk-reduction achieved through six feet of physical distancing” (Risk Factor 7). The risky nature of this activity can, however, be alleviated when there is increased ventilation, such as when services occur outdoors, because aerosolized particles will dissipate into the atmosphere (Risk Factor 6). This explains why the State permits singing and chanting to occur during outdoor services, but prohibits such behaviors during indoor worship.

Retail Establishments & Grocery Stores: While only outdoor religious services are permitted under the Regional Stay at Home Order and Blueprint Tier 1, retail and grocery stores may operate indoors at 20% and 35% capacity, respectively, under the Regional Stay at Home Order, and 25% and 50%, respectively, under Tier 1.

To justify this disparate treatment, California presented evidence that retail and grocery stores pose a lower transmission risk than indoor worship, primarily

because these establishments do not involve individuals congregating to participate in a group activity. For example, patrons typically have the intention of getting in and out of grocery and retail stores as quickly as possible (Risk Factors 3, 5), whereas the very purpose of a worship service is to congregate as a community. To preserve perishable products and comply with applicable health and safety codes, grocery stores are “almost always” equipped with high-functioning air-conditioning systems that increase ventilation and air flow (Risk Factor 6). Singing, chanting, and shouting is uncommon in these establishments (Risk Factor 7).

Moreover, as California explains, these entities can only operate “with modifications,” which appear in the mandatory industry guidance designed to reduce the transmission risk posed by the particular activity.²⁹ Mandatory industry guidance for retail and grocery stores require additional precautions such as plexiglass at checkout, frequent disinfection of commonly used surfaces such as shopping carts, and the closure of any areas that encourage congregating, such as in-store bars, seating areas, and product sampling (Risk Factors 2, 3, 5). Thus, taking into account these risk criteria, California’s public health officials have concluded that retail, grocery, and big box stores present a lower risk profile than

²⁹ Cal. Dep’t of Pub. Health, *COVID-19 Industry Guidance: Retail* (Oct. 20, 2020), <https://files.covid19.ca.gov/pdf/guidance-retail--en.pdf>.

indoor worship services, and allow these establishments to operate indoors subject to strict capacity limits and mandatory industry guidance.

Personal Care Services: Like indoor worship, personal care services, such as barbershops, nail salons, and body waxing studios, must close completely under the Regional Stay at Home Order. Under Tier 1 of the Blueprint, however, indoor personal care services may reopen subject to mandatory industry guidance while indoor worship remains prohibited.³⁰

In assessing the risk profile of these services, California’s public health experts explain that although personal care services may bring together people in close contact with one another, they “involve small numbers of individuals interacting,” in contrast to “the numbers of individuals commonly present at indoor worship services” (Risk Factor 4). These sectors are also subject to additional mandatory hygienic requirements. For example, workers that are consistently within six feet of customers or coworkers are required to wear a secondary barrier in addition to a face mask (e.g., face shield or safety goggles).

Public Transportation: Under the Regional Stay at Home Order and the Blueprint, public transit is permitted subject to modifications such as reduced occupancy and increased sanitation (Risk Factor 2). But unlike worship services,

³⁰ Cal. Dep’t of Pub. Health, *COVID-19 Industry Guidance: Expanded Personal Care Services* (Oct. 20, 2020), <https://files.covid19.ca.gov/pdf/guidance-expanded-personal-care-services--en.pdf>.

interactions in a transit setting are likely to be asocial, brief and distant (Risk Factors 3, 5). Furthermore, chanting or yelling is uncommon—perhaps even alarming—in these environments (Risk Factor 7).

Worksites in Critical Infrastructure Sectors: The Regional Stay at Home Order allows critical infrastructure employers to designate essential workers to perform on-site tasks that cannot be done remotely, subject to mandatory industry-specific guidelines. Under the Blueprint, these sectors may operate indoors but are subject to strict modifications. The district court credited the statements of California’s experts and public health officials who explained that

job sites present a lower risk profile than non-employment situations because the State has greater control over enforcing specific industry guidelines applicable to each industry: factories must screen workers, develop safety plans, and install engineering controls such as plexiglass barriers, to protect individuals who work near each other. The employers are also subject to various health and safety requirements enforced by State labor authorities. Binding labor agreements in certain industries impose other mandatory measures such as routine testing of on-site staff. Work shifts may be grouped to control personnel to whom the employees are regularly exposed, thus diluting the risk presented by likelihood of strangers from different bubbles randomly mixing at each gathering.

Thus, while we agree with South Bay’s argument that “[t]he State cannot ‘assume the worst when people go to worship but assume the best when people go to work,’” *S. Bay. United Pentecostal Church*, 140 S. Ct. at 1615 (Kavanaugh, J., dissenting in denial of application for injunctive relief) (citation omitted), California is not “assuming” anything by enacting these regulations. Instead, it is

mandating additional restrictions through “detailed, workplace-specific COVID prevention plans subject to enforcement by State labor authorities.”

South Bay nonetheless misguidedly asserts that California’s seven risk factors are not applied to sectors deemed essential critical infrastructure. Again, the challenged restrictions do cover critical infrastructure, which can only operate with significant mandatory modifications—industry-specific guidance designed to reduce the transmission risk posed by the specific sector. The industry-specific guidelines applicable to religious gatherings do not impose nearly as stringent requirements in comparison to many other sectors. There are no labor agreements or other strictures mandating testing or contact tracing to combat the spread of the disease through religious worship. Nor do we see how mandated testing would be practicable for those who participate in weekly or daily worship.

Finally, South Bay makes much of an alleged “Hollywood Exemption.” But there is absolutely no record evidence to support its assertions. Although film and production studios are permitted to continue operations under the Regional Stay at Home Order and the Blueprint, record evidence demonstrates that Hollywood is not “exempt” from restrictions. In fact, this sector is *more strictly* regulated than many others. For example, the Executive Director of the California Film Commission attested that filming in the state resumed only after the studios and unions reached an agreement concerning safety guidelines. The agreement

requires tri-weekly testing and special protocols for makeup, hair styling, costumes, and props. Moreover, although singing and chanting is permitted outdoors for all activities (as with religious services), the Executive Director stated that she was “unaware of any current film or television productions involving large groups of people singing.” South Bay has pointed to no specific evidence to support its assertion that the film industry is permitted to allow singing indoors and we are unable to find any in the record.

South Bay’s analogous arguments with respect to professional sports teams, which it raises for the first time on appeal, fail for similar reasons. Like the film industry, professional sports may resume training and competition subject to approval by county health officers, which has not always been granted.³¹ Live audiences—even outdoors—are prohibited.³² Unlike religious gatherings, professional sports teams are subject to labor agreements that impose stringent regulations on players, including daily testing and penalties such as suspension if a player fails to follow the rules.³³

³¹ S.F. Chronicle, *49ers Won’t Return to Levi’s Stadium This Season After Coronavirus Ban Extended* (Dec. 18, 2020), <https://www.sfchronicle.com/49ers/article/49ers-won-t-return-to-Levi-Stadium-this-season-15814361.php> (last visited Jan. 21, 2020).

³² Cal. Dep’t of Pub. Health, *COVID-19 Industry Guidance: Sporting Events at Outdoor Stadiums and Racetracks* (Oct. 20, 2020), <https://files.covid19.ca.gov/pdf/guidance-outdoor-live-professional-sports--en.pdf>.

³³ See, e.g., *NFL-NFLPA COVID-19 Protocols for 2020 Season*, 61 (Oct. 16, 2020), <https://static.www.nfl.com/image/upload/v1604923568/league/>

* * *

Dissecting the risk profile California assigned to each of these activities and sectors is a highly technical affair, and the district court’s factual findings based on the scientific evidence before it confirms that it correctly concluded that the framework’s restrictions on religious worship are narrowly tailored. California “seriously undertook to address [the] problem with the less intrusive tools readily available to it.” *McCullen v. Coakley*, 573 U.S. 464, 494 (2014). The State tailored its “restrictions to the specific mechanism of Covid-19 transmission: viral droplets which travel through the air from person to person.” *Harvest Rock Church, Inc. v. Newsom*, 2020 WL 7639584, at *7 (C.D. Cal. Dec. 21, 2020).

We therefore agree with the district court that while some “may disagree with the local public health officials’ assessments of what constitutes comparable activities based on the seven risk factors, . . . such risk assessment—which necessarily reflects the local climate, infrastructure, and public health outcomes of prior policies—is a question of policy-making better deferred to the local public health officials.” *See also Roman Catholic Diocese*, 141 S. Ct. at 74 (Kavanaugh, J., concurring) (“Federal courts [] must afford substantial deference to state and local authorities about how best to balance competing policy considerations during

[qj8bnhpzrnjevze2pmc9.pdf](#); NBA, *NBA Outlines Health and Safety Protocols for 2020-21 Season* (Dec. 5, 2020), <https://www.nba.com/news/nba-establishes-health-and-safety-protocol-for-2020-21-season> (last visited Jan. 21, 2021).

the pandemic.”); *South Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613–14 (2020) (Roberts, C.J., concurring) (“When [politically accountable] officials ‘undertake[] to act in areas fraught with medical and scientific uncertainties,’ their latitude ‘must be especially broad.’ Where those broad limits are not exceeded, they should not be subject to second-guessing by an ‘unelected federal judiciary,’ which lacks the background, competence, and expertise to assess public health and is not accountable to the people.” (quoting *Marshall v. United States*, 414 U.S. 417, 427 (1974) and then quoting *Garcia v. San Antonio Met. Trans. Auth.*, 469 U.S. 528, 545 (1985))).

Notably, in response to the State’s mountain of scientific evidence, South Bay has not pointed to *anything* in the record to support the notion that the lesser restriction that it seeks—100% occupancy with a reliance solely on mask-wearing, social distancing, and sanitation measures³⁴—would be effective to meet

³⁴ South Bay has made repeated misrepresentations on appeal regarding the status of a Los Angeles County ordinance enacted in the wake of the Supreme Court’s ruling in *Roman Catholic Diocese*. On December 19, Los Angeles County passed an ordinance allowing houses of worship to hold indoor services without numerical limits or percentage caps provided that congregants wear masks and adhere to physical distancing. The ordinance was quickly rescinded on December 29—two days before South Bay filed its Opening Brief—to bring the county back into compliance with the state’s Regional Stay at Home Order, which then permitted only outdoor worship. Nonetheless, South Bay continues to cite to the ordinance as if it were still in effect, even after the State filed a motion for judicial notice confirming it was repealed. When asked about this discrepancy during oral argument, South Bay continued to represent that the ordinance had not been rescinded.

California's compelling interest in controlling community spread. South Bay's self-serving assertion that it has experienced no incidence of the virus among its worshipers is entirely anecdotal and undermined by evidence of outbreaks in similarly situated places of worship.

And to the extent that South Bay seeks to be treated like grocery stores under the Regional Stay at Home Order, with indoor capacity capped at 35%, we note that similar percentage caps have applied to indoor worship at various times over the last ten months. In both May and October indoor worship was permitted up to 25% of capacity or 100 people. But as the district court correctly found, these less restrictive measures proved inadequate in reducing community spread as evidenced by increasing case numbers and overfilled ICUs, and, as such, failed to meet California's compelling state interest here.

South Bay also contends that the total prohibition on indoor worship under the Regional Stay at Home Order and Tier 1 of the Blueprint is invalid because it is imposed without regard to the size of the place of worship. Notably, however, a percentage cap on attendance based on size is not the relief South Bay seeks. Rather, South Bay would have us enjoin California's restrictions such that it may return to "100% occupancy with social distancing and the other health protocols." Moreover, even when a percentage of capacity is permitted under Tiers 2 and 3 of the Blueprint, South Bay would still be bound by the mandatory state-wide and

industry-specific guidelines, including six feet of physical distancing, which would preclude certain religious practices, such as altar calls, the laying of the hands, and fellowship.

And even if an individual congregant is willing to accept the risk of contracting the virus by partaking in such conduct, the risk is not an individual's risk to take. The risk is also to the lives of others with whom an asymptomatic person may come into close contact, to the healthcare workers who must care for the person one infects, and to California's overwhelmed healthcare system as a whole. California's experts cited studies published by the Centers of Disease Control that estimate, on average, one individual infected with COVID-19 goes on to infect an additional 2.5 people, and each of those persons infects 2.5 more. Thus, the risk of community spread grows exponentially with each additional infected person.

3.

Finally, we turn to South Bay's contention that *Roman Catholic Diocese* and *Dayton Valley* compel the conclusion that California's restrictions are not narrowly tailored. We disagree. California's restrictions differ markedly from the New York order under review in *Roman Catholic Diocese* and the Nevada directive at issue in *Dayton Valley*.

To begin, New York's restrictions were "especially harsh" towards religion,

Roman Catholic Diocese, 141 S. Ct. at 66, whereas California’s objective risk assessment treats all communal gatherings the same across activities and sectors. The Supreme Court seemed to observe as much when describing the New York executive order as “far more restrictive” than a previous iteration of the California restrictions, which have been incorporated into Tier 2 of the Blueprint. *Id.* at 67 n.2 (citing *S. Bay United Pentecostal Church*, 140 S. Ct. 1613); *see also id.* at 74 (Kavanaugh, J., concurring) (“New York’s restrictions on houses of worship are much more severe than the California and Nevada restrictions at issue in *South Bay* and [*Dayton Valley*]”); *id.* at 75 (Roberts, C.J., dissenting) (observing that the New York restrictions are “distinguishable from those we considered in [*South Bay*]”).

Moreover, that the Regional Stay at Home Order and Tier 1 of the Blueprint do not tether maximum indoor worship attendance to the building size, as the Supreme Court suggested in *Roman Catholic Diocese*, does not automatically render the restrictions unconstitutional. Tying maximum attendance to the size of the church, synagogue, or mosque is one “[a]mong other things” that the Supreme Court suggested would be more narrowly tailored than New York’s strict numerical caps. *Id.* at 67. California’s framework is narrowly tailored to stopping the viral spread in each type of endeavor within the state. And, as test positivity rates drop in a given county—and the State’s interest in restricting indoor religious

services in that locale lessens—California permits congregations in the county to expand the size of their indoor services. This sliding scale demonstrates California’s careful calibration in its effort to impinge on its inhabitants’ Free Exercise rights no more than is required by a once-in-a-lifetime global pandemic.

Finally, we note that the evidentiary record before the Supreme Court in *Roman Catholic Diocese* appears to have been quite different than the one before us. The Court’s suggestion that the “maximum attendance at a religious service *could* be tied to the size of the church or synagogue,” *id.* (emphasis added), does not appear to be supported by the extensive testimony of public health officials and the studies they relied upon, which we have before us now, *see also id.* (“*It is hard to believe* that admitting more than 10 people to a 1,000-seat church or 400-seat synagogue would create a more serious health risk than the many other activities that the State allows.” (emphasis added)).

In *Dayton Valley*, we were faced with a similarly lean record—each party submitted just one expert declaration. There was certainly no indication that Nevada employed a risk-based activity-tailored analysis in assigning restrictions to different sectors under the challenged directive. Instead, the state enacted regulations that allowed potentially hundreds of individuals to congregate indoors at casinos, but limited religious services to a strict 50-person cap regardless of the size of the church or whether the service was held indoors or out. *See Dayton*

Valley, 982 F.3d at 1233. Here, by contrast, California has closed cardrooms under the Regional Stay at Home Order and requires outdoor operation under Tiers 1 and 2 of the Blueprint. Outdoor worship services are permitted without any attendance limitations.

As we have previously observed, we recognize that the issues before us “strike at the very heart of the First Amendment’s guarantee of religious liberty,” *S. Bay. United Pentecostal Church v. Newsom*, 982 F.3d 1239 (9th Cir. 2020) (quoting *Roman Catholic Diocese*, 141 S. Ct. at 68); indeed, we appreciate our “duty to conduct a serious examination of the need for such a drastic measure,” *Roman Catholic Diocese*, 141 S. Ct. at 98. But it is precisely this careful examination that leads us to the conclusion we reach today: given the contagiousness of this deadly virus and the dire circumstances facing Southern California’s healthcare system at this moment in its history, there exist no less restrictive means to alleviate the situation.

B.

“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Id.* at 67 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)). The district court found that South Bay demonstrated irreparable harm, and the government does not challenge this finding on appeal. We agree that South Bay is suffering irreparable harm by not

being able to hold worship services in the Pentecostal model to which it subscribes.

C.

Where the government is a party to a case in which a preliminary injunction is sought, the balance of the equities and public interest factors merge. *See Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). The district court did not abuse its discretion in concluding that the public interest lay not with enjoining California's restrictions, but rather with the continued protection of the population as a whole so that all who desire to do so may once again return to worship indoors.

To be sure, without its requested injunctive relief, South Bay will continue to be deprived of the ability to engage in indoor worship. But unlike the plaintiffs in *Roman Catholic Diocese*, South Bay is permitted to hold in-person services outdoors in unlimited numbers under both the Regional Stay at Home Order and Tier 1 of the Blueprint. Thus, "personal attendance," with which the Supreme Court was principally concerned, is not an issue here. *See Roman Catholic Diocese*, 141 S. Ct. at 68. During this time, many Catholic churches throughout California have provided the Sacrament of Communion on a drive-through basis, following the live stream of the Mass to parishioners at home.³⁵ *Cf. id.* (observing

³⁵ Orange County Register, *Drive-through Communion, Online Sermons: Venerable Tustin Church Adapts to Pandemic* (Aug. 4, 2020), <https://www.ocregister.com/2020/08/02/drive-through-communion-online->

that in New York, “Catholics who watch a Mass at home cannot receive communion”). Other faiths have similarly held regular outdoor services. For example, many Los Angeles-based synagogues held in-person outdoor High Holy Days services in their parking lots.³⁶

And, as we have just explained, the Regional Stay at Home Order and the Blueprint permit these outdoor religious services without restrictions on attendance or singing and chanting. San Diego County benefits from a year-round warm climate³⁷ and is full of outdoor spaces that could plausibly accommodate outdoor religious services, such as parks and parking lots. Given the obvious climatic differences between San Diego in the winter and say, New York, the Regional Stay

[sermons-venerable-tustin-church-adapts-to-pandemic/](#) (Aug. 4, 2020) (last visited Jan. 21, 2021); Sierra Star, *Mountain Area Church Gets Face-time With Parishioners in Drive-thru Communion* (May 2, 2020), <https://www.sierrastar.com/living/religion/article242454861.html> (last visited Jan. 21, 2021).

³⁶ L.A. Magazine, *To Survive COVID-19, the Jewish High Holidays Go Virtual—or Outdoors—Across L.A.* (Aug. 28, 2020), <https://www.lamag.com/citythinkblog/high-holidays-covid-19/> (last visited Jan. 21, 2021); *see also* East Bay Times, *Coronavirus: Drive Right up and Confess Your Sins from a Safe Distance* (Apr. 3, 2020), <https://www.eastbaytimes.com/2020/04/03/coronavirus-drive-right-up-and-confess-your-sins-from-a-safe-distance/> (last visited Jan. 19, 2021); NBC Bay Area, *Santa Clara County Mosques Find Ways to Continue Services* (July 19, 2020), <https://www.nbcbayarea.com/news/local/south-bay/santa-clara-county-mosques-find-ways-to-continue-services/2328779/> (last visited Jan. 21, 2021).

³⁷ According to the National Oceanic and Atmospheric Administration (NOAA), the average temperature in San Diego for the month of December 2020 was 69 °F. *See* National Centers for Environmental Information, *Record of Climatological Observations: San Diego Int’l Airport*, <https://www.ncdc.noaa.gov>.

at Home Order's allowance for outdoor services is much more than "lip service" to the demands of the First Amendment. Moreover, although the limitations on indoor worship services are of grave concern, they will be in effect only until ICU availability increases beyond a 15% threshold and test positivity rates drop below 8%.

On the other hand, if the requested injunctive relief is granted, the record evidence points to the conclusion that the public will be further endangered by both the virus and the collapse of the state's health system. Although there is no record evidence that attendance at South Bay's services in particular has contributed to the spread of the virus, the record does evidence outbreaks tied to religious gatherings in San Diego County and in the Southern California region. And, certainly, California's public health experts have concluded that indoor gatherings of any kind are exactly what magnifies the risk of exposure. Accordingly, unlike in *Roman Catholic Diocese*, there is strong evidence to conclude that enjoining California's restrictions on indoor worship services to permit gatherings for indoor religious services will in fact harm the public. *Cf. id.* Indeed, it is difficult to see how allowing more people to congregate indoors will do anything other than lead to more cases, more deaths, and more strains on California's already overburdened healthcare system.

IV.

We next assess South Bay’s claim that the 100- and 200-person attendance limits on indoor worship under Tiers 2 and 3 of the Blueprint, respectively, violate the Free Exercise Clause.³⁸ Although South Bay raised this challenge in its renewed motion for injunctive relief, the district court did not address it in its December 21 order. The parties have nonetheless briefed the issue on appeal. We believe that the *Winter* factors counsel enjoining these attendance caps.

We conclude that South Bay is likely to succeed on its challenge to the 100- and 200-person attendance caps under Tiers 2 and 3 of the Blueprint. As with the limitation on indoor worship, after *Roman Catholic Diocese*, we apply strict scrutiny to these attendance caps because California has imposed different capacity restrictions on religious services relative to non-religious activities and sectors. *See Roman Catholic Diocese*, 141 S. Ct. at 66–67. Specifically, in Tier 2, indoor worship services are limited to the lesser of 25% or 100 people, whereas retail may operate at 25% capacity and grocery stores may operate at 50% capacity, both

³⁸ South Bay also purports to challenge the 25% limitation on capacity in Tier 2 of the Blueprint, and the 50% limitation on capacity under Tiers 3 and 4 of the Blueprint. However, the district court did not rule on this challenge, nor did the parties present specific evidence regarding the narrowly tailored inquiry with respect to the percentage limitations below or make meaningful arguments here. If South Bay desires to challenge these percentage limitations, it must return to the district court. *See Christian Legal Soc. Chapter of Univ. of Cal. v. Wu*, 626 F.3d 483, 487 (9th Cir. 2010) (per curiam) (“[W]e won’t consider matters on appeal that are not specifically and distinctly argued in appellant’s opening brief.” (internal quotations and citations omitted)).

without attendance caps. In Tier 3, indoor worship services are limited to the lesser of 50% or 200 people, whereas retail and grocery stores may operate without capacity limits subject to mandatory industry guidance.

Whereas the State has submitted substantial evidence as to why indoor worship is unsafe at any level in counties where COVID-19 is “widespread” and ICU capacity is non-existent, we cannot find record evidence to support its assertion that the 100-person cap in Tier 2 and 200-person cap in Tier 3 are necessary to achieve its goal in further slowing community spread. As in *Roman Catholic Diocese*, “there are many other less restrictive rules that could be adopted to minimize the risk to those attending religious services.” *Id.* at 67. And while 100 or 200 people could overwhelm a small chapel, a large church the size of South Bay could easily implement social distancing with much higher numbers. Accordingly, we conclude that South Bay is likely to succeed on the merits of its Free Exercise claim with respect to the numerical caps in Tiers 2 and 3.

When San Diego County reaches Tiers 2 and 3 of the Blueprint, the numerical attendance caps will undeniably unconstitutionally deprive some of South Bay’s worshippers of participation in its worship services, causing irreparable harm. *See Roman Catholic Diocese*, 141 S. Ct. at 67. Moreover, the untethered nature of the caps, at least on the record before us, will tip the balance of the equities and public interest in South Bay’s favor. *See Hernandez v.*

Sessions, 872 F.3d 976, 996 (9th Cir. 2017) (“[T]he injunction serves the interests of the general public by ensuring that the government’s . . . procedures comply with the Constitution. Generally, public interest concerns are implicated when a constitutional right has been violated because all citizens have a stake in upholding the constitution.” (internal quotation marks omitted)). The State has not shown that less restrictive measures, such as basing attendance limits on the size of the church, synagogue or mosque would cause any greater peril to the public. Accordingly, we remand to the district court with the instruction to enjoin the State from imposing the 100- and 200- person caps under Tiers 2 and 3 of the Blueprint.

V.

Finally, we separately consider South Bay’s claim that California’s ban on indoor singing and chanting violates its First Amendment rights under the Free Exercise Clause. Although South Bay raised this challenge in its renewed motion for injunctive relief, the district court did not specifically address it in its December 21 order. We find that the district court’s failure to do so, if error, is harmless because the challenge lacks merit.

California’s ban on indoor singing and chanting applies to *all* indoor activities, sectors, and private gatherings. South Bay has not pointed to any record evidence that this ban results in disparate treatment of religious gatherings, and we cannot find any. Thus, our analysis of the singing and chanting ban is subject to

the deferential rational basis review, not strict scrutiny.

California’s public health officials explain that “[s]inging, chanting, [and] shouting . . . significantly increase the risk of COVID-19 transmission because these activities increase the release of respiratory droplets and fine aerosols into the air.”³⁹ Such conduct propels respiratory droplets farther and thus mitigates the effects achieved by social distancing. Moreover, mask-wearing cannot completely impede the risk of transmission because of the forceful nature of the expulsion. The State’s ban on singing and chanting is therefore rationally related to controlling the spread of COVID-19, and South Bay has not demonstrated a likelihood of success on this claim.

VI.

We are mindful that “even in a pandemic, the Constitution cannot be put away and forgotten.” *Roman Catholic Diocese*, 141 S. Ct. at 68. But we do not think this is what California has done. Although South Bay may not be able to hold indoor worship services, California has left open other avenues for worship that pose substantially less risk for further spread of COVID-19. Accordingly, having evaluated the likelihood of success on the merits, the potential for

³⁹ Cal. Dep’t of Pub. Health, *Guidance for the Prevention of COVID-19 Transmission for Gatherings* (Nov. 13, 2020), <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Guidance-for-the-Prevention-of-COVID-19-Transmission-for-Gatherings-November-2020.aspx> (last visited Jan. 21, 2021).

irreparable injury, the balance of equities, and the public interests implicated by this case, we cannot conclude that the district court abused its discretion in refusing to grant South Bay's requested injunction. We therefore AFFIRM the district court's denial of South Bay's motion for preliminary injunctive relief.

AFFIRMED.

APPENDIX A

	Regional Stay at Home Order, Dec. 3, 2020	Blueprint for a Safer Economy, Aug. 28, 2020			
		Tier 1: Widespread	Tier 2: Substantial	Tier 3: Moderate	Tier 4: Minimal
Places of Worship	Outdoor only	Outdoor only	Lesser of: 25% capacity or 100 people + mandatory industry guidance	Lesser of: 50% capacity or 200 people + mandatory industry guidance	50% capacity + mandatory industry guidance
Political Protests	Outdoor only	Outdoor only	Lesser of: 25% capacity or 100 people + mandatory industry guidance	Lesser of: 50% capacity or 200 people + mandatory industry guidance	50% capacity + mandatory industry guidance
Movie Theaters	Closed (drive-in OK)	Closed (drive-in OK)	Lesser of: 25% capacity or 100 people + mandatory industry guidance	Lesser of: 50% capacity or 200 people + mandatory industry guidance	50% capacity + mandatory industry guidance
Restaurants	Take-out or delivery only	Outdoor only	Lesser of 25% capacity or 100 people + mandatory industry guidance	Lesser of 50% capacity or 200 people + mandatory industry guidance	50% capacity + mandatory industry guidance
Museums, Zoos, Aquariums	Closed	Outdoor only	25% capacity + mandatory industry guidance	50% capacity + mandatory industry guidance	Open + mandatory industry guidance
Retail, Shopping Malls	20% capacity + mandatory industry guidance	25% capacity + mandatory industry guidance	50% capacity + mandatory industry guidance	Open + mandatory industry guidance	Open + mandatory industry guidance
Grocery Stores	35% capacity + mandatory industry guidance	50% capacity + mandatory industry guidance	Open indoors + mandatory industry guidance	Open indoors + mandatory industry guidance	Open indoors + mandatory industry guidance
Gyms, Fitness Centers	Outdoor only	Outdoor only	10% capacity + mandatory industry guidance	25% capacity + mandatory industry guidance	50% capacity + mandatory industry guidance
Cardrooms	Closed	Outdoor only	Outdoor only	25% capacity + mandatory industry guidance	50% capacity + mandatory industry guidance
Hair Salons, Barbershops	Closed	Open indoors + mandatory industry guidance	Open indoors + mandatory industry guidance	Open indoors + mandatory industry guidance	Open indoors + mandatory industry guidance

Music, Film, TV Production	Approval by county health officials + mandatory industry guidance	Open indoors + mandatory industry guidance	Open indoors + mandatory industry guidance	Open indoors + mandatory industry guidance	Open indoors + mandatory industry guidance
Critical Infrastructure	Essential workers may work on-site when remote work not feasible + mandatory industry guidance	Open indoors + mandatory industry guidance	Open indoors + mandatory industry guidance	Open indoors + mandatory industry guidance	Open indoors + mandatory industry guidance
Bars, Breweries, Distilleries	Closed	Closed	Closed	Outdoor only	50% capacity indoors + mandatory industry guidance

APPENDIX B

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SOUTH BAY UNITED PENTECOSTAL
CHURCH, a California nonprofit
corporation; BISHOP ARTHUR
HODGES III, an individual,
Plaintiffs-Appellants,

v.

GAVIN NEWSOM, in his official
capacity as the Governor of
California; XAVIER BECERRA, in his
official capacity as Attorney General
of California; SONIA ANGELL, in her
official capacity as California Public
Health Officer; WILMA J. WOOTEN,
in her official capacity as Public
Health Officer, County of San
Diego; HELEN ROBBINS-MEYER, in
her official capacity as Director of
Emergency Services; WILLIAM D.
GORE, in his official capacity as
Sheriff of the County of San Diego,
Defendants-Appellees.

No. 20-56358

D.C. No.
3:20-cv-00865-
BAS-AHG

ORDER

2 SOUTH BAY UNITED PENTECOSTAL CHURCH V. NEWSOM

Filed December 24, 2020

Before: Kim McLane Wardlaw and Richard C. Clifton,
Circuit Judges, and Timothy Hillman,* District Judge.

ORDER

Appellants' Urgent Motion for an Injunction Pending Appeal Under Circuit Rule 27-3(b) (ECF No. 5) is **DENIED** without prejudice to renewing the request for injunctive relief in conjunction with the merits appeal.

IT IS SO ORDERED.

* The Honorable Timothy Hillman, United States District Judge for the District of Massachusetts, sitting by designation.

APPENDIX C

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

SOUTH BAY UNITED PENTECOSTAL
CHURCH, a California nonprofit
corporation; BISHOP ARTHUR
HODGES III, an individual,
Plaintiffs-Appellants,

v.

GAVIN NEWSOM, in his official
capacity as the Governor of
California; XAVIER BECERRA, in his
official capacity as Attorney General
of California; SONIA ANGELL, in her
official capacity as California Public
Health Officer; WILMA J. WOOTEN,
in her official capacity as Public
Health Officer, County of San
Diego; HELEN ROBBINS-MEYER, in
her official capacity as Director of
Emergency Services; WILLIAM D.
GORE, in his official capacity as
Sheriff of the County of San Diego,
Defendants-Appellees.

No. 20-56358

D.C. No.
3:20-cv-00865-
BAS-AHG

ORDER

2 SOUTH BAY UNITED PENTECOSTAL CHURCH V. NEWSOM

Filed December 23, 2020

Before: Kim McLane Wardlaw and Richard C. Clifton,
Circuit Judges, and Timothy Hillman,* District Judge.

ORDER

Appellees are directed to file an opposition to Appellants' Emergency Motion for an Injunction Pending Appeal on Thursday, December 24, 2020, by 9:00 A.M. Appellants' optional reply brief is due on Thursday, December 24, 2020, by 12:00 P.M.

Given that the issues presented in this appeal “strike at the very heart of the First Amendment’s guarantee of religious liberty,” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, slip op. at 6 (2020) (per curiam), and the gravity of the pandemic’s impact on Southern California, in particular, we order Appellants’ appeal from the district court’s Order Denying the Motion for a Temporary Restraining Order or Preliminary Injunction expedited. *See* Fed. R. App. P. 2; Ninth Circuit R. 3-3. The briefing schedule shall proceed as follows: the opening brief and excerpts of record are due on or before December 31, 2020; the answering brief is due on or before January 7, 2021; and the optional reply brief is due on or before January 11, 2021.

This appeal is set for virtual oral argument at the Richard H. Chambers U.S. Court of Appeals Building, Pasadena,

* The Honorable Timothy Hillman, United States District Judge for the District of Massachusetts, sitting by designation.

SOUTH BAY UNITED PENTECOSTAL CHURCH V. NEWSOM 3

California, on January 15, 2021, at 1:00 P.M. Each side is allotted 30 minutes for argument.

IT IS SO ORDERED.

APPENDIX D-1

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SOUTH BAY UNITED PENTECOSTAL
CHURCH, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. 20-cv-00865-BAS-AHG

ORDER

- 1. GRANTING DEFENDANTS’ REQUEST FOR JUDICIAL NOTICE (ECF No. 81-7);**
- 2. STRIKING EXHIBITS 4–7 TO THE DECLARATION OF TRISSEL AND DENYING AS MOOT DEFENDANTS’ OBJECTION (ECF No. 86); AND**
- 3. DENYING PLAINTIFFS’ RENEWED MOTION FOR A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION (ECF No. 75).**

In this action brought by a San Diego church to challenge California’s COVID-19 regulation, the Court is asked to draw a difficult balance between religious liberty and public health. The applicant church seeks to enjoin the regulation in order to provide indoor worship for its congregation, and California seeks to preserve the regulation to curb the

1 community spread of the virus. The Southern California region is now witnessing the
2 pandemic at its peak: record number of new daily cases, skyrocketing deaths, and 0% of
3 ICU hospital beds left to spare. The stakes are high. Religion is all the more essential
4 when disease, desperation, and death surround us; at the same time, a unified effort to fight
5 the spread of the virus is desperately needed like never before.

6 In drawing this difficult balance between religious liberty and public health, the
7 Court must follow the higher courts' precedents, when the precedents seem to change
8 course as quickly as the various pandemic restrictions. Admittedly, this has been a rapidly
9 evolving—and escalating—pandemic. And in this very case, the Supreme Court declined
10 to intervene after the Court refused to enjoin California's prior regulation. Now, by all
11 measures, the pandemic is worse and more out of control in Southern California than when
12 that decision was made. Nevertheless, the Court is tasked with deciding whether Chief
13 Justice Roberts' rationale for not intervening in this case has now "expired," as Justice
14 Gorsuch's recent concurrence in another case suggests. *See Roman Catholic Diocese of*
15 *Brooklyn v. Cuomo*, --- U.S. ---- (Nov. 25, 2020), 2020 WL 6948354, at *5 (Gorsuch, J.,
16 concurring).

17 This decision is the Court's best attempt to interpret and harmonize the recent
18 decisions on the issue from the Supreme Court and the Ninth Circuit, in balancing the
19 essential interests in religious liberty and public health.

20 21 **I. BACKGROUND**

22 The Court incorporates the background section from the Court's October 15, 2020
23 Order. (Order at 3:21-15:2, ECF No. 71.) In that Order, the Court denied Plaintiffs'
24 renewed motion to enjoin California's restrictions in place at that time, in the form of a
25 capacity limit on indoor worship services and a ban on singing, chanting, or shouting
26 indoors. *Id.*

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1 **A. Rulings Above**

2 **1. The Supreme Court’s Prior Denial of Plaintiffs’ Application**

3 In May, Plaintiffs sought emergency relief from the Supreme Court.¹ After Justice
4 Kagan referred Plaintiffs’ application for injunctive relief to the Supreme Court, the Court
5 denied it. *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020) (mem.).
6 Chief Justice Roberts wrote an opinion concurring in the denial of the application. *Id.* at
7 1613–14. He reasoned:

8 Although California’s guidelines place restrictions on places of worship, those
9 restrictions appear consistent with the Free Exercise Clause of the First
10 Amendment. Similar or more severe restrictions apply to comparable secular
11 gatherings, including lectures, concerts, movie showings, spectator sports, and
12 theatrical performances, where large groups of people gather in close
13 proximity for extended periods of time. And the Order exempts or treats more
14 leniently only dissimilar activities, such as operating grocery stores, banks,
and laundromats, in which people neither congregate in large groups nor
remain in close proximity for extended periods.

15 *Id.* at 1613. The Chief Justice further explained:

16 The precise question of when restrictions on particular social activities should
17 be lifted during the pandemic is a dynamic and fact-intensive matter subject
18 to reasonable disagreement. Our Constitution principally entrusts “[t]he
19 safety and the health of the people” to the politically accountable officials of
20 the States “to guard and protect.” *Jacobson v. Massachusetts*, 197 U.S. 11,
21 38 (1905). When those officials “undertake[] to act in areas fraught with
22 medical and scientific uncertainties,” their latitude “must be especially
23 broad.” *Marshall v. United States*, 414 U.S. 417, 427 (1974). Where
24 those broad limits are not exceeded, they should not be subject to second-
guessing by an “unelected federal judiciary,” which lacks the background,
competence, and expertise to assess public health and is not accountable to
the people. *See Garcia v. San Antonio Metropolitan Transit Authority*, 469
U.S. 528, 545 (1985).

25 *Id.*

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¹ Appl. for Inj. Relief, *S. Bay United Pentecostal v. Newsom* (No. 19A1044).

1 **2. Roman Catholic Diocese of Brooklyn v. Cuomo (2020)**

2 In late November, the Supreme Court granted Roman Catholic Diocese of Brooklyn’s
3 emergency application to enjoin New York’s COVID-19 restrictions on houses of worship,
4 which had limited in-person attendance to 10 persons in the red zone and 25 persons in the
5 orange zone. *Roman Catholic Diocese of Brooklyn v. Cuomo*, --- U.S. ----, 2020 WL
6 6948354 (Nov. 25, 2020) (per curiam). The Court held that the 10- and 25-person capacity
7 limits should be reviewed under strict scrutiny, finding that the challenged rules singled
8 out houses of worship for “especially harsh treatment,” which “effectively barr[ed] many
9 from attending religious services.” *Id.* at *1, 3. The Court opined that, although
10 “[s]temming the spread of COVID–19 is unquestionably a compelling interest,” New
11 York’s restrictions were not narrowly tailored to the state’s interest. *Id.* at *2.

12 A week after, the Supreme Court vacated a district court’s decision to not enjoin
13 California’s restriction on houses of worship as requested by the Harvest Rock Church in
14 Los Angeles County,² and remanded to the Ninth Circuit with instructions to remand to the
15 Central District of California for further consideration in light of the Court’s ruling in
16 *Roman Catholic Diocese. Harvest Rock Church v. Newsom*, --- S. Ct. ----, 2020 WL
17 7061630 (Dec. 3, 2020) (mem.).

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19 **3. Dayton Valley v. Sisolak (9th Cir. 2020)**

20 On December 15, 2020, the Ninth Circuit issued a published decision reversing a
21 district court’s denial of a preliminary injunction barring enforcement of a Nevada directive
22 against houses of worship. *Dayton Valley v. Sisolak*, No. 20-16169, 2020 WL 7350247
23 (9th Cir. Dec. 15, 2020). The Ninth Circuit held that the *Roman Catholic Diocese* decision
24 compelled strict scrutiny review of Nevada’s directive, which imposed a fifty-person cap
25 on houses of worship but a 50% capacity cap on certain other businesses. *Dayton Valley*,
26 2020 WL 7350247, at *3. The panel held that *Roman Catholic Diocese* “arguably
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28 ² *Harvest Rock Church, Inc. v. Newsom*, No. LACV206414JGBKX, 2020 WL 5265564 (C.D.
Cal. Sept. 2, 2020).

1 represented a seismic shift in Free Exercise law” and Nevada’s directive created “the same
2 ‘disparate treatment’ of religion,” thus triggering strict scrutiny review under *Roman*
3 *Catholic Diocese*. *Id.* The panel found that Nevada held a compelling interest in slowing
4 the spread of COVID-19 but concluded that the directive was not narrowly tailored to the
5 compelling interest “because, for example, ‘maximum attendance at a religious service
6 could be tied to the size of the [house of worship].’” *Id.* at *4 (citing *Roman Catholic*
7 *Diocese*, 2020 WL 6948354, at *2). Concluding that the plaintiff church has demonstrated
8 a success on the merits of its Free Exercise claim, and finding other preliminary injunction
9 factors to be in favor of an injunction, the Ninth Circuit reversed the district court with
10 instructions that the district court “employ strict scrutiny review to its analysis of the
11 Directive, and preliminarily enjoin the State from imposing attendance limitations on in-
12 person services in houses of worship that are less favorable than 25% of the fire-code
13 capacity.” *Id.* at *4.

14 15 **B. Winter Outbreak in California and the State’s Response**

16 Meanwhile, COVID-19 rampaged through California, quickly bringing the State
17 into the worst phase of the pandemic since its inception in March. In just a month between
18 mid-November and mid-December, the number of new cases per day in California
19 increased from 8,743 a day to more than 35,000 a day.³ The number of hospitalizations
20 for COVID-19 in California grew from 777 on November 15 to 13,635 on December 14.⁴
21 In Southern California, ICU bed capacity is now 0%.⁵

22 In response to the unprecedented surge in the virus infections and patients needing
23 hospitalization, California’s public health officials reinforced its response to reduce
24 community spread of the virus, protect individuals at higher risk of severe illness or death,
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27 ³ Declaration of Dr. George Rutherford, MD (“Rutherford Decl.”) ¶ 66, ECF No. 81-4.

28 ⁴ *Id.*

⁵ Current tier assignments as of December 15, 2020, <https://covid19.ca.gov/state-dashboard/>.

1 and prevent the state’s health care delivery system from being overwhelmed.⁶ Community
2 spread occurs when residents become infected with the virus in community settings,
3 making it difficult to identify the source of exposure.⁷ California’s response targets three
4 factors that facilitate community spread of COVID-19: (1) prevalence of COVID-19 in the
5 community, measured by the proportion of individuals infected at a given time, (2) the
6 number of interactions between people during which the pathogen can be transmitted, and
7 (3) the average likelihood of transmission per interaction.⁸ Wearing masks, frequent
8 handwashing, and social distancing reduce the likelihood of transmission per interaction
9 (factor 3).⁹ Stay at home orders and limiting the capacity of indoor operations reduce the
10 number of interactions (factor 2).¹⁰

11 In devising its response to manage the second factor—reducing the number of
12 interpersonal interactions—the State applies neutral risk criteria to determine the
13 conditions in which a given activity may take place:

- 14 • ability to accommodate wearing masks at all times;
- 15 • ability to allow physical distancing;
- 16 • ability to limit duration of exposure;
- 17 • ability to limit amount of mixing of people from differing households and
18 communities;
- 19 • ability to limit amount of physical interactions of visitors/patrons;
- 20 • ability to optimize ventilation; and
- 21 • ability to limit activities that are known to cause increased spread.

22 (Declaration of Todd Grabarsky (“Grabarsky Decl.”) Ex. 6, ECF No. 81-1 at 74–75; *Id.*
23 Ex. 7, ECF No. 81-1 at 85–86.)

25 ⁶ Declaration of Dr. Michael A. Soto (“Soto Decl.”) ¶ 9, ECF No. 81-5; Declaration of Dr. James
26 Watt, MD, MPH (“Watt Decl.”) ¶ 90, ECF No. 81-3.

27 ⁷ Watt Decl. ¶34.

28 ⁸ Stoto Decl. ¶ 10.

⁹ *Id.*

¹⁰ *Id.*

1 On December 3, 2020, California implemented a Regional Stay at Home Order
2 applicable to any Regions for which the adult ICU bed capacity falls below 15%.¹¹ The
3 Order mandates “[a]ll individuals living in the Region [to] stay home or at their place of
4 residence except as necessary to conduct activities associated with the operation,
5 maintenance, or usage of critical infrastructure.”¹² When operative in a Region, the Order
6 supersedes the State’s prior guidance including the Blueprint for a Safer Economy.¹³ For
7 example, restaurants in the Purple Tier could operate outdoors before, but under the new
8 Order, restaurants may only offer take-out or deliveries.¹⁴

9 The Regional Stay at Home Order allows Californians to engage in onsite operations
10 in the critical infrastructure sector and to gather outdoors for religious worship and political
11 expression.¹⁵ California designates as essential “[c]lergy for essential support and faith-
12 based services that are provided outdoors, or through streaming or other technologies that
13 support physical distancing and state public health guidelines,” along with other designated
14 essential workers in the critical infrastructure sector.¹⁶ The critical infrastructure sector
15 also includes certain operations in health care; emergency services; food and agriculture;
16 energy; water and wastewater; transportation and logistics; communications and
17 information technology; government operations and other community-based essential
18 functions; critical manufacturing; financial services; chemical and hazardous materials;
19 defense industrial base; and industrial, commercial, residential, and sheltering facilities and
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24 ¹¹ Grabarsky Decl., Ex. 13, ECF No. 81-1 at 152–55.

25 ¹² *Id.* at ¶ 2.a.

26 ¹³ *Id.* at ¶ 9.

27 ¹⁴ Compare California Health Officials Announce a Regional Stay at Home Order Triggered by
28 ICU Capacity (Dec. 3, 2020), <https://www.gov.ca.gov/2020/12/03/california-health-officials-announce-a-regional-stay-at-home-order-triggered-by-icu-capacity/> with Industry guidance to reduce risk—
Restaurants, wineries, and bars (Dec. 1, 2020) <https://covid19.ca.gov/industry-guidance/#restaurants>.

¹⁵ Grabarsky Decl., Ex. 13 at ¶ 2.b,c , ECF No. 81-1 at 153.

¹⁶ Essential Workforce at 8.16 (Dec. 3, 2020), <https://covid19.ca.gov/essential-workforce/>.

1 services.¹⁷ The essential workforce employed at the listed critical infrastructure is allowed
2 to report to work “if remote working is not practical.”¹⁸

3 The Regional Stay at Home Order became operative in San Diego after the ICU
4 capacity for the Southern California Region fell below 15%.¹⁹ Accordingly, in San Diego,
5 all gatherings at places of worship, weddings, and funerals, as well as for political
6 expression must be held outdoors.²⁰ Lectures and student gatherings at higher education
7 institutions must be held outdoors, except for some courses like labs.²¹ Gyms and dance
8 studios must operate outdoors, and indoor pools, hot tubs, saunas, and steam rooms must
9 close.²² Amusement parks, museums, zoos, aquariums, overnight campgrounds must
10 close, and so must convention centers, concert venues, movie theatres, family
11 entertainment centers, and live performances.²³ Entertainment production and professional
12 sports may not take place with live audiences.²⁴ Restaurants, wineries, bars, breweries,
13 and distilleries must close for dine-in or on-site consumption.²⁵ Tattoo shops, hair salons,
14 barbershops, nail salons, and body waxing studios must close.²⁶ Cardrooms and satellite
15 wagering businesses must close.²⁷ Hotels must not accept in-state reservations unless used
16 for listed exceptions such as mitigating COVID-19, and out-of-state reservations must be
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19 ¹⁷ Essential Workforce (Dec. 3, 2020), <https://covid19.ca.gov/essential-workforce/>.

20 ¹⁸ *Id.*

21 ¹⁹ Current tier assignments as of December 15, 2020 (Dec. 15, 2020), <https://covid19.ca.gov/stay-home-except-for-essential-needs>.

22 ²⁰ Grabarsky Decl., Ex. 13 at ¶ 2.c; Industry guidance to reduce risk—Places of worship and cultural ceremonies (Dec. 8, 2020 at 1:39 p.m.), <https://covid19.ca.gov/industry-guidance/#worship>.

23 ²¹ Industry guidance to reduce risk—Higher education (Oct. 1, 2020), <https://covid19.ca.gov/industry-guidance/#higher-education>.

24 ²² Industry guidance to reduce risk—Gyms and fitness centers (Dec. 3, 2020), <https://covid19.ca.gov/industry-guidance/#fitness-guidance>.

25 ²³ Find the status for activities in your county, <https://covid19.ca.gov/safer-economy/>.

26 ²⁴ *Id.*; California Health Officials Announce a Regional Stay at Home Order Triggered by ICU Capacity (Dec. 3, 2020), <https://www.gov.ca.gov/2020/12/03/california-health-officials-announce-a-regional-stay-at-home-order-triggered-by-icu-capacity/>.

27 ²⁵ Find the status for activities in your county, <https://covid19.ca.gov/safer-economy/>.

28 ²⁶ *Id.*

²⁷ *Id.*

1 at least the minimum time period required for quarantine.²⁸ Schools may not reopen fully
2 for in-person instruction with some exceptions.²⁹

3 Grocery stores can operate at 35% of capacity.³⁰ Clothing stores, convenience
4 stores, home and furnishing stores, and other retail stores, in addition to libraries, can
5 operate at 20% of capacity.³¹ Laundromats and limited service providers that do not
6 require close contact may remain open with modifications.³² Essential workers in public
7 transit,³³ manufacturing plants,³⁴ logistics and warehousing facilities,³⁵ and non-urgent
8 medical and dental care offices³⁶ may conduct on-site operations with mandatory
9 precautions.

10 The following table summarizes the restrictions in place in the San Diego County,
11 where Plaintiffs' church is located:

	Regional Stay at Home Order Capacity Restrictions
Places of worship	Outdoor only.
Political expression	Outdoor only.
Weddings and Funerals	Outdoor only.
Cultural ceremonies	Outdoor only.
Outdoor Recreational Facilities	Allow outdoor operation only without any food, drink or alcohol sales. Additionally, overnight stays at campgrounds will not be permitted.
Entertainment production and professional sports	No live audience.
Amusement parks	Closed.
Museums, zoos, and aquariums	Closed.

20 ²⁸ *Id.*

21 ²⁹ *Id.* (“Local school and health officials may decide to open elementary schools, and school
22 officials may decide to conduct in-person instruction for a limited set of students in small cohorts.”)

23 ³⁰ *Id.*; CDPH, Supplement to Regional Stay at Home Order (Dec. 6, 2020), <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/supplement-regional-stay-at-home-order.aspx>.

24 ³¹ Find the status for activities in your county, <https://covid19.ca.gov/safer-economy/>.

25 ³² *Id.*; Industry guidance to reduce risk—Limited services, <https://covid19.ca.gov/industry-guidance/#limited-services>.

26 ³³ Industry guidance to reduce risk—Public transit and intercity passenger rail (Oct. 20, 2020),
27 <https://covid19.ca.gov/industry-guidance/#public-transit>.

28 ³⁴ Industry guidance to reduce risk—Manufacturing, <https://covid19.ca.gov/industry-guidance/#manufacturing>.

³⁵ Industry guidance to reduce risk—Logistics and warehousing facilities, <https://covid19.ca.gov/industry-guidance/#logistics>.

³⁶ Find the status for activities in your county, <https://covid19.ca.gov/safer-economy/>.

1	Restaurants	Take-out only.
2	Wineries	Closed for on-site consumption.
3	Bars, Breweries, Distilleries	Closed for on-site consumption.
4	Higher education	Outdoor only (closed for indoor lectures and student gatherings).
5	Convention Centers	Closed.
6	Concert venues	Closed.
7	Movies	Closed.
8	Family Entertainment Centers	Closed.
9	Musical, theatrical, and artistic performances	Closed.
10	Cardrooms and satellite wagering	Closed.
11	Tattoo shops	Closed.
12	Hair salons and barbershops	Closed.
13	Nail salons	Closed.
14	Body waxing studios	Closed.
15	Dance studios	Outdoor only.
16	Gyms	Outdoor only.
17	Indoor pools, hot tubs, saunas	Closed.
18	Hotels	Closed for in-state reservations unless used for listed exceptions. Open for non-essential, out-of-state reservations so long as reservation is at least the minimum time period required for quarantine.
19	Music, film, and TV production	May resume subject to approval by county public health officers.
20	Public Transit	Open with safety precautions.
21	Office workspaces	Allow remote only except for critical infrastructure sectors where remote working is not possible.
22	Libraries	20% of capacity.
23	Retail stores / Shopping malls	20% of capacity.
24	Grocery stores	35% of capacity.
25	Laundromats	Open with modifications.
26	Critical infrastructure	Essential workers may work on site, if remote work not practicable.
27	Non-urgent medical and dental	Open with safety precautions.
28	Schools	Schools may not reopen fully for in-person instruction until the county has been in the Substantial (Red) Tier for two weeks. Local school and health officials may decide to open elementary schools, and school officials may decide to conduct in-person instruction for a limited set of students in small cohorts.
	Child care	Open with safety precautions.
	Day camps	Open with modifications.

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1 **C. The Present Motion**

2 Plaintiffs filed the present renewed motion for a temporary restraining order and
3 application for an injunction pending appeal on December 3, 2020. (ECF No. 75.)
4 Plaintiffs concurrently filed a parallel application with the Ninth Circuit. (Emergency
5 Mot., *S. Bay United Pentecostal Church v. Newsom*, No. 20-55533 (9th Cir. Dec. 3, 2020),
6 ECF No. 96.) The Ninth Circuit vacated this Court’s October 15, 2020 Order, remanded
7 the case for further consideration, and denied without prejudice Plaintiffs’ emergency
8 motion for an injunction pending appeal. (Mandate and Order, ECF No. 84.)

9 Plaintiffs filed a supplemental brief. (ECF No. 80.) California Defendants filed an
10 Opposition (ECF No. 81), and San Diego Defendants filed a Joinder and Opposition (ECF
11 Nos. 82, 83). Plaintiffs filed a Reply. (ECF No. 85.) The Court held a hearing on
12 December 18, 2020. The Motion is now ripe for decision.

13
14 **II. PRELIMINARY MATTERS**

15 Because the case has been remanded, the Court construes Plaintiffs’ application for
16 a stay pending appeal (ECF No. 75) as a renewed motion for a temporary restraining order
17 or preliminary injunction.

18 California Defendants’ request for judicial notice (ECF No. 81-7), to which
19 Plaintiffs have not objected, is granted.³⁷

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22

³⁷ To the extent that any exhibit does not satisfy the requirements of summary judgment or trial
23 evidence, “a preliminary injunction is customarily granted on the basis of procedures that are less formal
24 and evidence that is less complete than in a trial on the merits.” *Univ. of Texas v. Camenisch*, 451 U.S.
25 390, 395 (1981). This flexibility exists because “[t]he urgency of obtaining a preliminary injunction
26 necessitates a prompt determination.” *Flynt Distrib. Co. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984).
27 A district court therefore “may give even inadmissible evidence some weight, when to do so serves the
28 purpose of preventing irreparable harm.” *Id.* District courts have exercised this discretion to consider a
variety of evidence at the preliminary injunction stage that may otherwise be inadmissible. *See, e.g., Flynt
Distrib. Co.*, 734 F.2d at 1394 (holding that it was within the district court’s discretion to rely on hearsay
statements); *Moose Creek, Inc. v. Abercrombie & Fitch Co.*, 331 F. Supp. 2d 1214, 1225 n.4 (C.D. Cal.
2004) (considering internet materials that were not individually authenticated).

1 At the hearing, Plaintiffs withdrew exhibits 4 through 7 accompanying Plaintiffs'
2 counsel's declaration, which consist of evidence submitted to the Kern County Superior
3 Court in a separate action. (Exs. 4–7 to the Declaration of Jeffrey M. Trissell, ECF No.
4 85-2 at 76–222.) The withdrawn exhibits are stricken from the record, and California
5 Defendants' objection (ECF No. 86) is denied as moot.

6 7 **III. LEGAL STANDARD**

8 The standard for a temporary restraining order and preliminary injunction are
9 “substantially identical.” *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
10 839 n.7 (9th Cir. 2001). “A plaintiff seeking a preliminary injunction must establish that
11 [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the
12 absence of preliminary relief, that the balance of equities tips in [its] favor, and that an
13 injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20
14 (2008). The party seeking the injunction bears the burden of proving these elements. *Klein*
15 *v. City of San Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009). “A preliminary injunction
16 is ‘an extraordinary and drastic remedy, one that should not be granted unless the
17 movant, by a clear showing, carries the burden of persuasion.’” *Lopez v. Brewer*, 680 F.3d
18 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)).

19 20 **IV. ANALYSIS**

21 **A. Irreparable Harm**

22 The Supreme Court has made clear that capacity restrictions at houses of worship
23 will cause irreparable harm without temporary or preliminary relief. *See Roman Catholic*
24 *Diocese*, 2020 WL 6948354, at *3. The Court finds that Plaintiffs have shown irreparable
25 harm.

26 //

27 //

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

2 The issue is whether Plaintiffs' Free Exercise Clause claim as applied to the current
3 restrictions in place is likely to succeed on the merits at a final hearing. Ordinarily, a party
4 seeking preliminary injunction must establish that it will prevail on the merits with a
5 "reasonable certainty." *Sierra Club v. Hickel*, 433 F.2d 24, 33 (9th Cir. 1970), *aff'd sub*
6 *nom. Sierra Club v. Morton*, 405 U.S. 727 (1972). In this circuit, the burden is lessened to
7 a fair chance of success on the merits in cases in which the harm that may occur to the
8 plaintiff is sufficiently serious. *William Inglis & Sons Baking Co. v. ITT Continental*
9 *Baking Co., Inc.*, 526 F.2d 86, 88 (9th Cir. 1975).

10 The Court limits its analysis to Plaintiffs' Free Exercise Clause claim because the
11 Ninth Circuit has remanded the present action "[i]n light of the Supreme Court's orders in
12 *Harvest Rock Church, Inc. v. Newsom*, No. 20A94, 592 U.S. ____ (Dec. 3, 2020) and *Roman*
13 *Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87, 592 U.S. ____ (Nov. 25, 2020)."

14
15 **1. Applicable Tier of Scrutiny**

16 The Free Exercise Clause of the First Amendment disallows a State from enacting a
17 law that prohibits the free exercise of religion. *Church of the Lukumi Babalu Aye, Inc. v.*
18 *City of Hialeah* ("Lukumi"), 508 U.S. 520, 531 (1993). Any "law burdening religious
19 practice that is not neutral or not of general application must undergo the most rigorous of
20 scrutiny." *Id.* at 546.

21 California argues that the Regional Stay at Home Order is a neutral law of general
22 applicability, thus triggering only a rational basis review. Plaintiffs argue that the Regional
23 Stay at Home Order's goal is "to infringe upon or restrict practices because of their
24 religious motivation," as evidenced by the California governor's statements and by the fact
25 that the Regional Stay at Home Order treats religious institutions differently from certain
26 other non-religious entities. *Lukumi*, 508 U.S. at 533. Plaintiffs point to the following
27 statement by the Governor of California:
28

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

5 A: Yeah, we're, we're looking at the science, epidemiology, looking again at
6 frequency, duration, time, uh, and looking at low risk-high reward, low risk-
7 low reward, looking at a series of conditions and criteria, as well as best
8 practices uh from other states and nations.

9 (Pls.' Br. at 19:8–16 (citing ECF No. 47 at 13–14).)

10 The Court cannot draw a reasonable inference from this exchange that the Governor
11 implied that religion is a “low reward” activity, as Plaintiffs suggest.³⁸ The Court would
12 have to make multiple assumptions and leaps in logic to so interpret the statement. A more
13 plausible interpretation of the statement is that the State considered a cost-benefit analysis
14 in addition to “science, epidemiology, frequency, duration, [and] time” in formulating its
15 COVID-19 restrictions. Plaintiffs also fail to mention that, in the same exchange, the
16 Governor stated that the State was “very sensitive to those that want to get back into
17 church” and that the State was going to “see what [it] can do to accommodate that.”³⁹ The
18 Court finds no evidence of statements made in connection with the challenged rule that can
19 be viewed as targeting Plaintiffs’ faith or singling out any other religion. In this regard,
20 Plaintiffs have not shown that California’s Regional Stay at Home Order harbors “an
21 official purpose to disapprove of a particular religion or of religion in general.” *See*
22 *Lukumi*, 508 U.S. at 532.

23 The Court is nonetheless bound by precedent in this circuit to conclude that the
24 Regional Stay at Home Order is subject to strict scrutiny review. *See Hart v. Massanari*,
25 266 F.3d 1155, 1171 (9th Cir. 2001) (holding that all courts within a circuit are bound by

26 ³⁸ The Court also notes that this statement is from May 2020, before the current Regional Stay at
27 Home Order was implemented.

28 ³⁹ Press Conference Tr. 50:58-51:23, 53:25-54:20 (May 7, 2020), <https://www.rev.com/blog/transcripts/gov-gavin-newsom-california-covid-19-briefing-transcript-may-7>.

1 vertical *stare decisis* authority of a circuit panel’s precedential opinion). A Ninth Circuit
2 panel, in a published opinion, has held that *Roman Catholic Diocese* mandates strict
3 scrutiny review when a state imposes different capacity restrictions on religious worship
4 services as compared to non-religious activities and entities, like retail stores, in response
5 to the pandemic. *Dayton Valley*, 2020 WL 7350247, at *4. There, the panel found that
6 strict scrutiny review was triggered because a Nevada directive imposed a fifty-person cap
7 on houses of worship, and only a 50% cap on other activities and entities including casinos,
8 bowling alleys, and restaurants. *Id.* Although California’s Regional Stay at Home Order
9 does not allow casinos, bowling alleys, and restaurants to open at a greater capacity than
10 religious services, it does allow retail establishments to do so. Thus, the Court is bound to
11 analyze the Order under strict scrutiny.

12 13 **2. Strict Scrutiny Analysis**

14 Strict scrutiny review requires that the challenged restriction “be ‘narrowly tailored’
15 to serve a ‘compelling’ state interest.” *Dayton Valley*, 2020 WL 7350247, at *4 (citing
16 *Roman Catholic Diocese*, 2020 WL 6948354, at *2). Although strict scrutiny imposes a
17 high bar, courts have “upheld laws—even under strict scrutiny.” *See Williams-Yulee v.*
18 *Fla. Bar*, 575 U.S. 433, 449 (2015) (collecting cases); *cf.* Adam Winkler, *Fatal in Theory*
19 *and Strict in Fact: An Empirical Analysis of Strict Scrutiny in the Federal Courts*, 59 *Vand.*
20 *L. Rev.* 793, 809 (2006) (explaining that the Supreme Court, applying strict scrutiny
21 review, has frequently upheld free exercise challenges to religious exemptions from
22 generally applicable laws).

23 24 **i. Compelling Interest**

25 Plaintiffs argue that California’s goal of reducing community spread of COVID-19
26 is “not even a *rational*” interest, much less a compelling one. (Pls.’ Reply at 7:14–24, ECF
27 No. 85.) Contrary to Plaintiffs’ position, the Supreme Court has clarified that “[s]temming
28 the spread of COVID–19 is unquestionably a compelling interest.” *Roman Catholic*

1 *Diocese*, 2020 WL 6948354, at *2. Although Plaintiffs urge this Court to find that focusing
2 on community spread would not serve the ultimate promotion of public health and safety,
3 courts lack both the expertise and the authority to make such determination. *See id.* at *8
4 (Kavanaugh, J., concurring) (“The Constitution ‘principally entrusts the safety and the
5 health of the people to the politically accountable officials of the States.’”); *cf. Williams-*
6 *Yulee*, 575 U.S. at 449 (“[P]olicymakers may focus on their most pressing concerns.”).

7 Following the precedents, the Court concludes that California has a compelling
8 interest in reducing the community spread of COVID-19. *See Roman Catholic Diocese*,
9 2020 WL 6948354, at *2; *Dayton Valley*, 2020 WL 7350247, at *4 (“[S]lowing the spread
10 of COVID-19 is a compelling interest.”).

11 12 **ii. Narrow Tailoring**

13 Having found that California has a compelling interest in reducing community
14 spread of COVID-19, the Court turns to determining whether California’s Regional Stay
15 at Home Order is narrowly tailored to the compelling interest. Narrow tailoring requires
16 that the law restrict no more than is necessary to advance the government’s compelling
17 interest. *See Thomas v. Review Bd. of Indiana Employment Sec. Div.*, 450 U.S. 707, 718
18 (1981) (“The state may justify an inroad on religious liberty by showing that it is the least
19 restrictive means of achieving some compelling state interest.”). California explains that
20 the Regional Stay at Home Order narrowly tailors the restrictions to its objective of slowing
21 the community spread, by assessing the risk profile of an activity based on seven-factor
22 risk criteria, which consider: an activity’s (1) ability to accommodate wearing masks at all
23 times; (2) ability to allow physical distancing; (3) ability to limit the duration of exposure;
24 (4) ability to limit the amount of mixing of people from differing households and
25 communities; (5) ability to limit the amount of physical interactions of visitors/patrons;
26 (6) ability to optimize ventilation; and (7) ability to limit activities that are known to cause
27 increased spread. (Grabarsky Decl. Ex. 7, ECF No. 81-1 at 85–86.)

28

1 Applying these factors, California assigns a similar risk profile for religious
2 gatherings, as it does for weddings, funerals, college lectures, and political expression.
3 California requires those activities to take place outdoors. Dance studios and gyms must
4 also only operate outdoors. The Regional Stay at Home Order does not grant an exemption
5 for other activities that similarly may involve gathering in groups for a prolonged period.
6 All operations at amusement parks, museums, zoos, aquariums, campgrounds must stop,
7 and so must convention centers, concert venues, movie theatres, family entertainment
8 centers, live performances, and live audience participation in professional sports.⁴⁰
9 Restaurants may not open for dine-in.⁴¹ Plaintiffs do not dispute that California treats a
10 church more favorably than those non-exempted activities with respect to gathering
11 outdoors. Plaintiffs direct the Court’s focus on other exempted activities that can proceed
12 indoors.

13 A law’s underinclusiveness—its failure to reach all activities that implicate the
14 interest—can constitute evidence that “raise[s] doubts about whether the government is in
15 fact pursuing the interest it invokes, rather than disfavoring a particular speaker or
16 viewpoint.” *See Williams-Yulee*, 575 U.S. at 448 (citing *Brown v. Entm’t Merchants Ass’n*,
17 564 U.S. 786, 802 (2011)). For example, in *Lukumi*, “[i]n a textbook illustration of that
18 principle, [the Court] invalidated a city’s ban on ritual animal sacrifices because the city
19 failed to regulate vast swaths of conduct that similarly diminished its asserted interests in
20 public health and animal welfare.” *Id.* (citing *Lukumi*, at 543–47). “Underinclusiveness
21 can also reveal that a law does not actually advance a compelling interest.” *Id.* at 449. For
22 this reason, the Supreme Court deemed unconstitutional a restriction that “prohibit[ed]
23 newspapers, but not electronic media, from releasing the names of juvenile defendants.”
24 *Id.* (citing *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 104–05 (1979)).

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28 ⁴⁰ Find the status for activities in your county, <https://covid19.ca.gov/safer-economy/>.

⁴¹ *Id.*

1 The court turns to analyze each exemption to determine whether the Regional Stay
2 at Home Order disfavors religious entities or fails to advance California's goal to reduce
3 community spread.

4 **a. Religious Gatherings**

5 California explains that religious gatherings, weddings, funerals, college lectures,
6 and political expression involve features that raise the risks associated with the second
7 through fifth factors in California's risk criteria: many people gathering at one time and
8 socializing with each other; people from different households gathering nearby each other
9 for a prolonged time; and vocalizing, conversing, or singing in groups. (Watt Decl. ¶¶ 39–
10 43, 45–46; Rutherford Decl. ¶¶ 90–92, 101–10.) California explains that these risks can
11 be mitigated when the gatherings take place outdoors because aerosolized transmission is
12 slowed in open air. (Rutherford Decl. ¶ 93.)

13 As to the seventh factor, California has shown that there have been known COVID-
14 19 outbreaks tied to religious gatherings in the San Diego County⁴² and in the Southern
15 California Region.⁴³ Both outbreaks occurred when religious gatherings could take place
16 indoors at limited capacity.⁴⁴ Plaintiffs do not deny the existence of these outbreaks.
17 California's health experts also considered reports and studies of known outbreaks tied to
18 religious gatherings in other states. (Watt Decl. ¶¶ 46.i (Washington), 46.ii (Arkansas);
19 Rutherford Decl. ¶ 108 (West Virginia).)

20
21 **b. Retail, Limited Services, and Transportation**

22 Grocery stores and retail shops can operate indoors at fixed capacity.⁴⁵ Limited
23 services, including laundromats, that do not require close contact may remain open with
24

25 ⁴² Grabarsky Decl. Ex. 17, ECF No. 81-1 at 174 (County of San Diego's letter to Awaken Church,
COVID-19 Outbreak Notification).

26 ⁴³ Grabarsky Decl. Ex. 21, ECF No. 81-1 at 187–91 (Grace Community Church outbreak in Los
27 Angeles).

28 ⁴⁴ The outbreak in San Diego County occurred on or around November 23, 2020, and the outbreak
in Los Angeles County occurred on or around October 22, 2020. *See supra* n.43 and 44.

⁴⁵ Find the status for activities in your county, <https://covid19.ca.gov/safer-economy/>.

1 modifications.⁴⁶ The transportation sector, such as airports and train stations, may also
2 remain open with modifications.⁴⁷ California explains that these activities have a lower
3 risk profile because interactions between patrons in these places are typically asocial,
4 distanced, and short in time—with patrons generally seeking to leave the store as soon as
5 possible. (Rutherford Decl. ¶¶ 62, 117, 126.) Singing, recitation, or speaking in unison,
6 such as reciting a prayer together, is not common in retail, limited services, or
7 transportation settings. (*Id.* ¶¶ 119, 127.) These assumptions lower the third through fifth
8 risk factors. The record before the Court does not include known cases of an outbreak tied
9 to retail, grocery shopping, laundromats, or transportation hubs.

10
11 **c. Worksites in Critical Infrastructure Sectors**

12 The Regional Stay at Home Order allows employers in the critical infrastructure to
13 designate essential workers to perform on-site tasks that cannot be done remotely—subject
14 to specific industry guidelines. (Grabarsky Decl. Ex. 13 at ¶ 2.d, ECF No. 81-1 at 153.)
15 California explains that job sites present a lower risk profile than in non-employment
16 situations because the State has greater control over enforcing specific industry guidelines
17 applicable to each industry: factories must screen workers, develop safety plans, and install
18 engineering controls such as plexiglass barriers, to protect individuals who work near each
19 other. (*Id.* Ex. 30, ECF No. 81-1 at 264–73.) The employers are also subject to various
20 health and safety requirements enforced by State labor authorities. (Rutherford Decl.
21 ¶ 121, ECF No. 81-4.) Binding labor agreements in certain industries impose other
22 mandatory measures such as routine testing of on-site staff. (Grabarsky Decl. Ex. 33 at
23 ¶ 4, ECF No. 81-2 at 5 (describing testing requirements in work protocols implemented by
24 Screen Actors Guild); *Id.* Ex. 34 at ¶¶ 6–7 (describing testing requirements of “COVID-19

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27 ⁴⁶ *Id.*; Industry guidance to reduce risk—Limited services, <https://covid19.ca.gov/industry-guidance/#limited-services>.

28 ⁴⁷ Industry guidance to reduce risk—Public transit and intercity passenger rail (Oct. 20, 2020) <https://covid19.ca.gov/industry-guidance/#public-transit>.

1 Return-to-Work Agreement” binding the movie studios and unions)). Work shifts may be
2 grouped to control personnel to whom the employees are regularly exposed, thus diluting
3 the risk presented by likelihood of strangers from different bubbles randomly mixing at
4 each gathering. (Rutherford Decl. Ex. 19 (CDC guidance for employers), ECF No. 81-4
5 at 549.) Besides, an employer is better positioned to control its employees’ behavior
6 affecting the risk factors. (Watt Decl. ¶¶ 87, 104.)⁴⁸ The record lacks evidence of known
7 outbreaks associated with jobsites in Southern California.

8 In sum, California assigns different risk profiles to different sectors based on a
9 neutral, seven-factor risk analysis, which explains the different restrictions that apply to
10 various exempt sectors. While some courts may disagree with the local public health
11 officials’ assessment of what constitutes comparable activities based on the seven risk
12 factors, the Court finds that such risk assessment—which necessarily reflects the local
13 climate, infrastructure, and public health outcomes of prior policies—is a question of
14 policy-making better deferred to the local public health officials. California applied a
15 neutral seven-factor risk criteria and concluded that the risk profile of religious gatherings,
16 college lectures, political expression, weddings and funerals, cultural ceremonies, dance
17 studios, and gyms, called for outdoor restriction but not an entire closure order. California
18 applied the same risk factors and concluded that activities with a higher risk profile,
19

20 ⁴⁸ Our legal system already recognizes that “[c]ontrol or right of control by the employer . . .
21 characterizes the relation of the employer and employee.” *See Metcalf & Eddy v. Mitchell*, 269 U.S. 514,
22 521 (1926)). And our legal system imposes certain obligations on employers that are not imposed on other
23 entities. For example, strict liability is only imposed on employers in workers compensation law. *See*
24 Lawrence M. Friedman & Jack Ladinsky, *Social Change and the Law of Industrial Accidents*, 67 Colum.
25 L. Rev. 50, 71 (1967) (explaining the development of a workers compensation system that “fix[es] liability
26 upon the employer regardless of fault” in industrial accidents). In torts, the strict-liability principle of
27 *respondeat superior* may hold an employer liable for a negligent act of its employee committed during
28 the course of performing the job. *See generally* David Jacks Achtenberg, *Taking History Seriously:
Municipal Liability Under 42 U.S.C. S 1983 and the Debate over Respondeat Superior*, 73 Fordham L.
Rev. 2183, 2204 (2005) (explaining that the *respondeat superior* doctrine is traditionally explained by (1)
an employer’s power to control the direct tortfeasor, (2) the legal unity between the tortfeasor and his
employer, (3) the master’s implied warranty of the servant’s fitness, or (4) the need for reciprocity between
benefits and responsibility). There is no equivalent legal doctrine recognizing a house of worship’s control
over its congregation.

1 including amusement parks, museums, zoos, aquariums, dine-in restaurants, on-site
2 consumption at wineries, convention centers, concert venues, movies, family entertainment
3 centers, live performances, cardrooms, tattoo shops, hair salons, barbershops, nail salons,
4 body waxing studios, indoor pools, hot tubs, saunas, and hotels (for in-state reservations or
5 out-of-state reservations not exceeding the minimum quarantine period) should be closed.
6 Based on the same risk factors, California concluded that retail, transportation, and limited
7 services activities—with better ability to limit duration of exposure, amount of mixing of
8 people from differing households, amount of physical interactions of visitors, and limit
9 activities that are known to cause increased spread—could proceed indoors with specific
10 limitations.

11 The Court concludes that California did exactly what the narrow tailoring
12 requirement mandates—that is, California has carefully designed the different exemptions
13 to match its goal of reducing community spread, based on a neutral, seven-factor risk
14 analysis. The Court does not find that California’s Regional Stay at Home Order is
15 underinclusive as to exceed the boundaries drawn by the First Amendment. Therefore,
16 based on the record before the Court, Plaintiffs are not likely to show that the Regional
17 Stay at Home Order restricts more than is necessary to advance the California’s compelling
18 interest in reducing community spread.

19 20 **3. Consistency with Precedents**

21 The Court’s strict scrutiny analysis does not conflict with the recent decisions issued
22 by the higher courts. In *Roman Catholic Diocese*, the Supreme Court found that the 10- or
23 25-person ban instituted by New York was an effective ban on all religious activities in the
24 applicable zones. *See* 2020 WL 6948354, at *3 (“The restrictions at issue here, by
25 effectively barring many from attending religious services, strike at the very heart of the
26 First Amendment’s guarantee of religious liberty.”). The same cannot be said about the
27 Regional Stay at Home Order’s exemption allowing outdoor religious gatherings, given
28 that the climate in Southern California Region is warm year-round. The record does not

1 contain evidence that various entities that had been limited to operate outdoors in the past
2 versions of California’s COVID-19 response, such as gyms and restaurants, have not been
3 able to follow the outdoor mandate. Further, no capacity limit is placed on outdoor
4 worship. Based on the above, the Court does not find that the Regional Stay at Home
5 Order, as applied to San Diego County and the Southern California Region, places an
6 effective ban on religious services. *But see Burfitt v. Newsom*, BCV-20-102267 (Cal. Sup.
7 Ct. Dec. 10, 2020).

8 In *Dayton Valley*, the Ninth Circuit considered the State of Nevada’s regulatory
9 scheme and concluded that Nevada’s restrictions were not narrowly tailored to the State’s
10 proffered interest. Nevada “ha[d] not explained why a 50% occupancy cap is good enough
11 for secular businesses where people congregate in large groups or remain in close
12 proximity for extended periods—such as at restaurants, bars, casinos, and gyms—but is
13 not good enough for places of worship.” *See Calvary Chapel Dayton Valley v. Sisolak*,
14 140 S. Ct. 2603, 2613 (2020) (Mem.) (Kavanaugh, J., dissenting). Here, California places
15 similar or greater limits on restaurants, bars, card rooms, gyms, and other activities that
16 share a similar risk profile with religious entities. *See supra* Part I.B. Many other activities
17 with heightened risk profiles are entirely closed. Retail stores, manufacturing plants, and
18 certain other activities are allowed to operate indoors with additional limitations and
19 industry-specific measures to reduce the risks, but California explains that those activities
20 have dissimilar risk profiles compared to houses of worship. Because California has shown
21 that it applied a neutral, multi-factor risk analysis to place each activity on a risk spectrum
22 and imposed no more restriction on houses of worship than necessary, the Court finds that
23 *Dayton Valley* is factually distinguishable.

24 Plaintiffs have not shown that a lesser restriction—for example, allowing indoor
25 worship relying only on mask wearing, social distancing, and sanitization measures—
26 would have achieved California’s compelling interest in curbing the community spread of
27 the virus. Mask wearing, social distancing, and sanitization reduces the likelihood of
28 transmission per interaction, whereas stay-at-home orders and capacity regulations reduce

1 the number of interactions of people from different households. (Soto Decl. ¶ 9, ECF No.
2 81-5.) To the extent that Plaintiffs seek to hold indoor worship services at 20% of the
3 church's maximum capacity,⁴⁹ the Court notes that California has already tried a similar
4 measure, which allowed indoor worship at 25% capacity. That restriction proved
5 insufficient to prevent outbreaks at houses of worship in the San Diego County⁵⁰ and the
6 Southern California Region.⁵¹ If the dire trend of COVID-19 in Southern California—
7 which has left the Region's ICU capacity at 0%⁵²—proves anything, it is that the State's
8 efforts to implement curfews and less restrictive restrictions were not enough.

9 Plaintiffs do not dispute the existence of these outbreaks or the unavailability of
10 hospital beds in the Southern California Region. Plaintiffs merely proffer that they are not
11 aware of any confirmed COVID-19 cases tied to Plaintiffs' church. In general, a local
12 government is not required to prove that a particular individual has contributed to a known
13 social harm, before implementing a law that seeks to prevent the harm. Just as a restaurant
14 with no known COVID-19 cases tied to it is bound by a valid public health regulation, so
15 must a house of worship that has no known COVID-19 cases tied to it. This is especially
16 so when the social harm sought to be mitigated is community spread of a deadly virus,
17 whose exact path of contagion is hard to trace.

18 The Court concludes that Plaintiffs are not likely to succeed on their Free Exercise
19 Clause claim at a final hearing.

20 //

21 //

22 //

24 ⁴⁹ At the hearing held on December 18, 2020, Plaintiffs requested that the Court match the
25 restrictions in place for the retail sector, which is currently capped at 20% of maximum capacity under the
26 Regional Stay at Home Order. See Find the status for activities in your county, <https://covid19.ca.gov/safer-economy/>.

27 ⁵⁰ Grabarsky Decl. Ex. 17, ECF No. 81-1 at 174 (County of San Diego's letter to Awaken Church,
COVID-19 Outbreak Notification).

28 ⁵¹ *Id.* Ex. 21, ECF No. 81-1 at 187–91 (Grace Community Church outbreak in Los Angeles).

⁵² Current tier assignments as of December 15, 2020, <https://covid19.ca.gov/state-dashboard/>.

1 **C. Balance of Equities and Public Interest**

2 COVID-19 poses a significant health risk to everyone in Southern California, the
3 nation, and in fact, the world. In San Diego, emergency rooms are having to turn patients
4 away, and the hospitals are being quickly overwhelmed with the most recent surge of
5 patients infected with COVID-19.

6 The Court is mindful that a San Diego Superior Court judge recently enjoined
7 enforcement of the Regional Stay at Home Order, as applied to strip clubs and restaurants,
8 based in part on the finding that the plaintiff strip clubs “have done nothing to contribute
9 to the spread of COVID.” *See Midway Venture LLC v Co. of San Diego*, No. 37-2020-
10 00038194-CU-CR-CTL (Cal. Sup. Ct. Dec. 16, 2020). The injunction is now stayed,⁵³ but
11 it is worth highlighting the dichotomy between that ruling and this one as an example of
12 the dangers of having individual judges make public health policy. *See Roman Catholic*
13 *Diocese*, 2020 WL 6948354, at *3 (holding that, although the Court needs to conduct
14 “serious examination” of restrictions placed on religion, “[m]embers of this Court are not
15 public health experts, and we should respect the judgment of those with special expertise
16 and responsibility in this area”); *Id.* at *8 (Kavanaugh, J., concurring) (recognizing that
17 “[f]ederal courts . . . must afford substantial deference to state and local authorities about
18 how best to balance competing policy considerations during the pandemic” while not
19 abdicating the courts’ responsibility to assess the constitutionality of a challenged law); *S.*
20 *Bay United Pentecostal Church*, 140 S. Ct. at 1613 (Roberts, C. J., concurring in the denial
21 of application for injunctive relief) (“Our Constitution principally entrusts ‘[t]he safety and
22 the health of the people’ to the politically accountable officials of the States ‘to guard and
23 protect.’”). It is for that reason that this Court gives “substantial deference” to the
24 California public health officials’ attempt to protect the safety of its people.

25 The Court does not doubt that not being able to congregate indoors imposes a burden
26 on Plaintiffs’ religion. Nevertheless, the Court also recognizes that the burden is a

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⁵³ *Midway Venture LLC v Newsom*, No. D078375 (Cal. Ct. App. Dec. 18, 2020).


1 temporary one, with widespread vaccination in close sight. The Court concludes that it
2 serves the public interest to continue to protect the population as a whole, in this dire phase
3 of the pandemic.

4
5 **V. CONCLUSION**

6 Plaintiffs have not shown that they are entitled to injunctive relief before a trial on
7 the merits. Consequently, the Court **DENIES** Plaintiffs' renewed motion for a temporary
8 restraining order or preliminary injunction (ECF No. 75).

9
10 **IT IS SO ORDERED.**

11
12 **DATED: December 21, 2020**


Hon. Cynthia Bashant
United States District Judge

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United States District Court
for the Southern District of California

SOUTH BAY UNITED PENTECOSTAL)	
CHURCH, etc., et al.,)	No. 20cv0865-BAS
)	
Plaintiffs,)	December 18, 2020
)	
v.)	San Diego, California
)	
GAVIN NEWSOM, etc., et al.,)	
)	
Defendants.)	

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

APPEARANCES:

For the Plaintiffs:	LIMANDRI & JONNA LLP CHARLES S. LIMANDRI PAUL MICHAEL JONNA JEFFREY M. TRISSELL Attorneys At Law DHILLON LAW GROUP MARK PHILIP MEUSER Attorney at Law
For the Defendants:	CALIFORNIA ATTORNEY GENERAL'S OFFICE TODD GRABARSKY LISA PLANK Attorneys at Law OFFICE OF THE COUNTY COUNSEL TIMOTHY M. WHITE Attorney At Law
Court Reporter:	Dana Peabody, RDR, CRR District Court Clerk's Office 333 West Broadway, Suite 420 San Diego, California 92101 DanaPeabodyCSR@gmail.com

1 San Diego, California, December 18, 2020

2 (Telephonic Hearing.)

3 * * *

4 THE CLERK: Good morning, Judge. This is Stephanie.
5 We have everybody on the line, I believe.

6 I'm going to go ahead and get started with a few reminders
7 of everyone. I know it's been a little while.

8 The courtroom decorum is the same even though it's a
9 teleconference. There are no recordings of the proceedings of
10 any type, and the transcript may be obtained by Dana Peabody,
11 our wonderful court reporter, who is also on the line.

12 I ask that everybody please keep their phones muted,
13 especially while others are speaking because we pick up a lot
14 of background noise, and all members of the public must keep
15 their phones muted at all times.

16 And please do not hang up until the proceedings are over as
17 we get a beep in the middle of the proceedings, and it makes
18 things difficult.

19 With that, I'm going to go ahead and call the matter.

20 Calling matter Number 1, 20cv0865, South Bay United
21 Pentecostal Church, et al., versus Newsom, et al., on calendar
22 for a telephonic hearing.

23 If we can start with plaintiff.

24 MR. JONNA: Good morning, Your Honor. This is
25 Paul Jonna on behalf of plaintiffs.

1 MR. TRISSELL: And Jeffrey Trissell, LiMandri & Jonna.

2 MR. LIMANDRI: Charles LiMandri is also present on
3 behalf of the plaintiffs.

4 MR. MEUSER: Mark Meuser from the Dhillon Law Group,
5 also here on behalf of plaintiff.

6 THE COURT: Okay. And who do we have for defendants?

7 MR. GRABARSKY: Good morning. This is Deputy Attorney
8 General Todd Grabarsky on behalf of the state defendants.

9 MS. PLANK: Good morning, Your Honor. This is
10 Lisa Plank, Deputy Attorney General, also on behalf of the
11 state defendants.

12 MR. WHITE: Timothy white on behalf of the County of
13 San Diego defendants.

14 THE COURT: Okay. Good morning, everyone.

15 First of all, I have reviewed the plaintiffs' ex parte
16 motion for injunction, the state's response, the plaintiffs'
17 reply on the issue of the request for delayed briefing
18 schedule, the plaintiffs' supplemental briefing, the state's
19 response with the declarations of Dr. Watt, Dr. Rutherford,
20 Dr. Stoto, S-T-O-T-O, Dr. Maldonado, and the open letter signed
21 by 98 Stanford University -- various experts, the county's
22 response and joinder, and the state's response, the county's
23 Order of Emergency Regulations effective December 10th, the
24 Ninth Circuit's mandate that remanded this case that was filed
25 on December 16th, and then I also saw that plaintiff filed over

1 200 pages of expert declarations and supplemental material the
2 day before yesterday after the briefing was over.

3 And I can tell you, I'm happy to consider those materials,
4 but if I do, I need to let the defendants peruse them and
5 respond in writing. And I understand plaintiffs are saying
6 time is of essence here, so it's up to you. If you want me to
7 consider those additional materials, even though they were
8 filed late, I will, but I'll set a supplemental briefing
9 schedule allowing the state and county to respond.

10 To plaintiff, do you want me to consider those supplemental
11 filings?

12 MR. JONNA: Good morning, Your Honor. This is
13 Paul Jonna for the plaintiffs.

14 I think there's sufficient material in our other filings
15 that the Court can proceed today without the supplemental
16 material.

17 THE COURT: Okay. That's what I'll do then.

18 And let me just start before I hear argument from the
19 parties by saying how sorry I am that the two periods of
20 soaring pandemic right -- I hear someone talking in the
21 background. Hello? Sounds like it's muted now. No.

22 MR. JONNA: Your Honor, I'm not sure who that is.
23 This is Paul Jonna. I'm not sure what that sound is.

24 THE COURT: Yeah, I'm not sure either. Someone is
25 talking in the background. I hear you say, "They're talking in

1 court." If that's you saying, "They're talking in court,"
2 could you mute your microphone so you don't interrupt the court
3 proceedings? There you go. Mute it. Someone is having a hard
4 time figuring out their mute button. Okay. Hopefully we've
5 got them muted now.

6 As I started to say, I'm sorry that the pandemic rates are
7 corresponding to the weeks before Easter and Christmas. I
8 mean, the irony is not lost with me that the last time we had
9 one of these telephonic hearings, we all recognized that Easter
10 is one of the most important days in the Christian faith, and
11 yet we'll all stuck at home, and here we are, the week of
12 Christmas, and it's sad, and I really wish it was not the case.

13 And I do think that both sides recognize the validity of
14 the other parties' argument. I think the church recognizes
15 that the state has an obligation to protect its citizens from
16 contracting the disease, and I think the state recognizes the
17 importance of allowing citizens to gather to practice their
18 religion.

19 When one is surrounded by death and disease, I think
20 religion becomes more, not less, of an important part of our
21 lives, and I know the church doesn't want to do anything that
22 would harm the lives and the well-being of their parishioners.

23 So it's a tough balancing act, and I think that's reflected
24 in the various court opinions on the issue. Even the supreme
25 court opinion had little in the way of precedential discussions

1 and much more non-precedential, one- or two-judge concurring or
2 dissenting opinions, which isn't quite as helpful as a majority
3 opinion might be.

4 And I think the nature of the pandemic is such that the
5 regulations and restrictions are constantly fluctuating, which
6 also makes it difficult.

7 overlaid over all of this is what appears to be a consensus
8 from the supreme court and the federal court -- the supreme
9 court -- the federal court should give substantial deference,
10 not total deference, but substantial, to state and local
11 authorities on how to best balance these competing policy
12 interests.

13 So I think I should take a hard look at the current
14 restrictions and whether similarly situated businesses and
15 services are treated the same as religious services because
16 that's what was so offensive about the New York rules.
17 Religious services were treated harshly than similarly situated
18 activities.

19 So let me hear from South Bay Pentecostal Church first
20 about how religious institutions are treated harsher than other
21 institutions. Isn't just about everything shut down right now?

22 MR. JONNA: Your Honor, good morning. It's
23 Paul Jonna.

24 Yes, let me just start by saying that, as the Court likely
25 recognizes, the landscape has fundamentally changed in the wake

1 of the Diocese of Brooklyn case as well as the Calvary Chapel
2 case. The landscape has dramatically changed, and the issues
3 are actually quite simple. And Justice Gorsuch noted it well
4 in the Diocese of Brooklyn case when he said, "It's now time,
5 it's past time, to make it plain that while the pandemic poses
6 many grave challenges, there's no world in which the
7 constitution tolerates color-coded executive edicts that reopen
8 liquor stores and bike shops, but shutter churches, synagogues,
9 and mosques."

10 And as the Court knows in that case, we were dealing with
11 the 25-person cap on indoor worship, and as the Court also
12 knows, in California over 99 percent of the state currently is
13 in a total indoor worship ban, which is far worse than the
14 restrictions in New York.

15 There is no argument that the state can make in light of
16 the binding precedent on this court to support an indoor
17 worship ban other than an appeal to the Brooklyn Diocese
18 dissent, which I'll explain in a little bit and which sort of
19 advocates a deference to medical experts and a focus on
20 transmission risk. The Court --

21 THE COURT: Before you get there, let me just
22 interrupt you for a minute. There is no cap on the number of
23 people that can gather outdoors. Is that correct?

24 MR. JONNA: That is correct, Your Honor, but that's
25 not the standard. There are numerous -- and so let me address

1 what the Court said initially, which was -- you focused on, and
2 what the state focuses on, which is the Diocese of Brooklyn
3 comment on there being especially harsh treatment to religious
4 institutions.

5 And what they use as an example, what they said, that
6 there's an example of a store in Brooklyn, for example, where
7 hundreds of people could be shopping whereby as in a nearby
8 church or synagogue would be barred from having more than ten
9 or 25 people inside.

10 So that was the example the Court used as especially harsh
11 treatment.

12 In San Diego and throughout California we've got thousands
13 of stores with hundreds of people, but not one person's allowed
14 to worship inside a church right now. worship in a church
15 belongs in a church, it doesn't belong in a parking lot, just
16 like shopping at a grocery store belongs in a grocery store,
17 not in a parking lot.

18 So it's not sufficient to say that, you know, worship
19 outdoors is permitted; therefore, churches are treated okay.

20 Now, if you look at the Diocese of Brooklyn case, what they
21 said was that the orders weren't neutral towards religion
22 because they restricted them to a greater degree than essential
23 businesses.

24 And they use examples like acupuncture facilities,
25 campgrounds, garages, manufacturing plants, transportation

1 facilities, factories, schools, and, like I said, the large
2 stores, hundreds of people shopping there in a given day.

3 The standard articulated by the court, which is binding on
4 this Court, is that if some secular activities are privileged
5 over religion, then strict scrutiny is triggered, and the
6 Ninth Circuit made that clear in the Calvary Chapel case
7 referring to the Diocese of Brooklyn decision represented a
8 seismic shift in the litigation concerning these restrictions
9 on religious gatherings, and courts throughout the
10 United States -- and, you know, we had other supreme court
11 rulings vacating denials of injunctions out of the Third
12 Circuit in Colorado, and the governor in Colorado actually
13 completely lifted the restrictions on churches in response to
14 the Brooklyn Diocese case.

15 So, Your Honor, I think the issue today, really, is just
16 simply, you know, there's no way that justifies the indoor
17 worship ban.

18 The only question before the Court is, you know, what
19 occupancy limits can the state actually place on church, and
20 our position is that it has to be treated just like an
21 essential business.

22 And that's made clear in both the Diocese of Brooklyn case
23 as well as the Calvary Chapel case.

24 If you look at the current Regional Stay-At-Home Order,
25 every -- churches are closed indoors completely whereas all

1 essential businesses are allowed to open with no restrictions,
2 and retail is at 20 percent.

3 So it's clear that the documented restrictions are greater
4 on churches than they are on any other industry, and so,
5 therefore, the orders are not neutral and not generally
6 applicable.

7 And then the same thing applies with the entire
8 "Blueprint," if you look at all the different tiers, and I
9 don't think it would be productive for me to give all the
10 examples, but basically in the purple tier, you've got churches
11 closed, but you have all essential retail open, all government
12 offices, appliance stores, convenience stores, gas stations,
13 pharmacies, hotels. You know, the list goes on. Hair salons.

14 THE COURT: I thought hotels were closed.

15 MR. JONNA: This is in purple tier 1.

16 THE COURT: I thought they say you couldn't allow
17 anyone from out of state to stay in a hotel, and if they came
18 to a hotel, they had to close -- I'm trying to listen because I
19 think retail -- I agree retail is treated differently, but
20 other than retail, I'm trying to figure out what else is
21 treated differently.

22 MR. JONNA: Okay. So it's important to remember
23 there's a lot of different restrictions. Currently there's a
24 Regional Stay-At-Home Order, and 99 percent of California,
25 there's a total ban on indoor worship. So a lot of industries

1 are closed, but all essential businesses are open. Schools are
2 open, professional sports and film production is open, and
3 retail at 20 percent, and churches are completely closed
4 indoor, and essential businesses, it's important to remember,
5 include gas stations, liquor stores, marijuana dispensaries,
6 retailers, like Best Buy, Home Depot, Walmart, pharmacies,
7 grocery stores. All of these entities currently are allowed to
8 have indoor operations.

9 And then when I mentioned hotels, I was actually referring
10 to purple tier 1 under the "Blueprint," and in purple tier 1,
11 you've churches again closed indoors, but all essential retail
12 open, all government offices, all appliance repair shops,
13 convenience stores, day camps, farmers' markets, gas stations,
14 hotels. That was in purple tier 1. Laundromats, auto repair
15 shops, banks and credit unions. The list goes on and on.

16 And they even subsequently modified purple tier 1 to allow
17 hair salons, barber shops, personal care services, like tattoo
18 parlors and massage therapy. So that's all allowed while
19 churches are closed indoors.

20 And to say that, you know, outdoor worship suffices
21 is -- that is absolutely not the correct analysis at all. And
22 you look at the other tiers, though, Your Honor. You've got
23 the red tier, the same issue. Houses of worship were limited
24 to 25 percent or a hundred people, whatever was less, while you
25 had food packaging, laundromats, warehouses, grocery stores

1 with no limits. And then you have, you know, other subject to
2 more generous limits. And then the orange tier and the yellow
3 tier, all of the tiers treat religious institutions worse than
4 similar secular industries.

5 In order to satisfy strict scrutiny and advance a
6 compelling interest, the law also can't leave any appreciable
7 damage to the supposedly vital interests unprohibited. That's
8 from the Church of Lukumi case.

9 We know that the "Blueprint" and the Regional Stay-At-Home
10 Order leave unprohibited a vast amount of damage to the
11 interest of stopping COVID because there's so many exceptions
12 for activities that involve large groups of people in close
13 proximity for long durations. Like I said, factories,
14 warehouses, meat packing plants, and the like.

15 (Interruption by the court reporter.)

16 MR. JONNA: And then we also know from
17 Judge O'Scannlain in his dissent in the Harvest Rock case that
18 the state has conceded that there have been outbreaks at a
19 range of workplaces the state is allowing to stay open, like
20 food production, warehouses, meat processing plants, and
21 grocery stores.

22 It's also important to know that the only court to date
23 that has substantively applied the Diocese of Brooklyn case to
24 the California framework was a court just last Friday in the
25 Burfitt versus Newsom case, the state court that determined

1 that California's total and complete ban of indoor religious
2 services are, arguably, harsher than any other set of
3 restrictions considered by the courts in all of the cases
4 cited.

5 And the Court found that the Tier 1 discriminatory
6 restrictions on the latest worship services, as well as Tier 2
7 and 3, were not neutral or generally applicable and were
8 subject to strict scrutiny under Diocese of Brooklyn.

9 Also, this is something the Court asked about in the
10 beginning, and this is a very important point. The state makes
11 the point that the application of strict scrutiny here depends
12 on whether there's -- that there's evidence of statements
13 targeting churches for discriminatory treatment, and that's not
14 the standard at all.

15 The supreme court made it clear in the Diocese of Brooklyn
16 case that their decision did not hinge on any statements made
17 by the governor. They said that they put those statements
18 aside and that the restrictions still could not stand.

19 And in the Calvary Chapel case, which struck down the
20 restrictions in Nevada -- which, again, were far more generous
21 to churches than the ones in California because they allowed
22 indoor worship with a cap whereas it's completely banned in
23 California -- they struck those down even though there was no
24 statements targeting religious services in the -- in that case.

25 And the Ninth Circuit didn't say in Calvary Chapel that the

1 directive to treat secular activities with a similar
2 transmission risk better than religion. They just said strict
3 scrutiny is triggered because secular activity entities were
4 treated better than religious services.

5 And in California, the governor's "Blueprint" does, in
6 fact, target churches for discriminatory treatment.

7 We do have some evidence in the record that the Court
8 already reviewed about the governor's comments regarding a
9 church being a higher risk/lower reward, but in Brooklyn
10 Diocese, what Justice Gorsuch said was that the only -- this is
11 a quote. "The only explanation for treating religious places
12 differently seems to be a judgment that what happens there just
13 isn't as essential as what happens in secular spaces. Indeed,
14 the governor is remarkably frank about this. In his judgment,
15 laundry and liquor, travel and tools are all essential while
16 traditional religious exercises are not. That is exactly the
17 kinds of discrimination the First Amendment forbids."

18 And Judge Collins previously noted in his dissent in the
19 Ninth Circuit ruling in this case, the constitutional benchmark
20 is government neutrality, not government avoidance of bigotry.

21 So the other thing, Your Honor -- and again, this is a
22 point that Your Honor addressed in the outset and that the
23 state has mentioned -- the state is appealing to the dissenting
24 positions in the Diocese of Brooklyn case, and I think it's
25 very important that the Court carefully considers this because

1 the state is leading the Court into reversible error. The
2 position advanced by the state and the position that the Court
3 sort of alluded to at the outset is this deference to experts
4 and this focus on the transmission risk, which if you read the
5 dissent opinion in Diocese of Brooklyn, that's all
6 Justice Sotomayor and all the dissenting justices talk about.
7 That position was rejected.

8 THE COURT: Let me just interrupt you.
9 Justice Kavanaugh says it as well in the opinion. He says
10 substantial deference should be given to the state.

11 MR. JONNA: He said -- he made it very clear
12 that -- and this is a quote. "Judicial deference in an
13 emergency does not mean wholesale judicial advocacy."

14 THE COURT: Absolutely, right. No, I agree, but he
15 also says substantial deference needs to be given.

16 MR. JONNA: When you look at what Justice Breyer said,
17 though, he emphasized the fact that members of the scientific
18 and medical communities tell us that the virus is transmitted
19 more easily in gatherings with features of religious worship
20 services, and Justice Sotomayor said, "Medical experts tell us
21 that large groups of people gathering, speaking, and singing in
22 close proximity pose a greater risk."

23 And then she also said that, "Epidemiologists generally
24 agree that religious services are among the riskiest
25 activities."

1 And they focused on what the state is focusing on, which is
2 this transmission risk test, which is not what the supreme
3 court adopted. If you look at the decision, it did not apply
4 that test. And the test is that worship services need to be
5 treated the same or better than all secular activities.

6 And if that appears to be a break from supreme court
7 precedent, then that's a break the Ninth Circuit recognizes
8 when it said, "The Diocese of Brooklyn represents a seismic
9 shift in free exercise law." And it said, "It compelled them
10 to treat churches no less favorably than any secular industry."

11 And in that regard, Your Honor, it's important to note, as
12 it was in the Diocese of Brooklyn case, that South Bay United
13 Pentecostal Church has a perfect track record. They've had no
14 COVID infections from services, and that's unchallenged. The
15 state can't produce one shred of evidence linking their church
16 to the spread of COVID-19. And the only evidence they referred
17 to --

18 THE COURT: Let me just interrupt you there. You're
19 not asking for the state rule -- to carve out an exception just
20 for your religious services, correct? I mean, just because
21 you're -- just because South Bay Pentecostal Church has done a
22 good job at successfully stemming the spread, if other
23 religious institutions -- you're not asking me to rule South
24 Bay Pentecostal can hold their services but no other churches
25 can?

1 MR. JONNA: What I'm saying, Your Honor, is that this
2 was something relevant to the supreme court in the Brooklyn
3 Diocese case. The fact of the matter is, they can't point to
4 evidence that churches have been, you know, these deadly
5 sources of viral spread. And in our case, in particular,
6 they've got no evidence that our church, our client's church,
7 has been any problem whatsoever in terms of spreading the
8 virus. So --

9 THE COURT: That's why I'm asking you, should I be
10 looking at the -- any evidence of your church or should I be
11 looking at evidence of any religious gatherings spreading the
12 virus?

13 MR. JONNA: I think that there is no evidence of
14 any -- let me just -- let me answer your question in a more
15 nuanced way. We know, for example, Your Honor -- and this is
16 referenced in the Delgado declaration -- that there was a study
17 of a million church services, a million, with 17 parishes, and
18 this was a study referenced in the Delgado declaration,
19 paragraph 6. And they were not able to identify -- I think
20 they were able to identify five in-person exposures, but zero
21 transmissions of the coronavirus. And this is a Thomas
22 McGovern "Evidence-Based Guidelines That Celebrate Mass
23 Safely."

24 And if you look at the state experts, like Stoto, for
25 example, they criticized Dr. Delgado saying that he has not

1 done a sufficient comparison of the risk of infection between
2 different industries and how they worship.

3 So basically what they're saying is that it's not possible
4 to do a comparison. They haven't, they can't, and it's their
5 burden, so I don't think there is evidence in the record
6 suggesting that churches -- and there has been no study,
7 there's been no study, for example, can the state point to a
8 study where they've looked at people attending church the way
9 Bishop Hodges is handling church services; social distancing,
10 mask-wearing, temperature checks, following every CDC
11 guideline. Have they done a study to show that that's not a
12 safe way to attend church, that that's more dangerous than
13 going to a grocery store? According to their expert, there is
14 no way to compare it. They tear apart the Delgado comparison.
15 They say you can't compare transmission risks, so I think that
16 the question is -- is -- I mean, I think the supreme court
17 obviously found it relevant to ask if there was any evidence of
18 the church at issue in that case spreading the virus. There
19 wasn't, and that's the same point I'm making with respect to
20 South Bay Pentecostal Church and more broadly if the Court
21 wants to consider the issue.

22 I think there's plenty of evidence that you can attend
23 church safely if you follow CDC protocols. And there's no
24 studies in the record anywhere to suggest that attending church
25 with following the protocol proposed by Bishop Hodges and the

1 CDC is an unsafe or more dangerous activity than going to
2 Costco shoulder to shoulder and, you know, with people facing
3 every direction, and, you know, we've seen all the pictures, I
4 don't have to explain it, but there's no study comparing those.
5 And the state basically says that's not even possible to do
6 when they criticize the Delgado study.

7 And as Judge O'Scannlain noted in Harvest Rock defense, he
8 basically said Dr. Watt and Dr. Rutherford are not qualified as
9 experts to opine on what takes place at religious worship
10 services or how people interact there as opposed to other
11 settings in other public life. And California can't credibly
12 argue that it regulates industries solely because of the
13 transmission risk. I mean, they say that, but they can't make
14 that argument because if you look at the most recent
15 stay-at-home order, every essential business is allowed to stay
16 open regardless of transmission risks. So the list of
17 essential workers was never about transmission risk. They
18 thought groceries store should stay open because people need to
19 eat. And churches need to stay open because they're engaging
20 in Constitutionally protected activity, and people need to go
21 to church. So the transmission risk assessment is not what
22 they're using. They're using it to justify their ban on
23 worship, but they're not using it to justify their allowing all
24 these essential businesses to stay open.

25 The Supreme Court in the Diocese of Brooklyn case and the

1 Calvary Chapel case, Ninth Circuit, were both clear that
2 churches can't be treated worse than essential businesses.

3 And again, it's important to look at the examples the Court
4 gave. The examples were acupuncture facilities, campgrounds,
5 garages, manufacturing plants, transportation facilities, large
6 stores, factories and schools, and then casinos, restaurants,
7 bars, amusement and theme parks, gym and fitness centers, movie
8 theaters, mass protests. They didn't just limit the comparison
9 to this transmission risk assessment. That was a minority
10 opinion in the dissent in Diocese of Brooklyn. That is what
11 the state is advocating. They're advocating the dissent and
12 the minority opinion.

13 I also have some points on singing, Your Honor. I don't
14 know if you have questions about that, but the singing ban is
15 also not neutral. It applies to certain industries and not
16 others. And in the Robinson case, recently that the supreme
17 court vacated the lower court's denial of an injunction against
18 the mask mandate where there was secular exceptions allowed and
19 instructed them to reconsider in light of Diocese of Brooklyn,
20 so we think the supreme court is clear to us that they believe
21 that the ruling in Brooklyn Diocese is broad enough to impact
22 issues beyond just occupancy cap. And we think there is no
23 compelling interest in banning singing only in church, but
24 allowing it, for example, in Hollywood productions and sporting
25 events. There's no evidence of deaths caused by congregational

1 singing. They can't just use anecdotes from back in March in
2 Washington.

3 And we do have studies that we referred to, again, that
4 church -- that singing in churches is safe, and we cited that
5 in the Delgado declaration. It was a report produced by a
6 collaboration between university and three music institutes in
7 Germany called "The Risk Assessment of Coronavirus Infections
8 in the Field of Music," and it basically said singing can
9 safely take place in worship services so long as social
10 distancing and mask-wearing is adhered to and the ventilation
11 is adequate.

12 The other thing I would point out, Your Honor, is that the
13 courts in these recent cases, including the supreme court --
14 this is a very important point -- were not persuaded by the
15 defendants' doom-and-gloom statistics of the COVID-19 rates of
16 infection. The supreme court heard all of these arguments in
17 the Diocese of Brooklyn case, and they weren't persuaded that
18 that impacted the constitutional analysis when you're
19 restricting houses of worship.

20 And it's clear -- we read the briefs in the Diocese of
21 Brooklyn case, but it's even more clear from reading the
22 dissent, no matter how serious the pandemic is, the
23 free-exercise analysis required equal treatment for churches.

24 And we submitted evidence from the supplemental Delgado
25 declaration that the COVID-19 statistics in California and

1 New York are essentially identical. I mean, if you look at the
2 new daily cases and you look at the daily deaths, actually, in
3 some respects, it's worse in New York. If you look --

4 THE COURT: What about -- let me ask you this: what
5 about the availability of ICU beds? Is that something I should
6 consider?

7 MR. JONNA: I think that Dr. Delgado looked at that in
8 his comparison, and I think -- I think overall the situation in
9 New York and California is comparable. I think that there's
10 no -- that the stats here in California don't warrant departing
11 from the supreme court framework for analyzing these issues, so
12 I think that to the extent --

13 THE COURT: Delgado's declaration is -- unfortunately,
14 things keep changing, but it's dated, right? I mean, there's a
15 lot of things that have happened since his declaration was
16 filed as far as ICU beds and numbers in California.

17 MR. JONNA: Here's what I would say about Your Honor's
18 question. No matter how bad the pandemic is and no matter how
19 few IC beds there are, if it's okay to keep Costco open, it's
20 okay to have churches open. They can't have it both ways. If
21 they're going to regulate churches with a total indoor ban,
22 then they have to treat secular institutions the same way.
23 They're letting secular industries stay open, like Costcos,
24 like liquor stores, like marijuana dispensaries. They can't
25 say, oh, but the ICU beds have fallen to zero. We have to

1 close churches. That's not how it works. That would be a
2 direct contradiction of the binding precedent now in Diocese of
3 Brooklyn and Calvary Chapel .

4 So I think that it's worth looking at the numbers to show
5 that it really does not make a difference, but even if you
6 accept their doom-and-gloom statistics and even if you accept
7 that the world's coming to an end, if it's okay to keep a
8 Costco open, it's okay to keep churches open. And that's the
9 fundamental principle that we've now learned from the supreme
10 court.

11 There's also been recent rulings that the Court may be
12 interested in from state courts in California. I'm sure you've
13 heard about the ruling concerning strip clubs, concerning
14 restaurants in San Diego.

15 There's been another ruling concerning outdoor dining in
16 Los Angeles, and I don't have to necessarily quote those, but
17 those obviously involve far less important rights than worship.
18 And courts have found that the -- looked at these precise
19 orders in California and issued injunctions.

20 So I think that the courts are now looking more carefully
21 at what's going on, and I think that when you're dealing with
22 fundamental constitutional rights, the right of worship, you
23 can't just say, oh, but they're allowed to do it outdoors. I
24 mean, that's not how it works. Most churches can't do it
25 outdoors. A lot of churches can't do it outdoors. Lots of

1 places in California, it's very cold. People get -- so that's
2 a flawed approach to this analysis. And I would urge the Court
3 to reject the state's invitation to adopt the dissenting
4 position in the Brooklyn Diocese case, and I'd like to reserve
5 some time for rebuttal, Your Honor.

6 THE COURT: Okay. Let me hear from the state first,
7 and the first question I have is, doesn't the Ninth Circuit
8 opinion in Calvary Chapel compel me to apply strict scrutiny
9 because retail establishments are treated differently?

10 MR. GRABARSKY: Good morning, Your Honor. This is
11 Deputy Attorney General Todd Grabarsky.

12 The short answer to your question is no. Roman Catholic
13 Diocese and the recent Ninth Circuit opinion in Calvary Chapel
14 Dayton Valley make clear that the restrictions on issues in
15 those cases were especially harsh, this proportionate
16 restriction that singled out and targeted religion, and
17 again --

18 THE COURT: But the Calvary Chapel -- let me
19 just -- Calvary Chapel specifically says basically retail
20 establishments are treated differently than church; therefore,
21 strict scrutiny applies. Doesn't it?

22 MR. GRABARSKY: Not entirely. In Calvary Chapel
23 there's a list of the activities on page 9 of the list opinion
24 that -- the Ninth Circuit was looking at was the totality of
25 Nevada's restriction. So it included retail, but also it

1 included casinos, which were subject to a 50 percent cap,
2 bowling allies, arcades, and restaurants, which were also
3 subject to a 50 percent cap, which was extremely -- the
4 50-person cap for worship services was extremely harsh and
5 disproportionate when you compare it with a 50 percent cap on
6 casinos, let's say, and, you know, we have a sense of what, you
7 know, a humongous casino on the Las Vegas Strip looks like. 50
8 percent cap can -- would probably include hundreds, if not
9 thousands, of people in a single casino whereas worship
10 services, we're capped at 50. In California casinos are
11 treated the same or if not worse than worship services.

12 THE COURT: Let me ask you about some of the areas
13 of -- some of the businesses that the church raises. What
14 about professional sports? What about day camps? What about
15 meat packing plants? What about transportation facilities? I
16 mean, those are all singled out in California beyond retail.
17 Doesn't that make it that we need to take a look at -- with
18 strict scrutiny?

19 MR. GRABARSKY: No, Your Honor, and to correct a point
20 that Mr. Jonna had made, for all those sectors or industries,
21 there's no outright exemption for those industries that, for
22 example, meat packing plants or the entertainment industry,
23 it's not true that those industries can operate as they could
24 before the pandemic. There are specific tailored particular
25 restrictions that are imposed on those industries to address

1 the particular risk of transmission that those industries pose.

2 So, for example, in factories or meat packing plants,
3 there's a state requirement that there are Plexiglass barriers
4 that separate the workers, especially the workers who have to
5 work in close proximity with one another.

6 In addition, generally, factories, meat packing plants, the
7 entertainment industry are subject to be a whole host of
8 employment regulations that exist in a pre-COVID world.

9 So, for example, if one factory worker gets sick, it's a
10 requirement that the employer's notified, and precautions about
11 that illness can be made to separate that worker from the rest
12 of the factory.

13 Quarantining, contact tracing is much easier than in
14 large, indoor, congregated gatherings that are open to the
15 public, including concerts, including spectator sporting
16 events, and including worship services.

17 In addition, the entertainment industry is required to do
18 frequent, if not daily, testing of the employees who work in
19 that industry.

20 Plaintiffs aren't suggesting, the state's not suggesting,
21 that that that's even feasible for worship services.

22 And, you know, we all understand the importance of testing,
23 so if, again, an employee, whether in the entertainment
24 industry, whether in a meat packing plant, or elsewhere, tests
25 positive, immediately that employee can be quarantined, they

1 can contact trace that employee to understand on which shift he
2 or she was, to immediately test the other employees that they
3 were working with and quarantine and isolate those employees as
4 well.

5 So again, the restrictions that California imposes on
6 various industries are particular, and they're particular to
7 address the specific risk of harm that those industries pose.

8 Again, it wouldn't be feasible, and I don't think
9 plaintiffs are suggesting, that the -- that the requirements
10 for factories, meat packing plants, or the entertainment
11 industry be carried over to houses of worship or concerts or
12 spectator sporting events.

13 So to go back to Your Honor's initial question in Calvary
14 Chapel and in Roman Catholic Diocese of Brooklyn, both courts
15 were dealing with especially harsh restriction that singled out
16 and targeted religion and imposed disproportionate restrictions
17 on religious activities that was disproportionate to the harm,
18 especially when you compare the much more lenient restrictions
19 on other activities.

20 So, for example, in New York, ten percent or 25 percent cap
21 for religious services. I'll note that that cap applies both
22 for indoor and outdoor religious services.

23 As Your Honor has recognized in California, outdoor
24 religious services is permitted statewide in unlimited numbers,
25 and the state's not suggesting that's the perfect substitute

1 for indoor services, but I think the point about the lack of
2 numerical restriction for outdoor services goes to the idea
3 that this isn't a particularly or especially harsh restriction
4 on indoor services unlike was the case in New York.

5 In addition, just to address Mr. Jonna's comments about the
6 comments from Governor Cuomo that targeted or threatened
7 religious service -- threatened religious groups, that might be
8 dicta, but the supreme court was concerned about that
9 targeting, and that's completely absent here. We addressed the
10 comments from Governor Newsom in our brief, and I don't think
11 there's anything more to say about that, but even putting aside
12 those comments from Governor Cuomo, there was evidence in the
13 record that -- in addition to those comments and separate from
14 those comments, that New York targeted Orthodox Jewish groups
15 via the ad hoc zones that were drawn; specifically to
16 encapsulate large neighborhoods that had large Orthodox Jewish
17 population.

18 Here all of the zones and the tiers and even the Regional
19 Stay-At-Home Order is based on preexisting political
20 boundaries, not the ad hoc zones.

21 So there's simply no evidence, and I don't think plaintiffs
22 are alleging, that California is gerrymandering the zones and
23 the tiers to include religious groups.

24 As I said, the list of activities in Calvary Chapel Dayton
25 Valley, the list of activities on page 9 of the opinion that so

1 concerned the Court, the only -- you know, casinos, arcades,
2 restaurants, that's not an issue in California because in
3 California, those activities are subject to the same or more
4 stringent numerical stats.

5 THE COURT: Let me ask you this. Kind of an
6 interesting twist. Should I be analyzing the rules as
7 initially established by the state and county or should I be
8 analyzing the rules that are now going to be enforced because
9 of the Midway Venture ruling, allowing restaurants to open and
10 strip clubs to open? Clearly if it's the latter, that limits
11 your argument that they're treated harsher.

12 MR. GRABARSKY: It's the state's position that the
13 "Blueprint" and the Regional Stay-At-Home Order, as they are,
14 are in force and effect. Plaintiff in this case, that's what
15 they're challenging in their renewed preliminary injunction and
16 TRO motion. They're challenging the "Blueprint" and the
17 Regional Stay-At-Home Order.

18 If Your Honor would like additional briefing on how the
19 Midway Venture case affects plaintiffs' motion or request or
20 how it affects California's restrictions, then the state would
21 be happy to provide additional briefing on that issue, but
22 again, it's the state's position that the executive orders as
23 encapsulated by the "Blueprint," Regional Stay-At-Home Order,
24 and the limited stay-at-home order, those are the orders that
25 are in effect.

1 THE COURT: Can you address -- I don't need anything
2 more on that. I mean, point me to where -- what are you
3 relying on as far as the scientific evidence that there's
4 increased risk of contracting COVID if someone goes to
5 religious services indoors even if they're socially distanced
6 and wearing masks and following all the rules, as the plaintiff
7 indicates they'd be willing to follow?

8 MR. GRABARSKY: The pin cite from our declarations
9 are: Rutherford declaration, paragraph 90 through 94, also,
10 paragraphs 101 through 110; Dr. Watt's declaration, paragraphs
11 38, 53, 70, 99; Dr. Stoto's declaration, 37 through 40. To
12 address further evidence of the particularly great risk of
13 COVID community transmission posed by large indoor gatherings,
14 including worship services, the declaration -- my declaration,
15 declaration of Todd Grabarsky, contains numerous articles about
16 super-spreader events from throughout the entire time of the
17 pandemic. Initially when, unfortunately, the virus came to
18 this country from back in March, we briefed that extensively.
19 I'm sure Your Honor is well familiar with those super-spreading
20 events. That continued to the present.

21 THE COURT: Yeah, you know, I have difficulty -- I
22 don't think I can rely on newspaper articles or magazine
23 articles as a source of -- you know, I don't think that's an
24 expert opinion, and I think it -- I have difficulty relying on
25 those for my expert opinions at this point.

1 MR. GRABARSKY: Your Honor, I understand that. Our
2 experts do opine about the particularly great risk of community
3 transmission posed by large, especially indoor, gatherings.

4 THE COURT: Even if they socially distance and wear
5 masks?

6 MR. GRABARSKY: Yes, and the pin cites that I said
7 before.

8 THE COURT: Okay.

9 MR. GRABARSKY: And Dr. Rutherford also does talk
10 about the so-called super-spreader events. I believe he
11 attributes -- he points to reports and studies indicating that
12 about 80 percent of COVID infections are tied to group
13 gathering. And that's at paragraph 37 of Dr. Rutherford's
14 declaration.

15 So when you look at those -- that expert testimony coupled
16 with the newspaper articles, those newspaper articles are
17 not -- may not be dispositive, but they must be given some
18 weight.

19 I believe in the state's request for judicial notice that
20 we filed along with our opposition, we cite the cases that
21 explain the extent to which newspaper articles and other
22 reports that might not otherwise be given weight, let's say, at
23 trial or possibly at summary judgment, but they may be given
24 weight at this posture, at the preliminary injunction or
25 Temporary Restraining Order phase of litigation, and that's

1 Docket Number 81-7 in which we explain the Ninth Circuit --
2 this Court's authority explaining that, again, newspaper
3 articles and other evidence that might otherwise not be given
4 much weight can be considered when deciding a preliminary
5 injunction. And this is especially true when we supplemented
6 those articles with the expert testimony from Dr. Watt,
7 Dr. Rutherford, and Dr. Stoto.

8 Another comment I would like to make about Roman Catholic
9 Diocese and Calvary Chapel Dayton Valley, those opinions did
10 not overturn the Supreme Court's, you know, 30-year-old
11 precedent in *Employment Division versus Smith* or *The Church of*
12 *Lukumi* matter, which requires courts to engage in the
13 comparisons with other secular activities to determine what
14 secular activity might be comparable.

15 Again, in *Lukumi*, the Court defined "comparable secular
16 activity" as activity that endangers the government's interest
17 in a similar or greater degree than the religious activity at
18 issue. And that's at 508 U.S. page 543.

19 So that -- there's nothing in Roman Catholic Diocese that
20 suggests that that's been overturned.

21 To the extent the Ninth Circuit identified a potential
22 arguable seismic shift in the precedent, it's the state's
23 reading of that opinion, but that's -- what Roman Catholic
24 Diocese might have done and probably could do is expand the
25 definition of "neutrality" where religious activity is subject

1 to particularly harsh, especially harsh and disproportionate
2 restriction, when you look at the particularly lenient
3 restriction for secular activity. That suggests that those
4 restrictions are no longer neutral, and that's -- that is
5 possibly what the arguable seismic shift that was identified in
6 the Calvary Chapel Dayton Valley Ninth Circuit opinion. Again,
7 in New York worship services were subject to ten-person and
8 25-person capped indoor and outdoor whereas in the red zone,
9 essential businesses had no cap, no percentage cap, no
10 restriction. In the yellow zone -- even nonessential
11 businesses had no percentage cap, no restriction.

12 Again, in California presently under the Regional
13 Stay-At-Home Order, there's a 20 percent cap on retail. In
14 the "Blueprint" under Tier 1, there's a 25 percent cap.

15 And to address Mr. Jonna's point about that -- suggesting
16 that Roman Catholic Diocese stand for the proposition that any
17 time you have any more lenient restriction on any secular
18 activity, that automatically mandates strict scrutiny, that
19 simply can't be the case for two reasons: First, the supreme
20 court had this exact question in front of it. One week later,
21 one week after Roman Catholic Diocese, the plaintiff in the
22 Harvest Rock Church matter, California church, asked the
23 supreme court, said, look, you all just decided Roman Catholic
24 Diocese. You applied strict scrutiny, and you enjoined a
25 portion of New York's restriction. So we ask you do the same

1 to California's restriction. Just take the New York Roman
2 Catholic Diocese opinion, apply it to California, apply strict
3 scrutiny, find strict scrutiny is not met, and enjoin
4 California's restriction.

5 The supreme court denied that request, said, no, we're not
6 going to issue that injunction, remanded it not just to the
7 Ninth Circuit, but all the way back down to the district court
8 for the district court to engage in a factual inquiry to
9 determine to what extent the Roman Catholic Diocese opinion,
10 again, about especially harsh restriction applies to the
11 particularity to California's restriction.

12 And that's what's happening in Harvest Rock. As Your Honor
13 might be aware, that case has been briefed, and there's a
14 hearing this afternoon before Judge Bernal in the Central
15 District. And that's what the Ninth Circuit did in this case.
16 Again, plaintiff asked, the Ninth Circuit said, look, Roman
17 Catholic Diocese controls this, so we're requesting the
18 Ninth Circuit to issue an injunction against California's
19 restriction based on Roman Catholic. The Ninth Circuit
20 declined that -- the Ninth Circuit declined that request,
21 remanded back to this Court, and here we are for this Court to
22 engage in that factual inquiry as to whether California's
23 restrictions are disproportionate, are especially harsh, are
24 not nuanced, and not tailored, are not fine-tuned as they were
25 in New York. And we briefed that extensively -- that question

1 extensively as to -- and demonstrating that the answer to that
2 question is no. But there are stark differences with the
3 particularly harsh restrictions that were at issue in Roman
4 Catholic Diocese.

5 The second reason we know that it can't be the case that
6 strict scrutiny is automatically mandated is when we look at
7 the extreme of what plaintiffs are asking, and I think one apt
8 example is hospitals. Right now hospitals are permitted to
9 operate at 100 percent and, in fact, are probably operating
10 much more over capacity, whatever capacity, but
11 their -- whatever numerical or capacity is mandated under, say,
12 the fire code given the dire circumstances of the state
13 pandemic right now.

14 So it simply can't be the case that because hospitals are
15 permitted to operate at 100 percent capacity and, in fact, are
16 operating at over 100 percent capacity, that houses of worship
17 automatically need to be permitted to operate at 100 percent
18 capacity or, in fact, over 100 percent capacity. That just
19 simply can't be the case, and that, you know, is absurd, to say
20 the least.

21 Another example would be zoning laws.

22 THE COURT: I think what they're saying is -- wait a
23 minute. What they're saying is not that it must mean that
24 houses of worship have to operate at 100 percent, but that
25 strict scrutiny applies. And so then you look at the strict

1 scrutiny, why do you apply 100 percent to hospitals and not
2 apply it to religion? I think probably under your example, if
3 you're only considering hospitals and religious establishments,
4 it would probably pass strict scrutiny muster, but you'd have
5 to look at strict scrutiny as opposed to a rational basis.

6 MR. GRABARSKY: Possibly, but that would entirely
7 eviscerate the comparison that Lukumi and Employment Division
8 versus Smith require, and, again, Roman Catholic Diocese did
9 not overturn those opinions, and there's nothing about Calvary
10 Chapel Dayton Valley that suggests that, that Lukumi or Smith
11 is no longer operative law and the definition for a comparable
12 secular activity no longer applies.

13 I think it would also be worth noting -- we didn't cite
14 this case in our brief, but the Sixth Circuit issued an opinion
15 in Commonwealth versus Beshear, and it's a Westlaw citation
16 2020WL7017858, in which the plaintiff -- the issue was
17 Kentucky's order shutting down all schools, religious and
18 secular schools alike, and the plaintiffs in that case were
19 making a similar argument to plaintiffs here saying, look, our
20 religious mandate compels us to educate our children in
21 religious settings, a religious school, and religious schools
22 are shut down, but movie theaters and stores are given
23 favorable treatment, and those are allowed to be open, so,
24 therefore, you have to open the religious schools just like
25 movie theaters and shopping malls and other retailers are open.

1 The Sixth Circuit denied that request, and yesterday the
2 supreme court refused to stay the Sixth Circuit opinion.

3 And I would implore the Court to read the way -- and the
4 Sixth Circuit opinion was issued after Roman Catholic Diocese,
5 and I would implore the Court to read that opinion and to see
6 the way the Sixth Circuit distinguished Roman Catholic Diocese
7 and found that strict scrutiny wasn't appropriate in that case,
8 even though there were secular activities that was treated more
9 favorably than the religious activity issue in that case;
10 namely, religious schools.

11 Again, so the overall point is that the Court -- you know,
12 for the reason that Harvest Rock remanded back to district
13 court and the Ninth Circuit remanded in this case back to this
14 court, this Court must engage in the comparative risk
15 assessment between religious worship services and other secular
16 activities that plaintiffs are pointing to, and plaintiffs
17 present no evidence calling into question the comparative risk
18 assessment that Dr. Watt, Dr. Rutherford, and, to an extent,
19 Dr. Stoto engage in.

20 California applies a host of objective, neutral,
21 scientific, and data-driven risk factors that apply generally
22 to all activities, religious and secular alike, to determine
23 what risk of COVID transmission those activities pose and what
24 the appropriate restrictions would be to minimize that risk in
25 the appropriate way.

1 Again, plaintiffs don't call into question any of those
2 comparative risk assessment. To the extent that they continue
3 to rely on Dr. Delgado for that comparative risk assessment, I
4 believe we've addressed that, and this Court has already found
5 that Dr. Delgado's opinions on that issue are entitled to
6 minimal weight and are simply -- must be rejected.

7 A point about the Burfitt case. I'll also draw the -- just
8 to note that that case was decided under California state law
9 to which the state defendants are immune in this case and also
10 draw the Court's attention to the People versus Calvary Chapel
11 San Jose case, also a state court case, which also was looking
12 at Roman Catholic Diocese, refused to adopt that opinion
13 wholesale and distinguish California's restrictions to New York
14 restrictions that were at issue in Roman Catholic Diocese, and
15 we've included that order in -- I believe it's Exhibit 2 of the
16 first Grabarsky declaration.

17 But even if strict scrutiny were applied, it's the state's
18 position that it's clear that in this case, strict
19 scrutiny -- that state's restrictions would meet strict
20 scrutiny.

21 I'll draw Your Honor's attention to Your Honor's
22 first -- very first ruling in this case in which Your Honor
23 found that strict scrutiny was met on the state's previous
24 total ban on in-person religious worship services, indoor and
25 outdoor. Your Honor had found strict scrutiny was met in that

1 case. It's clear that the "Blueprint" and the Regional
2 Stay-At-Home Order is much more nuanced and fine-tuned, to use
3 Your Honor's words in the October 15th ruling. It's much more
4 nuanced and fine-tuned, and, therefore, it narrowly tailored to
5 address the great undisputable compelling interest in stemming
6 the spread of COVID, and plaintiffs don't appear to dispute
7 that.

8 To walk through, you know, we've addressed the evolution of
9 the state's restriction since March in our briefings, and
10 Your Honor's well familiar with it, with that evolution, having
11 walked through it in the October 15th order, but the evolution,
12 the loosening, the restricting, when cases move up, the
13 imposition of a statewide mask mandate, the imposition of a
14 statewide indoor singing and chanting ban, all demonstrate that
15 the state is exploring less restrictive alternatives, but the
16 numerical and percentage cap on all indoor gatherings,
17 spectator sporting events, concerts, movie theaters, and
18 worship services, it's simply necessary to curb the spread, and
19 I think the state's evolution of how it's been imposing these
20 restrictions over time demonstrate that, and that's exactly
21 what strict scrutiny is required. It required the state to
22 explore other options and figure out what's best, and that's
23 exactly what's gone on here. Plaintiffs don't appear to
24 dispute that.

25 In plaintiffs' reply they seem -- initially in

1 plaintiffs' initial briefing they appear to offer
2 alternative -- what they argue are less restrictive
3 alternatives, one of which is the Great Barrington declaration,
4 which it appears on page 9 of their reply that they're walking
5 away from and taking a step back from. That's great that
6 they're -- that plaintiffs are now disavowing the Great
7 Barrington declaration and the focus protection or herd
8 immunity strategy that that declaration proposes. We've
9 addressed thoroughly in our briefing why that declaration is
10 unscientific and harmful and radical, and it is really a fringe
11 theory about how you address the COVID pandemic.

12 So, therefore, the only alternative that plaintiffs are
13 left with, having disavowed the Great Barrington declaration,
14 are social distancing, masks, and hygiene, and potentially
15 quarantining those who have the symptoms in their church.

16 And as I pointed to the pin cite as Your Honor asked
17 earlier, our experts unequivocally opine that those are
18 insufficient to curb -- insufficient measures to curb the
19 spread at large indoor gatherings, and that's especially true
20 given that this virus can spread even among those who exhibit
21 no symptoms and who may not know that they're infected.

22 And just a point to -- to address Mr. Jonna's comment about
23 the perfect record or the supposed perfect record at
24 plaintiffs' church, there is evidence that members of
25 plaintiffs' church have been infected with the COVID-19 virus.

1 There's evidence that the community, the Chula Vista community,
2 has over 12,000 infections. Although plaintiffs point to the
3 pastor's declaration that he is unaware that anyone
4 from -- that anyone, any congregant, has been infected as a
5 result of the worship services, the pastor doesn't purport to
6 be an expert in the way that the virus spreads. There's no
7 evidence that the person -- the congregants from plaintiffs'
8 church who were infected, that they've been contact-traced to
9 figure out the source of their infection, and again, as
10 Your Honor suggests, we may not just analyze this on a
11 church-by-church basis. That -- and I don't think -- it
12 appears Mr. Jonna agrees that we shouldn't carve out exceptions
13 for certain churches that may be able to show that they -- that
14 congregants haven't been infected as a result of worship
15 services.

16 You know, I think what plaintiffs are asking for are -- is
17 this Court to enjoin the restriction statewide and for the
18 reason -- the evidence of Dr. Rutherford, Dr. Watt about
19 outbreak tied to indoor gatherings, like worship services,
20 coupled with the newspaper articles and other accounts of such
21 super-spreader events, including those in San Diego -- and I
22 think I might have forgot to mention the Awaken Church outbreak
23 that happened very recently that we attached to the Grabarsky
24 declaration.

25 So all that evidence in the totality shows that, you know,

1 the indoor worship services pose an exceedingly great risk of
2 outbreak.

3 AS Your Honor had indicated, a majority of the supreme
4 court advocates for substantial deference to publicly
5 accountable public health officials who are acting in the space
6 of scientific and medical uncertainty.

7 I'll also note that Justice Kavanaugh signed on to this
8 principle in addition to his concurrence in Roman Catholic, but
9 his concurrence in *Andino versus Middleton*, the case that we
10 cite in our briefs, and that principle has been applied for
11 over a hundred years by the supreme court, even when individual
12 rights and liberties are at stake and even in nonemergency
13 context.

14 And we cite to a list of cases dating back to 1912 and
15 extending all the way into this century on page 20 of our
16 opposition brief. Plaintiffs -- no response to that.

17 Another point that plaintiffs addressed in their reply, and
18 I think Mr. Jonna made some comments today, plaintiffs suggest
19 that Dr. Watt and Dr. Rutherford are entirely unqualified to
20 opine about what goes on in worship services, and I think the
21 word in their reply brief that they use is that their
22 declarations and their opinions are worthless because, quote,
23 they have no idea what happened in a Pentecostal Sunday
24 service.

25 Plaintiffs haven't pointed out anything that's wrong with

1 Dr. Watt or Dr. Rutherford's declarations or opinions about the
2 way the virus spreads in large indoor gatherings. They haven't
3 said, well, here's the way that our church service is wrong
4 based on -- or different based on what Dr. Watt or
5 Dr. Rutherford presumed. It doesn't appear that plaintiffs are
6 disputing that what they seek to do is hold large -- hold an
7 indoor gathering of hundreds of people limited only to the fire
8 code, to have people sit together, distance among households
9 albeit, but sit together and engage in a communal activity,
10 communal experience for hours. It doesn't appear that
11 plaintiffs or Mr. Jonna today is disputing that, and that's
12 what Dr. Watt and Dr. Rutherford are basing their opinion about
13 community spread in such large indoor, in-person gatherings,
14 and again, there's a pin cite that I referred to earlier.
15 Those opinions hold true even when distancing, even when
16 masking, even when hygiene precautions are imposed. Even when
17 all those precautions are imposed, the large indoor gatherings
18 pose an exceedingly and -- exceedingly great risk of community
19 transmission.

20 About the singing and chanting ban, just to address
21 Mr. Jonna's comments about that, Dr. Rutherford and Dr. Watt do
22 opine that singing and chanting, even while wearing masks, even
23 while distancing, poses an exceedingly great risk based on the
24 way that this virus spreads. It's increased in forceful
25 exhalation that expels a much greater number of viral

1 particles, infected viral particles. That poses much increased
2 risk. We've addressed that in our briefing, and Dr. Watt and
3 Dr. Rutherford specifically attest to that.

4 And I'll note that courts have adopted the California Court
5 of Appeal in the County of Los Angeles versus the Superior
6 Court case that we cite, takes that position exactly, that
7 singing and chanting pose an even greater risk even when
8 masking and even when distancing precautions are taken.

9 The Elim Romanian Pentecostal Church case from the Seventh
10 Circuit that we cited to also takes that position.

11 To the extent Dr. Delgado has changed his position on that,
12 you know, we've addressed why Dr. Delgado is not qualified to
13 give opinions on epidemiology or public health with the way
14 that the virus -- or infectious diseases spread in the
15 community. We've addressed that, and his opinion, which I'll
16 note has changed over time, should be rejected.

17 Lastly, and I really hope that this doesn't get lost in the
18 analysis, I would like to address the balance of equities prong
19 of preliminary injunction.

20 Everything that we've been talking about -- when we're
21 looking at this prong, everything we've been talking about can
22 be put aside. The constitutional analysis as to whether
23 plaintiffs are likely to succeed under the free exercise
24 claims, that's not relevant to the balance of equities.

25 And it's a bit shocking that in plaintiffs' reply brief

1 they don't even address this prong at all. And there's really
2 barely two paragraphs in their initial motion addressing the
3 harm that the virus is really reaping on California, especially
4 right now. And we've addressed this extensively in our
5 briefings that were filed on Monday. Today's Friday. Those
6 briefings are already outdated. Yesterday nearly 400 people
7 died in California and 50,000 were infected. Today, as it
8 stands right now, ICU capacity statewide is at 3 percent. In
9 Southern California -- sorry, ICU availability in California
10 statewide is at 3 percent. In Southern California there is no
11 ICU availability. It's at zero percent. Or around zero
12 percent. In the San Joaquin Valley, it's less than 1 percent.

13 I'll note that ICU availability isn't just about treating
14 those who are -- become greatly ill from the disease. It's
15 about other illnesses and injuries, severe illness -- and
16 immediate illnesses or accidents, car accidents, gunshot
17 wounds. This state had a particularly dire situation, and it
18 seems -- you know, plaintiffs use -- plaintiffs' counsel,
19 Mr. Jonna, uses the term "doom-and-gloom statistics." I hope
20 that's not flip or sarcastic. I mean, that's the reality of
21 what's going on. These are grim statistics, but they're true.
22 Plaintiffs don't appear to dispute them.

23 There simply couldn't be a worse time to enjoin the
24 restriction that are doing their best to curb the spread of
25 this dangerous and deadly disease that's really reeking havoc

1 throughout the state, also in San Diego, in Southern
2 California, where plaintiffs' church is located, right now.

3 To the extent the supreme court looked at the statistics in
4 New York, the Roman Catholic Diocese was decided about a month
5 ago. Probably the statistics, you know, weeks before, so we're
6 talking about New York statistics that might have been
7 different and are certainly outdated given the fact that
8 briefings were filed this week are now greatly outdated.

9 As I've indicated in the brief, in our briefing, in the
10 past month in California, cases, hospitalizations, and deaths
11 have tripled, and that's the daily rate for cases,
12 hospitalizations, and deaths have tripled.

13 Again, enjoining the restriction that plaintiffs are asking
14 for would exacerbate, would definitely exacerbate, the
15 situation that -- the really dire situation that's going on
16 now. And I don't -- I don't think plaintiffs dispute that,
17 that lifting these restrictions would cause, at a minimum, an
18 increased spread in churches throughout the state.

19 So again, there simply can't be a worse time, and I wish
20 plaintiffs had addressed the balance of equities more in their
21 briefing so we could look at the particular statistic that
22 they're identifying in their briefing, in their reply briefing,
23 but, you know, the fact that they've just left that necessary
24 prong for the preliminary injunction analysis out seems to
25 indicate that they might not dispute the statistic, and they

1 might not dispute the great harm that would occur if the
2 restrictions were lifted.

3 Your Honor, I know I've been talking for a while. I'm
4 happy to answer any particular additional questions that you
5 might have.

6 One other sort of administrative housekeeping matter I
7 would like to address, since Your Honor has indicated, and
8 plaintiffs, I think, agree, that Your Honor's not going to look
9 at these new declarations that were filed on wednesday. We
10 would ask that those be stricken from the record. We would ask
11 that Your Honor do that.

12 But again, I'm happy to answer any additional questions
13 about the state's restrictions. I know they're complicated, I
14 know things are changing almost daily. So if Your Honor has
15 any other questions, I'd be happy to answer them.

16 THE COURT: No.

17 Does the county have anything to add?

18 MR. WHITE: Not much, Your Honor.

19 We join completely in Mr. Grabarsky's arguments that they
20 state just because there is no daylight between the county's
21 public health order and the state's restrictions. The county's
22 public health order does not reference or contain any
23 restrictions on religious services other than incorporating the
24 state's industry guidances and regulations would impose
25 guidance on religious services.

1 When the state has eased the restrictions on the County of
2 San Diego, for example, when we're placed in the red tier, the
3 county did not impose any additional or more restrictive
4 restrictions upon worship services or other industries.

5 And so the arguments, again, with the state are the same as
6 against the county, and the county's order would rise and fall
7 with the Court's ruling on the state's restrictions because
8 they pass through.

9 To the extent there are claims under the California
10 Constitution, we've made the argument Judge Curiel's decision
11 in Porter V. Gore is applicable here. The Court ruling under
12 the California Constitution on the county's order is, in
13 effect, a direct ruling by the Court judging the state's
14 restrictions under the California Constitution, which we
15 believe is barred by the 11th Amendment.

16 And finally, to the extent the Court would hold strict
17 scrutiny applied under the California Constitution applicable
18 to the state guidelines in this case, we would adopt
19 Mr. Grabarsky's defense of those guidelines, even under strict
20 scrutiny that he's put forth ably here today.

21 THE COURT: Okay. Thank you.

22 Mr. Jonna.

23 MR. JONNA: Yes. Thank you, Your Honor. I'll try to
24 be brief.

25 I mean, the big-picture summary that we're hearing from the

1 defense is that they're making distinctions that the supreme
2 court and the Ninth Circuit have rejected, and they're
3 advocating positions that the minority has taken. I mean, the
4 issues before the Court are really not that complicated, and I
5 want to explain -- I want to respond to a few points that
6 Mr. Grabarsky made, but I really think, though, that the issues
7 are crystalized and clear in light of Brooklyn Diocese, in
8 light of Calvary Chapel.

9 When we talk about treating -- singling out churches for
10 harsh treatment, again, it's important to look at what the
11 supreme court thought was harsh treatment. They gave two
12 examples. One example was allowing essential businesses to
13 stay open, and they gave a list. I'm not going to repeat the
14 list. It was, you know, transmission-based risk assessment.
15 It was a list of essential businesses: Acupuncture,
16 campgrounds, garages, manufacturing plants. They said it was
17 especially harsh to allow essential businesses like that to
18 stay open but to limit churches to ten or 25 people. They also
19 said it was especially harsh to have department stores with
20 hundreds of people shopping on any given day when churches
21 couldn't have more than ten or 25 people.

22 Again, we have a total indoor worship ban in California.
23 The State of California is trying to justify a total indoor
24 worship ban, and they're trying to suggest that that's narrowly
25 tailored. I mean, the argument is -- at this point is absurd

1 on its face. In Calvary Chapel the Court said, and I'm reading
2 from the Ninth Circuit's decision, "Just like the New York
3 restrictions, the directive treats numerous secular activities
4 and entities significantly better than religious worship
5 services. The example they give were casinos, bowling allies,
6 retail businesses, restaurants, arcades. They don't cite
7 studies based on transmission-risk analysis and assessments.
8 That was what the dissent advocated. They said since they
9 treated secular activities better than religious services, and
10 they gave examples, strict scrutiny was triggered, and strict
11 scrutiny was not satisfied. In that case 50 people were
12 allowed inside churches. In California, no one is allowed
13 inside a church. Not one. 99.1 percent of the state has an
14 indoor worship ban.

15 Another point that Mr. Grabarsky made is that
16 there's -- oh, there's other operational adjustments for these
17 essential businesses, but that's not the point. The point is
18 they're allowed to have indoor operations. Churches are not.
19 So that's a red herring.

20 As far as the experts that he refers to, these pin cites,
21 obviously, I didn't have time to read every pin cite, but the
22 ones I looked at, and I'm sure the Court will look at them.
23 They don't say churches are more dangerous. They're general
24 citations to principles of -- about indoor gatherings. There's
25 not one study that assesses the safety of a church service

1 following CDC protocols and whether that's inherently riskier
2 or more dangerous than having retail open right now and Costco.
3 And again, I mean, they've talked about the doom and gloom. Of
4 course I'm not being sarcastic. I realize this pandemic poses
5 challenges. Our client realizes that too. But if it poses
6 challenges that allow retail to stay open at 20 percent, then
7 they can't close down churches. It's that simple. It's very
8 simple.

9 As far as the argument, the Court pointed out that those
10 are not admissible. We had another judge in a case in
11 Los Angeles who said the same thing; you can't just make things
12 up to regulate churches. There's no newspaper article
13 exception to the Free Exercise Clause.

14 As far as why church should be outdoors, why aren't they
15 saying that outdoor shopping and liquor purchases should be
16 outdoors?

17 I mean, so another point we heard -- another point I want
18 to make is that the supreme court heard this evidence that you
19 are hearing today and that is before this Court about the
20 transmission risk and -- of churches. They rejected that
21 analysis. That was not the approach the majority of the court
22 accepted. And Calvary Chapel was clear that the analysis in
23 Brooklyn Diocese represents a seismic shift. And if you
24 want -- and what they considered comparable secular
25 activities -- and again, they gave examples, and that was what

1 they considered to be comparable.

2 what the state is advocating is that -- very complicated
3 and nuanced scientific analysis that really doesn't have a
4 valid basis where they're going to say, this is what we
5 consider to be comparable.

6 well, that's not what the supreme court says. That's not
7 what the Ninth Circuit said. what they said was comparable was
8 a list of essential businesses that I read off to the Court.
9 what they're saying is no, that's the wrong approach. The
10 right approach is you've got to listen to our expert, Watts and
11 Rutherford, and they dictate what's comparable. That's just
12 not the controlling authority as it stands right now.

13 I have heard no explanation, and I still -- I don't think
14 there is one on how a total ban on indoor worship is narrowly
15 tailored. I mean, the suggestion is, like I said, absurd on
16 its face. There's no way that's narrowly tailored. If the
17 Court leaves in place an indoor worship ban in California, that
18 would be reversible error. The other point -- hello?

19 THE COURT: I don't know where that's coming from.
20 Could whoever is playing the music, please turn it off.

21 MR. JONNA: Can you hear?

22 THE COURT: Yes, I can hear you now.

23 MR. JONNA: The other thing I would say that
24 Mr. Grabarsky criticizes the comparative risk assessment that
25 our -- Delgado made. That's not our burden. We don't have to

1 do a comparative risk assessment. That's not the standard
2 before the Court right now. That's not what Brooklyn Diocese
3 stands for, and that's, again, leading the Court down to the
4 defending position.

5 As far as trying to distinguish the Burfitt case, which is
6 a case that our firm was involved in, that's, you
7 know -- there's no distinction, and the Court made it clear
8 between the free exercise rights under the California
9 Constitution or the Federal Constitution and any attempt to
10 distinguish the outcome in that case is just -- you know, quite
11 frankly, it's not legitimate.

12 As far as the -- I didn't address all the things our expert
13 said, and of course, we didn't disavow anything in any of our
14 expert declarations. I don't think we need to do that. The
15 reason why we even attached the expert declaration was to show
16 that there are many more tailored restrictions that actually
17 comport more closely with public health. And so we refer to
18 things that the state obviously would agree help in terms of
19 allowing other businesses, mask-wearing, social distancing,
20 ventilation. And we also talk about the rise in suicide and
21 drug overdoses, the benefits of church attendance for mental
22 health. All of these things are in those declarations to
23 support the overall position that, you know --

24 THE COURT: You're talking about the
25 declarations -- are you talking about the declarations that you

1 agreed to withdraw?

2 MR. JONNA: No, I believe even the ones that we didn't
3 withdraw. I believe in the ones that were submitted with the
4 initial filing, all those points were made.

5 And I mean, as far as our client having a COVID infection,
6 I think the only -- at its church, I think the only allegation
7 the state can make, and it's pretty pathetic to hear that
8 they're going to justify an indoor worship ban because they
9 heard that one person at my client's church had a COVID
10 infection -- in fact, and we made this clear. Once they prayed
11 for someone in their church who had COVID, and there's zero
12 evidence, because it wasn't the case, that he got it at the
13 church. The fact that they're praying for someone in their
14 church, and they went through a YouTube video and they found
15 that they had prayed for someone is kind of ridiculous, what
16 we're hearing right now.

17 Dr. Watt and Rutherford, again, they were criticized not by
18 us but by Judge O'Scannlain in his dissent in explaining that
19 they were not qualified to -- and they admit it. I think
20 Mr. Grabarsky conceded that they're not qualified to opine on
21 how -- what takes place at religious gatherings. I'm not
22 quoting exactly what he said, but it was along those lines.

23 The reason why I said this is a simple issue is it goes
24 back to what I said earlier. Despite the statistics, it is
25 okay to allow people in retail establishments. It is okay to

1 allow exemptions for Hollywood in the case of singing. But it
2 is definitely okay for churches to be open, and the indoor
3 worship ban cannot survive. It needs to be struck down. It
4 should be treated like other essential businesses, and it's
5 that simple.

6 There's really nothing else to say. The indoor worship ban
7 has to be struck down.

8 As far as San Diego, I mean, we briefed all the issues in
9 our papers, and, you know, the county has their own order.
10 They didn't have to implement their own order. We assert
11 federal and state claims against the county, so I don't think
12 those issues are dispositive for them.

13 I think those are the main points I wanted to make. I'm
14 happy to answer any questions the Court has.

15 THE COURT: Okay. I will, as a housekeeping matter,
16 grant the state's request to strike the declarations that were
17 filed on wednesday after the briefing was over with.
18 Otherwise, I'll take the matter under submission. Thank you.

19 MR. JONNA: Thank you, Your Honor.

20 MR. GRABARSKY: Thank you, Your Honor.

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

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

Dated December 19, 2020, at San Diego, California.

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

APPENDIX E

FILED

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

DEC 8 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

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

Plaintiffs-Appellants,

v.

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

Defendants-Appellees.

No. 20-55533

D.C. No.

3:20-cv-00865-BAS-AHG

Southern District of California,
San Diego

ORDER

Before: WARDLAW and CLIFTON, Circuit Judges, and HILLMAN,* District
Judge.

In light of the Supreme Court’s orders in *Harvest Rock Church, Inc. v. Newsom*, No. 20A94, 592 U.S. ____ (Dec. 3, 2020) and *Roman Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87, 592 U.S. ____ (Nov. 25, 2020), we vacate the district court’s October 15, 2020 order denying the motion for injunctive relief filed by South Bay United Pentecostal Church (South Bay), and remand to the district court for further consideration of this matter.

* The Honorable Timothy Hillman, United States District Judge for the District of Massachusetts, sitting by designation.

South Bay's emergency motion for an injunction pending appeal (ECF No. 96) is denied without prejudice.

IT IS SO ORDERED.

APPENDIX F

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SOUTH BAY UNITED PENTECOSTAL
CHURCH, *et al.*,

Plaintiffs,

v.

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

Defendants.

Case No. 20-cv-00865-BAS-AHG

**ORDER DENYING PLAINTIFFS’
RENEWED MOTION FOR A
TEMPORARY RESTRAINING
ORDER OR PRELIMINARY
INJUNCTION (ECF No. 53)**

I. INTRODUCTION

This case arises from the State of California’s efforts to limit the spread of the novel severe acute respiratory syndrome-related coronavirus (SARS-CoV-2) that has upended society. The illness caused by the virus, coronavirus disease 2019 (COVID-19), has killed more than ten thousand people in California and sickened many more. There is no known cure, widely available effective treatment, or approved vaccine for the disease. And because people infected with the virus may be asymptomatic, they may unintentionally infect others around them. Therefore, physical distancing that limits physical contact is essential to slow the spread of the virus.

1 To ensure physical distancing, the Governor of California has issued a series of
2 restrictions on public gatherings. This case centers on the restrictions for in-person, indoor
3 religious worship services. Plaintiffs South Bay United Pentecostal Church and Bishop
4 Arthur Hodges III allege these restrictions violate their constitutional rights by limiting
5 their ability to freely exercise their religion.

6 An earlier version of California's restrictions prohibited Plaintiffs from holding any
7 in-person worship services. In May 2020, Plaintiffs asked the Court to enjoin those
8 restrictions while this case proceeded. After the Court denied Plaintiffs' request for
9 extraordinary relief, they appealed to the Court of Appeals for the Ninth Circuit and
10 concurrently requested an emergency injunction, which was denied. Plaintiffs next asked
11 the Supreme Court for emergency relief, but it, too, denied their request. Plaintiffs later
12 requested that their appeal be sent back to this Court to allow the Court to reconsider
13 whether California's restrictions should be enjoined in light of new developments. The
14 Ninth Circuit granted their request.

15 Now before the Court is Plaintiffs' renewed motion for a temporary restraining order
16 or preliminary injunction. In San Diego County, California's restrictions currently limit
17 Plaintiffs' indoor worship services to 25% of building capacity or 100 people, whichever
18 is fewer. The restrictions also forbid group singing and chanting indoors. Thus, the
19 challenged restrictions are more nuanced and lenient than the rules the Court previously
20 considered in May. Plaintiffs now argue, however, that California's "scientific
21 pronouncements" are "largely baseless," and that by "all reasonable scientific
22 measurements," the COVID-19 health emergency "has ended." (ECF No. 61 at 1:12–15.)
23 They also argue the State's restrictions treat certain secular businesses more favorably than
24 religious organizations and have been enforced in a discriminatory manner. Consequently,
25 Plaintiffs argue the restrictions regarding indoor worship services and singing are
26 unconstitutional and should be enjoined before trial.

27 California paints a different picture of the current circumstances. It stresses the crisis
28 is ongoing and filled with uncertainty. California highlights that COVID-19 infections and

1 deaths surged after the Court considered Plaintiffs’ first request to enjoin the State’s rules.
2 And although Plaintiffs’ renewed motion cites that “[a]s of July 14, 2020, California ha[s]
3 only reported a total of 7,227 deaths from COVID-19,” the State points out that this count
4 had swelled to 12,407 as of August 31, 2020. (State’s Opp’n 9:18–21, ECF No. 57; *see*
5 *also* Renewed Mot. 1:24–25, ECF No. 53-1.) California argues “these numbers are
6 enormous, far greater than the number of people killed in the 9/11 terrorist attacks and
7 those who lost their lives in Hurricane Katrina.” (State’s Opp’n 9:21–23.) The State also
8 claims Plaintiffs “ignore the reason for why the State has been able to slow the spread of
9 the disease: the imposition of the very types of public health restrictions that Plaintiffs ask
10 the Court to enjoin.” (*Id.* 10:14–17.) “Enjoining restrictions because they have proven
11 effective in curbing COVID-19 would be ‘like throwing away your umbrella in a rainstorm
12 because you are not getting wet,’” the State argues. (*Id.* 10:26–28 (citing *Shelby Cty. v.*
13 *Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting)).) Therefore, both California
14 and the County of San Diego urge the Court to again refuse Plaintiffs’ request for
15 extraordinary relief.

16 Ultimately, the Court concludes Plaintiffs have not met their burden to demonstrate
17 they are entitled to a preliminary injunction—“an extraordinary remedy never awarded as
18 of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). Therefore, for the
19 following reasons, the Court **DENIES** Plaintiffs’ renewed motion for a temporary
20 restraining order or preliminary injunction.

21 **II. BACKGROUND**

22 **A. SARS-CoV-2**

23 Transmission. Although much remains uncertain about the novel coronavirus,
24 “there is consensus among epidemiologists that the most common mode of transmission of
25 SARS-CoV-2 is from person to person, through respiratory droplets such as those that are
26 produced when an infected person coughs or sneezes, or projects his or her voice through
27
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1 speaking, singing and other vocalization.” (Dr. Watt Decl. ¶ 27, ECF No. 57-2¹; *accord*
2 Dr. Rutherford Decl. ¶ 28, ECF No. 57-3.²) The virus can also “live on certain surfaces
3 for a period of time, suggesting that fomite transmission (through touching a surface where
4 the live virus is present) is possible,” but this method of transmission “is not believed to be
5 a common method by which individuals can be infected by the virus.” (Dr. Watt Decl. ¶
6 29; *see also* Dr. Rutherford Decl. ¶ 30.) There is also “broad consensus that people who
7 are not experiencing symptoms can still spread SARS-CoV-2.” (Watt Decl. ¶ 30; *see also*
8 *id.* ¶ 31; Dr. Rutherford Decl. ¶¶ 20–32.) “Therefore, individuals who themselves may
9 have been unknowingly infected by others can themselves become unknowing transmitters
10 of the virus.” (Dr. Watt Decl. ¶ 32; *accord* Dr. Rutherford Decl. ¶ 27.)
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13 ¹ Dr. James Watt is the Chief of the Division of Communicable Disease Control of the Center for
14 Infectious Diseases at the California Department of Public Health (“CDPH”). (Dr. Watt Decl. ¶ 2.) He
15 received his doctor of medicine from the University of California, San Diego in 1993 and a master’s
16 degree in public health from the University of California, Berkeley in 1995. (*Id.* ¶ 3.) Dr. Watt previously
17 worked for the Centers for Disease Control and Prevention (“CDC”) as an Epidemic Intelligence Service
18 Officer in the Respiratory Diseases Branch. (*Id.* ¶ 4.) He is also an Associate at the Johns Hopkins
19 Bloomberg School of Public Health and a Clinical Professor at the University of California, San Francisco
20 School of Medicine, where he teaches graduate students in public health and medical students about
21 communicable disease control. (*Id.* ¶ 5.) His professional commendations include the U.S. Public Health
22 Service Achievement medal in 2000, the National Center for Infectious Diseases Honor Award in 2001,
23 and Outstanding Achievement Awards from the CDPH in 2015 and 2016. (*Id.* ¶ 8.) Dr. Watt has been
24 “very involved” in the CDPH’s response to the COVID-19 pandemic, “working full time for
25 approximately 60–70 hours per week to address the pandemic” from January 2020 to the date of his
26 declaration. (*Id.* ¶ 15.) The Court addresses Plaintiffs’ objections to Dr. Watt’s declaration and other
27 evidence below. *See infra* note 7.

28 ² Dr. George Rutherford is the Salvatore Pablo Lucia Professor of Epidemiology, Preventive
Medicine, Pediatrics, and History at the University of California, San Francisco School of Medicine. (Dr.
Rutherford Decl. ¶ 4.) He also leads the Division of Infectious Disease and Global Epidemiology in the
Department of Epidemiology and Biostatistics. (*Id.*) Further, Dr. Rutherford is an adjunct professor at
the University of California, Berkeley School of Public Health. (*Id.*) He also serves as the “Director of
Global Strategic Information Group in the Institute for Global Health Sciences at U.C. San Francisco.”
(*Id.*) Dr. Rutherford received his doctor of medicine from the Duke University School of Medicine in
1978. (*Id.* ¶ 2.) He also received training in epidemiology in the CDC’s Epidemic Intelligence Service
and spent ten years in various public health positions before entering academia. (*Id.* ¶ 3.) Since the novel
coronavirus emerged, Dr. Rutherford has “devoted substantial time to researching and studying the virus”
as part of his epidemiology roles and has “spoken extensively on topics related to the novel coronavirus
and the disease it causes during 2020,” including through presentations to the California Medical
Association and the California Health and Human Services Agency. (*Id.* ¶ 14.)

1 Gatherings. Group gatherings increase the risk of transmission of the virus. (Dr.
2 Watt Decl. ¶¶ 37–43; *see also* Dr. Rutherford Decl. ¶¶ 47–52.) “The more people that
3 gather, the higher the likelihood that an infected person will be present. Also, the larger
4 the gathering, the higher the number of people who may be secondarily infected by that
5 infected person.” (Dr. Watt Decl. ¶ 42; *see also* Dr. Rutherford Decl. ¶ 47.) “Evidence
6 indicates the risk of transmission at a gathering increases when individuals are in close
7 proximity to one another for an extended period.” (Dr. Watt Decl. ¶ 43.) The transmission
8 risk also “increases with both the length of time the gathering lasts and the proximity of
9 people to each other at the gathering.” (*Id.*)

10 Indoor Gatherings and Singing. Although gatherings increase the risk of
11 transmission of the virus, this risk “is much higher when the gathering takes place indoors
12 rather than outdoors.” (Dr. Watt Decl. ¶ 43; Dr. Rutherford Decl. ¶ 50 (“There is a lower
13 risk of COVID-19 transmission when a group gathering takes place outdoors; there is a
14 much decreased likelihood of aerosolized transmission of the virus outdoors because
15 aerosolized particles will dissipate into the atmosphere.”).) There is also “scientific
16 consensus that vocalization, even normal speech, produces aerosols, and that louder and
17 more forceful expression such as singing and chanting produces more aerosols.” (Dr. Watt
18 Decl. ¶ 45.) “Most scientists believe that group singing, particularly when engaged in while
19 in close proximity to others in an enclosed space, carries a high risk of spreading the
20 COVID-19 virus through the emission of infected droplets (which typically travel <6 feet
21 and aerosols.” (*Id.*; *see also* Dr. Rutherford Decl. ¶ 54 (explaining that engaging in
22 “singing, chanting, shouting, and speaking loudly . . . in an indoor or enclosed space”
23 increases the risk of transmission).)

24 Given the foregoing, religious “services and similar cultural events, particularly
25 those taking place in an enclosed space, involve a heightened level of risk of COVID-19
26 transmission.” (Dr. Watt Decl. ¶ 72; *accord* Dr. Rutherford Decl. ¶ 57.) “The
27 characteristics of such events that cause the increased risk of transmission include: being
28 indoors, bringing together a large group of people, having close proximity between

1 individuals, gathering for an extended duration, and having substantial singing and
2 vocalizing that generally takes place at the events.” (Dr. Watt Decl. ¶ 72; *see also* Dr.
3 Rutherford Decl. ¶ 57 (“Based on my knowledge, experience and study of the relevant
4 publications, attending indoor worship services (and similar cultural events, which are
5 included in this discussion) presents an exceptionally high risk of COVID-19 transmission
6 because they involve a combination of many high risk factors”).)

7 COVID-19. “The virus can cause severe disease and death in individuals of any age.
8 Older adults and people of any age who have serious underlying medical conditions are at
9 higher risk for severe illness or death from COVID-19.” (Dr. Watt Decl. ¶ 22; *see also* Dr.
10 Rutherford Decl. ¶¶ 40, 51.) “The symptoms of the disease are predominantly respiratory
11 but many of those infected also experience non-respiratory symptoms.” (Dr. Rutherford
12 Decl. ¶ 20; *see also* Dr. Watt Decl. ¶ 21.) “The disease typically starts as a fever and cough
13 that progresses to respiratory distress and pneumonia in some individuals. In its most
14 severe form it causes respiratory and/or myocardial failure.” (Dr. Rutherford Decl. ¶ 21.)
15 “Currently there is no vaccine available in the United States and no generally effective
16 treatment for COVID-19.” (*Id.* ¶ 36; *see also id.* ¶ 37 (noting that “[w]e have learned a lot
17 about treatment of the novel coronavirus since the beginning of the pandemic and
18 treatments have improved,” but “they are far from curative”); Dr. Watt Decl. ¶ 24.)

19 **B. South Bay Pentecostal Church**

20 Plaintiff South Bay Pentecostal Church “is a multi-national, multi-cultural
21 congregation” located in Chula Vista in San Diego County, California. (Bishop Hodges
22 Decl. ¶ 3, ECF No. 12-2.) Its congregation “represents a cross-section of society, from rich
23 to poor and encompassing people of all ages.” (*Id.* ¶ 17.) Plaintiff Bishop Art Hodges III
24 has served as the senior pastor of the Church for thirty-five years. (*Id.* ¶ 2.)

25 Typically, the Church holds “between three and five services each Sunday.” (Bishop
26 Hodges Decl. ¶ 12, ECF No. 12-2.) “The average attendance at some of these services lies
27 between two-hundred (200) and three-hundred (300) congregants.” (*Id.*) The Church’s
28

1 “sanctuary can hold up to six-hundred (600) people.” (*Id.*) The Church “also perform[s]
2 baptisms, funerals, weddings, and other religious ceremonies.” (*Id.* ¶ 15.)

3 Bishop Hodges explains that “singing is at the heart of our worship services, and
4 comprises 25–50% of our typical Pentecostal worship gathering experience at Church.”
5 (Bishop Hodges Decl. ¶ 3, ECF No. 53-2.) “In a Pentecostal Church worship service,
6 everyone is instructed and expected to sing praise to God, just as everyone is instructed
7 and expected to pray to God. In our worship services, praying, singing, and praising God
8 is not for spectators, it is for participants.” (*Id.* ¶ 10.) A service at the Church also
9 “concludes with fellowship both inside and outside the sanctuary.” (Bishop Hodges Decl.
10 ¶ 14, ECF No. 12-2.) Bishop Hodges further explains: “‘Zoom Meetings’ and other tele-
11 conferencing applications are inadequate substitutes [for in-person services] as they curtail
12 a minister’s ability to lay hands upon a congregant or perform a baptism. They also curtail
13 our congregation’s ability to approach the altar, which is central to our experience of faith.”
14 (*Id.* ¶ 20.)

15 C. Stay-at-Home Order and First Motion for Injunctive Relief

16 Executive Order N-33-20. On March 4, 2020, the Governor of California
17 proclaimed a State of Emergency in California because of the threat of COVID-19.
18 (Second Am. Compl. (“SAC”) ¶ 18, ECF No. 47; *see also* SAC Ex. 1-1, ECF No. 47-1.)
19 On March 19, 2020, the Governor issued Executive Order N-33-20, which states that to
20 protect the public’s health, “all individuals living in the State of California” are “to stay at
21 home or at their place of residence except as needed to maintain continuity of operations
22 of the federal critical infrastructure sectors.” (SAC Ex. 1-1.)³ California’s Public Health
23 Officer designated a list of “Essential Critical Infrastructure Workers.” (SAC Ex. 1-2.)
24 Included in that list were “[f]aith based services that are provided through streaming or
25

26 ³ The Court considers the public records and government documents attached to the Second
27 Amended Complaint because their authenticity is not questioned. The Court similarly grants the State’s
28 and Plaintiffs’ requests for judicial notice as to the contents of public records and government documents.
(ECF Nos. 57-7, 69.) *See, e.g., Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. California*, 547 F.3d 962, 969 n.4 (9th Cir. 2008).

1 other technology.” (*Id.* at 16.) Meaning, Plaintiffs could conduct services over online
2 streaming video or teleconferencing, but not in person at the Church’s sanctuary. (*See id.*)

3 The State later released a “Resilience Roadmap” that categorized workplaces into
4 four stages. (SAC Ex. 1-3.) The roadmap placed “religious services” in Stage 3, along
5 with movie theaters, museums, and bars—instead of Stage 2, which included retail stores
6 and dine-in restaurants. (*Id.*) The County of San Diego adopted the State’s restrictions,
7 list of essential workers, and roadmap through a series of public health orders and
8 emergency regulations. (*See* SAC Exs. 2-2, 2-3, 2-4.)

9 On May 8, 2020, Plaintiffs filed this action against various State and County
10 officials.⁴ (ECF No. 1.) On May 11, 2020, Plaintiffs filed a First Amended Complaint
11 raising claims under the First Amendment’s Free Exercise, Establishment, Free Speech,
12 and Assembly Clauses; the Fourteenth Amendment’s Due Process and Equal Protection
13 Clauses; and rights enumerated in Article 1, sections 1 through 4, of the California
14 Constitution. (ECF No. 11.) Plaintiffs then moved for a temporary restraining order and
15 an order to show cause regarding a preliminary injunction. (ECF No. 12.) Plaintiffs sought
16 an injunction that would prevent the State and County “from enforcing . . . any prohibition
17 on Plaintiffs’ engagement in religious services, practices, or activities at which the County
18

19 _____
20 ⁴ After changes to the pleadings and personnel, the Defendants are:

Name	Title
Gavin Newsom	Governor of California
Xavier Becerra	Attorney General of California
Sandra Shewry*	Acting Director of the CDPH
Wilma J. Wooten	Public Health Officer, County of San Diego
Helen Robbins-Meyer	Director of Emergency Services, County of San Diego
William D. Gore	Sheriff of the County of San Diego

21 Plaintiffs sue all these Defendants in their official capacities. (SAC ¶¶ 10–15.) For simplicity, the
22 Court collectively refers to the State of California officials as either “California” or the “State.” The Court
23 also collectively refers to the County of San Diego officials as the “County” or “San Diego County.” *But*
24 *see* U.S. Const. amend XI; 42 U.S.C. § 1983; *Monell v. Department of Social Services of the City of New*
25 *York*, 436 U.S. 658 (1978).

26 * The Court substitutes Sandra Shewry, the Acting Director of the CDPH, in place of Sonia Angell,
27 the former official, who resigned. (*See* ECF No. 67 at n.1.) *See* Fed. R. Civ. P. 25(d).
28

1 of San Diego’s Social Distancing and Sanitation Protocol and Safe Reopening Plan is being
2 followed.” (ECF No. 12-1 at 25:10–14.)

3 Prior Ruling. On May 15, 2020, the Court denied Plaintiffs’ motion during a
4 telephonic hearing. (ECF No. 32.) The Court concluded Plaintiffs are unlikely to prevail
5 on the merits of their claims for several reasons. First, applying *Jacobson v.*
6 *Massachusetts*, 197 U.S. 11 (1905), the Court found that the State “may limit an
7 individual’s right to freely exercise his religious beliefs when faced with a serious health
8 crises” like that presented by COVID-19. (Mot. Hr’g Tr. 25:19–25, ECF No. 38.) The
9 Court reasoned: “The right to practice religion freely does not include the liberty to expose
10 the community to communicable disease or to ill health or death.” (*Id.* 26:1–3.)

11 Second, citing *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S.
12 520 (1993), the Court reasoned that the then-operative restrictions did not place a burden
13 on in-person worship services “because of a religious motivation, but because of the
14 manner in which the service is held, which happens to pose a greater risk of exposure to
15 the virus.” (Mot. Hr’g Tr. 26:9–25.) The Court highlighted that “the services involve
16 people sitting together in a closed environment for long periods of time.” (*Id.* 26:19–20.)
17 The Court further determined that Plaintiffs had “not demonstrated arbitrary exceptions to
18 [the] classification” level that included in-person worship services. (*Id.* 27:5–6.) The
19 Court also found the reopening restrictions were “rationally based on protecting safety and
20 stopping” the spread of the virus. (*Id.* 27:10–11.)

21 Third, the Court reasoned that, even if the equivalent of strict scrutiny applied to
22 Plaintiffs’ state constitutional free exercise claim, the restrictions were narrowly tailored
23 to further a compelling governmental interest—the State’s interest in protecting public
24 health. (Mot. Hr’g Tr. 27:12–28:17.) Finally, the Court determined Plaintiffs were
25 unlikely to succeed on their federal equal protection and due process claims. (*Id.* 29:18–
26 30:2.) And after further finding that neither the balance of equities nor the public interest
27 supported issuing a temporary restraining order, the Court denied Plaintiffs’ motion. (*Id.*
28 30:3–19.)

1 **D. Appeal and Changing Landscape**

2 Ninth Circuit. Plaintiffs appealed to the Ninth Circuit and filed an emergency
3 motion for an injunction that would allow them to hold in-person religious services pending
4 appeal. (ECF Nos. 35, 41–42.) On May 22, 2020, the Ninth Circuit denied Plaintiffs’
5 request. *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938 (9th Cir. 2020). The
6 Ninth Circuit concluded Plaintiffs had “not demonstrated a sufficient likelihood of success
7 on appeal.” *Id.* at 939. It explained:

8 Where state action does not “infringe upon or restrict practices because of
9 their religious motivation” and does not “in a selective manner impose
10 burdens only on conduct motivated by religious belief,” it does not violate the
11 First Amendment. *See Church of the Lukumi Babalu Aye, Inc. v. City of*
12 *Hialeah*, 508 U.S. 520, 533, 543, (1993). We’re dealing here with a highly
13 contagious and often fatal disease for which there presently is no known cure.
14 In the words of Justice Robert Jackson, if a “[c]ourt does not temper its
doctrinaire logic with a little practical wisdom, it will convert the
constitutional Bill of Rights into a suicide pact.” *Terminiello v. City of*
Chicago, 337 U.S. 1, 37 (1949) (Jackson, J., dissenting).

15 *Id.* at 939. The Ninth Circuit also determined the remaining injunction factors “do not
16 counsel in favor of injunctive relief.” *Id.* at 940. Judge Collins dissented. *Id.* at 940–47.
17 He reasoned the State’s then-operative reopening plan is not facially neutral or generally
18 applicable, is subject to strict scrutiny, and does not pass muster under this standard. *Id.* at
19 943–46. On the last point, Judge Collins reasoned California’s “undeniably compelling
20 interest in public health” could be achieved through narrower restrictions that regulated the
21 “specific underlying risk-creating *behaviors*, rather than banning the particular *religious*
22 setting within which they occur.” *Id.* at 946–47.

23 On May 25, 2020, California issued guidelines that allow places of worship to
24 resume in-person services with limitations. (SAC Ex. 1-5.) The guidelines contain
25 instructions and recommendations for physical distancing during worship services as well
26 as cleaning and disinfection protocols, training for employees and volunteers, and
27 individual screening. (*Id.*) Further, while citing the increased risk of transmission of the
28 virus in an indoor setting, the guidelines limit attendance for in-person worship services

1 “to 25% of building capacity or a maximum of 100 attendees, whichever is fewer.” (*Id.* at
2 3.)

3 Supreme Court. When California relaxed its restrictions, Plaintiffs were seeking
4 emergency relief from the Supreme Court. (Grabarsky Decl. Ex. 6, ECF No. 57-1.) They
5 filed a supplemental brief to challenge the State’s May 25 guidelines. (*Id.* Ex. 7.) After
6 Justice Kagan referred Plaintiffs’ application for injunctive relief to the Supreme Court, the
7 Court denied it. *S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613 (2020).
8 Chief Justice Roberts wrote an opinion concurring in the denial of the application. *Id.* at
9 1613–14. He reasoned:

10 Although California’s guidelines place restrictions on places of worship, those
11 restrictions appear consistent with the Free Exercise Clause of the First
12 Amendment. Similar or more severe restrictions apply to comparable secular
13 gatherings, including lectures, concerts, movie showings, spectator sports, and
14 theatrical performances, where large groups of people gather in close
15 proximity for extended periods of time. And the Order exempts or treats more
16 leniently only dissimilar activities, such as operating grocery stores, banks,
and laundromats, in which people neither congregate in large groups nor
remain in close proximity for extended periods.

17 *Id.* at 1613. The Chief Justice further explained:

18 The precise question of when restrictions on particular social activities should
19 be lifted during the pandemic is a dynamic and fact-intensive matter subject
20 to reasonable disagreement. Our Constitution principally entrusts “[t]he
21 safety and the health of the people” to the politically accountable officials of
22 the States “to guard and protect.” *Jacobson v. Massachusetts*, 197 U.S. 11,
23 38 (1905). When those officials “undertake[] to act in areas fraught with
24 medical and scientific uncertainties,” their latitude “must be especially
25 broad.” *Marshall v. United States*, 414 U.S. 417, 427 (1974). Where
26 those broad limits are not exceeded, they should not be subject to second-
guessing by an “unelected federal judiciary,” which lacks the background,
competence, and expertise to assess public health and is not accountable to
the people. *See Garcia v. San Antonio Metropolitan Transit Authority*, 469
U.S. 528, 545 (1985).

27 *Id.* Justice Kavanaugh dissented. He reasoned that indoor worship services are comparable
28 to “factories, offices, supermarkets,” and various other secular establishments that were

1 not subject to the same occupancy cap. *Id.* at 1614. And although “California undoubtedly
2 has a compelling interest in combating the spread of COVID–19 and protecting the health
3 of its citizens,” Justice Kavanaugh reasoned California’s restrictions discriminate against
4 religion because the State lacks a compelling justification for distinguishing between
5 worship services and the aforementioned secular businesses. *Id.* at 1615.

6 **E. Continued Developments and Limited Remand**

7 Singing Restrictions. After the Supreme Court’s decision, the State and County
8 officials continued to “actively shap[e] their response to changing facts on the ground.”
9 *See* 140 S. Ct. at 1614 (Roberts, C.J.). In early July, the State issued revised guidance that
10 requires places of worship to “discontinue indoor singing and chanting activities” because
11 such activities “negate the risk reduction achieved through six feet of physical distancing.”
12 (SAC Ex. 1-9.) This prohibition on indoor group singing and chanting similarly applies
13 to political protests, schools, and restaurants.⁵ (*See* Dr. Watt Decl. ¶¶ 88–90 (explaining
14 why the State imposed restrictions on these activities and noting that other gatherings that
15 involve “an elevated risk of COVID-19 virus spread through singing, chanting or similar
16 activities, such as those at live concerts, live music venues, live theatrical performances,
17 spectator sports, recreational team sports, theme parks and indoor protests, remain
18 prohibited throughout the State”).)

19 July 13 Closure Order. Then, on July 13, 2020, due to the “significant increase in
20 the spread of COVID-19,” the State issued an order re-imposing many previously relaxed
21 restrictions on indoor activities. (SAC Ex. 1-13.) In addition, for those counties on the
22 State’s “County Monitoring List,” which are those the State believed showed “concerning
23 levels of disease transmission, hospitalizations, insufficient testing, or other critical
24

25 ⁵ (Gabrasky Decl. Ex. 14 (providing “singing and chanting activities are discontinued” for “indoor
26 protests”); Ex. 15 (providing “[a]ctivities where there is increased likelihood for transmission from
27 contaminated exhaled droplets such as band and choir practice and performances are not permitted” and
28 any activities “that involve singing must only take place outdoors”); Ex. 16 (providing restaurants “must
discontinue” concert or performance-like entertainment “until these types of activities are allowed to
resume”).)

1 epidemiological markers,” the order closed various indoor businesses, as well as “places
2 of worship.” (*Id.*)

3 Limited Remand. Meanwhile, on July 10, 2020, while Plaintiffs’ interlocutory
4 appeal was pending, Plaintiffs moved this Court for an indicative ruling to revisit its denial
5 of their initial motion. (ECF No. 45.) The Court granted their request, reasoning it raised
6 a substantial issue. (ECF No. 46.) Plaintiffs then filed their Second Amended Complaint.
7 (ECF No. 47.) And on July 29, 2020, the Ninth Circuit remanded the appeal “for the
8 limited purpose of permitting the district court to consider Plaintiffs’ request in light of the
9 events and case law that have developed since May 15, 2020.” (ECF No. 49.)

10 Four-Tier System. On August 10, 2020, Plaintiffs filed their renewed motion for a
11 temporary restraining order or a preliminary injunction. (Renewed Mot., ECF No. 53.)
12 While the motion was being briefed, circumstances again changed. On August 28, 2020,
13 due to “increased knowledge of disease transmission vulnerabilities and risk factors,” the
14 State established a new four-tier system for reopening, which superseded the State’s July
15 13 order. (Grabarsky Decl. Exs. 50–53.) Under this four-tier system, which is more
16 nuanced than the State’s prior restrictions, lower-risk activities and sectors are permitted
17 to resume sooner than higher-risk ones based on a series of “risk criteria.” These criteria
18 include the ability “to physically distance between individuals from different households,”
19 “to limit the number of people per square foot,” “to limit duration of exposure,” “to
20 optimize ventilation (e.g. indoor vs outdoor, air exchange and filtration),” and “to limit
21 activities that are known to cause increased spread” like singing and shouting. (*Id.* Ex. 51;
22 *see also* Dr. Rutherford Decl. ¶¶ 57–71 (discussing risks of indoor religious worship and
23 cultural events, grocery shopping, restaurant dining, and factories and whether those
24 environments involve the “heightened risk created by group singing”).)

25 Counties are assigned to a tier based on their reported COVID-19 case rate and
26 percentage of positive COVID-19 tests. (Grabarsky Decl. Ex. 50.) For example, Tier 2 is
27 the red-colored tier, which marks “substantial” risk of community disease transmission.
28 (*Id.*) The State placed San Diego County into this tier when Plaintiffs’ motion was being

1 briefed, and the County remains there now. (*Id.* Ex. 52-1.)⁶ In this tier, Plaintiffs again
2 may hold indoor worship services up to 25% of building capacity or 100 persons,
3 whichever is fewer. (*Id.* Exs. 52–23.) Indoor restaurants and movie theaters in the County
4 are subject to the same attendance restrictions as worship services, but bars, wineries,
5 cardrooms, concerts, sporting events, family entertainment centers, and theatrical
6 performances remain either closed entirely or restricted to outdoor activities only. (*Id.* Ex.
7 53.) Retail stores—except standalone grocers—are limited to 50% capacity indoors with
8 modifications. (*Id.*) Non-critical office spaces are designated “remote,” and gyms are
9 limited to 10% capacity indoors. (*Id.*)

10 The State and County filed oppositions to Plaintiffs’ renewed motion, and Plaintiffs
11 filed a reply to each opposition. (State’s Opp’n, ECF No. 57; County’s Opp’n, ECF No.
12 58; County’s Joinder, ECF No. 59; Reply to State’s Opp’n, ECF No. 61; Reply to County’s
13 Opp’n, ECF No. 61-1.)⁷ Further, on September 4, 10, 11, and 14, and on October 1, 6, 7,
14

15 ⁶ Although the facts underlying the State’s decision making with respect to its four-tier system
16 may be subject to dispute, the fact that the State has placed and kept San Diego County in Tier 2 is not
17 subject to reasonable dispute. *See* Blueprint for a Safer Economy—Current Tier Assignments as of
18 October 13, 2020, <https://covid19.ca.gov/safer-economy/>; *see also* Fed. R. Evid. 201(b); *King v. Cty. of*
Los Angeles, 885 F.3d 548, 555 (9th Cir. 2018) (taking judicial notice of “undisputed and publicly
available information displayed on government websites”).

19 ⁷ Plaintiffs lodge 142 evidentiary objections to the evidence submitted by California and the
20 County. (ECF No. 61-6.) Among raising other objections, Plaintiffs argue certain evidence is hearsay,
irrelevant, “more prejudicial than probative,” or lacks foundation. (*Id.* at 1:12–142.) The State responds.
(ECF No. 65.)

21 The Court overrules these objections. Evidence submitted in connection with a request for a
22 preliminary injunction is not subject to the same requirements that would apply at trial. *See Flynt Distrib.*
Co. v. Harvey, 734 F.2d 1389, 1394 (9th Cir. 1984); *see also, e.g., Johnson v. Couturier*, 572 F.3d 1067,
23 1083 (9th Cir. 2009) (“A district court may, however, consider hearsay in deciding whether to issue a
preliminary injunction.”); *Nat’l Rifle Ass’n of Am. v. City of Los Angeles*, 441 F. Supp. 3d 915, 926 (C.D.
24 Cal. 2019) (“Because of the extraordinary nature of injunctive relief . . . a district court may consider
evidence outside the normal rules of evidence, including: hearsay, exhibits, declarations, and pleadings.”);
25 *Rosen Entm’t Sys., LP v. Eiger Vision*, 343 F. Supp. 2d 908, 912 (C.D. Cal. 2004) (applying the Ninth
Circuit’s reasoning in *Flynt* to objections to the defendant’s evidence). Rather, the evidence’s form
26 impacts the weight it is given when the court assesses the merits of equitable relief. *Rosen*, 343 F. Supp.
2d at 912. Indeed, the Court notes that both parties, including their proposed experts, routinely rely on
27 various reported statistics for COVID-19. (*See, e.g.,* SAC ¶¶ 105–112 (citing statistics prepared by
California and the County); Cicchetti Decl. ¶¶ 17–19 (citing data from *Politico* and *The New York Times*);
28 Dr. Delgado Decl. ¶¶ 7–14 (relying on CDC and non-governmental website data); *Lyons-Weiler* Decl. ¶¶

1 and 13, 2020, the parties filed notices of supplemental authority, all of which the Court has
2 considered. (ECF Nos. 60, 62–64, 66–68, 70.)

3 **III. LEGAL STANDARD**

4 The standard for a temporary restraining order and preliminary injunction are
5 “substantially identical.” *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832,
6 839 n.7 (9th Cir. 2001). “A plaintiff seeking a preliminary injunction must establish that
7 [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the
8 absence of preliminary relief, that the balance of equities tips in [its] favor, and that an
9 injunction is in the public interest.” *Winter*, 555 U.S. at 20. The party seeking the
10 injunction bears the burden of proving these elements. *Klein v. City of San Clemente*, 584
11 F.3d 1196, 1201 (9th Cir. 2009). “A preliminary injunction is ‘an extraordinary and drastic
12 remedy, one that should not be granted unless the movant, by a clear showing, carries the
13 burden of persuasion.’” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting
14 *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)).

15 **IV. ANALYSIS**

16 Against this backdrop, the Court considers Plaintiffs’ renewed request for injunctive
17 relief against the State and County officials. Plaintiffs tailor their renewed motion to their
18 “Free Exercise Claims under the U.S. and California Constitutions.” (Renewed Mot. 8
19 n.4.) Therefore, the Court focuses its analysis on these claims.

20 Further, the Court analyzes these claims in light of the current restrictions that apply
21 to the Church. As summarized above, San Diego County is in the State’s “red” tier—Tier
22 2. Thus, worship services may be held outdoors and include singing and chanting outdoors.
23 Indoor worship services, however, are limited to up to 100 people or 25% of building
24 capacity, whichever is fewer, and may not include singing or chanting. *See supra* Part II.E.

25
26 _____
27 10–18, 27 (citing information from the European CDC and an assortment of news sources like *Bloomberg*
28 and *US News and World Report*); Trissell Decl. Exs. A–C (appending CDC and County statistics); Dr.
Watt Decl. ¶¶ 93–103; Dr. Rutherford Decl. ¶ 25.) To the extent the Court cites to evidence that Plaintiffs
object to, the Court has determined Plaintiffs’ objections are meritless or the evidence deserves some
weight at this stage notwithstanding concerns over its admissibility at trial.

1 Because Plaintiffs wish to hold indoor worship services that include group singing and
2 exceed the Tier 2 limit on attendees, the Court considers whether Plaintiffs have
3 demonstrated a likelihood of success on their claims that these restrictions violate their
4 federal and state constitutional free exercise rights. (*See* Renewed Mot. 6:25–7:6.)

5 At bottom, Plaintiffs’ renewed motion asks the Court to second guess decisions
6 made by California officials concerning whether COVID-19 continues to present a health
7 emergency and whether large indoor gatherings with singing pose a risk to public health.
8 Although not binding, the Court finds Chief Justice Roberts’s reasoning in this case to be
9 compelling. The background set forth above shows the State and County “are actively
10 shaping their response to changing facts on the ground.” *See* 140 S. Ct. at 1614 (Roberts,
11 C.J.). And the evidence demonstrates the COVID-19 pandemic remains an area “fraught
12 with medical and scientific uncertainties,” where the State and County’s latitude “must be
13 especially broad.” *See id.* at 1613 (quoting *Marshall*, 414 U.S. at 427).

14 Moreover, neither Plaintiffs’ evidence nor their arguments convincingly show that
15 the current restrictions exceed “those broad limits.” *See* 140 S. Ct. at 1613. Hence, the
16 Court finds Plaintiffs have not demonstrated a likelihood of success on the merits of their
17 free exercise claims. *See id.* at 1614 (“Where those broad limits are not exceeded, they
18 should not be subject to second-guessing by an ‘unelected federal judiciary,’ which lacks
19 the background, competence, and expertise to assess public health and is not accountable
20 to the people.” (quoting *Garcia*, 469 U.S. at 545)). Consequently, Plaintiffs are not entitled
21 to the “extraordinary and drastic remedy” that is injunctive relief before trial. *See Lopez*,
22 680 F.3d at 1072 (providing the court should not issue a preliminary injunction “unless the
23 movant, *by a clear showing*, carries the burden of persuasion”); *accord City & Cty. of San*
24 *Francisco v. U.S. Citizenship & Immigr. Servs.*, 944 F.3d 773, 789 (9th Cir. 2019).

25 The Court further expands upon its analysis below while addressing Plaintiffs’
26 claims that (i) COVID-19 no longer presents a public health emergency, (ii) the State’s
27 restrictions discriminate against places of worship, and (iii) the State’s restrictions have
28 been discriminatorily enforced.

1 **A. Public Health Emergency**

2 The Court previously reasoned that the State “may limit an individual’s right to
3 freely exercise his religious beliefs when faced with a serious health crises” like that
4 presented by COVID-19. (Mot. Hr’g Tr. 25:19–25, ECF No. 38 (citing *Jacobson v.*
5 *Massachusetts*, 197 U.S. 11 (1905).) In Plaintiffs’ renewed motion, they argue the
6 COVID-19 pandemic has stabilized in California, as the State “had only reported a total of
7 7,227 deaths” as of July 14, 2020. (Renewed Mot. 1:24–25 (citing COVID-19 Statewide
8 Update for July 15, 2020, SAC Ex. 5-3).) They also argue curbing the virus is no longer
9 “a compelling interest” given “the flattening of the death and hospitalization rates,
10 regardless of the infection rate,” as “numerous experts have concluded that the worst of the
11 pandemic is absolutely over.” (*Id.* 11:3–5.) Plaintiffs later argue that California’s
12 “scientific pronouncements” are “largely baseless,” and that by “all reasonable scientific
13 measurements,” the COVID-19 health emergency “has ended.” (Reply to State’s Opp’n
14 1:12–15.)

15 Plaintiffs’ position is not convincing. For one, arguments of counsel are
16 not evidence. *See, e.g., Carrillo-Gonzalez v. I.N.S.*, 353 F.3d 1077, 1079 (9th Cir. 2003).
17 In determining whether to grant extraordinary relief, this Court is not bound by Plaintiffs’
18 counsel’s interpretation of CDC statistics or what they believe is an acceptable death rate
19 for COVID-19 compared to other causes of death—many of which are not contagious and
20 are well-understood by the scientific community. (*See* Renewed Mot. 1:13–3:4; Reply to
21 State’s Opp’n 1:13–25; *see also* Dr. Watt Decl. ¶¶ 101–02.)⁸ Second, the State’s evidence

22
23 ⁸ Plaintiffs highlight that “the CDC updated its coronavirus statistics to reveal that for 94% of
24 coronavirus related deaths, ‘in addition to COVID-19, on average, there were 2.6 additional’
25 comorbidities.” (Reply to State Opp’n 1:15–22 (citing Trissell Decl. Ex. NN, ECF No. 61-5).) They
26 extrapolate this 94% statistic to determine a much smaller infection-fatality rate for those who “are healthy
27 and have no other comorbidities.” (*Id.* 1:21–22.) That characterization is problematic. The
28 “comorbidities” listed in the CDC’s data include not only common health conditions like obesity, diabetes,
and hypertension, but also conditions that COVID-19 *itself* can cause *before* death—like “pneumonia”
and “respiratory failure.” (Trissell Decl. Ex. NN at 5–6; *see also* Dr. Watt Decl. ¶ 21; Dr. Rutherford
Decl. ¶ 21 (“The disease typically starts as a fever and cough that progresses to respiratory distress and
pneumonia in some individuals. In its most severe form it causes respiratory and/or myocardial failure.”).)

1 regarding infections and deaths amply demonstrates that SARS-CoV-2 and COVID-19
2 continue to present a public health emergency in California, including in the County of San
3 Diego. (Dr. Watt Decl. ¶¶ 16–103; Dr. Rutherford Decl. ¶¶ 16–46.) Third, Plaintiffs’
4 contrary evidence is not compelling. At best, Plaintiffs’ evidence confirms that “[t]he
5 precise question of when restrictions on particular social activities should be lifted during
6 the pandemic is a dynamic and fact-intensive matter subject to reasonable disagreement.”⁹
7 *See S. Bay Church*, 140 S. Ct. at 1613 (Roberts, C.J.). And because Plaintiffs do not show
8 “the broad limits” of the State and County’s discretion in this context are being exceeded,
9 second guessing their decisions is not appropriate. *See id.*; *see also San Francisco*, 944
10 F.3d at 789 (providing the court should not issue a preliminary injunction “unless the
11 movant, *by a clear showing*, carries the burden of persuasion”). Accordingly, the Court
12

13 The State, of course, has a compelling interest in protecting all of its residents from a communicable
14 disease—including those residents with conditions like obesity and diabetes that may ultimately be
15 “comorbidities” along with COVID-19.

16 ⁹ *Compare* Cicchetti Decl. ¶ 20, ECF No. 53-5 (claiming, as an economist, that there “is no
17 scientific evidence that supports California continuing to restrict religious worship”), *and* Kauffman Decl.
18 ¶ 14, ECF No. 53-6 (expressing that “[d]espite the state’s claim, there is no rational and legitimate
19 scientific or public health basis supporting the sweeping breadth and scope of the State of California’s
20 above-described closure mandate”), *and* Lyons-Weiler Decl. ¶ 29, ECF No. 53-7 (opining that the
21 increasing cases in the United States “are not as large of a concern as they were in the beginning of the
22 pandemic” because the “infection case fatality rate . . . is falling fast” and “COVID-19 is not the monster
23 we initially thought it was”), *and* Dr. Bhattacharya Decl. ¶ 28, ECF No. 53-8 (estimating the “infection
24 fatality rate is less than 0.2%” for “the non-elderly congregants,” whereas the mortality risk for those over
25 seventy who contract the disease is “still small, with 98.7% of infected elderly people surviving the
26 infection”), *and* Trissell Decl. Exs. D–F, ECF No. 69-1 (arguing that current lockdown policies are
27 producing detrimental effects on short and long-term public health and “[t]he most compassionate
28 approach that balances the risks and benefits of reaching herd immunity, is to allow those who are at
minimal risk of death to live their lives normally to build up immunity to the virus through natural
infection, while better protecting those who are at highest risk”), *with* Watt Decl. ¶¶ 93–103, ECF No. 57-
2 (explaining that having “a single infectious disease as a top ranking cause of death signals a serious
change” because “[i]nfectious diseases were commonly the top causes of death decades ago, but they have
been replaced with chronic diseases more recently because our public health efforts have led to reductions
in infectious disease”), *and* Dr. Rutherford Decl. ¶¶ 38–46, ECF No. 57-3 (opining that “the novel
coronavirus pandemic calls for extraordinary measures to protect the population” not only because it
causes serious illness or death, but also because there is “emerging evidence that the virus has serious
lasting, and possibly long-term, effects on some individuals”), *and* Imrey Decl. ¶ 50, ECF No. 57-4
(opining that “Dr. Bhattacharya’s seroprevalence-survey based claims of very low overall and age-specific
COVID-19 infection fatality rates, generally and specifically in California, remain matters on which, for
good reasons, there is no scientific consensus”).

1 rejects Plaintiffs’ claim that the State’s restrictions are unconstitutional because the
2 COVID-19 public health emergency has ended.

3 **B. Discriminatory Restrictions**

4 “Where state action does not ‘infringe upon or restrict practices because of their
5 religious motivation’ and does not ‘in a selective manner impose burdens only on conduct
6 motivated by religious belief,’ it does not violate the First Amendment.” *S. Bay Church*,
7 959 F.3d at 939 (quoting *Lukumi*, 508 U.S. at 532). In determining whether a law
8 discriminates against religion, courts compare the treatment of religious conduct and
9 “analogous non-religious conduct” and consider whether the governmental interests “could
10 be achieved by narrower ordinances that burden[] religion to a far lesser degree.” *Lukumi*,
11 508 U.S. at 546.

12 As mentioned, the Court’s decision to deny Plaintiffs’ initial request for injunctive
13 relief also rested on the Court’s determination that the then-operative restrictions did not
14 place a burden on in-person worship services “because of a religious motivation, but
15 because of the manner in which the service is held, which happens to pose a greater risk of
16 exposure to the virus.” (Mot. Hr’g Tr. 26:9–25.) The Court further determined that
17 Plaintiffs had “not demonstrated arbitrary exceptions to [the] classification” of restrictions
18 that included in-person worship services. (*Id.* 27:5–6.) Plaintiffs argue the revised
19 restrictions do not pass muster under Free Exercise Clause standards for an assortment of
20 reasons, including that the State’s four-tier system gives preferential treatment to secular
21 businesses like supermarkets, retail stores, and factories. (*See* Renewed Mot. 8:11–17:22.)

22 In resolving Plaintiffs’ free exercise arguments, the Court finds persuasive Judge
23 Bernal’s decision from the Central District of California that considered the same four-tier
24 system in *Harvest Rock Church, Inc. v. Newsom*, No. LACV 20-6414 JGB (KKx), 2020
25 WL 5265564 (C.D. Cal. Sept. 2, 2020), and the Ninth Circuit’s subsequent opinion, No.
26 20-55907, 2020 WL 5835219 (9th Cir. Oct. 1, 2020). Judge Bernal denied Harvest
27 International Ministry and Harvest Rock Church’s comparable request for injunctive relief,
28 reasoning in part that they had not shown a likelihood of success on the merits of their free

1 exercise claims. 2020 WL 5265564, at *2–3. The plaintiffs appealed, and the Ninth
2 Circuit similarly denied their emergency motion to enjoin “California Governor Gavin
3 Newsom’s COVID-19 Executive Orders and related restrictions (Orders) as they apply to
4 in-person worship services.” 2020 WL 5835219, at *2. The Ninth Circuit explained:

5 We find that Harvest Rock has not shown a likelihood of success on its
6 argument that the district court abused its discretion by declining to enjoin the
7 Orders. The evidence that was before the district court does not support
8 Harvest Rock’s arguments that the Orders accord comparable secular activity
9 more favorable treatment than religious activity. The Orders apply the same
10 restrictions to worship services as they do to other indoor congregate events,
11 such as lectures and movie theaters. Some congregate activities are
12 completely prohibited in every county, such as attending concerts and
13 spectating sporting events. The dissent states that the restrictions applicable
14 to places of worship ‘do not apply broadly to all activities that might appear
15 to be conducted in a manner similar to religious services,’ but does not provide
16 support for this point. By our read the restrictions on theaters and higher
17 education are virtually identical.

18 Harvest Rock also contends that the Governor failed to provide a
19 rationale for the more lenient treatment of certain secular activities, such as
20 shopping in a large store. However, the Governor offered the declaration of
21 an expert, Dr. James Watt, in support of the claim that the risk of COVID-19
22 is elevated in indoor congregate activities, including in-person worship
23 services. Harvest Rock did not offer a competing expert or any other evidence
24 to rebut Dr. Watt’s opinion that congregate events like worship services are
25 particularly risky. Because the district court based its order on the only
26 evidence in the record as to the risk of spreading COVID-19 in different
27 settings, Harvest Rock is unlikely to show that the district court abused its
28 discretion.

29 *Id.* at *1.

30 The question, then, is whether the evidence before the Court points to a different
31 outcome than in *Harvest Rock*. It does not. As set forth above, the evidence shows that
32 the State’s restrictions are based on the elevated risk of transmission of the novel
33 coronavirus in indoor settings, particularly congregate activities and those involving
34 singing and chanting. *See supra* Part II.A, E. The restrictions are tailored to the State’s
35 understanding of the risk of certain activities and the potential spread of SARS-CoV-2, not

1 the targeted conduct’s religious motivation. *See S. Bay Church*, 959 F.3d at 939 (citing
2 *Lukumi*, 508 U.S. at 532); *see supra* Part II.E. And the State has continued to fine tune its
3 restrictions “to changing facts on the ground.” *See S. Bay Church*, 140 S. Ct. at 1614
4 (Roberts, C.J.). (*See also* Dr. Watt Decl. ¶¶ 47–106.)

5 That said, unlike the *Harvest Rock* plaintiffs, Plaintiffs here submit evidence that
6 includes a declaration from the medical director of a family medical group, Dr. George
7 Delgado, who has “been intimately involved in planning for the current coronavirus disease
8 . . . for [his] family medical group and hospice.” (Dr. Delgado Decl. ¶¶ 2–5, ECF No. 53-
9 4.) Among other things, Dr. Delgado states, “I feel that going to one’s church, synagogue
10 or mosque should be much safer than going to the grocery store, participating in a protest,
11 or working at a manufacturing facility.” (*Id.* ¶ 14.) To support this statement in his
12 supplemental declaration,¹⁰ Dr. Delgado sets forth a “comparative risk analysis” that states
13 the risk of contracting COVID-19 at a house of worship is “0.125 or 12.5% the risk at the
14 grocery store,” “0.01 or 1% the risk at public protests,” and “0.25 or 25% the risk at [a]
15 manufacturing facility.” (Dr. Delgado Decl. ¶¶ 25, 33, 43.)¹¹

16 The State argues Dr. Delgado’s comparative risk assessment is both baseless and
17 inadmissible for a litany of reasons. (State’s Opp’n 18:5–20:17.) The State also supplies
18 the opinion of Peter B. Imrey, Ph.D., a Professor of Medicine at Cleveland Clinic and Case
19 Western Reserve University. Imray explains why Dr. Delgado’s broad-brushed assessment
20 that leads to precise probabilities of the risk of COVID-19 spread is not accepted as reliable
21 in the relevant scientific community. (Imrey Decl. ¶¶ 31–40 (explaining that Dr. Delgado’s
22 incomplete model “is unscientific” because it does not include supporting data and there is
23 no “practical scientific basis” for “assessing the reliability of such numbers”). *See also*
24 *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592–94 (1993) (providing the court
25

26 ¹⁰ Dr. Delgado provided a similar declaration in support of Plaintiffs’ initial motion for injunctive
27 relief. (*See* Dr. Delgado Decl. ¶¶ 14–23, ECF No. 12-3.)

28 ¹¹ Although Plaintiffs’ other declarants make statements about the danger of COVID-19 to
religious congregants and the broader public as part of the debate referenced above, *see supra* note 9, they
do not provide this type of comparative risk assessment.

1 can consider whether a technique is acceptable in the relevant scientific community). In
2 rebuttal to Imrey’s detailed critique, Dr. Delgado states that “there are presently no
3 adequate models or methodologies to compare risks, and so I cite none” and that his
4 assessment is based “on common scientific sense.” (Dr. Delgado Decl. ¶ 36, ECF No. 61-
5 3.) *But see Daubert v. Merrell Dow Pharm., Inc.*, 43 F.3d 1311, 1319 (9th Cir. 1995)
6 (explaining that when peer review scrutiny is unavailable, experts should “explain
7 precisely how they went about reaching their conclusions and point to some objective
8 source—a learned treatise, the policy statement of a professional association, a published
9 article in a reputable scientific journal or the like—to show that they have followed the
10 scientific method, as it is practiced by (at least) a recognized minority of scientists in” the
11 relevant field).

12 The Court assigns Dr. Delgado’s declaration minimal weight. Although he may
13 have treated “people with infectious diseases including viral illnesses such as influenza
14 which tend to occur in epidemics,” Dr. Delgado lacks significant experience in
15 epidemiology. (Dr. Delgado Decl. ¶¶ 2–5.) Moreover, he does not explain the basis for
16 his model used to assess the precise comparative risk of religious services and other
17 activities—nor does he provide any supporting data for his conclusions. (*See id.* ¶¶ 25, 31,
18 41 (broadly assigning values for “relative risk” factors like “touching objects” and being
19 in “[c]lose contact with others” for various different environments without offering any
20 data to support them); *see also* Imrey Decl. ¶¶ 31–40 (dissecting Dr. Delgado’s
21 comparative risk model).) Therefore, although the Court has opted to not strictly apply the
22 Rules of Evidence to the parties’ submissions, *see supra* note 7, the Court does not believe
23 Dr. Delgado’s comparative risk assessment survives scrutiny under *Daubert*. *See* 509 U.S.
24 579; *see also* Fed. R. Evid. 702 (providing expert testimony must be “based on sufficient
25 facts or data” and be “the product of reliable principles and methods”).

26 And finally, aside from being unreliable, Dr. Delgado’s comparative risk assessment
27 is simply not convincing in light of the evidence before the Court. The COVID-19
28 pandemic remains an area “fraught with medical and scientific uncertainties.” *See S. Bay*

1 *Church*, 140 S. Ct. at 1613 (Roberts, C.J.). It is one thing for an expert to explain why
2 epidemiologists believe there is a higher risk of transmission of SARS-CoV-2 in large
3 gatherings, indoor spaces, and where groups are singing indoors, it is quite another for
4 someone to purport to calculate—without data—that the risk of contracting COVID-19 at
5 a house of worship is “12.5% the risk at the grocery store” or “1% the risk at public
6 protests.” (See Dr. Watt Decl. ¶¶ 27–45; Dr. Delgado Decl. ¶¶ 25, 33, 43.) See also *supra*
7 note 7. Probabilities are not derived from only “common scientific sense.” (See Dr.
8 Delgado Decl. ¶ 36, ECF No. 61-3.) Hence, the Court assigns some weight to Dr.
9 Delgado’s opinions about COVID-19, but the Court assigns no weight to the conclusions
10 of his comparative risk assessment.

11 On balance, having reviewed the parties’ evidence, the Court finds Plaintiffs have
12 not shown they are likely to succeed in demonstrating the State and County’s restrictions
13 “infringe upon or restrict practices because of their religious motivation” or “in a selective
14 manner impose burdens only on conduct motivated by religious belief.” See *S. Bay*
15 *Church*, 959 F.3d at 939 (quoting *Lukumi*, 508 U.S. at 533, 543); see also *Harvest Rock*
16 *Church*, 2020 WL 5835219, at *1–2. This determination does not mean Plaintiffs could
17 not prevail at a trial on the merits. Rather, they merely have not shown they are entitled to
18 the extraordinary remedy that is injunctive relief before trial. See *San Francisco*, 944 F.3d
19 at 789 (providing the court should not issue a preliminary injunction “unless the movant, by
20 a clear showing, carries the burden of persuasion”).

21 C. Discriminatory Enforcement

22 Last, the Court addresses Plaintiffs’ argument that California’s restrictions “have
23 been enforced discriminatorily.” (Renewed Mot. 9:13–28; see also *id.* 20:16–23:9.)
24 Plaintiffs argue that “despite enforcing its restrictions against houses of worship, California
25 has steadfastly refused to enforce its restrictions against political protests,” making “places
26 of worship” ultimately “pay for the sins of protestors . . . a palpable violation of Plaintiffs’
27 rights.” (*Id.* 21:11–12, 23:8–9.) See also *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1083–
28 84 (9th Cir. 2015) (analyzing a claim of whether Washington’s Pharmacy Quality

1 Assurance Commission selectively enforced rules concerning emergency contraceptives
2 “against religiously motivated violations but not against secularly motivated violations” in
3 contravention of the Free Exercise Clause).

4 The Court is unconvinced. Plaintiffs are challenging the State and County’s
5 restrictions on indoor worship and group singing—not outdoor gatherings or protests. The
6 operative restrictions do not limit attendance for outdoor religious services or outdoor
7 protests. (*See* SAC Ex. 1-7; Grabarsky Decl. Ex. 14.) And the challenged restriction on
8 group singing applies equally to indoor religious services and indoor protests. *See supra*
9 Part II.E. Further, as described above, the distinction between indoor and outdoor
10 gatherings is based on the State’s understanding of the increased risk of transmission of the
11 novel coronavirus indoors. The same is true for the distinction between indoor and outdoor
12 group singing. *See supra* Part II.A, E. Hence, the Court agrees that by focusing on outdoor
13 protests, “Plaintiffs are comparing apples and oranges.” (State’s Opp’n 28:3–4.) Indeed,
14 Judge Bernal rejected a similar argument in *Harvest Rock Church*. *See* 2020 WL 5265564,
15 at *2 (reasoning that “how the Orders treat outdoor protests is irrelevant to whether the
16 Orders’ restriction on indoor religious services is constitutional” and “whether the
17 Governor encouraged outdoor protests that violated earlier stay-at-home orders is” likewise
18 “irrelevant”).¹² The evidence in this case leads the Court to the same conclusion.

19 Moreover, the Court agrees that Plaintiffs do not otherwise demonstrate a pattern of
20 discriminatory enforcement. On this point, the County shows that as of August 26, 2020,
21 it “had issued 144 citations for violations of the County’s COVID-19 public health orders.”
22 (Jordan Decl. ¶ 2, Ex. A, ECF No. 58-1.) None of those 144 citations was issued to places
23 of worship or persons engaged in religious services. (*Id.* ¶ 3.)

24
25 ¹² For this same reason, the Court finds distinguishable the district court’s discussion of protests
26 in *Capital Hill Baptist Church v. Muriel Bowser*, No. 20-CV-02710 (TNM), 2020 WL 5995126 (D.D.C.
27 Oct. 9, 2020). (*See* ECF No. 70.) In that case, the District of Columbia contended it “has a compelling
28 interest in capping the number of attendees at the Church’s *outdoor services*.” *Id.* at *8 (emphasis added).
Here, by contrast, the State and County are not limiting the attendees at outdoor religious services, and
the State’s restrictions are based on its understanding of the increased risk posed by large *indoor* gatherings
that include group singing.

1 In addition, through August 26, 2020, the County had served ten cease-and-desist
2 orders or compliance letters to businesses and other entities with respect to reported
3 violations of the County’s public health orders. (Johnston Decl. ¶ 7, Ex. B, ECF No. 58-
4 2.) Only three of those items were issued to places of worship. (*Id.*) The remaining seven
5 were issued to businesses—including gyms and a restaurant with a bar—as well as a
6 college and a public school district. (*Id.*)

7 Finally, aside from issuing citations and cease-and-desist orders, the County has
8 issued health officer orders that require a business or other organization to immediately
9 close down and cease operations. (Jordan Decl. ¶ 9, Ex. C.) As of August 26, 2020, the
10 County had issued only five of these orders—none to places of worship. (*Id.*) Three of
11 the five immediate-closure orders were served on gyms that continued indoor operations
12 in violation of the applicable rules, and the other two were issued to restaurants with bars
13 for repeated violations of social distancing, sanitation, and facial covering requirements.
14 (*Id.*) The County submits that this evidence shows its “enforcement of COVID-19 public
15 health orders and regulations has been uniform, evenhanded, and in no way has treated
16 secular businesses or activities more favorably than religious organizations or services.”
17 (County’s Opp’n 10:11–16.)

18 In response, Plaintiffs claim the County “misses the point” because the County
19 “treats protestors as first-class citizens.” (Reply to County Opp’n 8:16–9:12.) The Court
20 disagrees. The manner in which the County is enforcing the State’s COVID-19 restrictions
21 goes to the heart of whether there has been discriminatory enforcement. The evidence does
22 not show a pattern of discriminatory enforcement against religious organizations. Nor does
23 the evidence show the County has treated comparable secular businesses or activities more
24 favorably than religious organizations. Therefore, Plaintiffs do not meet their burden on
25 this point. *See Stormans*, 794 F.3d at 1083–84 (concluding there was no evidence of
26 selective enforcement by the state commission against religiously motivated violations).

27 Overall, the Court finds that Plaintiffs have not shown they are likely to succeed on
28 their claim that the challenged restrictions are unconstitutional in light of discriminatory


1 enforcement. Hence, injunctive relief is similarly not appropriate on this basis. *See San*
2 *Francisco*, 944 F.3d at 789 (providing the court should not issue a preliminary injunction
3 “unless the movant, *by a clear showing*, carries the burden of persuasion”).

4 **V. CONCLUSION**

5 In sum, Plaintiffs have not demonstrated that new developments mean they are likely
6 to succeed on their free exercise claims under the federal and state constitutions. The
7 Court’s analysis of the remaining injunctive relief factors remains the same. (*See Mot.*
8 *Hr’g Tr.* 30:3–19.) Plaintiffs thus have not shown they are entitled to injunctive relief
9 before a trial on the merits. Consequently, the Court confirms its prior conclusions and
10 **DENIES** Plaintiffs’ renewed motion for a temporary restraining order or preliminary
11 injunction (ECF No. 53). For the same reasons, the Court also confirms that an injunction
12 pending appeal is not appropriate.

13 **IT IS SO ORDERED.**

14
15 **DATED: October 14, 2020**


Hon. Cynthia Bashant
United States District Judge

APPENDIX G-1



SANDRA SHEWRY, MPH, MSW
Acting Director

State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

**Statewide Public Health Officer Order,
August 28, 2020**

On March 19, 2020, the State Public Health Officer issued an order directing all individuals living in the State of California to stay at home except as needed to facilitate authorized activities or to maintain the continuity of operations of critical infrastructure sectors. (See [March 19, 2020 Order](#).) The scope of activities authorized under this order was subsequently modified in additional state public health directives. Then, consistent with Executive Order N-60-20, the State Public Health Officer set out California's path forward from this "Stay-at-Home" Order in California's [Pandemic Resilience Roadmap](#). That Roadmap identified 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). On July 13, 2020, in response to a significant increase in the spread of COVID-19, the State Public Health Officer ordered the statewide closure of operations in certain high-risk sectors. (See [July 13, 2020 Order](#).) Counties on the County Monitoring List for three consecutive days were also required to close additional indoor operations for certain sectors in order to further slow community transmission.

Community spread of infection remains a significant concern across the state. In addition to the impact on the general population, community spread increases the likelihood of expanded transmission of COVID-19 in congregate settings such as nursing homes, homeless shelters, jails and prisons. Infection of vulnerable populations in these settings can be catastrophic. Higher levels of community spread also increase the likelihood of infection among individuals at higher risk of serious outcomes from COVID-19, including the elderly and those with underlying health conditions who might live or otherwise interact with an infected individual. COVID-19 infection is also disproportionately impacting our essential workforce. The anticipated influenza season is likely to impose additional burdens on the healthcare delivery system, increasing demand for space, supplies, and personnel.

The COVID-19 pandemic continues to evolve, and CDPH is continually monitoring new scientific evidence and improving its understanding of the disease. Based on the current state of the pandemic in California and current scientific understanding of transmission, it is my judgment that it is appropriate to further refine the approach in order to gradually reopen businesses and activities while reducing the risk of increased community spread. A targeted system for sector reopenings which considers both current epidemiological conditions and the latest understanding of transmission risk in certain



sectors will allow CDPH to monitor both counties and sectors for evidence of increased epidemiological risk and will reduce risk as California continues to reopen its economy and protect public health. [California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe](#) sets forth in detail the basis for the new Framework.

NOW, THEREFORE, I, as Acting State Public Health Officer of the State of California, order all of the following:

1. The updated framework for reopening, which shall be known as California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe, will rely on a set of Tiers corresponding to specific epidemiological profiles based on indicators of disease burden including case rates per capita and percent of positive covid-19 tests and proportion of testing and other covid-19 response efforts addressing the most impacted populations within a county. For each progressive Tier, this framework will permit a broader range of reopening guided by risk-based criteria pertinent to each sector. I may modify the epidemiological criteria for each Tier as well as the sectors, businesses, establishments, or activities within the Tiers as necessary based on the latest available public health information and research to protect public health and safety. The up-to-date Tier profiles and those sectors, businesses, establishments, or activities that are permitted to open in each Tier will be posted (along with necessary modifications), at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx>.
2. Pursuant to this framework, all local health jurisdictions in the state may reopen specified sectors according to their respective county's Tier. However, a local health jurisdiction that moves to a Tier permitting further reopening must pause for 21 days, or a different period that I identify, before reopening additional sectors.
3. Conversely, a local health jurisdiction must also close sectors according to their respective county's Tier consistent with the timeline and procedures set forth in California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.
4. A local health jurisdiction may continue to implement or maintain more restrictive public health measures if the jurisdiction's Local Health Officer determines that health conditions in that jurisdiction warrant such measures.

Terms of Orders

5. This order shall go into effect August 31, 2020 and shall supersede the July 13, 2020 State Public Health Officer Order.
6. This order shall remain in effect until I determine it is appropriate to modify the order based on public health conditions.
7. I will continue to monitor the epidemiological data and will modify California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe as required by the evolving public health conditions. If I determine that it is necessary to change what will reopen or close, or otherwise modify the Plan, these modifications will be posted at [California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe](#).
8. Except to the extent this order or other state public health directives expressly provide otherwise, all CDPH guidance continues to apply statewide.
9. All references in CDPH or other State guidance to the County Monitoring List or the County Data Monitoring List shall refer to those counties falling within Tier 1 of California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.
10. This order is issued pursuant to Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120150, 120175, 120195 and 131080; EO N-60-20, N-25-20, and other authority provided for under the Emergency Services Act; and other applicable law.



Erica S. Pan, MD, MPH
Acting State Public Health Officer
California Department of Public Health

APPENDIX G-2

COVID-19

Blueprint for a Safer Economy

California has a blueprint for reducing COVID-19 in the state with revised criteria for loosening and tightening restrictions on activities. Every county in California is assigned to a tier based on its test positivity and adjusted case rate for tier assignment. Additionally, a health equity metric took effect on October 6, 2020. In order to advance to the next less restrictive tier, each county will need to meet an equity metric or demonstrate targeted investments to eliminate disparities in levels of COVID-19 transmission, depending on its size. The California Health Equity Metric is designed to help guide counties in their continuing efforts to reduce COVID-19 cases in all communities and requires more intensive efforts to prevent and mitigate the spread of COVID-19 among Californians who have been disproportionately impacted by this pandemic.

Updates as of 12/08/2020:

- CDPH continues to implement and operate the Blueprint For a Safer Economy under the emergency brakes action announced on November 9, 2020. Counties who are not currently under a regional Stay at Home Order may be moved to a more restrictive tier based on Blueprint data assessed each week. Once announced, the county is required to implement tier related restrictions by 11:59pm the next day.
- Thereafter, if a county enters into a regional Stay at Home Order based on ICU capacity, the restrictions associated with that order would take effect.
- In light of the recent, unprecedented surge in rate of increase of cases, notwithstanding the Blueprint framework outlined below, the following changes have been effective since 11/9/2020 and will stay in place until further notice:
 - Tier assignments may occur any day of the week and may occur more than once a week when CDPH determines that the most recent reliable data indicate that immediate action is needed to address COVID-19 transmission in a county.
 - Counties may be moved back more than one tier if CDPH determines that the data support the more intensive intervention. Key considerations will include the rate of increase in new cases and/or test positivity, more recent data as noted below, public health capacity, and other epidemiological factors.
 - The most recent reliable data will be used to complete the assessment.
- The California Blueprint Data Chart (Excel) has been updated to show county tier status, date of tier assignment, adjusted case rate for tier assignment, countywide test positivity, and the Health Equity quartile test positivity.
- County requests for tier adjudication will *not* hold the county in the current tier during adjudication, and given the current environment of rapidly escalating cases and widespread disease transmission across California, tier adjudication requests are unlikely to be approved unless unique, extreme circumstances and data are submitted justifying how the county is not impacted by the statewide increases.

Additional information about the Blueprint:

- Find the status of activities in your county
- Understand which activities and businesses are open in the four tiers (PDF)
- Learn more about the California Health Equity Metric and the Targeted Equity Investment Plans from each county
- County Tier Adjudication Request
- Explore the complete data by county - California Blueprint Data Chart (Excel)
- Find archived California Blueprint Data Charts
- Proyecto para una economía más segura | For other languages, visit our Multilingual Documents page

Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe

This guidance outlines an updated framework for a safe progression of opening more businesses and activities in light of the pandemic. The framework for this guidance is informed by increased knowledge of disease transmission vulnerabilities and risk factors and is driven by the following goals:

1. To progress in phases based on risk levels with appropriate time between each phase in each county so impacts of any given change can be fully evaluated.
2. To aggressively reduce case transmission to as low a rate as possible across the state so the potential burden of flu and COVID-19 in the late fall and winter does not challenge our healthcare delivery system's ability to surge with space, supplies and staff. Also, with winter weather pushing more activities indoors, low levels of transmission in the community will make large outbreaks in these riskier settings less likely.
3. To simplify the framework and lay out clear disease transmission goals for counties to work towards.

Tier Framework

This framework lays out the measures that each county must meet, based on indicators that capture disease burden, testing, and health equity. A county may be more restrictive than this framework. This framework also notes signals of concern, including impacted healthcare capacity that may lead towards a dimming intervention. This framework replaces the former County Data Monitoring metrics. As the COVID-19 pandemic continues to be an evolving situation and new evidence and understanding emerges, the California Department of Public Health (CDPH), in collaboration with other State officials, will continue to reassess metrics and thresholds.

See chart below for the framework metrics as set according to tiers based on risk of community disease transmission. Calculation of metrics is described in Appendix 1. Description of the Health Equity Metric can be found on the Health Equity Metric page.

	Higher Risk \longrightarrow Lower Risk of Community Disease Transmission***			
	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Measure				
Adjusted Case Rate for Tier Assignment** (Rate per 100,000 population* excluding prison cases^, 7 day average with 7 day lag)	>7	4-7	1-3.9	<1
Testing Positivity^ (Excluding prison cases^, 7 day average with 7 day lag)	>8%	5-8%	2-4.9%	<2%

Metrics with values greater than or less than tier cut points by 0.05 are rounded up or down using conventional rounding rules.

^Excludes state and federal inmates, ICE facility residents, State Hospital inmates and US Marshal detainees

*Population denominators from the Department of Finance: State Population Projections - Total Population by County- Table P-1

**Case rate will be determined using cases confirmed by PCR

*** Counties are assigned a tier based on two metrics: test positivity and case rate. Large counties with populations greater than approximately 106,000 must also meet the health equity metric described on the Health Equity Metric page in order to advance to a less restrictive tier.

The case rate is adjusted based on testing volume per 100,000 population as described below. Due to variability in data, this adjustment does not apply to small counties (defined as those with a population less than 106,000 residents).

As counties focus on increased testing in their health equity quartiles and to support school openings, they are likely to experience an increased number of cases. We want to avoid disincentivizing increased testing, provided that test positivity is low and there is sufficient capacity for contact tracing and isolation. We are therefore increasing the adjustment for higher volume testing.

- For counties with testing volume above the state median, the factor is less than 1, decreasing in a linear manner from 1.0 to 0.5 as testing volume increases from the state median to 2x the state median. The factor remains at 0.5 if the testing volume is greater than 2x the state median.
- For counties with testing volume below the state median, the factor is greater than 1, increasing in a linear manner from 1.0 to 1.4 as testing volume decreases from the state median to zero. However, this adjustment for low testing volume will not be applied to counties with a test positivity < 3.5%.

California COVID-19 Case Rate Adjustment Factor

Testing Volume	Case Rate Adjustment Factor*
0	1.4
0.25* State Median	1.3
0.50* State Median	1.2
0.75* State Median	1.1
State Median	1
1.25* State Median	0.875
1.5* State Median	0.75
1.75* State Median	0.625
2.0*State Median and above	0.5

- Counties with fewer than 106,000 residents, will be exempted from case rate adjustments, and counties with test positivity <3.5% will be exempted from adjustment for testing rates lower than the state median.
- If the two metrics are not within the same tier, the county's tier assignment will be determined by the more restrictive of the two. For example, if a county's test positivity corresponds to tier 3 (orange, moderate), but the case rate corresponds to tier 1 (purple, widespread), the county will be assigned as tier 1. Movement will be determined by criteria described below.

Moving through the Tiers

Rules of the framework:

1. CDPH will assess indicators weekly on Mondays and release updated tier assignments on Tuesdays.
2. A county must remain in a tier for a minimum of three weeks before being able to advance to a less restrictive tier.
3. A county can only move forward one tier at a time, even if metrics qualify for a more advanced tier.
4. If a county's adjusted case rate for tier assignment and test positivity measure fall into two different tiers, the county will be assigned to the more restrictive tier.
5. The health equity metric is applied to jurisdictions with populations greater than 106,000. Rules of the health equity metric are described on the Health Equity Metric page.
6. City local health jurisdiction (LHJ) data will be included in overall metrics, and city LHJs will be assigned the same tier as the surrounding county
7. An LHJ may continue to implement or maintain more restrictive public health measures if the local health officer determines that health conditions in that jurisdiction warrant such measures.
8. Tier status goes into effect the Wednesday following each weekly tier assignment announcement on Tuesdays.

To advance:

1. A county must have been in the current tier for a minimum of three weeks.
2. A county must meet criteria for the next less restrictive tier for both measures for the prior **two** consecutive weeks in order to progress to the next tier.
3. In addition, counties must meet the health equity criteria to demonstrate the county's ability to address the most impacted communities within a county.

To move back:

1. During the weekly assessment, if a county's adjusted case rate and/or test positivity has fallen within a more restrictive tier for two consecutive weekly periods, the state will review the most recent 10 days of data, and if CDPH determines there are objective signs of improvement the county may remain in the tier. If the county's most recent 10 days data does not show objective signs of improvement the county must revert to the more restrictive tier. For subsequent weekly assessments, the above rules apply.
2. At any time, state and county public health officials may work together to determine targeted interventions or county wide modifications necessary to address impacted hospital capacity and drivers of disease transmission, as needed, including movement across more than one tier. Key considerations will also include the rate of increase in new cases and/or test positivity, more recent data as noted above, public health capacity, and other epidemiological factors.
3. Counties with a population less than 106,000 will have a small county criteria applied to it to ensure movement to a more restrictive tier is appropriate. Description of the small county framework is below.
4. Counties will have three days, beginning the Wednesday after tier assignments are announced on Tuesdays, to implement any sector changes or closures unless extreme circumstances merit immediate action.

Small County Framework

Because California's case rate metric is normalized per 100,000 population, a number of counties with small populations have experienced large swings in their daily case rate as a result of a small number of newly reported cases. For some counties, this has raised the specter of needing to move back to a more restrictive tier despite overall disease stability and a demonstrated ability to trace, follow up with, investigate and support cases.

For example, once a small county is in yellow tier, a small number of cases – as low as 1 case per week for 2 consecutive weeks – could cause it to return to a more restrictive tier. While the overall proportion of cases may be the same as a larger county, the absolute number of cases is also an important consideration in gauging county capacity to control transmission through disease investigation, contact tracing and supportive isolation.

It is not in the interest of the public health of communities to close or restrict entire business sectors on the basis of such a small number of cases, and in some situations a small swing in week over week case counts can move a county from yellow tier all the way to purple tier. Because the state wants to avoid swift shifts in tier status based on small absolute case number changes, we are creating an alternate case assessment measure to apply to small counties. Small counties are defined as having fewer than 106,000 residents.[1]

Alternate Case Assessment Measure. Small counties are subject to all existing Blueprint rules (test positivity thresholds, minimum duration of 3 weeks in a tier before moving to a less restrictive tier, inability to skip over a tier while moving from more restrictive to less restrictive tier designations, etc.) with the exception of the case rate thresholds as delineated below.

The alternate case assessment measure provides a small county protection against sudden tier changes as a result of small increases in cases.

For a small county that has test positivity that meets the threshold of that county's currently assigned tier, but is flagged for potentially moving to a more restrictive tier based on its weekly case rate assessment, the following criteria shall be applied in lieu of the Blueprint case rate thresholds.

If the county exceeds the following absolute weekly case numbers based on its population and tier for two consecutive weeks, it will be required to move to a more restrictive tier:

Current Tier	Pop ≤ 35K	Pop 35K-70K	Pop 70K-106K
Yellow	7	14	21
Orange	14	21	28
Red	35	42	49

Movement into Yellow Tier

In moving from purple to red or red to orange tiers, small counties are subject to all existing Blueprint rules (test positivity thresholds, minimum duration of 3 weeks in a tier before moving to a less restrictive tier, inability to skip over a tier while moving from more restrictive to less restrictive tier designations, etc.).

For a small county to move from the orange to yellow tier, it must meet the existing test positivity threshold of less than 2%. However, in lieu of meeting the established daily case rate threshold for yellow tier of less than 1 case per 100,000, a small county is allowed to have a daily case rate of less than or equal to 2 cases per 100,000. Of note, these are the same parameters used for the health equity acceleration criteria to yellow tier.

[1] Twenty-two California counties have a population of less than 100,000. Sutter, which has a population of 106,000 is also included as it shares a health officer with Yuba County. Counties below this size have similar challenges and opportunities in controlling COVID-19 transmission and generally do not have major or large, densely populated cities. This distinction factors into how rapidly COVID-19 transmission can increase beyond households and the ability of the county to rapidly identify and contain outbreaks with existing contact tracing, isolation and quarantine resources.

Risk Criteria

Activities and sectors will begin to open at a specific tier based on risk-based criteria (PDF), as outlined below. Lower risk activities or sectors are permitted sooner and higher risk activities or sectors are not permitted until later phases. Many activities or sectors may increase the level of operations and capacity as a county reduces its level of transmission.

Criteria used to determine low/medium/high risk sectors

- Ability to accommodate face covering wearing at all times (e.g. eating and drinking would require removal of face covering)
- Ability to physically distance between individuals from different households

- Ability to limit the number of people per square foot
- Ability to limit duration of exposure
- Ability to limit amount of mixing of people from differing households and communities
- Ability to limit amount of physical interactions of visitors/patrons
- Ability to optimize ventilation (e.g. indoor vs outdoor, air exchange and filtration)
- Ability to limit activities that are known to cause increased spread (e.g. singing, shouting, heavy breathing; loud environs will cause people to raise voice)

Schools

Schools may reopen for in-person instruction based on equivalent criteria to the July 17 School Re-opening Framework (PDF) previously announced. That framework remains in effect except that Tier 1 is substituted for the previous County Data Monitoring List (which has equivalent case rate criteria to Tier 1). Schools in counties within Tier 1 are not permitted to reopen for in-person instruction, with an exception for waivers granted by local health departments for TK-6 grades. Schools that are not authorized to reopen, including TK-6 schools that have not received a waiver, may provide structured, in-person supervision and services to students under the Guidance for Small Cohorts/Groups of Children and Youth.

Schools are eligible for reopening at least some in-person instruction following California School Sector Specific Guidelines once the county is out of Tier 1 (and thus in Tier 2) for at least 14 days, which is similar to being off the County Data Monitoring List for at least 14 days. The first day a county is considered in Tier 2 is the Wednesday after the weekly county tier assignments are announced and posted on the CDPH website (Tuesdays). For example, if a county is assigned to Tier 2 on Tuesday, October 13, the first full day the county is in Tier 2 is Wednesday, October 14. The county will have completed 14 days in Tier 2 on Tuesday, October 27 and may reopen schools for in-person instruction on Wednesday, October 28. As noted above, an LHJ may continue to implement or maintain more restrictive public health measures if the local health officer determines that health conditions in that jurisdiction warrant such measures.

As stated in the July 17 School Re-opening Framework (PDF), schools are not required to close if a county moves back to Tier 1, but should consider surveillance testing of staff. However, if a school or district had not already reopened for in-person instruction while in Tier 2 and is then moved to Tier 1, it may not reopen those schools until the county moves back to Tier 2 and remains in Tier 2 for 14 days.

County Tier Adjudication Process

For more information, visit our County Tier Adjudication Request page.

APPENDIX 1: Calculation of metrics

Metric	Definition
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<p>Case Rate (rate per 100,000 excluding prison cases, 7-day average with 7-day lag)</p>	<p>Calculated as the average (mean) daily number of COVID-19+ cases, this excludes: (a) persons out of state or with unknown county of residence and (b) persons incarcerated at state or federal prisons, ICE facilities, US Marshal only detention facilities or Department of State Hospitals (identified as cases with an ordering facility name or address associated with these locations), over 7 days (based on episode date), divided by the number of people living in the county/region/state. This number is then multiplied by 100,000. Due to reporting delays, there is a 7-day lag built into this calculation. For example, for data updated through 8/22/20, the case rate will be dated as 8/15/20 and will include the average case rate from 8/9/20 - 8/15/20.</p>
<p>Linear adjusted case Rate per 100,000 per day, excluding prisoners (7-day average with 7-day lag)</p>	<p>Calculated as the case rate multiplied by a case rate adjustment factor that is based on the difference between the county testing volume (testing volume, tests per 100,000 per day, described below) and the median county testing volume calculated across all counties. The median testing volume thus forms an anchor for this adjustment and is recalculated every four weeks to prevent undue fluctuation while remaining sensitive to evolving testing trends. For counties with a testing volume above the median, the adjustment factor is less than 1, decreasing in a linear manner from 1.0 to 0.5 as testing volume increases from the anchor point to 2x that value. The adjustment factor remains at 0.5 if the county testing volume is greater than 2x the state median. For counties with a testing volume below the state median, the adjustment factor is greater than 1, increasing in a linear manner from 1.0 to 1.4 as county testing volume decreases from the state median to zero. The linear adjustment formula can be expressed mathematically as follows:</p> <p>For counties testing above the state median:</p> $1 - (((\text{county testing rate} - \text{state median testing rate}) / \text{state median testing rate}) * 0.5)$ <p>For counties testing below the state median:</p> $1 - (((\text{county testing rate} - \text{state median testing rate}) / \text{state median testing rate}) * 0.4)$ <p>There are two conditions in which this formula is not applied. The first is small counties, those with a population less than approximately 100,000 based on CA Department of Finance population projections (see reference * in tier framework table). The small county exception prevents potential spurious adjustment due to fluctuations in testing influenced by secular events unrelated to underlying transmission risk. As a second condition for exception from the adjustment, counties with a testing volume below the state median and testing positivity < 3.5% are not adjusted, based on the assumption that volume of testing in these counties may not need to be as high with low test positivity. Under both these conditions, the adjusted case rate is equal to the unadjusted rate.</p>

<p>Overall testing Positivity, excluding prisoners over 7-days (PCR only, 7-day lag)</p>	<p>Calculated as the total number of positive polymerase chain reaction (PCR) tests for COVID-19 over a 7-day period (based on specimen collected date) divided by the total number of PCR tests conducted; this excludes tests for: (a) persons out of state or with unknown county of residence and (b) persons incarcerated at state or federal prisons, ICE facilities, US Marshal only detention facilities and Department of State Hospitals (identified as cases with an ordering facility name or address associated with prison/state hospitals locations). This number is then multiplied by 100 to get a percentage. Due to reporting delay (which may be different between positive and negative tests), there is a 7-day lag.</p> <p><i>Example:</i> For cumulative lab data received on 6/30/20, reported test positivity is dated as 6/23/20 and is calculated based on tests with specimen collection dates from 6/17-6/23</p>
<p>Tests per 100,000 per day, excluding prisoners (7-day average with 7-day lag)</p>	<p>Calculated as the number of polymerase chain reaction (PCR) tests per day over a 7-day period (based on specimen collection date), excluding tests for persons incarcerated at state or federal prisons, ICE facilities, US Marshal only detention facilities and Department of State Hospitals (identified as cases with an ordering facility name or address associated with prison/state hospitals locations), and divided by the number of people living in the county/region/state. This number is then multiplied by 100,000. Due to reporting delay, there is a 7-day lag included in the calculation.</p> <p><i>Example:</i> For cumulative lab data received through 8/22/20, the reported 7-day average number of tests will be dated as 8/15/20 and will include PCR tests with specimen collection dates from 8/9/20 - 8/15/20.</p>

Data Source: CalREDIE

Helpful Links

- Find the status of activities in your county
- Understand which activities and businesses are open in the four tiers (PDF)
- Learn more about the California Health Equity Metric and the Targeted Equity Investment Plans from each county
- County Tier Adjudication Request
- Explore the complete data by county (Excel)
- Find archived California Blueprint Data Charts
- School Re-opening Framework (PDF)
- Guidance for Small Cohorts/Groups of Children and Youth
- www.covid19.ca.gov
- Proyecto para una economía más segura | For other languages, visit our Multilingual Documents page

Page Last Updated : December 11, 2020

APPENDIX G-3

Blueprint for a Safer Economy

Activity and Business Tiers

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Critical Infrastructure	Open with modifications	Open with modifications	Open with modifications	Open with modifications
Gatherings*	Outdoor gatherings only with modifications <ul style="list-style-type: none"> Max 3 households 	Indoor gatherings strongly discouraged, allowed with modifications <ul style="list-style-type: none"> Max 3 households 	Indoor gatherings strongly discouraged, allowed with modifications <ul style="list-style-type: none"> Max 3 households 	Indoor gatherings strongly discouraged, allowed with modifications <ul style="list-style-type: none"> Max 3 households
Limited Services	Open with modifications	Open with modifications	Open with modifications	Open with modifications
Outdoor Playgrounds & Outdoor Recreational Facilities **	Open with modifications	Open with modifications	Open with modifications	Open with modifications
Hair Salons & Barbershops	Open Indoors with modifications	Open indoors with modifications	Open indoors with modifications	Open indoors with modifications

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
All Retail (including critical infrastructure, except standalone grocers)	Open Indoors with modifications <ul style="list-style-type: none"> Max 25% capacity 	Open Indoors with modifications <ul style="list-style-type: none"> Max 50% capacity 	Open Indoors with modifications	Open Indoors with modifications
Shopping Centers (Malls, Destination Centers, Swap Meets)	Open Indoors with modifications <ul style="list-style-type: none"> Max 25% capacity Closed common areas Closed food courts 	Open indoors with modifications <ul style="list-style-type: none"> Max 50% capacity Closed common areas Reduced capacity food courts (see restaurants) 	Open indoors with modifications <ul style="list-style-type: none"> Closed common areas Reduced capacity food courts (see restaurants) 	Open Indoors with modifications <ul style="list-style-type: none"> Reduced capacity food courts (see restaurants)
Personal Care Services***	Open Indoors with modifications	Open indoors with modifications	Open indoors with modifications	Open indoors with modifications
Museums, Zoos, and Aquariums	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> Indoor activities max 25% capacity 	Open indoors with modifications <ul style="list-style-type: none"> Indoor activities max 50% capacity 	Open indoors with modifications

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Places of Worship	Outdoor Only with modifications	Open indoors with modifications • Max 25% capacity or 100 people, whichever is fewer	Open indoors with modifications • Max 50% capacity or 200 people, whichever is fewer	Open indoors with modifications • Max 50% capacity
Movie Theaters	Outdoor Only with modifications	Open Indoors with modifications • Max 25% capacity or 100 people, whichever is fewer	Open indoors with modifications • Max 50% capacity or 200 people, whichever is fewer	Open indoors with modifications • Max 50% capacity
Hotels and Lodging	Open with modifications	Open with modifications • +Fitness centers (+10%)	Open with modifications • +Fitness centers (+25%) • +Indoor pools	Open with modifications • +Fitness Centers (50%) • +Spa facilities etc.
Gyms and Fitness Centers	Outdoor Only with modifications	Open indoors with modifications • Max 10% capacity • +Climbing walls	Open indoors with modifications • Max 25% capacity • +Indoor pools	Open indoors with modifications • +Saunas • +Steam rooms • Max 50% capacity

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Restaurants	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> • Max 25% capacity or 100 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity or 200 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity
Wineries	Outdoor Only with modifications	Outdoor Only with modifications	Open indoors with modifications <ul style="list-style-type: none"> • Max 25% capacity indoors, or 100 people, whichever is fewer 	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity or 200 people indoors, whichever is fewer
Bars, Breweries, and Distilleries (where no meal provided) (follow restaurant guidance where meal is provided)	Closed	Closed	Open Outdoors with modifications	Open indoors with modifications <ul style="list-style-type: none"> • Max 50% capacity
Family Entertainment Centers	Outdoor Only with modifications e.g. <ul style="list-style-type: none"> • Kart Racing • Mini Golf • Batting Cages 	Outdoor Only with modifications e.g. <ul style="list-style-type: none"> • Kart Racing • Mini Golf • Batting Cages 	Open Indoors for naturally distanced activities with modifications <ul style="list-style-type: none"> • Max 25% capacity • Bowling Alleys 	Open indoors for activities with increased risk of proximity and mixing with modifications <ul style="list-style-type: none"> • Max 50% capacity • Arcade Games • Ice and roller skating • Indoor playgrounds

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Cardrooms, Satellite Wagering	Outdoor Only with modifications	Outdoor Only with modifications	Open indoors with modifications • Max 25% capacity	Open indoors with modifications • Max 50% capacity
Offices	Remote	Remote	Open indoors with modifications • Encourage telework	Open indoors with modifications • Encourage telework
Professional Sports	Open • Without live audiences • With modifications	Open • Without live audiences • With modifications	Open • Without live audiences • With modifications	Open • Without live audiences • With modifications
Live Audience Sports***	Closed	Closed	Outdoors Only • Max 20% • Regional visitors (120 miles) • Advanced reservations only • Assigned seating only • In-seat concessions only (No concourse sales)	Outdoors Only • Max 25% • Regional visitors (120 miles) • Advanced reservations only • Assigned seating only • In-seat concessions only (No concourse sales)

SECTORS	Widespread Tier 1	Substantial Tier 2	Moderate Tier 3	Minimal Tier 4
Amusement Parks***	Closed	Closed	Smaller Parks Open <ul style="list-style-type: none"> • 25% capacity or 500 people, whichever is fewer • Outdoor attractions only • In-county visitors only • Advanced reservations only 	Larger Parks Open <ul style="list-style-type: none"> • 25% capacity • Advanced reservations only

*Gatherings updated November 13, 2020

**Outdoor playgrounds and outdoor recreational facilities updated September 28, 2020

***Personal care services, live audience professional sports and amusement parks updated October 20, 2020

APPENDIX H -1



SANDRA SHEWRY, MPH,MSW
Acting Director
ERICA S. PAN, MD,MPH
Acting State Health Officer

State of California—Health and Human Services Agency
California Department of Public Health



GAVIN NEWSOM
Governor

**Regional Stay At Home Order
12/03/2020**

Upon assessment of the recent, unprecedented rise in the rate of increase in COVID-19 cases, hospitalizations, and test positivity rates across California, the California Department of Public Health (CDPH) is taking immediate actions to prevent the spread of the virus.

The State, like the nation, continues to record an unprecedented surge in the level of community spread of COVID-19. California implemented an accelerated application of the Blueprint Framework metrics on November 16 and a limited Stay at Home Order issued on November 19. However, in the interim, the number of new cases per day has increased by over 112%, (from 8,743 to 18,588) and the rate of rise of new cases per day continues to increase dramatically. The number of new hospital admissions has increased from 777 on November 15, to 1,651 on December 2, and because of the lag between case identification and hospitalizations, we can only expect these numbers to increase.

Current projections show that without additional intervention to slow the spread of COVID-19, the number of available adult Intensive Care Unit (ICU) beds in the State of California will be at capacity in mid-December. This is a sign that the rate of rise in cases, if it continues, is at risk of overwhelming the ability of California hospitals to deliver healthcare to its residents suffering from COVID-19 and from other illnesses requiring hospital care. ICU beds are a critical resource for individuals who need the most advanced support and care and the ability to add additional ICU capacity is limited by the lack of available ICU nurses and physicians as a result of the nationwide surge in hospitalizations and ICU admissions.

Because the rate of increases in new cases continues to escalate and threatens to overwhelm the state's hospital system, further aggressive action is necessary to respond to the quickly evolving situation. While vaccines are promising future interventions, they are not available to address the immediate risks to healthcare delivery in the current surge. The immediate aggressive institution of additional non-pharmaceutical public health interventions is critical to avoid further overwhelming hospitals and to prevent the need to ration care.



NOW, THEREFORE, I, as Acting State Public Health Officer of the State of California, order:

1. CDPH will evaluate public health based on Regions, responsive to hospital capacity for persons resident in those Regions.
2. CDPH will evaluate the adult ICU bed capacity for each Region and identify on covid19.ca.gov any Regions for which that capacity is less than 15%. When that capacity is less than 15%, the following terms (the Terms of this Order) will apply.
 - a. All gatherings with members of other households are prohibited in the Region except as expressly permitted herein.
 - b. All individuals living in the Region shall stay home or at their place of residence except as necessary to conduct activities associated with the operation, maintenance, or usage of critical infrastructure,¹ as required by law, or as specifically permitted in this order.
 - c. [Worship](#) and [political expression](#) are permitted outdoors, consistent with existing guidance for those activities.
 - d. Critical infrastructure sectors may operate and must continue to modify operations pursuant to the [applicable sector guidance](#).
 - e. [Guidance](#) related to schools remain in effect and unchanged. Accordingly, when this Order takes effect in a Region, schools that have previously reopened for in-person instruction may remain open, and schools may continue to bring students back for in-person instruction under the [Elementary School Waiver Process](#) or [Cohorting Guidance](#).
 - f. In order to reduce congestion and the resulting increase in risk of transmission of COVID-19 in critical infrastructure retailers, all retailers may operate indoors at no more than 20% capacity and must follow the [guidance for retailers](#). All access to retail must be strictly metered to ensure compliance with the limit on capacity. The sale of food, beverages, and alcohol for in-store consumption is prohibited.
 - g. To promote and protect the physical and mental well-being of people in California, outdoor recreation facilities may continue to operate. Those facilities may not sell food or drink for on-site consumption. Overnight stays at

¹ See <https://covid19.ca.gov/essential-workforce/> for full list of California's Critical Infrastructure workforce.

campgrounds are not permitted.

- h. Nothing in this Order prevents any number of persons from the same household from leaving their residence, lodging, or temporary accommodation, as long as they do not engage in any interaction with (or otherwise gather with) any number of persons from any other household, except as specifically permitted herein.
 - i. Terms (a) and (b) of this section do not apply to persons experiencing homelessness.
3. Except as otherwise required by law, no hotel or lodging entity in California shall accept or honor out of state reservations for non-essential travel, unless the reservation is for at least the minimum time period required for quarantine and the persons identified in the reservation will quarantine in the hotel or lodging entity until after that time period has expired.
 4. This order shall take effect on December 5, 2020 at 1259pm PST.
 5. For Regions where the adult ICU bed capacity falls below 15% after the effective date of this order, the Terms of this Order shall take effect 24 hours after that assessment.
 6. The Terms of this Order shall remain in place for at least three weeks from the date the order takes effect in a Region and shall continue until CDPH's four-week projections of the Region's total available adult ICU bed capacity is greater than or equal to 15%. Four-week adult ICU bed capacity projections will be made approximately twice a week, unless CDPH determines that public health conditions merit an alternate projection schedule. If after three weeks from the effective date of the Terms of this Order in a Region, CDPH's four-week projections of the Region's total available adult ICU bed capacity is greater than or equal to 15%, the Terms of this Order shall no longer apply to the Region
 7. After the termination of the Terms of this Order in a Region, each county within the Region will be assigned to a tier based on the [Blueprint for a Safer Economy](#) as set out in my August 28, 2020 Order, and the County is subject to the restrictions of the Blueprint appropriate to that tier.
 8. I will continue to monitor the epidemiological data and will modify this Regional Stay-at-Home Order as required by the evolving public health conditions. If I determine that it is necessary to change the Terms of this Order, or otherwise modify the Regional Stay-at-Home Order, these modifications will be posted at covid19.ca.gov.

9. When operative in a Region, the Terms of this Order supersede any conflicting terms in other CDPH orders, directives, or guidance. Specifically, for those Regions with ICU bed capacity triggering this order, the Terms of this Order shall supersede the State's [Blueprint for a Safer Economy](#) and all guidance (other than guidance for critical infrastructure sectors) during the operative period. In all Regions that are not subject to the restrictions in this order, the [Blueprint for a Safer Economy](#) and all guidance shall remain in effect.

10. This order is issued pursuant to Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120175, 120195 and 131080; EO N-60-20, N-25-20, and other authority provided for under the Emergency Services Act; and other applicable law.



Erica S. Pan, MD, MPH
Acting State Public Health Officer
California Department of Public Health

APPENDIX H-2



Sandra Shewry
Acting Director
Erica S. Pan, MD, MPH
Acting State Health Officer

State of California—Health and Human
Services Agency
**California Department of
Public Health**



GAVIN NEWSOM
Governor

December 6, 2020

TO: All Californians

SUBJECT: Supplement to Regional Stay At Home Order

Note: This Supplemental Order accompanies the Regional Stay at Home Order.

I, as Acting State Public Health Officer of the State of California, order as follows:

1. In order to ensure that California's grocery stores are able to safely deliver sufficient quantities of food to California households, it is necessary to ensure capacity for grocery stores. Therefore, in the Regions that are subject to my Regional Stay At Home Order of December 3, 2020, stand-alone grocery stores where the principal business activity is the sale of food may operate at 35% of capacity (based on fire department occupancy limits). All access to grocery stores must be strictly metered to ensure compliance with the limit on capacity. The sale of food, beverages, and alcohol for in- store consumption is prohibited.
2. The travel restriction in paragraph 3 of my Regional Stay At Home Order is applicable only when at least one Region has an adult ICU bed capacity of less than 15%, as set forth in paragraph 2 of that Order.
3. Paragraph 5 of my Regional Stay At Home Order is modified as follows: For Regions where the adult ICU bed capacity falls below 15% after the effective date of this order, the Terms of this Order shall take effect the next day after that assessment is made, at 11:59pm.
4. All other terms may remain in effect as stated in that Order.
5. This order is effective immediately and shall remain in effect as long as the Regional Stay At Home Order.
6. This order is issued pursuant to Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120175, 120195 and 131080; EO N-60-20, N-25-20, and other authority provided for under the Emergency Services Act; and other applicable law.

Erica S. Pan, MD, MPH
Acting State Public Health Officer
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Page Last Updated : December 10, 2020

APPENDIX H-3

April 28, 2020

ESSENTIAL WORKFORCE

On March 19, 2020, Governor Newsom issued Executive Order N-33-20 directing all residents immediately to heed current State public health directives to stay home, except as needed to maintain continuity of operations of essential critical infrastructure sectors and additional sectors as the State Public Health Officer may designate as critical to protect health and well-being of all Californians.

In accordance with this order, the State Public Health Officer has designated the following list of “Essential Critical Infrastructure Workers” to help state, local, tribal, and industry partners as they work to protect communities, while ensuring continuity of functions critical to public health and safety, as well as economic and national security.

Sector Index:

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

Relevant Guidance For All Sectors:

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

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1. HEALTHCARE / PUBLIC HEALTH

Sector Profile

The Healthcare and Public Health (HPH) Sector is large, diverse, and open, spanning both the public and private sectors. It includes publicly accessible healthcare facilities, research centers, suppliers, manufacturers, and other physical assets and vast, complex public-private information technology systems required for care delivery and to support the rapid, secure transmission and storage of large amounts of HPH data.

Essential Workforce, if remote working is not practical:

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

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

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

Relevant Sector Guidance:

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

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

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2. EMERGENCY SERVICES SECTOR

Sector Profile

The Emergency Services Sector (ESS) is a community of highly-skilled, trained personnel, along with the physical and cyber resources, that provide a wide range of prevention, preparedness, response, and recovery services during both day-to-day operations and incident response. The ESS includes geographically distributed facilities and equipment in both paid and volunteer capacities organized primarily at the federal, state, local, tribal, and territorial levels of government, such as city police departments and fire stations, county sheriff's offices, Department of Defense police and fire departments, and town public works departments. The ESS also includes private sector resources, such as industrial fire departments, private security organizations, and private emergency medical services providers.

Essential Workforce, if remote working is not practical:

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

Relevant Sector Guidance:

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

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3. FOOD AND AGRICULTURE

Sector Profile

The Food and Agricultural (FA) Sector is composed of complex production, processing, and delivery systems and has the capacity to feed people and animals both within and beyond the boundaries of the United States. Beyond domestic food production, the FA Sector also imports many ingredients and finished products, leading to a complex web of growers, processors, suppliers, transporters, distributors, and consumers. This sector is critical to maintaining and securing our food supply.

Essential Workforce, if remote working is not practical:

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

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13. Employees of companies engaged in the production, storage, transport, and distribution of chemicals; medicines, including cannabis; vaccines; and other substances used by the food and agriculture industry, including seeds, pesticides, herbicides, fertilizers, minerals, enrichments, and other agricultural production aids.
14. Animal agriculture workers to include those employed in veterinary health (including those involved in supporting emergency veterinary or livestock services); raising of animals for food; animal production operations; livestock markets; slaughter and packing plants, manufacturers, renderers, and associated regulatory and government workforce.
15. Transportation supporting animal agricultural industries, including movement of animal medical and reproductive supplies and material, animal vaccines, animal drugs, feed ingredients, feed, and bedding, live animals, animal medical materials; transportation of deceased animals for disposal; and associated regulatory and government workforce
16. Workers who support sawmills and the manufacture and distribution of fiber and forest products, including, but not limited to timber, paper, and other wood and fiber products
17. Employees engaged in the manufacture and maintenance of equipment and other infrastructure necessary to agricultural production and distribution
18. Workers at animal care facilities that provide food, shelter, veterinary and/or routine care and other necessities of life for animals.

Relevant Sector Guidance:

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

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4. ENERGY

Sector Profile

The Energy Sector consists of widely diverse and geographically dispersed critical assets and systems that are often interdependent of one another. This critical infrastructure is divided into three interrelated segments or subsectors—electricity, oil, and natural gas—to include the production, refining, storage, and distribution of oil, gas, and electric power. The Energy Sector supplies fuels to the transportation industry, electricity to households and businesses, and other sources of energy that are integral to growth and production across the Nation. In turn, it depends on the Nation's transportation, information technology, communications, finance, water, and government infrastructures.

Essential Workforce, if remote working is not possible:

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

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5. WATER AND WASTEWATER

Sector Profile

The Water and Wastewater Sector is a complex sector composed of drinking water and wastewater infrastructure of varying sizes and ownership types. Multiple governing authorities pertaining to the Water and Wastewater Sector provide for public health, environmental protection, and security measures, among others.

Essential Workforce, if remote working is not practical:

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

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

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6. TRANSPORTATION AND LOGISTICS

Sector Profile

The Transportation Systems Sector consists of seven key subsectors, or modes:

- Aviation includes aircraft, air traffic control systems, and airports, heliports, and landing strips. Commercial aviation services at civil and joint-use military airports, heliports, and sea plane bases. In addition, the aviation mode includes commercial and recreational aircraft (manned and unmanned) and a wide variety of support services, such as aircraft repair stations, fueling facilities, navigation aids, and flight schools.
- Highway and Motor Carrier encompasses roadway, bridges, and tunnels. Vehicles include trucks, including those carrying hazardous materials; other commercial vehicles, including bicycles, commercial motor coaches and school buses; vehicle and driver licensing systems; taxis, transportation services including Transportation Network Companies, and delivery services including Delivery Network Companies; traffic management systems; AND cyber systems used for operational management.
- Maritime Transportation System consists of coastline, ports, waterways, and intermodal landside connections that allow the various modes of transportation to move people and goods to, from, and on the water.
- Mass Transit and Passenger Rail includes terminals, operational systems, and supporting infrastructure for passenger services by transit buses, trolleybuses, monorail, heavy rail—also known as subways or metros—light rail, passenger rail, and vanpool/rideshare.
- Pipeline Systems consist of pipelines carrying natural gas hazardous liquids, as well as various chemicals. Above-ground assets, such as compressor stations and pumping stations, are also included.
- Freight Rail consists of major carriers, smaller railroads, active railroad, freight cars, and locomotives.
- Postal and Shipping includes large integrated carriers, regional and local courier services, mail services, mail management firms, and chartered and delivery services.

Essential Workforce, if remote working is not practical:

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

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

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

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

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7. COMMUNICATIONS AND INFORMATION TECHNOLOGY

Sector Profile

The Communications Sector provides products and services that support the efficient operation of today's global information-based society. Communication networks enable people around the world to contact one another, access information instantly, and communicate from remote areas. This involves creating a link between a sender (including voice signals) and one or more recipients using technology (e.g., a telephone system or the Internet) to transmit information from one location to another. Technologies are changing at a rapid pace, increasing the number of products, services, service providers, and communication options. The national communications architecture is a complex collection of networks that are owned and operated by individual service providers. Many of this sector's products and services are foundational or necessary for the operations and services provided by other critical infrastructure sectors. The nature of communication networks involves both physical infrastructure (buildings, switches, towers, antennas, etc.) and cyber infrastructure (routing and switching software, operational support systems, user applications, etc.), representing a holistic challenge to address the entire physical-cyber infrastructure.

The IT Sector provides products and services that support the efficient operation of today's global information-based society and are integral to the operations and services provided by other critical infrastructure Sectors. The IT Sector is comprised of small and medium businesses, as well as large multinational companies. Unlike many critical infrastructure Sectors composed of finite and easily identifiable physical assets, the IT Sector is a functions-based Sector that comprises not only physical assets but also virtual systems and networks that enable key capabilities and services in both the public and private sectors.

Essential Workforce – Communications, if remote working is not practical:

1. **Maintenance of communications infrastructure**- including privately owned and maintained communication systems- supported by technicians, operators, call-centers, wireline and wireless providers, cable service providers, satellite operations, Internet Exchange Points, Network Access Points, back haul and front haul facilities, and manufacturers and distributors of communications equipment.
2. Workers performing functions related to undersea cable infrastructure and support facilities, including cable landing sites, beach manhole vaults and covers, submarine cable depots, and submarine cable ship facilities
3. Government and private sector employees supporting Department of Defense internet and communications facilities.
4. **Workers who support radio, television, and media service, including, but not limited to front line news reporters, studio, and technicians for newsgathering, reporting, and publishing news.**
5. Network Operations staff, engineers and/or technicians to include IT managers and staff, HVAC & electrical engineers, security personnel, software and hardware engineers, and database administrators that manage the network or operate facilities
6. Workers responsible for infrastructure construction and restoration, including contractors for construction and engineering of fiber optic cables, buried conduit, small cells, other wireless facilities, and other communications sector-related infrastructure. This includes construction of

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

7. Installation, maintenance and repair technicians that establish, support or repair service as needed.
8. Central office personnel to maintain and operate central office, data centers, and other network office facilities, and critical support personnel assisting front line employees
9. Customer service and support staff, including managed and professional services as well as remote providers of support to transitioning employees to set up and maintain home offices, who interface with customers to manage or support service environments and security issues, including payroll, billing, fraud, logistics and troubleshooting
10. Workers providing electronic security, fire, monitoring, and life safety services, and who ensure physical security, cleanliness, and the safety of facilities and personnel, including those who provide temporary licensing waivers for security personnel to work in other States or Municipalities.
11. Dispatchers involved with service repair and restoration
12. Retail customer service personnel at critical service center locations for onboarding customers, distributing and repairing equipment and other supply chain personnel, to support individuals' remote emergency communications needs;
13. External Affairs personnel to assist in coordinating with local, state, and federal officials to address communications needs supporting COVID-19 response, public safety, and national security.
14. Workers responsible for ensuring that persons with disabilities have access to and the benefits of various communications platforms, including those involved in the provision of telecommunication relay services, closed captioning of broadcast television for the deaf, video relay services for deaf citizens who prefer communication via American Sign Language over text, and audio-description for television programming.

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

15. Workers who support command centers, including, but not limited to Network Operations Command Centers, Broadcast Operations Control Center and Security Operations Command Centers
16. Data center operators, including system administrators, HVAC & electrical engineers, security personnel, IT managers and purchasers, data transfer solutions engineers, software and hardware engineers, and database administrators
17. Workers who support client service centers, field engineers, and other workers supporting critical infrastructure, as well as manufacturers and supply chain vendors that provide hardware and software, support services, research and development, information technology equipment (to include microelectronics and semiconductors), and HVAC and electrical equipment for critical infrastructure and test labs and certification agencies that qualify such equipment for critical infrastructure.
18. Workers needed to pre-empt and respond to cyber incidents involving critical infrastructure,, and entities supporting the functioning of critical infrastructure sectors
19. Suppliers, designers, transporters and other workers supporting the manufacture, distribution, and construction of essential global, national and local infrastructure for computing services (including cloud computing services and teleworking capabilities), business infrastructure, financial transactions, web-based services, and critical manufacturing

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20. Workers supporting communications systems, information technology, and work from home solutions
21. Employees required to support Software as a Service businesses that enable remote working, performance of business operations, distance learning, media services, and digital health offerings, or required for technical support crucial for business continuity and connectivity.

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8. GOVERNMENT OPERATIONS AND OTHER COMMUNITY-BASED ESSENTIAL FUNCTIONS

Essential Workforce, if remote working is not practical.

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

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

Relevant Sector Guidance:

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

April 28, 2020

9. CRITICAL MANUFACTURING

Sector Profile

The Critical Manufacturing Sector identifies several industries to serve as the core of the sector: Primary Metals Manufacturing, Machinery Manufacturing, Electrical Equipment, Appliance, and Component Manufacturing, Transportation Equipment Manufacturing Products made by these manufacturing industries are essential to many other critical infrastructure sectors.

Essential Workforce, if remote working is not practical

1. Workers necessary for the manufacturing of metals, industrial minerals, semiconductors, materials and products needed for supply chains of the critical infrastructure sectors.
2. Workers necessary for the manufacturing of materials and products needed to manufacture medical equipment and personal protective equipment
3. Workers necessary for mining and production of critical minerals, materials and associated essential supply chains, and workers engaged in the manufacture and maintenance of equipment and other infrastructure necessary for mining production and distribution.
4. Workers who produce or manufacture parts or equipment that supports continued operations for any essential services and increase in remote workforce, including computing and communication devices, semiconductors, and equipment such as security tools for Security Operations Centers (SOCs) or data centers.
5. Workers manufacturing or providing parts and equipment that enable the maintenance and continued operation of essential businesses and facilities.

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10. FINANCIAL SERVICES

Sector Profile

The Financial Services Sector includes thousands of depository institutions, providers of investment products, insurance companies, other credit and financing organizations, and the providers of the critical financial utilities and services that support these functions. Financial institutions vary widely in size and presence, ranging from some of the world's largest global companies with thousands of employees and many billions of dollars in assets, to community banks and credit unions with a small number of employees serving individual communities. Whether an individual savings account, financial derivatives, credit extended to a large organization, or investments made to a foreign country, these products allow customers to: Deposit funds and make payments to other parties; Provide credit and liquidity to customers; Invest funds for both long and short periods; Transfer financial risks between customers.

Essential Workforce, if remote working is not practical:

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

April 28, 2020

11. CHEMICAL & HAZARDOUS MATERIALS

Sector Profile

The Chemical Sector—composed of a complex, global supply chain—converts various raw materials into diverse products that are essential to modern life. Based on the product produced, the sector can be divided into five main segments, each of which has distinct characteristics, growth dynamics, markets, new developments, and issues: Basic chemicals; Specialty chemicals; Agricultural chemicals; Pharmaceuticals; Consumer products.

Essential Workforce, if remote working is not practical:

1. Workers supporting the chemical and industrial gas supply chains, including workers at chemical manufacturing plants, workers in laboratories, workers at distribution facilities, workers who transport basic raw chemical materials to the producers of industrial and consumer goods, including hand sanitizers, food and food additives, pharmaceuticals, textiles, building materials, plumbing, electrical and paper products.
2. Workers supporting the safe transportation of chemicals, including those supporting tank truck cleaning facilities and workers who manufacture packaging items
3. Workers supporting the production of protective cleaning and medical solutions, personal protective equipment, disinfectants, and packaging that prevents the contamination of food, water, medicine, among others essential products
4. Workers supporting the operation and maintenance of facilities (particularly those with high risk chemicals and/ or sites that cannot be shut down) whose work cannot be done remotely and requires the presence of highly trained personnel to ensure safe operations, including plant contract workers who provide inspections
5. Workers who support the production and transportation of chlorine and alkali manufacturing, single-use plastics, and packaging that prevents the contamination or supports the continued manufacture of food, water, medicine, and other essential products, including glass container manufacturing
6. Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits
7. Workers who support hazardous materials response and cleanup
8. Workers who maintain digital systems infrastructure supporting hazardous materials management operations
9. Workers who support the removal, storage, and disposal of residential and commercial solid waste and hazardous waste, including landfill and recycling operations.

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12. DEFENSE INDUSTRIAL BASE

Sector Profile

The Defense Industrial Base Sector is the worldwide industrial complex that enables research and development, as well as design, production, delivery, and maintenance of military weapons systems, subsystems, and components or parts, to meet U.S. military requirements. The Defense Industrial Base partnership consists of Department of Defense components, Defense Industrial Base companies and their subcontractors who perform under contract to the Department of Defense, companies providing incidental materials and services to the Department of Defense, and government-owned/contractor-operated and government-owned/government-operated facilities. Defense Industrial Base companies include domestic and foreign entities, with production assets located in many countries. The sector provides products and services that are essential to mobilize, deploy, and sustain military operations.

Essential Workforce, if remote working is not practical:

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

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

Essential Workforce, if remote working is not practical:

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

April 28, 2020

11. Workers responsible for the leasing of residential and commercial properties to provide individuals and families with ready access to available housing.
12. Residential and commercial real estate workers, limited to scheduled property viewings to a potential buying party. This does not extend to open-house viewings, nor viewings with more than one buying party at a time.
13. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities and critical sector services
14. Workers responsible for handling property management, maintenance, and related service calls who can coordinate the response to emergency “at-home” situations requiring immediate attention, as well as facilitate the reception of deliveries, mail, and other necessary services.
15. **Workers supporting the entertainment industries, studios, and other related establishments, provided they follow covid-19 public health guidance around physical distancing.**
16. Workers that provide or determine eligibility for food, shelter, in-home supportive services, child welfare, adult protective services and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals (including family members)
17. Workers performing services in support of the elderly and disabled populations who coordinate a variety of services, including health care appointments and activities of daily living.
18. Workers who provide support to vulnerable populations to ensure their health and well-being including family care providers.
19. Workers providing dependent care services, particularly those whose services ensure essential workers can continue to work.
20. Workers who support food, shelter, and social services, and other necessities of life for economically disadvantaged or otherwise needy individuals, such as those residing in shelters.
21. **Workers in laundromats, laundry services, and dry cleaners.**
22. Workers providing disinfection services, for all essential facilities in essential sectors
23. Workers necessary for the installation, maintenance, distribution, and manufacturing of water and space heating equipment and its components.
24. Support required for continuity of services, including commercial disinfectant services, janitorial/cleaning personnel, and support personnel functions that need freedom of movement to access facilities in support of front-line employees.

Relevant Sector Guidance:

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

APPENDIX I



County of San Diego

HEALTH AND HUMAN SERVICES AGENCY
PUBLIC HEALTH SERVICES

ORDER OF THE HEALTH OFFICER AND EMERGENCY REGULATIONS

(Effective **December 10, 2020**)

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

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

1. All persons are to remain in their homes or at their place of residence, except for employees or customers traveling to and from essential businesses or a State authorized sector as defined in sections 10 and 11, below, or to participate in individual or family outdoor activity as allowed by this Order.
2. All “gatherings,” as defined in the California Department of Public Health Guidance for Private Gatherings found at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/CDPH-Guidance-for-the-Prevention-of-COVID-19-Transmission-for-Gatherings-10-09.aspx>, with members of other households are prohibited unless expressly permitted in the Regional Stay At Home Order issued by the California Public Health Officer on December 3, 2020 and found at: <https://www.gov.ca.gov/wp-content/uploads/2020/12/12.3.20-Stay-at-Home-Order-ICU-Scenario.pdf>.
3. SCHOOLS
 - a. All public, charter, and private schools may hold classes and other school activities only under circumstances permitted by the State and in compliance with the [COVID-19 Industry Guidance: Schools and School - Based Programs](#), and as may be updated or superseded by further State guidance. Institutions of higher education may hold classes or other school activities only under circumstances permitted by the State and in compliance with the [COVID – 19 Industry Guidance: Institutions of Higher Education](#) and as may be updated or superseded by further State guidance. A written,

Exh. 1-1

worksite-specific COVID-19 prevention plan as stated in their applicable state guidance may be used by schools and institutions of higher education in lieu of a Social Distancing and Sanitation Protocol or Safe Reopening Plan.

- b. All school districts, charter schools, and private schools serving grades TK – 12 inclusive, shall report the following to the San Diego County Office of Education (SDCOE) on or before the second and fourth Monday of each month, in a format designated by SDCOE:
 - i. Number of students participating in full-time in-person learning, by school site and school district, if applicable.
 - ii. Number of students participating in hybrid learning (a mix of in-person and distance learning) by school site and school district, if applicable.
 - iii. Number of students participating in distance learning by school site and school district, if applicable.
 - iv. Number of school employees who work onsite at a school, by school site and school district, if applicable.
 - v. The name, email, mailing address, and phone number of the person responsible for responding to complaints regarding COVID-19 prevention, by school site and school district, if applicable.

SDCOE shall report this information to the County of San Diego by the end of business on the following day (Tuesday) and shall post this information on its publicly facing website.

- c. All school districts, charter schools, and private schools serving grades TK – 12 inclusive, as required in the most recent *COVID -19 Industry Guidance: Schools and School-Based Programs*, shall notify local health officials immediately of any positive case of COVID-19, and exposed staff and families, as relevant, while maintaining confidentiality as required by state and federal laws.
4. 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 11c, below.
 5. “Non-essential personnel,” as defined in section 15a 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.

6. 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.
7. Hospitals, healthcare providers, pharmacies, commercial testing laboratories, and any other setting conducting testing shall report all positive and non-positive (i.e., negative, indeterminate, and specimen unsatisfactory) test results from nucleic acid amplification tests, antibody tests, and antigen diagnostic tests for SARS-CoV-2 to the Public Health Officer immediately after such results are received.
8. Face coverings shall be worn as described and required in California Department of Public Health Face Covering Guidance issued on November 16, 2020, (available at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx>).
9. All businesses not meeting the definition of essential business or State authorized sector in section 10 and 11 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 businesses and entities in State authorized sectors 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.
10. ESSENTIAL BUSINESSES
 - 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.

- b. 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 describe all measures required in section c below. Any business that fails to prepare and successfully implement a Social Distancing and Sanitation Protocol shall immediately close.
- c. When the State of California has issued an [industry guidance](#), or any subsequent amendments thereto, with mandatory or suggested restrictions and/or measures to be implemented by a particular sector of essential business, every essential business in that sector must comply with the guidance and shall include in its Social Distancing and Sanitation Protocol (prepared pursuant to section b, above) all of the measures listed in the industry guidance. Any mandatory measures required by this Order must also be included in a Social Distancing and Sanitation Protocol.

11. STATE AUTHORIZED SECTORS

- a. A “State authorized sector” is a type of business or activity that is not an essential business as defined in section 10a above, and is operating in conformance with the State of California’s Regional Stay At Home Order issued by the State Public Health Officer on December 3, 2020, all portions of which are operative in San Diego County effective immediately, and available at: <https://www.gov.ca.gov/wp-content/uploads/2020/12/12.3.20-Stay-at-Home-Order-ICU-Scenario.pdf>.
- b. All State authorized sectors, must prepare and post a “Safe Reopening Plan” on the form available at: <https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs>

/p/epidemiology/covid19/Community_Sector_Support/BusinessesandEmployers/SafeReopeningPlanTemplate.pdf for each of their facilities in the county.

- c. The Safe Reopening Plan must be posted at or near the entrance of the relevant facility, and shall be easily viewable by the public and employees. A copy of the Safe Reopening Plan must also be provided to each employee performing work at the facility. All businesses or entities in a State authorized sector shall implement the Safe Reopening Plan and provide evidence of its implementation to any authority enforcing this Order upon demand. The Safe Reopening Plan must describe all measures required in section e, below. Any business that fails to prepare and comply with its Safe Reopening Plan or COVID-19 Restaurant Operating Protocol shall immediately close.
 - d. When the State of California has issued an [industry guidance](#), or any subsequent amendments thereto, with mandatory or suggested restrictions and/or measures to be implemented by a particular State authorized sector, every business or entity in that sector must comply with the guidance and shall include in its Safe Reopening Plan (prepared pursuant to section c, above) all of the measures listed in the industry guidance. Any mandatory measures required by this Order must also be included in a Social Distancing and Sanitation Protocol.
12. Each essential business, and business or entity in a State authorized sector, shall take all of the following actions if an employer becomes aware that an employee is diagnosed with COVID-19:
- a. Promptly notify the County Department of Public Health that there is an employee that is laboratory-confirmed diagnosed with COVID-19, together with the name, date of birth, and contact information of the employee.
 - b. 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.
 - c. 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>.

13. 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. Recreational boating may occur in compliance with applicable State guidance: <https://files.covid19.ca.gov/pdf/guidance-campgrounds.pdf>.
- d. Businesses or entities operating pursuant to this section 13 shall comply with additional restrictions listed in Section 2 (g) of the State Regional Stay At Home Order and shall close all indoor facilities.

14. 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.

15. For purposes of this Order:

- a. “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.

- b. “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.
16. 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.”
17. 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.
18. 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.
19. 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 November 16, 2020; j) the State of California’s “Resilience Roadmap;” k) the State of California’s Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe; l) the California Statewide Public Health Officer Order dated August 28, 2020; and m) the Regional Stay At Home Order issued by the California Public Health Officer on December 3, 2020.

20. 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.
21. 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 businesses or entities in State authorized sectors and their customers/clients.
22. 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.
23. 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.
24. 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.
25. 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.

26. Violation of this Order is subject to fine, imprisonment, or both. (California Health and Safety Code section 120295.)
27. 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.
28. Once this Order takes effect it shall supersede the Order of the Health Officer and Emergency Regulations dated **December 5, 2020**.

IT IS SO ORDERED:

Date: **December 9, 2020**



Wilma J. Wooten, M.D., M.P.H.
Public Health Officer
County of San Diego

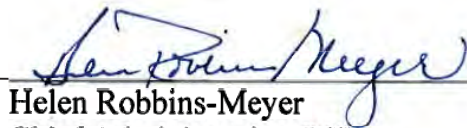
EMERGENCY REGULATIONS

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

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

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

Date: **December 9, 2020**



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

THIS ORDER AND EMERGENCY REGULATIONS DOES NOT SUPERSEDE MORE RESTRICTIVE STATE ORDERS OR GUIDANCE. ALL PERSONS MUST REFERENCE BOTH THIS DOCUMENT AND APPLICABLE STATE ORDERS AND GUIDANCE. TO THE EXTENT THERE IS ANY INCONSISTENCY THE MORE RESTRICTIVE MEASURE APPLIES.

APPENDIX J-1

313 N. Figueroa Street, Room 806 • Los Angeles, CA 90012 • (213) 240-8144 • media@ph.lacounty.gov
[Facebook.com/LAPublicHealth](https://www.facebook.com/LAPublicHealth) • [Twitter.com/LAPublicHealth](https://twitter.com/LAPublicHealth)

For Immediate Release:

December 19, 2020

L.A. County Surpasses 600,000 COVID-19 Cases as Hospitalizations Continue to Soar 60 New Deaths and 13,756 New Confirmed Cases of COVID-19 in Los Angeles County

The Los Angeles County Department of Public Health (Public Health) has reported more than 600,000 confirmed COVID-19 cases in Los Angeles County. More than 100,000 new cases have been reported since December 11, when L.A. County reached 500,000 COVID-19 cases. L.A. County is experiencing the fastest acceleration of new cases than at any other time during the pandemic.

To date, Public Health identified 610,372 positive cases of COVID-19 across all areas of L.A. County and a total of 8,817 deaths. Today, Public Health has confirmed 60 new deaths and 13,756 new cases of COVID-19.

There are 5,424 people with COVID-19 currently hospitalized and 21% of these people are in the ICU. Today's number of people currently hospitalized with COVID-19 is again a new high and an increase of more than 300 patients since yesterday. Hospital capacity across the county is limited, and healthcare workers are hard-pressed to keep up with the need for care. And the only means available to improve the situation at the hospitals is to reduce the number of people becoming newly infected with COVID-19.

A recent decision by the Court of Appeal affirms Los Angeles County's duty to prevent disease transmission and protect public health through existing Health Officer Orders, and the suspension of outdoor dining remains in effect. Public Health reminds all sectors and businesses that all other requirements, safety directives, and temporary business closures also remain in effect.

The Los Angeles County Health Officer Order will be modified today to align with recent Supreme Court rulings for places of worship. Places of worship are permitted to offer faith-based services both indoors and outdoors with mandatory physical distancing and face coverings over both the nose and mouth that must be worn at all times while on site. Places of worship must also assure that attendance does not exceed the number of people who can be accommodated while maintaining a physical distance of six feet between separate households.

Public Health strongly recommends that places of worship continue to hold services outdoors, with physical distancing and the use of face coverings to prevent the spread of COVID-19 to congregants and to the entire community. Because Los Angeles County is experiencing an unprecedented surge of COVID-19 cases, hospitalizations, and deaths, every effort to prevent the spread of COVID-19 to congregants and to the entire community is critical.

Yesterday, the U.S. Food and Drug Administration issued an emergency use authorization (EUA) for the second vaccine to prevent COVID-19 severe illness. The EUA allows the Moderna COVID-19 vaccine to be distributed throughout the country. Public Health expects doses of this vaccine to arrive in L.A. County next week. Once these doses arrive, they will be used to vaccinate staff and residents at skilled nursing facilities, frontline EMS EMT's and paramedics, and vaccinators.

Currently, the Pfizer COVID-19 initial allocation of vaccine is being used by acute care hospitals to vaccinate frontline health care personnel. A second allotment of Pfizer vaccine is anticipated to arrive next week and will be used to vaccinate additional healthcare workers at acute care hospitals.

Of the 60 new deaths reported today, 29 people that passed away were over the age of 80 years old, 17 people who died were between the ages of 65 and 79 years old, nine people who died were between the ages of 50 and 64 years old, and two people who died were between the ages of 30 and 49 years old. Forty-six people who died had underlying health conditions including 25 people over the age of 80 years old, 13 people between the ages of 65 and 79 years old, six people between the ages of 50 and 64 years old, and two people between the ages of 30 and 49 years old. Two deaths were reported by the City of Pasadena and one death was reported by the City of Long Beach.

"Our hearts go out to everyone grieving the loss of a loved one due to the COVID-19 pandemic. We are so sorry for your loss," said Barbara Ferrer, PhD, MPH, MEd, Director of Public Health. "We are bearing witness every day to the terrible suffering caused by a virus that is spreading out of control throughout the county. Places where people from different households gather and do not follow safety directives contributes to unnecessary COVID-19 spread that results in hospitalizations and deaths that could have been avoided. Following the safety measures saves lives and is our only way to protect essential workers and our hospitals. Stay home as much as possible, do not mingle with others, and do not travel. Always wear a face covering, keep distance from others, frequently wash hands, and limit all non-essential activities."

If you have symptoms or test positive for COVID-19, isolate immediately from your family and others. Individuals with underlying health conditions and those that are older should remain in their home and not be around others unless seeking essential health and dental care. If you are having difficulty breathing, go to an emergency room or call 911.

The Reopening Protocols, COVID-19 Surveillance Interactive Dashboard, Roadmap to Recovery, Recovery Dashboard, and additional things you can do to protect yourself, your family and your community are on the Public Health website,

<http://www.publichealth.lacounty.gov>.

Always check with trusted sources for the latest accurate information about novel coronavirus:

- Los Angeles County Department of Public Health <http://publichealth.lacounty.gov/media/Coronavirus/>
- California Department of Public Health <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>
- Centers for Disease Control and Prevention (CDC) <https://www.cdc.gov/coronavirus/2019-ncov/index.html> Spanish <https://www.cdc.gov/coronavirus/2019-ncov/index-sp.html>
- World Health Organization <https://www.who.int/health-topics/coronavirus>
- LA County residents can also call 2-1-1

The Department of Public Health is committed to promoting health equity and ensuring optimal health and well-being for all 10 million residents of Los Angeles County. Through a variety of programs, community partnerships and services, Public Health oversees environmental health, disease control, and community and family health. Nationally accredited by the Public Health Accreditation Board, the Los Angeles County Department of Public Health comprises nearly 4,500 employees and has an annual budget of \$1.2 billion. To learn more about Los Angeles County Public Health, please visit www.publichealth.lacounty.gov, and follow LA County Public Health on social media at twitter.com/lacountygov, and follow LA County Public Health on social media at twitter.com/lapublichealth, facebook.com/lapublichealth, instagram.com/lapublichealth and youtube.com/lapublichealth.

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APPENDIX J-2

**REVISED TEMPORARY TARGETED SAFER AT HOME HEALTH OFFICER ORDER FOR
CONTROL OF COVID-19: TIER 1 SUBSTANTIAL SURGE UPDATED RESPONSE | 12/19/2020**

REVISED TEMPORARY TARGETED SAFER AT HOME HEALTH OFFICER ORDER FOR CONTROL OF COVID-19: *TIER 1 SUBSTANTIAL SURGE UPDATED RESPONSE*

Revised Order Issued: December 19, 2020

Effective 11:59PM (PST) on December 19, 2020 to at least 11:59PM (PST) on December 27, 2020. This order may be extended if the projections of the Southern California Region's total available adult ICU bed capacity is less than 15%.

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. (California Health and Safety Code §120295; Los Angeles County Code § 11.02.080.)

SUMMARY OF THE TEMPORARY ORDER:

This Revised Temporary Targeted Safer At Home Order for Control of COVID-19: Tier 1 Substantial Surge Updated Response (Revised Temporary Order) is issued to temporarily replace both the most recently issued Temporary Order and Reopening Safer At Work And In The Community For Control of COVID-19 Order (Order) issued by the County of Los Angeles Health Officer (Health Officer). This Revised Temporary Order will be effective from 11:59pm (Pacific Standard Time (PST)) on December 19, 2020 to, at least, 11:59pm (PST) on December 27, 2020, and may be extended if the projections of the Southern California Region's total available adult ICU bed capacity is less than 15%.

This Revised Temporary Order has been updated and is issued as a response to the sustained and substantial rise in COVID-19 cases, hospitalizations and deaths. This Revised Temporary Order has been revised to align and comply with the [State's December 3, 2020 Regional Stay At Home Order](#), as well as the [Supplement to the Regional Stay At Home Order issued December 6, 2020](#). County Health Officer Orders may not be less restrictive than Orders issued by the State Public Health Officer.

The County is part of the Southern California Region (Region). Over the last seven (7) calendar days, the County of Los Angeles is averaging 13,727 newly diagnosed COVID-19 cases per day. Between November 13, 2020-December 18, 2020, hospitalizations of confirmed COVID-19 patients have increased by 330% to 5,100. In addition, the adult ICU bed admissions in the Southern California Region rose. And, per the California Department of Public Health, there is no additional [adult Intensive Care Unit \(ICU\) bed capacity within the Region](#). Because of both the rapid continuing increases in new cases and test positivity rates within the County and the Region



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and the lag between case identification and hospitalizations, the Health Officer expects both the number of new cases and hospitalizations, including adult ICU admissions in the Region, to continue to increase.

Per the State Public Health Officer, current projections show that without additional intervention to slow the spread of COVID-19, the number of available adult Intensive Care Unit (ICU) beds in the State of California will be at capacity in mid-December. ICU beds are a critical resource for individuals who need the most advanced support and care and the ability to add additional ICU capacity is limited by the lack of available ICU nurses and physicians as a result of the nationwide surge in hospitalizations and ICU admissions.

Without additional public health interventions and widespread public adherence to the personal preventive actions to avoid being exposed to this virus and spreading it to others, the high levels and rate of rise in both cases and hospitalizations, if either continues, are at risk of overwhelming the ability of hospitals to deliver healthcare to people suffering from COVID-19 and from other illnesses requiring hospital care.

This Revised Temporary Order is issued to ensure that County of Los Angeles (County) residents remain in their residences except as necessary to conduct activities specifically permitted in this order, to limit close contact with others outside their household in both indoor and outdoor spaces and to further reduce the risk of community transmission of COVID-19 resulting from the unprecedented surge of new daily cases. This Revised Temporary Order is issued to reduce capacity at sites where non-household members interact. Limiting interactions among non-household members, especially in places where persons are in close proximity without a face covering or mask, is essential to slowing the spread of COVID-19. It is imperative that all persons and businesses within in the County take personal responsibility and follow all restrictions and infection control precautions required by this Revised Temporary Order. Changes from the previous Temporary Order are highlighted.

This Revised Temporary Order is effective within the County of Los Angeles Public Health Jurisdiction, defined as all cities and unincorporated areas within the County of Los Angeles, with the exception of the cities of Long Beach and Pasadena that must follow their respective City Health Officer orders and guidance. This Revised Temporary Order is effective 11:59PM December 6, 2020 and will continue for at least 21 days.

REVISED TEMPORARY TARGETED SAFER AT HOME HEALTH OFFICER ORDER FOR CONTROL OF COVID-19: TIER 1 SUBSTANTIAL SURGE UPDATED RESPONSE | 12/19/2020**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE COUNTY OF LOS ANGELES HEALTH OFFICER ORDERS:**

1. This Revised Temporary Order replaces both the most recently issued Temporary Order and Reopening Safer At Work And In The Community For Control of COVID-19 Order (Order) issued by the County of Los Angeles Health Officer (Health Officer). That Order is suspended until the expiration of this Revised Temporary Order. This Revised Temporary Order is issued to slow the current high rates of COVID-19 community transmission and hospitalizations within the County. The Health Officer will continue to assess COVID-19 indicators within the County and the effectiveness of this Revised Temporary Order on an ongoing basis and determine, after consultation with the Board of Supervisors, whether this Revised Temporary Order needs to be modified or extended if the public health risk associated with COVID-19 increases in the future.
2. This Revised Temporary Order's intent is to continue to ensure that County residents remain in their residences except as necessary to conduct activities as required by law or as specifically permitted in this order, to limit close contact with others outside their household in both indoor and outdoor spaces and to further reduce the increased risk of community transmission of COVID-19 resulting from the unprecedented surge of new daily cases. All persons who can telework or work from home should continue to do so as much as possible during this pandemic. The public's adherence to sustained Social (Physical) Distancing, consistent and correct use of face coverings/masks, and other infection control measures will slow the spread of COVID-19 and diminish its impact on the delivery of critical healthcare services. Failure to comply with any of the Revised Temporary Order's provisions constitutes an imminent threat and menace to public health, and a public nuisance, and is punishable by fine, imprisonment or both.
 - a) This Revised Temporary Order does not supersede any stricter limitation imposed by a local public entity within the County of Los Angeles Public Health Jurisdiction.
 - b) Except for restrictions on Places of Worship, this Order is consistent with the provisions in the Governor's Executive Order N-60-20 and the State Public Health Officer's May 7, 2020 Order, that local health jurisdictions may implement or continue more restrictive public health measures in the jurisdiction if the local health officer believes conditions in that jurisdiction warrant them. Except for Places of Worship, where a conflict exists between this Order and any state public



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health order related to controlling the spread of COVID-19 during this pandemic, the most restrictive provision controls.¹

3. All persons within the County Public Health Jurisdiction must stay home, except to travel to and from Essential Businesses, to work at or provide service to a Healthcare Operation or Essential Infrastructure, to work at, perform or obtain services from an Essential Governmental Function, to engage in Essential Activities, or to participate in permitted individual or household activities, while practicing social distancing and using face coverings/masks as described below.
 - a) Nothing in this Revised Temporary Order prohibits persons living together as a single household in a household or living unit ("household") from engaging in permitted activities together. For purposes of this Revised Temporary Order, a "household" shall not include institutional group living situations such as dormitories, fraternities, sororities, monasteries, convents, or residential care facilities, nor does it include such commercial group living arrangements as boarding houses, hotels, or motels.²
 - b) All public and private gatherings and events with people from more than one household are not permitted except for outdoor faith-based services and outdoor political expression, and as provided in Paragraph 9 of this Revised Temporary Order.
 - c) People leaving their residences must strictly comply with the Social (Physical) Distancing, as specified in guidance or protocols established by the County Department of Public Health. This Revised Temporary Order requires all persons wear a face covering or mask over both the nose and mouth whenever they leave their place of residence and are or can be in contact with or walking near or past others who are non-household members in both public and private places, whether indoors or outdoors. This includes wearing a face covering or mask when patronizing a business. Wearing a face covering or mask reduces the risk of transmission to others from people who do not have symptoms and do not know they are infected. Wearing a face covering or mask has also been shown to provide

¹ *Burfitt v. Newsom*, No. BCV-20-102267 (Kern County Sup. Ct. Dec. 10, 2020); *Roman Catholic Diocese of Brooklyn v. Cuomo*, No. 20A87, 2020 WL 6948354 (U.S. Nov. 25, 2020) (per curiam); *Robinson, et al. v. Murphy*, 592 U.S. ____ (2020); and *High Plains Harvest Church, et al. v. Polis*, 592 U.S. ____ (2020).

² Los Angeles County Code, Title 22. §22.14.060 - F. Family definition. (Ord. 2019-0004 § 1, 2019.)

https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodoid=TIT22PLZO_DIV2DE_CH22.14DE_22.14.060F



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some protection for the wearer. The use of face coverings is commonly referred to as "source control".

- d) Persons and businesses within the County of Los Angeles Public Health Jurisdiction are required to follow the local COVID-19 infection control protocols and guidance provided by the County Department of Public Health. In instances where the County has not provided a specific guidance or protocol, specific guidance or protocols established by the State Public Health Officer shall control. All businesses must comply with the County Public Health Protocol applicable to that business sector.
- i. In the event that an owner, manager, or operator of any business knows of three (3) or more cases of COVID-19 among their employees within a span of 14 days, the employer must report this outbreak to the Department of Public Health at (888) 397-3993 or (213) 240-7821.
 - ii. In the event that an owner, manager, or operator of any business is informed that one or more employees of the business has tested positive for, or has symptoms consistent with COVID-19 (case), the employer must have a protocol to require the case(s) to isolate themselves at home and require the immediate self-quarantine of all employees that had a workplace exposure to the case(s).
- e) All permitted activities with individuals of other households and all activities conducted outside the residence, lodging, or temporary accommodation with members of other households must cease, between 10PM and 5AM (PST) except for those activities associated with the operation, maintenance, or usage of an Essential Business, Healthcare Operation, Essential Infrastructure, Essential Government Function, **Places of Worship for faith-based services** or **as** required by law. This Revised Temporary Order does not apply to persons experiencing homelessness. Nothing in this Revised Temporary Order prevents any number of person from the same household from leaving their residence, lodging or temporary accommodation, as long as they do not engage in any interaction with (or otherwise gather with) any number of persons from any other household, except as specifically permitted herein.

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4. This Revised Temporary Order incorporates by reference the following provisions of the recently issued Reopening Safer At Work And In The Community For Control of COVID-19 Order issued by the County Health Officer on November 25, 2020: Paragraphs 4, 5, 6, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26, and Appendices A, B, B-1, C, D, E, F, G, I, J, K, L, N, O, P, Q, S, T1, T2, and U. To the extent that this Revised Temporary Order conflicts with any incorporated paragraphs or appendices, this Revised Temporary Order controls.
5. The Health Officer orders the closure of the following businesses, recreational sites, commercial properties, and activities, where more frequent and prolonged person-to-person contacts are likely to occur:
 - a) Lounges and nightclubs;
 - b) Bars and craft distilleries that possess a valid low risk restaurant public health permit issued by the County of Los Angeles, and breweries and wineries for in-person onsite food and beverage service.
 - c) Public entertainment venues: movie theaters, live performance theaters, concert venues, theme parks, and festivals;
 - d) Family entertainment centers for all activities;
 - e) All restaurants, but only for indoor and outdoor in-person onsite dining until further notice;
 - f) Cardrooms, satellite wagering facilities, and racetrack onsite wagering facilities until further notice;
 - g) Indoor playgrounds; Outdoor playgrounds may remain open to facilitate physically distanced personal health and wellness through outdoor exercise following County Public Health Protocols for Playgrounds. Playgrounds located on schools that remain open for in-person instruction, and not accessible by the general public, may remain open and must follow County and State Protocols for Schools.
 - h) Museums, zoos and aquariums are closed to the public until further notice;
 - i) Hot tubs, steam rooms and saunas not located on a residential property;
 - j) Small water vessel charters and outdoor equipment rental;

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- k) Personal Care Services. Personal Care Establishments include hair salons, nail salons, barbershops, esthetic, skin care, waxing, electrology, body art professionals, tattoo parlors, and piercing shops, tanning salons and massage therapy (in non-healthcare settings). Personal Care Services do not include medical massage that is done based on a referral by a physician or chiropractor.
- l) All public and private events and gatherings, unless specifically allowed by this Order.
6. All Essential Businesses, as defined in Paragraph 18 of the November 25, 2020 Reopening Safer at Work Order, unless specific modifications are required by this Revised Temporary Order, may remain open to the public and conduct normal business operations, provided that they implement and maintain the Social (Physical) Distancing Protocol. All Essential Businesses must comply with the applicable County Public Health Protocol(s) for its business sector. An Essential Business' owner, manager, or operator must prepare and post a Social (Physical) Distancing Protocol and any other applicable County Public Health Protocol for each facility or office located within the County of Los Angeles Public Health Jurisdiction and must ensure that the Essential Business meets all other requirements of all applicable protocols and the Social (Physical) Distancing Protocol.
7. Lower-Risk Businesses are businesses that are not specified in Paragraph 6 of this Revised Temporary Order, and not defined as an Essential Business in Paragraph 18 of the most recent Order. There are four categories of Lower-Risk Businesses: (1) retailers ("Lower-Risk Retail Businesses"), (2) manufacturing and logistics sector businesses that supply Lower-Risk Retail Businesses, (3) Non-Essential office-based businesses, and (4) Indoor Malls and Shopping Centers. These four categories of Lower-Risk Businesses may be open subject to the following conditions:
- a) **Lower-Risk Retail Businesses** that are open for indoor operations must limit indoor capacity to 20% of maximum occupancy. Lower-Risk Retail Businesses must conduct entrance metering of customers. No eating or drinking inside the store. Additionally, special hours should be instituted for seniors and others with chronic conditions or compromised immune systems. Lower-Risk Retail Businesses, which are non-essential, must close for indoor retail operations between the hours of 10:00 PM – 5:00 AM (PST). Lower-Risk Retail Businesses must post and follow County Public Health Protocol, incorporated by reference as **Appendix B**.

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- b) For any **non-retail Lower-Risk Business**, that is a manufacturing and logistics sector business that supplies Lower-Risk Retail Businesses, the owner, manager, or operator must implement and post the required County Public Health Protocol, applicable to the business type or location, incorporated by reference as **Appendix C**, and must meet all other requirements of the Social (Physical) Distancing Protocol. All employees must wear a face covering or mask over both the nose and mouth at all times while present at work. A face covering must be worn when employees are or can be in contact with or walking near or past others who are non-household members in both public and private places, whether indoors or outdoors.
- c) For any **Non-Essential office-based business**, all indoor portions and operations must cease in-person operations until further notice. Non-essential office-based businesses may operate via telework and for Minimum Basic Operations only. Essential Businesses, Healthcare Operations, or Essential Infrastructure whose operations require that employees operate from an office worksite must require employees to telework to the extent feasible and any in-person operations must be in accordance with the County Public Health Reopening Protocol Office-Based Worksites, incorporated by reference as **Appendix D**.
- d) **Essential office-based businesses** that are open for indoor operations must limit indoor capacity to 25% of maximum occupancy, and must comply with County Public Health Protocols for Office-Based Worksites, incorporated by reference as **Appendix D**. This restriction does not apply to Healthcare Operations, Essential Infrastructure, and Essential Government Functions.
- e) **Indoor Malls and Shopping Centers**, defined as: A building with (7) or more sales or retail establishments with adjoining indoor space, (including indoor swap meets) may be open at up to 20% of overall mall or shopping center capacity. Indoor Malls and Shopping Centers must conduct entrance metering of customers. Additionally, special hours should be instituted for seniors and others with chronic conditions or compromised immune systems. Higher-risk businesses located within an Indoor Mall or Shopping Center as listed in Paragraph 6 of this Revised Temporary Order must remain closed. Food court dining areas and specified common areas located within an Indoor Mall or Shopping Center must remain closed to the public until further notice. Members of the public may not consume food or beverages inside the Indoor Mall or Shopping Center. Outdoor seating is closed to the public. Indoor Malls or Shopping Centers must close between the hours of 10:00 PM–5:00 AM (PST). All essential businesses with an entrance

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accessible by the public at the exterior of an Indoor Mall or Shopping Center may remain open during those hours in accordance with the limitations set forth in this Revised Temporary Order. The owner or operator of the Indoor Mall or Shopping Center must prepare, implement and post the required County Public Health Protocols for Shopping Center Operators, incorporated by reference as **Appendix E**.

8. The following sectors, business, and activities may remain open while adhering to the required workplace and operational modifications, and subject to the following conditions:
- a) **Music, Film and Television Production.** Operations for music, film and television production must prepare, implement and post the required County Public Health Protocol for Music, Film and Television Production, incorporated by reference as **Appendix J**, as well as abide by applicable industry-generated protocols. Workers supporting these entertainment industries, studios, and other related establishments such as establishments that provide content for professional broadcast are considered essential by the State.
 - b) **Day camps.** Day camp owners and operators must implement and post the required County Public Health Protocol for Day Camps, incorporated by reference as **Appendix K**. Day camps must close in-person operations between the hours of 10:00 PM – 5:00 AM (PST). Day Camps with a COVID-19 outbreak (3 or more cases within a 14-day period) must close for 14 days.
 - c) **Fitness facilities.** Fitness facilities, including private gymnasiums, may be open for outdoor operations only at 50% maximum outdoor capacity. The indoor portions of Fitness facilities are closed to the public until further notice. The owner, manager, or operator of fitness facilities must prepare, implement and post the required County Public Health Protocol for Gyms and Fitness Establishments, incorporated by reference as **Appendix L**. Fitness facilities must close in-person operations between the hours of 10:00 PM – 5:00 AM (PST).
 - d) [Intentionally omitted.]
 - e) **Professional sports without audiences.** Professional sports teams and franchises may continue operations and competitions without audiences. The owner, manager, or operator of professional sports teams and franchises must prepare, implement and post the required County Public Health Protocol for Professional Sports Leagues and Facilities Opening for Training Sessions and Spectator-Free

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Events, incorporated by reference as **Appendix N**, as well as abide by applicable industry-generated protocols. Workers supporting operations by professional sports leagues and facilities are considered essential by the State. Professional sports teams and franchises must conclude competitions and other in-person operations by 10:00 PM and cease operations between the hours of 10:00 PM – 5:00 AM (PST).

- f) **Campgrounds, RV Parks and associated outdoor activities.** Campgrounds and recreational vehicle parks may remain open. Recreational overnight stays at campgrounds are prohibited, unless used for COVID-19 mitigation and containment measures, treatment measures, providing accommodation for essential workers or those displaced as a result of fire or other emergency, or providing housing solutions, including measures to protect homeless populations. The owner, manager, or operator of campgrounds and RV Parks must prepare, implement and post the required County Public Health Reopening Protocol for Campgrounds, RV parks and Cabin Rental Units, incorporated by reference as **Appendix O**.
- g) **Schools (K-12) and School Districts.** The County Public Health Officer requires all public and private schools (K-12) and school districts within the County of Los Angeles to conduct distance learning. Since September 14, 2020, K-12 schools may offer in-school services for a small, stable cohort of students with Individualized Education Programs (IEPs) or English Learners (ELs) needing assessments and/or specialized in-school services, with priority given to students with disabilities. Other prioritized groups for in person support and services include students not participating in distance learning, students at risk of abuse or neglect, foster youth, and students experiencing homelessness. Permissible in-person specialized services that require cohorting of students, must limit the maximum stable cohort size to twelve (12) students and two (2) staff (not including aides assigned to children with special needs), and adhere to all provisions for safe opening of schools, as outlined in **Appendix T1: Reopening Protocols for K-12 Schools**. Schools must limit the number of students with IEPs and ELs, and other prioritized students allowed at any one time on campus for essential assessments and/or specialized in-school services to 25% or less of the total student body. In addition, Schools may reopen TK-2nd Grades for classroom instruction with a waiver application approved by the County Department of Public Health. Schools and School Districts that are permitted to reopen for prioritized individual and cohorted students (K-12) or upon an approved waiver application (TK-12) must follow the Reopening Protocols for K-12 Schools

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and the Protocol for COVID-19 Exposure Management Plan in K-12 Schools, incorporated by reference as **Appendices T1 & T2**. K-12 Schools with a COVID-19 outbreak (3 or more cases within a 14-day period) must close for 14 days.

- h) [Intentionally Omitted.]
- i) **Institutes of Higher Education.** Colleges and universities in Los Angeles County will not be able to resume all in-person academic instruction, at this time. Institutions may continue to offer in person training and instruction for essential workforce for required activities that cannot be accomplished through virtual learning. All other academic instruction must continue to be done via distance-learning as specified in the County's Protocols for Institutes of Higher Education incorporated by reference as **Appendix U**. Faculty and other staff may come to campus for the purpose of providing distance learning, and other activities related to the purposes above, as well as maintaining minimum basic operations. Limited activities may take place on the campus as defined in the County's Protocols for Institutes of Higher Education. The institution must comply with all relevant portions of the County's Protocols for Institutes of Higher Education to maximize safety for all employees, also noted in **Appendix U**.
- j) **Outdoor Malls, Shopping Centers, and Swap Meets** may remain open at up to 20% of overall mall or shopping center capacity. These establishments must conduct entrance metering of customers. Additionally, special hours should be instituted for seniors and others with chronic conditions or compromised immune systems. Food court dining areas and common areas located within an Outdoor Mall, Shopping Center or Swap Meet must remain closed to the public until further notice. Members of the public may not consume food or beverages on the premises. Restaurants may only offer food and beverages for takeout, drive thru or delivery. **Outdoor seating is closed to the public.** Outdoor Malls, Shopping Centers and Swap Meets must close between the hours of 10:00 PM–5:00 AM (PST). **The entities identified in Paragraph 3(e) of this Revised Temporary Order may remain open during those hours in accordance with the limitations set forth in this Revised Temporary Order.** The owner or operator must prepare, implement and post the required County Public Health Protocols for Shopping Center Operators, incorporated by reference as **Appendix E**.
- k) **Hotels, Motels and Shared Rental Units.** Hotels and lodging cannot accept or honor out-of-state reservations for non-essential travel, unless the reservation is for at least the minimum time period required for quarantine and the persons

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identified in the reservation will quarantine in the hotel or lodging entity until after that time period has expired. When the Regional Stay Home Order is in effect in a region, hotels and lodging can only offer accommodation for COVID-19 mitigation and containment measures, treatment measures, accommodation for essential workers, or providing housing solutions, including measures to protect homeless populations. The owner or operator must prepare, implement and post the required County Public Health Protocols for Hotels, Lodging and Short-Term Rentals, incorporated by reference as **Appendix P**.

- l) [Intentionally Omitted.]
- m) **Essential Retail.** Essential Retail Businesses are defined in Paragraph 18 of the Order, which is incorporated by reference into this Revised Temporary Order. Essential Retail Businesses, such as, Retail Food Markets, Gas Stations, Appliances, Electronics, Banks/Credit Unions, Pet Stores, Laundromats, Hardware, Automobile Dealerships, Auto Repair are open at 20% of maximum indoor capacity and following appropriate retail protocols. Stand-alone grocery stores where the principal business activity is the sale of food may operate at 35% of capacity (based on building code occupancy limits). All access to grocery stores and retail food markets must be strictly metered to ensure compliance with the limit on capacity. The sale of food, beverages, and alcohol for in-store consumption is prohibited. Grocery stores and retail food markets must comply with County Public Health Protocols for Grocery Stores and Retail Food Markets, incorporated by reference as **Appendix B-1**. Outdoor Certified Farmers Markets must comply with County Public Health Guidance for Certified Farmers Markets and limit occupancy to 35% of outdoor capacity.
- n) **Restaurants.** Restaurants and other food facilities that prepare and serve food are open but only for delivery, drive thru, and carry out. Indoor and outdoor onsite dining is not permitted. **Outdoor seating is closed to the public.** Restaurants may continue to offer delivery, drive thru and carry out between the hours of 10:00 PM – 5:00 AM (PST). Restaurants with a moderate risk or high risk restaurant permit issued by the County Public Health and other food facilities must follow the revised Public Health Protocols for Restaurants, incorporated by reference as **Appendix I**. Cafeterias, commissaries, and restaurants located within hospitals, nursing homes, or other licensed health care facilities may provide dine-in service, as long as Social (Physical) Distancing is practiced;



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- o) **Breweries and Wineries.** Breweries and wineries are closed for in-person onsite food and beverage service. Breweries and wineries may remain open for production, manufacturing, and indoor retail operations at 20% of maximum indoor occupancy following County Public Health Retail Protocol, incorporated by reference as **Appendix B**. These establishments must close in-person operations between 10:00 PM – 5:00 AM (PST).
- p) **Childcare Facilities.** All childcare facilities, including those operating at schools, must operate under the LAC DPH Childcare Guidance and the following conditions: (1) Childcare must be carried out in stable cohorted groups of 12 or fewer ("stable" means the same twelve (12) or fewer children are in the same group each day); (2) Children shall not change from one group to another; (3) If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other; (4) Childcare providers shall remain solely with one group of children.
- q) **Drive-In Movie Theaters / Drive-In Events.** Drive-In movie theaters and drive-in events are recommended to close. Those that remain open must adhere to the following conditions: All occupants of each car are members of the same household. Operators must follow County Public Health Drive-In Movie Protocol. The movie showing or event must end by 10:00 PM and remain closed until 5:00 AM (PST).
- r) **Libraries.** Libraries that are not on campuses of Institutes of Higher Education may remain open at 20% of maximum indoor capacity. Libraries may elect to continue curbside pick-up operations.
- s) **Swimming Pools.** Outdoor and indoor pools that serve members from more than one household are closed, except that outdoor pools that offer regulated lap swimming (one swimmer per lane) may remain open and drowning prevention classes, including swim lessons with certified instructors, are permitted indoors and outdoors. All gatherings at pool areas are prohibited. Must close for operations between the hours of 10:00 PM – 5:00 AM (PST).

9. Permitted Activities. The following activities are considered Essential Activities, and are specifically permitted under this Revised Temporary Order:

- a) Engaging in activities or performing tasks important to the health and safety of family or household members (including pets), such as, visiting a health or veterinary care professional, obtaining medical supplies or medication, visiting a

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physician or child's pediatrician for routine care, such as, well-child visits and vaccinations;

- b) Obtaining necessary services and supplies for family or household members, or delivering the same, such as, obtaining grocery items or necessary supplies from Essential Businesses for one's household or for delivery to others;
- c) Performing work for or accessing businesses that are open, or to carry out Minimum Basic Operations for businesses that are closed or operating remotely.
- d) Obtaining or accessing services from Essential Governmental Functions, such as, accessing court, social and administrative services, performing jury duty or complying with an order of law enforcement or court;
- e) Caring for minors, the elderly, dependents, persons with disabilities, or other vulnerable persons;
- f) Obtaining in-person behavioral health or substance use disorder support in therapeutic small group meetings, such as Alcoholics Anonymous or Narcotics Anonymous, provided that the gathering is outside and limited to 10 people or fewer and Social (Physical) Distancing is practiced.
- g) Obtaining in-person faith-based counselling services where the service cannot reasonably be practiced remotely, provided that the gathering is outside and limited to 10 people or fewer and Social (Physical) Distancing is practiced.
- h) Attending in-person faith-based services or otherwise engaging in faith-based practices at a Place of Worship. The number of persons on site at any time shall be reduced as needed to permit compliance with physical distancing and infection control requirements. Attendees at a faith-based service at a Place of Worship must observe strict Social (Physical) Distancing, incorporated by reference as **Appendix A**, which requires a minimum of six feet between attendees from different households. All attendees must wear a face covering or mask over both the nose and mouth at all times while in attendance and when walking near or past non-household members, whether indoors or outdoors. Faith-based organizations holding in-person services, must follow the Public Health Places of Worship Protocols, incorporated by reference as **Appendix F**. Please note: The protocols set forth in **Appendix F** do not obligate Places of Worship to resume any in-person activity. Further, it is strongly recommended that Places of Worship continue to facilitate outdoor or remote services and other related activities for all attendees,



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especially those who are vulnerable to COVID-19 including older adults and those with co-morbidities, given the increased risk of community transmission of COVID-19 resulting from the unprecedented surge of new daily cases, hospitalizations, and premature deaths.

- i) Permitted activities include engaging in outdoor recreation activity (as an individual or household), in compliance with Social (Physical) Distancing requirements and wearing a face covering, subject to the following limitations:
 - i. Outdoor recreation activity at parks, trails, piers, and beaches, and other open spaces must comply with any access or use restrictions separately established by the Health Officer, government, or other entity that manages the area to reduce congestion and the resulting increase in risk of COVID-19 transmission. Individuals can engage in active recreation at beaches, parks, and trails by themselves or with members of their household; team sports and any gatherings are prohibited unless with members of only one household. Must close for operations between the hours of 10:00 PM – 5:00 AM (PST).
 - ii. Shared outdoor facilities for recreational activities, including but not limited to golf courses, tennis, bocce and pickleball courts, children’s playgrounds, shooting and archery ranges, equestrian centers, model airplane areas, community gardens botanical gardens, skate parks, and bike parks may remain open for individuals or members of a single household while following Social (Physical) Distancing requirements and wearing a face covering. All persons must comply with any access or use restrictions separately established by the Health Officer, government, or other entity that manages the area to reduce congestion and the resulting increase in risk of COVID-19 transmission. Must close for operations between the hours of 10:00 PM – 5:00 AM (PST).
 - iii. Local public entities may elect to temporarily close certain streets or areas to automobile traffic, to allow for increased space for persons to engage in recreational activity permitted by and in compliance with Social (Physical) Distancing requirements specified in this Revised Temporary Order.
- j) **Participating in a Vehicle-Based Parade.** Wherever possible, vehicle parades should be canceled for the duration of this Order. Parades may only be held under the following conditions: The host of the Vehicle-Based Parade must comply with



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all local ordinances, traffic control requirements, and state and local laws. Only persons from the same household may occupy a vehicle. Further, the host of Vehicle-Based Parades must comply with County Public Health Vehicle-Based Parade Protocol, incorporate by reference as **Appendix G**. Vehicle-Based Parades may not occur during the hours of 10:00 PM – 5:00 AM (PST).

- k) Participating in an in-person political expression as long as the protest is held outdoors. Outdoor political expressive activities are permitted without a limit on attendees. Persons participating must wear a face covering or mask and maintain physical distancing of six (6) feet between persons or groups of persons from different households at all times, as well as observe the Department of Public Health Protocol for Public Demonstrations.
- 10.** Pursuant to Sections 26602 and 41601 of the California Government Code and Section 101029 of the California Health and Safety Code, the Health Officer requests that the Sheriff and all chiefs of police in all cities located in the Los Angeles County Public Health Jurisdiction ensure compliance with and enforcement of this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment or both.
- 11.** This Order shall become effective at 11:59 PM (PST) on December 19, 2020 and will continue to be until at least 11:59 PM (PST) December 27, 2020. This Revised Temporary Order may be extended if the projections of the Southern California Region's total available adult ICU bed capacity remains at less than 15%.

IT IS SO ORDERED:



12/19/2020

Muntu Davis, M.D., M.P.H.
Health Officer,
County of Los Angeles

Date

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Appendices At-A-Glance

All DPH protocol is available at: <http://www.publichealth.lacounty.gov/media/Coronavirus/>

Appendix A: Protocol for Social Distancing [Revised 12/4/2020]

Appendix B: Protocols for Retail Establishments Opening for In-person Shopping [Revised 12/6/2020]

Appendix B-1: Protocols for Grocery Stores and Retail Food Markets [Revised 12/9/2020]

Appendix C: Reopening Protocol for Warehousing, Manufacturing and Logistic Establishments [Revised 12/4/2020]

Appendix D: Protocols for Office Worksites [Revised 12/3/2020]

Appendix E: Protocols for Shopping Center Operators [Revised 12/6/2020]

Appendix F: Protocol for Places of Worship [Revised 12/19/2020]

Appendix G: Protocol for Vehicle-Based Parades [Revised 10/13/2020]

Appendix H: [Rescinded and Incorporated into Appendix R on 10/23/2020]

Appendix I: Protocol for Restaurants, Breweries and Wineries [Revised 12/11/2020]

Appendix J: Reopening Protocol for Music, Film, and Television Production [Revised 8/18/2020]

Appendix K: Reopening Protocol for Day Camps [Revised 11/28/2020]

Appendix L: Reopening Protocol for Gyms and Fitness Establishments [Revised 12/2/2020]

Appendix M: Rescinded on 12/6/2020

Appendix N: Protocol for Professional Sports Leagues and Facilities Opening for Training Sessions and Spectator-Free Events [Revised 12/12/2020]

Appendix O: Reopening Protocol for Campgrounds, RV parks and Cabin Rental Units [Revised 12/18/2020]

Appendix P: Reopening Protocol for Hotels, Lodging, and Short-Term Rentals [Revised 12/6/2020]

Appendix Q: Rescinded on 12/6/2020

Appendix R: Rescinded on 12/6/2020

Appendix S: [Rescinded 6/28/2020]

—continued on next page—



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Appendix T1: Reopening Protocols for K-12 Schools [Revised 11/28/2020]

Appendix T2: Protocol for COVID-19 Exposure Management Plan in K-12 Schools [Revised 11/28/2020]

Appendix U: Reopening Protocol for Institutes of Higher Education [Revised 12/2/2020]

Appendix V: Rescinded on 12/6/2020



APPENDIX J-3

REVISED TEMPORARY TARGETED SAFER AT HOME HEALTH OFFICER ORDER FOR
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REVISED TEMPORARY TARGETED SAFER AT HOME HEALTH OFFICER ORDER FOR CONTROL OF COVID-19: *TIER 1 SUBSTANTIAL SURGE UPDATED RESPONSE*

Revised Order Issued: December 29, 2020

The Revised Order is effective 11:59PM (PST) on December 29, 2020 and will remain in effect for as long as the State Public Health Officer's Regional Stay At Home remains in effect in the Southern California Region.

Please read this Order carefully. Violation of or failure to comply with this Order is a crime punishable by fine, imprisonment, or both. (California Health and Safety Code §120295; Los Angeles County Code § 11.02.080.)

SUMMARY OF THE TEMPORARY ORDER:

This Revised Temporary Targeted Safer At Home Order for Control of COVID-19: Tier 1 Substantial Surge Updated Response (Revised Temporary Order) is issued to temporarily replace both the most recently issued Temporary Order and Reopening Safer At Work And In The Community For Control of COVID-19 Order (Order) issued by the County of Los Angeles Health Officer (Health Officer). This Revised Temporary Order will be effective from 11:59pm (Pacific Standard Time (PST)) on December 29, 2020 and will remain in effect for as long as the State Public Health Officer's Regional Stay At Home remains in effect in the Southern California Region.

This Revised Temporary Order has been updated and is issued as a response to the sustained and substantial rise in COVID-19 cases, hospitalizations and deaths. This Revised Temporary Order has been revised to align and comply with the State's December 3, 2020 Regional Stay At Home Order, as well as the Supplement to the Regional Stay At Home Order issued December 6, 2020. County Health Officer Orders may not be less restrictive than Orders issued by the State Public Health Officer.

The County is part of the Southern California Region (Region). Over the last seven (7) calendar days, the County of Los Angeles is averaging 13,819 newly diagnosed COVID-19 cases per day. Between November 13, 2020-December 27, 2020, hospitalizations of confirmed COVID-19 patients have increased by 474% to 6,815. In addition, the adult ICU bed admissions in the Southern California Region rose. And, per the California Department of Public Health, there is no additional adult Intensive Care Unit (ICU) bed capacity within the Region. Because of both the rapid continuing increases in new cases and test positivity rates within the County and the Region and the lag between case identification and hospitalizations, the Health Officer expects both the



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number of new cases and hospitalizations, including adult ICU admissions in the Region, to continue to increase.

Per the State Public Health Officer, current projections show that without additional intervention to slow the spread of COVID-19, the number of available adult Intensive Care Unit (ICU) beds in the State of California will be at capacity in mid-December. ICU beds are a critical resource for individuals who need the most advanced support and care and the ability to add additional ICU capacity is limited by the lack of available ICU nurses and physicians as a result of the nationwide surge in hospitalizations and ICU admissions.

Without additional public health interventions and widespread public adherence to the personal preventive actions to avoid being exposed to this virus and spreading it to others, the high levels and rate of rise in both cases and hospitalizations, if either continues, are at risk of overwhelming the ability of hospitals to deliver healthcare to people suffering from COVID-19 and from other illnesses requiring hospital care.

This Revised Temporary Order is issued to ensure that County of Los Angeles (County) residents remain in their residences except as necessary to conduct activities specifically permitted in this order, to limit close contact with others outside their household in both indoor and outdoor spaces and to further reduce the risk of community transmission of COVID-19 resulting from the unprecedented surge of new daily cases. This Revised Temporary Order is issued to reduce capacity at sites where non-household members interact. Limiting interactions among non-household members, especially in places where persons are in close proximity without a face covering or mask, is essential to slowing the spread of COVID-19. It is imperative that all persons and businesses within in the County take personal responsibility and follow all restrictions and infection control precautions required by this Revised Temporary Order. Changes from the previous Temporary Order are highlighted.

This Revised Temporary Order is effective within the County of Los Angeles Public Health Jurisdiction, defined as all cities and unincorporated areas within the County of Los Angeles, with the exception of the cities of Long Beach and Pasadena that must follow their respective City Health Officer orders and guidance. This Revised Temporary Order is effective 11:59PM December 29, 2020 and will remain in effect for as long as the State Public Health Officer's Regional Stay At Home remains in effect in the Southern California Region.



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UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE COUNTY OF LOS ANGELES HEALTH OFFICER ORDERS:

1. This Revised Temporary Order replaces both the most recently issued Temporary Order and Reopening Safer At Work And In The Community For Control of COVID-19 Order (Order) issued by the County of Los Angeles Health Officer (Health Officer). That Order is suspended until the expiration of this Revised Temporary Order. This Revised Temporary Order is issued to slow the current high rates of COVID-19 community transmission and hospitalizations within the County. The Health Officer will continue to assess COVID-19 indicators within the County and the effectiveness of this Revised Temporary Order on an ongoing basis and determine, after consultation with the Board of Supervisors, whether this Revised Temporary Order needs to be modified or extended if the public health risk associated with COVID-19 increases in the future.
2. This Revised Temporary Order's intent is to continue to ensure that County residents remain in their residences except as necessary to conduct activities as required by law or as specifically permitted in this order, to limit close contact with others outside their household in both indoor and outdoor spaces and to further reduce the increased risk of community transmission of COVID-19 resulting from the unprecedented surge of new daily cases. All persons who can telework or work from home should continue to do so as much as possible during this pandemic. The public's adherence to sustained Social (Physical) Distancing, consistent and correct use of face coverings/masks, and other infection control measures will slow the spread of COVID-19 and diminish its impact on the delivery of critical healthcare services. Failure to comply with any of the Revised Temporary Order's provisions constitutes an imminent threat and menace to public health, and a public nuisance, and is punishable by fine, imprisonment or both.
 - a) This Revised Temporary Order does not supersede any stricter limitation imposed by a local public entity within the County of Los Angeles Public Health Jurisdiction.
 - b) This Revised Temporary Order is consistent with the provisions in the Governor's Executive Order N-60-20 and the State Public Health Officer's May 7, 2020 Order, that local health jurisdictions may implement or continue more restrictive public health measures in the jurisdiction if the local health officer believes conditions in that jurisdiction warrant them. Where a conflict exists between this Order and any State public health order related to controlling the spread of COVID-19 during this pandemic, the most restrictive provision controls, unless the County of Los Angeles

REVISED TEMPORARY TARGETED SAFER AT HOME HEALTH OFFICER ORDER FOR CONTROL OF COVID-19: TIER 1 SUBSTANTIAL SURGE UPDATED RESPONSE | 12/29/2020

is subject to a court order requiring it to act on, or enjoining it from enforcing, any part of this Revised Temporary Order.¹

3. All persons within the County Public Health Jurisdiction must stay home, except to travel to and from Essential Businesses, to work at or provide service to a Healthcare Operation or Essential Infrastructure, to work at, perform or obtain services from an Essential Governmental Function, to engage in Essential Activities, or to participate in permitted individual or household activities, while practicing social distancing and using face coverings/masks as described below.
 - a) Nothing in this Revised Temporary Order prohibits persons living together as a single household in a household or living unit ("household") from engaging in permitted activities together. For purposes of this Revised Temporary Order, a "household" shall not include institutional group living situations such as dormitories, fraternities, sororities, monasteries, convents, or residential care facilities, nor does it include such commercial group living arrangements as boarding houses, hotels, or motels.²
 - b) All public and private gatherings and events with people from more than one household are not permitted except for outdoor faith-based services and outdoor political expression, and as provided in Paragraph 9 of this Revised Temporary Order.
 - c) People leaving their residences must strictly comply with the Social (Physical) Distancing, as specified in guidance or protocols established by the County Department of Public Health. This Revised Temporary Order requires all persons wear a face covering or mask over both the nose and mouth whenever they leave their place of residence and are or can be in contact with or walking near or past others who are non-household members in both public and private places, whether indoors or outdoors. This includes wearing a face covering or mask when patronizing a business. Wearing a face covering or mask reduces the risk of transmission to others from people who do not have symptoms and do not know they are infected. Wearing a face covering or mask has also been shown to provide

¹ For example, see *Burfitt v. Newsom*, No. BCV-20-102267 (Kern County Sup. Ct. Dec. 10, 2020). Further this Revised Temporary Order is issued in and for the County of Los Angeles only, and has no jurisdiction over and does not affect the State Public Health orders.

² Los Angeles County Code, Title 22. §22.14.060 - F. Family definition. (Ord. 2019-0004 § 1, 2019.)

https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodeId=TIT22PLZO_DIV2DE_CH22.14DE_22.14.060F



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some protection for the wearer. The use of face coverings is commonly referred to as "source control."

- d) Persons and businesses within the County of Los Angeles Public Health Jurisdiction are required to follow the local COVID-19 infection control protocols and guidance provided by the County Department of Public Health. In instances where the County has not provided a specific guidance or protocol, specific guidance or protocols established by the State Public Health Officer shall control. All businesses must comply with the County Public Health Protocol applicable to that business sector.
- i. In the event that an owner, manager, or operator of any business knows of three (3) or more cases of COVID-19 among their employees within a span of 14 days, the employer must report this outbreak to the Department of Public Health at (888) 397-3993 or (213) 240-7821 or online at www.redcap.link/covidreport.
 - ii. In the event that an owner, manager, or operator of any business is informed that one or more employees of the business has tested positive for, or has symptoms consistent with COVID-19 (case), the employer must have a protocol to require the case(s) to isolate themselves at home and require the immediate self-quarantine of all employees that had a workplace exposure to the case(s).
- e) All permitted activities with individuals of other households and all activities conducted outside the residence, lodging, or temporary accommodation with members of other households must cease, between 10PM and 5AM (PST) except for those activities associated with the operation, maintenance, or usage of an Essential Business, Healthcare Operation, Essential Infrastructure, Essential Government Function, Places of Worship for faith-based services or as required by law. This Revised Temporary Order does not apply to persons experiencing homelessness. Nothing in this Revised Temporary Order prevents any number of person from the same household from leaving their residence, lodging or temporary accommodation, as long as they do not engage in any interaction with (or otherwise gather with) any number of persons from any other household, except as specifically permitted herein.
- f) Persons arriving in the County of Los Angeles from other states or countries on non-essential travel, including returning County of Los Angeles or California

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residents, must practice self-quarantine for 10 days after arrival. Such persons must limit their interactions to those within their immediate household (unless they are also under quarantine). If such quarantined person develops symptoms of or tests positive for COVID-19 during the quarantine period, they must isolate themselves as required by the Health Officer's Order for Isolation.

4. This Revised Temporary Order incorporates by reference the following provisions of the recently issued Reopening Safer At Work And In The Community For Control of COVID-19 Order issued by the County Health Officer on November 25, 2020: Paragraphs 4, 5, 6, 10, 11, 12 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 26, and Appendices A, B, B-1, C, D, E, G, I, J, K, L, N, O, P, T1, T2, and U. To the extent that this Revised Temporary Order conflicts with any incorporated paragraphs or appendices, this Revised Temporary Order controls.
5. The Health Officer orders the closure of the following businesses, recreational sites, commercial properties, and activities, where more frequent and prolonged person-to-person contacts are likely to occur:
 - a) Lounges and nightclubs;
 - b) Bars and craft distilleries that possess a valid low risk restaurant public health permit issued by the County of Los Angeles, and breweries and wineries for in-person onsite food and beverage service.
 - c) Public entertainment venues: movie theaters, live performance theaters, concert venues, theme parks, and festivals;
 - d) Family entertainment centers for all activities;
 - e) All restaurants, but only for indoor and outdoor in-person onsite dining until further notice;
 - f) Cardrooms, satellite wagering facilities, and racetrack onsite wagering facilities until further notice;
 - g) Indoor playgrounds; Outdoor playgrounds may remain open to facilitate physically distanced personal health and wellness through outdoor exercise following County Public Health Protocols for Playgrounds. Playgrounds located on schools that remain open for in-person instruction, and not accessible by the general public, may remain open and must follow County and State Protocols for Schools.



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- h) Museums, zoos and aquariums are closed to the public until further notice;
 - i) Hot tubs, steam rooms and saunas not located on a residential property;
 - j) Small water vessel charters and outdoor equipment rental;
 - k) Personal Care Services. Personal Care Establishments include hair salons, nail salons, barbershops, esthetic, skin care, waxing, electrology, body art professionals, tattoo parlors, and piercing shops, tanning salons and massage therapy (in non-healthcare settings). Personal Care Services do not include medical massage that is done based on a referral by a physician or chiropractor.
 - l) All public and private events and gatherings, unless specifically allowed by this Order.
6. All Essential Businesses, as defined in Paragraph 18 of the November 25, 2020 Reopening Safer at Work Order, unless specific modifications are required by this Revised Temporary Order, may remain open to the public and conduct normal business operations, provided that they implement and maintain the Social (Physical) Distancing Protocol. All Essential Businesses must comply with the applicable County Public Health Protocol(s) for its business sector. An Essential Business' owner, manager, or operator must prepare and post a Social (Physical) Distancing Protocol and any other applicable County Public Health Protocol for each facility or office located within the County of Los Angeles Public Health Jurisdiction and must ensure that the Essential Business meets all other requirements of all applicable protocols and the Social (Physical) Distancing Protocol.
7. Lower-Risk Businesses are businesses that are not specified in Paragraph 6 of this Revised Temporary Order, and not defined as an Essential Business in Paragraph 18 of the most recent Order. There are four categories of Lower-Risk Businesses: (1) retailers ("Lower-Risk Retail Businesses"), (2) manufacturing and logistics sector businesses that supply Lower-Risk Retail Businesses, (3) Non-Essential office-based businesses, and (4) Indoor Malls and Shopping Centers. These four categories of Lower-Risk Businesses may be open subject to the following conditions:
- a) **Lower-Risk Retail Businesses** that are open for indoor operations must limit indoor capacity to 20% of maximum occupancy. Lower-Risk Retail Businesses must conduct entrance metering of customers. No eating or drinking inside the store. Additionally, special hours should be instituted for seniors and others with chronic conditions or compromised immune systems. Lower-Risk Retail Businesses, which are non-essential, must close for indoor retail operations

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- between the hours of 10:00 PM – 5:00 AM (PST). Lower-Risk Retail Businesses must post and follow County Public Health Protocol, incorporated by reference as **Appendix B**.
- b) For any **non-retail Lower-Risk Business**, that is a manufacturing and logistics sector business that supplies Lower-Risk Retail Businesses, the owner, manager, or operator must implement and post the required County Public Health Protocol, applicable to the business type or location, incorporated by reference as **Appendix C**, and must meet all other requirements of the Social (Physical) Distancing Protocol. All employees must wear a face covering or mask over both the nose and mouth at all times while present at work. A face covering must be worn when employees are or can be in contact with or walking near or past others who are non-household members in both public and private places, whether indoors or outdoors.
- c) For any **Non-Essential office-based business**, all indoor portions and operations must cease in-person operations until further notice. Non-essential office-based businesses may operate via telework and for Minimum Basic Operations only. Essential Businesses, Healthcare Operations, or Essential Infrastructure whose operations require that employees operate from an office worksite must require employees to telework to the extent feasible and any in-person operations must be in accordance with the County Public Health Reopening Protocol Office-Based Worksites, incorporated by reference as **Appendix D**.
- d) **Essential office-based businesses** that are open for indoor operations must limit indoor capacity to 25% of maximum occupancy, and must comply with County Public Health Protocols for Office-Based Worksites, incorporated by reference as **Appendix D**. This restriction does not apply to Healthcare Operations, Essential Infrastructure, and Essential Government Functions.
- e) **Indoor Malls and Shopping Centers**, defined as: A building with (7) or more sales or retail establishments with adjoining indoor space, (including indoor swap meets) may be open at up to 20% of overall mall or shopping center capacity. Indoor Malls and Shopping Centers must conduct entrance metering of customers. Additionally, special hours should be instituted for seniors and others with chronic conditions or compromised immune systems. Higher-risk businesses located within an Indoor Mall or Shopping Center as listed in Paragraph 6 of this Revised Temporary Order must remain closed. Food court dining areas and specified common areas located within an Indoor Mall or Shopping Center must remain



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closed to the public until further notice. Members of the public may not consume food or beverages inside the Indoor Mall or Shopping Center. Outdoor seating is closed to the public. Indoor Malls or Shopping Centers must close between the hours of 10:00 PM–5:00 AM (PST). All essential businesses with an entrance accessible by the public at the exterior of an Indoor Mall or Shopping Center may remain open during those hours in accordance with the limitations set forth in this Revised Temporary Order. The owner or operator of the Indoor Mall or Shopping Center must prepare, implement and post the required County Public Health Protocols for Shopping Center Operators, incorporated by reference as **Appendix E**.

8. The following sectors, business, and activities may remain open while adhering to the required workplace and operational modifications, and subject to the following conditions:
- a) **Music, Film and Television Production.** Operations for music, film and television production must prepare, implement and post the required County Public Health Protocol for Music, Film and Television Production, incorporated by reference as **Appendix J**, as well as abide by applicable industry-generated protocols. Workers supporting these entertainment industries, studios, and other related establishments such as establishments that provide content for professional broadcast are considered essential by the State.
 - b) **Day camps.** Day camp owners and operators must implement and post the required County Public Health Protocol for Day Camps, incorporated by reference as **Appendix K**. Day camps must close in-person operations between the hours of 10:00 PM – 5:00 AM (PST). Day Camps with a COVID-19 outbreak (3 or more cases within a 14-day period) must close for 14 days.
 - c) **Fitness facilities.** Fitness facilities, including private gymnasiums, may be open for outdoor operations only at 50% maximum outdoor capacity. The indoor portions of Fitness facilities are closed to the public until further notice. The owner, manager, or operator of fitness facilities must prepare, implement and post the required County Public Health Protocol for Gyms and Fitness Establishments, incorporated by reference as **Appendix L**. Fitness facilities must close in-person operations between the hours of 10:00 PM – 5:00 AM (PST).
 - d) [Intentionally omitted.]



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- e) **Professional sports without audiences.** Professional sports teams and franchises may continue operations and competitions without audiences. The owner, manager, or operator of professional sports teams and franchises must prepare, implement and post the required County Public Health Protocol for Professional Sports Leagues and Facilities Opening for Training Sessions and Spectator-Free Events, incorporated by reference as **Appendix N**, as well as abide by applicable industry-generated protocols. Workers supporting operations by professional sports leagues and facilities are considered essential by the State. Professional sports teams and franchises must conclude competitions and other in-person operations by 10:00 PM and cease operations between the hours of 10:00 PM – 5:00 AM (PST).
- f) **Campgrounds, RV Parks and associated outdoor activities.** Campgrounds and recreational vehicle parks may remain open. Recreational overnight stays at campgrounds are prohibited, unless used for COVID-19 mitigation and containment measures, treatment measures, providing accommodation for essential workers or those displaced as a result of fire or other emergency, or providing housing solutions, including measures to protect homeless populations. The owner, manager, or operator of campgrounds and RV Parks must prepare, implement and post the required County Public Health Reopening Protocol for Campgrounds, RV parks and Cabin Rental Units, incorporated by reference as **Appendix O**.
- g) **Schools (K-12) and School Districts.** The County Public Health Officer requires all public and private schools (K-12) and school districts within the County of Los Angeles to conduct distance learning. Since September 14, 2020, K-12 schools may offer in-school services for a small, stable cohort of students with Individualized Education Programs (IEPs) or English Learners (ELs) needing assessments and/or specialized in-school services, with priority given to students with disabilities. Other prioritized groups for in person support and services include students not participating in distance learning, students at risk of abuse or neglect, foster youth, and students experiencing homelessness. Permissible in-person specialized services that require cohorting of students, must limit the maximum stable cohort size to twelve (12) students and two (2) staff (not including aides assigned to children with special needs), and adhere to all provisions for safe opening of schools, as outlined in **Appendix T1: Reopening Protocols for K-12 Schools**. Schools must limit the number of students with IEPs and ELs, and other prioritized students allowed at any one time on campus for essential assessments and/or specialized in-school services



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- to 25% or less of the total student body. In addition, Schools may reopen TK–2nd Grades for classroom instruction with a waiver application approved by the County Department of Public Health. Schools and School Districts that are permitted to reopen for prioritized individual and cohorted students (K-12) or upon an approved waiver application (TK-12) must follow the Reopening Protocols for K-12 Schools and the Protocol for COVID-19 Exposure Management Plan in K-12 Schools, incorporated by reference as **Appendices T1 & T2**. K-12 Schools with a COVID-19 outbreak (3 or more cases within a 14-day period) must close for 14 days.
- h) [Intentionally Omitted.]
- i) **Institutes of Higher Education.** Colleges and universities in Los Angeles County will not be able to resume all in-person academic instruction, at this time. Institutions may continue to offer in person training and instruction for essential workforce for required activities that cannot be accomplished through virtual learning. All other academic instruction must continue to be done via distance-learning as specified in the County's Protocols for Institutes of Higher Education incorporated by reference as **Appendix U**. Faculty and other staff may come to campus for the purpose of providing distance learning, and other activities related to the purposes above, as well as maintaining minimum basic operations. Limited activities may take place on the campus as defined in the County's Protocols for Institutes of Higher Education. The institution must comply with all relevant portions of the County's Protocols for Institutes of Higher Education to maximize safety for all employees, also noted in **Appendix U**.
- j) **Outdoor Malls, Shopping Centers, and Swap Meets** may remain open at up to 20% of overall mall or shopping center capacity. These establishments must conduct entrance metering of customers. Additionally, special hours should be instituted for seniors and others with chronic conditions or compromised immune systems. Food court dining areas and common areas located within an Outdoor Mall, Shopping Center or Swap Meet must remain closed to the public until further notice. Members of the public may not consume food or beverages on the premises. Restaurants may only offer food and beverages for takeout, drive thru or delivery. Outdoor seating is closed to the public. Outdoor Malls, Shopping Centers and Swap Meets must close between the hours of 10:00 PM–5:00 AM (PST). The entities identified in Paragraph 3(e) of this Revised Temporary Order may remain open during those hours in accordance with the limitations set forth in this Revised Temporary Order. The owner or operator must prepare, implement and

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post the required County Public Health Protocols for Shopping Center Operators, incorporated by reference as **Appendix E**.

- k) **Hotels, Motels and Shared Rental Units.** Hotels and lodging cannot accept or honor out-of-state reservations for non-essential travel, unless the reservation is for at least the minimum time period required for quarantine and the persons identified in the reservation will quarantine in the hotel or lodging entity until after that time period has expired. When the Regional Stay Home Order is in effect in a region, hotels and lodging can only offer accommodation for COVID-19 mitigation and containment measures, treatment measures, accommodation for essential workers, or providing housing solutions, including measures to protect homeless populations. The owner or operator must prepare, implement and post the required County Public Health Protocols for Hotels, Lodging and Short-Term Rentals, incorporated by reference as **Appendix P**.
- l) [Intentionally Omitted.]
- m) **Essential Retail.** Essential Retail Businesses are defined in Paragraph 18 of the Order, which is incorporated by reference into this Revised Temporary Order. Essential Retail Businesses, such as, Retail Food Markets, Gas Stations, Appliances, Electronics, Banks/Credit Unions, Pet Stores, Laundromats, Hardware, Automobile Dealerships, Auto Repair are open at 20% of maximum indoor capacity and following appropriate retail protocols. Stand-alone grocery stores where the principal business activity is the sale of food may operate at 35% of capacity (based on building code occupancy limits). All access to grocery stores and retail food markets must be strictly metered to ensure compliance with the limit on capacity. The sale of food, beverages, and alcohol for in-store consumption is prohibited. Grocery stores and retail food markets must comply with County Public Health Protocols for Grocery Stores and Retail Food Markets, incorporated by reference as **Appendix B-1**. Outdoor Certified Farmers Markets must comply with County Public Health Guidance for Certified Farmers Markets and limit occupancy to 35% of outdoor capacity.
- n) **Restaurants.** Restaurants and other food facilities that prepare and serve food are open but only for delivery, drive thru, and carry out. Indoor and outdoor onsite dining is not permitted. Outdoor seating is closed to the public. Restaurants may continue to offer delivery, drive thru and carry out between the hours of 10:00 PM – 5:00 AM (PST). Restaurants with a moderate risk or high risk restaurant permit



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issued by the County Public Health and other food facilities must follow the revised Public Health Protocols for Restaurants, incorporated by reference as **Appendix I**. Cafeterias, commissaries, and restaurants located within hospitals, nursing homes, or other licensed health care facilities may provide dine-in service, as long as Social (Physical) Distancing is practiced;

- o) **Breweries and Wineries.** Breweries and wineries are closed for in-person onsite food and beverage service. Breweries and wineries may remain open for production, manufacturing, and indoor retail operations at 20% of maximum indoor occupancy following County Public Health Retail Protocol, incorporated by reference as **Appendix B**. These establishments must close in-person operations between 10:00 PM – 5:00 AM (PST).
- p) **Childcare Facilities.** All childcare facilities, including those operating at schools, must operate under the LAC DPH Childcare Guidance and the following conditions: (1) Childcare must be carried out in stable cohorted groups of 12 or fewer ("stable" means the same twelve (12) or fewer children are in the same group each day); (2) Children shall not change from one group to another; (3) If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix with each other; (4) Childcare providers shall remain solely with one group of children.
- q) **Drive-In Movie Theaters / Drive-In Events.** Drive-In movie theaters and drive-in events are recommended to close. Those that remain open must adhere to the following conditions: All occupants of each car are members of the same household. Operators must follow County Public Health Drive-In Movie Protocol. The movie showing or event must end by 10:00 PM and remain closed until 5:00 AM (PST).
- r) **Libraries.** Libraries that are not on campuses of Institutes of Higher Education may remain open at 20% of maximum indoor capacity. Libraries may elect to continue curbside pick-up operations.
- s) **Swimming Pools.** Outdoor and indoor pools that serve members from more than one household are closed, except that outdoor pools that offer regulated lap swimming (one swimmer per lane) may remain open and drowning prevention classes, including swim lessons with certified instructors, are permitted indoors and outdoors. All gatherings at pool areas are prohibited. Must close for operations between the hours of 10:00 PM – 5:00 AM (PST).



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- t) **Places of Worship.** Places of Worship should engage in outdoor or remote faith-based services and other related activities for all attendees, especially those who are vulnerable to COVID-19 including older adults and those with co-morbidities, given the increased risk of community transmission of COVID-19 resulting from the unprecedented surge of new daily cases, hospitalizations, and premature deaths, as well as the severely reduced Intensive Care Unit (ICU) bed capacity. When carrying out virtual activities indoors, it is recommended that no more than 10 individuals participate in production and broadcast process; anyone participating in production and broadcast must follow infection control and physical distancing requirements. The number of persons on site (indoors or outdoors) at any time shall be reduced as needed to permit compliance with physical distancing and infection control requirements, as specified in the Social (Physical) Distancing Protocol (**Appendix A**), including but not limited to Places of Worship staff and attendees at any faith-based services maintaining a minimum of six feet between attendees from different households and that all attendees must wear a face covering or mask over both the nose and mouth at all times while in attendance and when walking near or past non-household members, among others. If drive-in outdoor services are offered, cars are directed to park at least 6 feet apart. The California Department of Public Health advises that “activities such as singing, and chanting negate the risk-reduction achieved through six feet of physical distancing” due to an increased likelihood for transmission from contaminated exhaled droplets. Consider practicing these activities through alternative methods (such as internet streaming) that ensure individual congregation members perform these activities separately in their own homes or alone in a separate room at the Place of Worship. Please review the State Industry Guidance for Places of Worship and Providers of Religious Services and Cultural Ceremonies [here](#). The Centers for Disease Control and Prevention recommends organizations consider temporarily suspending singing, chanting, or shouting, especially when indoors. If attendees choose to sing, chant, or shout, encourage them to continue wearing their masks while doing so and increase the distance between people to greater than 6 feet. The protocols set forth in **Appendix A** and in this paragraph 8(t) do not obligate and should not be read to, in any way, encourage Places of Worship to resume any in-person activity.

9. Permitted Activities. The following activities are considered Essential Activities, and are specifically permitted under this Revised Temporary Order:

- a) Engaging in activities or performing tasks important to the health and safety of family or household members (including pets), such as, visiting a health or

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- veterinary care professional, obtaining medical supplies or medication, visiting a physician or child's pediatrician for routine care, such as, well-child visits and vaccinations;
- b) Obtaining necessary services and supplies for family or household members, or delivering the same, such as, obtaining grocery items or necessary supplies from Essential Businesses for one's household or for delivery to others;
 - c) Performing work for or accessing businesses that are open, or to carry out Minimum Basic Operations for businesses that are closed or operating remotely.
 - d) Obtaining or accessing services from Essential Governmental Functions, such as, accessing court, social and administrative services, performing jury duty or complying with an order of law enforcement or court;
 - e) Caring for minors, the elderly, dependents, persons with disabilities, or other vulnerable persons;
 - f) Obtaining in-person behavioral health or substance use disorder support in therapeutic small group meetings, such as Alcoholics Anonymous or Narcotics Anonymous, provided that the gathering is outside and limited to 10 people or fewer and Social (Physical) Distancing is practiced.
 - g) Obtaining in-person faith-based counselling services where the service cannot reasonably be practiced remotely, provided that the gathering is outside and limited to 10 people or fewer and Social (Physical) Distancing is practiced.
 - h) [Intentionally omitted.]
 - i) Permitted activities include engaging in outdoor recreation activity (as an individual or household), in compliance with Social (Physical) Distancing requirements and wearing a face covering, subject to the following limitations:
 - i. Outdoor recreation activity at parks, trails, piers, and beaches, and other open spaces must comply with any access or use restrictions separately established by the Health Officer, government, or other entity that manages the area to reduce congestion and the resulting increase in risk of COVID-19 transmission. Individuals can engage in active recreation at beaches, parks, and trails by themselves or with members of their household; team sports and any gatherings are prohibited unless with members of only one

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household. Must close for operations between the hours of 10:00 PM – 5:00 AM (PST).

- ii. Shared outdoor facilities for recreational activities, including but not limited to golf courses, tennis, bocce and pickleball courts, children’s playgrounds, shooting and archery ranges, equestrian centers, model airplane areas, community gardens botanical gardens, skate parks, and bike parks may remain open for individuals or members of a single household while following Social (Physical) Distancing requirements and wearing a face covering. All persons must comply with any access or use restrictions separately established by the Health Officer, government, or other entity that manages the area to reduce congestion and the resulting increase in risk of COVID-19 transmission. Must close for operations between the hours of 10:00 PM – 5:00 AM (PST).
- iii. Local public entities may elect to temporarily close certain streets or areas to automobile traffic, to allow for increased space for persons to engage in recreational activity permitted by and in compliance with Social (Physical) Distancing requirements specified in this Revised Temporary Order.

j) **Participating in a Vehicle-Based Parade.** Wherever possible, vehicle parades should be canceled for the duration of this Order. Parades may only be held under the following conditions: The host of the Vehicle-Based Parade must comply with all local ordinances, traffic control requirements, and state and local laws. Only persons from the same household may occupy a vehicle. Further, the host of Vehicle-Based Parades must comply with County Public Health Vehicle-Based Parade Protocol, incorporate by reference as **Appendix G**. Vehicle-Based Parades may not occur during the hours of 10:00 PM – 5:00 AM (PST).

k) Participating in an in-person political expression as long as the protest is held outdoors. Outdoor political expressive activities are permitted without a limit on attendees. Persons participating must wear a face covering or mask and maintain physical distancing of six (6) feet between persons or groups of persons from different households at all times, as well as observe the Department of Public Health Protocol for Public Demonstrations.

10. Pursuant to Sections 26602 and 41601 of the California Government Code and Section 101029 of the California Health and Safety Code, the Health Officer requests that the Sheriff and all chiefs of police in all cities located in the Los Angeles County Public Health Jurisdiction

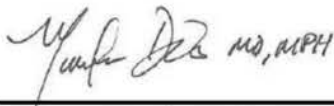


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ensure compliance with and enforcement of this Order. The violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by citation, civil penalty and injunction, fine or imprisonment.

11. This Order shall become effective at 11:59 PM (PST) on December 29, 2020 and will remain in effect for as long as the State Public Health Officer's Regional Stay At Home remains in effect in the Southern California Region.

IT IS SO ORDERED:



Muntu Davis, M.D., M.P.H.
Health Officer,
County of Los Angeles

12/29/2020

Date



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Appendices At-A-Glance

All DPH protocols are available at: <http://www.publichealth.lacounty.gov/media/Coronavirus/>

Appendix A: Protocol for Social Distancing [Revised 12/29/2020]

Appendix B: Protocols for Retail Establishments Opening for In-person Shopping [Revised 12/6/2020]

Appendix B-1: Protocols for Grocery Stores and Retail Food Markets [Revised 12/9/2020]

Appendix C: Reopening Protocol for Warehousing, Manufacturing and Logistic Establishments [Revised 12/4/2020]

Appendix D: Protocols for Office Worksites [Revised 12/24/2020]

Appendix E: Protocols for Shopping Center Operators [Revised 12/27/2020]

Appendix F: [Rescinded on 12/29/2020]

Appendix G: Protocol for Vehicle-Based Parades [Revised 10/13/2020]

Appendix H: [Rescinded and Incorporated into Appendix R on 10/23/2020]

Appendix I: Protocol for Restaurants, Breweries and Wineries [Revised 12/11/2020]

Appendix J: Reopening Protocol for Music, Film, and Television Production [Revised 8/18/2020]

Appendix K: Reopening Protocol for Day Camps [Revised 11/28/2020]

Appendix L: Reopening Protocol for Gyms and Fitness Establishments [Revised 12/2/2020]

Appendix M: [Rescinded on 12/6/2020]

Appendix N: Protocol for Professional Sports Leagues and Facilities Opening for Training Sessions and Spectator-Free Events [Revised 12/12/2020]

Appendix O: Reopening Protocol for Campgrounds, RV parks and Cabin Rental Units [Revised 12/18/2020]

Appendix P: Reopening Protocol for Hotels, Lodging, and Short-Term Rentals [Revised 12/6/2020]

Appendix Q: [Rescinded on 12/6/2020]

Appendix R: [Rescinded on 12/6/2020]

Appendix S: [Rescinded 6/28/2020]

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Appendix T1: Reopening Protocols for K-12 Schools [Revised 11/28/2020]

Appendix T2: Protocol for COVID-19 Exposure Management Plan in K-12 Schools [Revised 11/28/2020]

Appendix U: Reopening Protocol for Institutes of Higher Education [Revised 12/2/2020]

Appendix V: [Rescinded on 12/6/2020]



APPENDIX J-4

Protocol for Places of Worship: Appendix F

Recent Updates (Changes highlighted in yellow):

12/19/2020:

- Places of Worship are permitted to offer faith-based services, or otherwise allow access for faith-based practices, indoors and outdoors, provided that strict physical distancing is followed, which requires a minimum of six feet between persons from different households. Face coverings or masks that cover both the nose and mouth must be worn at all times while on site. Places of Worship are strongly encouraged to continue to hold faith-based services outdoors to the maximum extent practicable.
- Face coverings must be worn by staff working in cubicles, including cubicles equipped with partitions. This is a temporary measure in compliance with the temporary HEALTH OFFICER ORDER issued on November 28, 2020. The requirement is effective from 12:01AM (PST) on November 30, 2020 until further notice.
- At all times when eating or drinking, staff must maintain a 6-foot distance from others and should do so outdoors. Eating or drinking at a cubicle or workstation is preferred to eating in a breakroom.
- Staff and visitors arriving on-site must also be screened for whether they are currently under isolation or quarantine orders.

**Please note that the County of Los Angeles is experiencing an unprecedented surge in COVID-19 cases, hospitalizations and deaths. Indoor gatherings and activities with others not in your household present significant risk to your health and the health of others due to COVID-19 transmission. Public Health strongly recommends that persons only attend faith-based services outdoors or remotely. The recommendations in this protocol are intended to lower the risk of COVID-19 transmission among attendees, but they will not eliminate that risk.

This protocol provides guidance for Places of Worship and providers of religious services and cultural ceremonies (referred to collectively as “Places of Worship”) to support a lower risk environment for employees, interns and trainees, volunteers, scholars, and all other types of workers (referred to collectively as “staff”) as well as congregants, worshippers, visitors, etc. (referred to collectively as “visitors” or “congregants”). Places of Worship must also be in compliance with the conditions laid out in this Protocol for Places of Worship.

Please note: This Protocol does not obligate Places of Worship to resume any in-person activity. Further, it is strongly recommended that Places of Worship continue to facilitate outdoor or remote services and other related activities for all attendees, especially those who are vulnerable to COVID-19 including older adults and those with co-morbidities, given the increased risk of community transmission of COVID-19 resulting from the unprecedented surge of new daily cases, hospitalizations, and premature deaths.

This Protocol is not intended for food preparation and service, delivery of items to those in need, childcare and daycare services, school and educational activities, in-home caregiving, counseling, office work, and other activities that places and organizations of worship may provide. Those activities must follow specific guidance and protocols provided by the State and County Department of Public Health.



This Protocol may be updated as additional information and resources become available so be sure to check the LA County website <http://www.ph.lacounty.gov/media/Coronavirus/> regularly for any updates to this document.

This checklist covers:

- (1) Workplace policies and practices to protect staff health
- (2) Measures to ensure physical distancing
- (3) Measures to ensure infection control
- (4) Communication with staff, visitors and congregants
- (5) Measures to ensure equitable access to critical services.

These five key areas must be addressed as your facility implements its Places of Worship Protocols.

All entities covered by this guidance must implement all applicable measures listed below and be prepared to explain why any measure that is not implemented is not applicable to the site.

Place of Worship name: _____

Facility Address: _____

Maximum Occupancy, per Fire Code: _____

Approximate total square footage of space used by visitors and congregants for services: _____

In the protocols that follow, the term “household” is defined as “persons living together as a single living unit” and shall not include institutional group living situations such as dormitories, fraternities, sororities, monasteries, convents, or residential care facilities, not does it include such commercial living arrangements such as boarding houses, hotels, or motels.¹ The term “staff” is meant to include employees, volunteers, interns and trainees, scholars and all other individuals who carry out work at the site. The term “visitors” or “congregants” should be understood to include members of the congregation, worshippers, and members of the public who are on site as visitors. The terms “site” and “House of Worship” both refer to the building at which worship, faith-based service or practice, or cultural ceremony occurs and any adjacent buildings or grounds at which permitted activities of the congregation are conducted.

¹ Los Angeles County Code, Title 22. §22.14.060 - F. Family definition. (Ord. 2019-0004 § 1, 2019.) https://library.municode.com/ca/los_angeles_county/codes/code_of_ordinances?nodeld=TIT22PLZO_DIV_2DE_CH22.14DE_22.14.060F

A. WORKPLACE POLICIES AND PRACTICES TO PROTECT EMPLOYEE (STAFF) HEALTH (CHECK ALL THAT APPLY TO THE FACILITY)

- Staff who can carry out their work duties from home has been directed to do so.
- Vulnerable staff (those above age 65, those with chronic health conditions) are assigned work that can be done from home whenever possible.
- All staff have been told not to come to work if sick and to follow DPH guidance for self-isolation, if applicable.
- Information on employer or government-sponsored leave benefits the employee may be entitled to receive that would make it financially easier to stay at home. See additional information on [government programs supporting sick leave and worker's compensation for COVID-19](#), including employee's sick leave rights under the [Families First Coronavirus Response Act](#) and employee's rights to workers' compensation benefits and presumption of the work-relatedness of COVID-19 pursuant to the Governor's [Executive Order N-62-20](#)
- Work processes are reconfigured to the extent possible to increase opportunities for staff to work from home.**
- Upon being informed that one or more worker/practitioner, independent contractor and/or temporary worker tests positive for, or has symptoms consistent with COVID-19 (case), the employer has a plan in place to have the case(s) isolate themselves at home and require the immediate self-quarantine of all workers that had a workplace exposure to the case(s). The employer's plan should consider a protocol for all quarantined workers to have access to or be tested for COVID-19 in order to determine whether there have been additional workplace exposures, which may require additional COVID-19 control measures. See Public Health guidance on [responding to COVID-19 in the workplace](#).
- [Entry screenings](#) are conducted before employees may enter the workspace. Checks must include a check-in concerning cough, shortness of breath, difficulty breathing and fever or chills and if the employee **is currently under isolation or quarantine orders**. These checks can be done remotely or in person upon the employees' arrival. A temperature check should also be done at the worksite if feasible.
- In the event that 3 or more cases are identified within the workplace (including cases among staff and/or congregants) within a span of 14 days the employer **must** report this cluster to the Department of Public Health at (888) 397-3993 or (213) 240-7821. If a cluster is identified at a worksite, the Department of Public Health will initiate a cluster response which includes providing infection control guidance and recommendations, technical support and site-specific control measures. A public health case manager will be assigned to the cluster investigation to help guide the facility response.
- Employees who have contact with others are offered, at no cost, an appropriate face covering that covers the nose and mouth. The covering is to be worn by the employee at all times during the workday when in contact or likely to come into contact with others. Employees who have been instructed by their medical provider that they should not wear a face covering should wear a face shield with a drape on the bottom edge, to be in compliance with State directives, as long as their condition permits it. A drape that is form fitting under the chin is preferred. Masks with one-way valves should not be used. Employees need not wear a face covering when the employee is alone in a private office or a cubicle with a solid partition that



exceeds the height of the employee when standing.

- In compliance with HEALTH OFFICER ORDER FOR CONTROL OF COVID-19: TIER 1 SUBSTANTIAL SURGE RESPONSE issued November 28, 2020, all staff must wear face coverings at all times except when working alone in private offices with closed doors or when eating or drinking. The exception made previously for staff working in cubicles with solid partitions exceeding the height of the employee while standing is overridden.
- To ensure that masks are worn consistently and correctly, staff are discouraged from eating or drinking except during their breaks when they are able to safely remove their masks and physically distance from others. At all times when eating or drinking, staff must maintain at least a six-foot distance from others. When eating or drinking, it is preferred to do so outdoors and away from others, including visitors. Eating or drinking at a cubicle or workstation is preferred to eating in a breakroom if eating in a cubicle or workstation provides greater distance from and barriers between staff.
- Occupancy is reduced and space between employees is maximized in any room or area used by staff for meals and/or breaks. This has been achieved by:
 - Posting a maximum occupancy that is consistent with enabling a distance of at least six feet between individuals in rooms or areas used for breaks;
 - Staggering break or mealtimes to reduce occupancy in rooms or areas used for meals and breaks; and
 - Placing tables six feet apart and assuring six feet between seats, removing or taping seats to reduce occupancy, placing markings on floors to assure distancing, and arranging seating in a way that minimizes face-to-face contact. Use of partitions is encouraged to further prevent spread but should not be considered a substitute for reducing occupancy and maintaining physical distancing.
- Staff are instructed to wash or replace their face coverings daily.
- Appropriate personal protective equipment, including eye protection and gloves as needed, is provided to staff for washing religious garments and linens, seat or floor coverings, or other cloth items used in services or ceremonies.
- Staff are instructed to wash their cloth face coverings daily.
- All work areas are separated by at least 6 feet or by partitions.
- Common areas, including restrooms and areas used only by staff are disinfected hourly, on the following schedule:
 - Entry area/lobby _____
 - Hallways _____
 - Meeting rooms _____
 - Shared work areas _____
 - Break rooms _____
 - Stairways/Stairwells _____
 - Elevators _____
 - Restrooms _____

- Other _____
- Disinfectant and related supplies are available to staff at the following location(s):

- Hand sanitizer effective against COVID-19 is available to all staff at the following location(s):

- Staff are allowed frequent breaks to wash their hands.
- Staff have been instructed not to conduct home or other off-site visits to anyone who has tested positive for or exhibits symptoms of COVID-19 unless that person has completed the prescribed self-isolation or self-quarantine period.
- A copy of this protocol has been distributed to each staff person.
- Each staff person is assigned their own tools, equipment and defined workspace. Sharing held items is minimized or eliminated.
- All policies described in this checklist other than those related to terms of employment are applied to staff of delivery and any other companies who may be on the premises as third parties.
- Optional—Describe other measures:

B. MEASURES TO ENSURE PHYSICAL DISTANCING

- Faith-based services and cultural ceremonies at _____ or access to faith-based practices at _____ Places of Worship are permitted provided that:
 - All attendees/visitors must wear a face covering that covers their mouth and nose at all times when in attendance and also at any time when they could come into contact with, or when walking past others who are non-household members.
 - All attendees/visitors must observe a six-foot physical distance between themselves and others who are not members of their household. Measures have been implemented (advance registration, counting attendees at entry) to assure attendance does not exceed the number of people who can be accommodated with the required physical distancing in the indoor space.
 - Seating is reconfigured to ensure that all attendees/visitors are able to maintain a physical distance of at least 6 feet between themselves and others who are not members of their household.
 - Clear pathways have been identified between parking areas and other arrival points to the service areas to minimize crowding and congregating, to allow for monitoring of occupancy and for entrance screening.
 - A staff person (or staff people if there is more than one pathway) wearing a cloth face covering is posted at the entryway but at least 6 feet from the nearest arriving or departing person to monitor use of face coverings and track occupancy of attendees/visitors.

- If attendees/visitors must wait in line prior to being seated or at any other point during their presence at the site, markings are used to demonstrate the required 6-foot distance between individuals.
- If applicable, aisles within the area used for indoor services are designated as one-way to support physical distancing.
- Podiums, platforms and other speaker areas have been reconfigured to allow at least 6 feet between speakers or celebrants.
- Staff have been instructed to maintain at least a 6-foot distance from each other in all areas of the site.
- Virtual access is offered to visitors who wish to participate in services or events but are at high risk if exposed to COVID-19.
- Please note that the following alternative options are strongly encouraged for public religious services and cultural events. These options are:
 - Services and events are conducted outdoors in compliance with infection control and physical distancing requirements;
 - Services and events are conducted virtually via live streaming or taping for later broadcast.
 - Note that indoor space at Places of Worship may be used as the setting for services and events that are conducted virtually. It is recommended that no more than 10 individuals participate in production and broadcast process, who must follow infection control and physical distancing requirements. .
- Measures have been implemented to promote physical distancing at outdoor events.
 - Measures have been implemented (counting attendees at entry) to assure attendance does not exceed the number of people who can be accommodated with the required physical distancing at outdoor events.
 - Parking areas have been reconfigured to limit congregation points and ensure proper spacing (for example, by closing off every other space).
 - If drive-in outdoor services are offered, cars are directed to park at least 6 feet apart.
 - Clear pathways have been identified between parking areas and other arrival points and the site on the grounds at which a religious service or cultural ceremony is being held to minimize crowding, allow for monitoring of occupancy and leave room for symptom checks as staff and visitors enter.
 - A staff person (or staff people if there is more than one pathway) wearing a cloth face covering is posted at the start of the pathway but at least 6 feet from the nearest arriving or departing person to monitor use of face coverings and track occupancy.
 - Faith-based services and cultural ceremonies are configured to permit the required 6 feet of space between any 2 people.
 - The only exceptions to this are the two people who comprise a couple who are getting married or the members of a single household, who may attend any event together and sit together as a unit.
- If attendees at events must wait in line prior to being seated or at any other point

during their presence at the site, markings are used to demonstrate the required 6-foot distance between individuals.

- It is recommended that services and celebrations are shortened to limit time spent at the site among non-household members.
- Outdoor areas are configured to permit physical distancing. If chairs, benches or standing space are used, arrangements and markings are employed to permit a 6-foot space between individuals or between household groups and other household groups or individuals.
- If applicable, aisles within the area used for outdoor events are designated as one-way to support physical distancing.
- Podiums, platforms and other speaker areas have been reconfigured to allow at least 6 feet between speakers or celebrants.
- Staff have been instructed to maintain at least a 6-foot distance from each other in all areas of the site.
- Virtual access is offered to visitors who wish to participate in services or events but are at high risk if exposed to COVID-19.
- Arrangements are in place to make restrooms safely available to attendees/visitors. The site may choose to provide portable outdoor toilet and handwashing facilities. and/or to make indoor restrooms available. If indoor facilities are made available, the following precautions are in place:
 - A defined route is marked from the service area to the indoor location of restrooms.
 - Tape or other markings are used to assure physical distancing if attendees must line up to use restrooms.
 - Attendees/visitors are encouraged to use restrooms as needed during the service or event to avoid crowding at the end.
 - Restrooms facilities are in good working order and are equipped with adequate soap and one-time use towels to permit required handwashing.
 - Restroom facilities are configured to permit physical distancing outside of walled cubicles.
 - A staff person (or staff people if there is more than one interior restroom option) wearing a cloth face covering is posted at the entrance to the restroom but at least 6 feet from the nearest arriving or departing person to monitor use of face coverings and track occupancy.
- Staff have been instructed to maintain at least a 6-foot distance from each other in all areas of the site, including indoor work areas.
- If applicable, elevator capacity is limited to 4 individuals or fewer at a time for any elevator that does not allow for 6-foot physical distance between riders. All riders are required to wear face coverings. Consider elevator sizes, number of building floors, and daily number of employees to establish physical distancing guidelines appropriate for elevator riders.
- If applicable, stairwells have been opened for “up” or “down” traffic with increased cleaning of stairwells.

- Workstations in offices and other areas are separated by at least 6 feet and common areas are configured to limit employee gatherings to ensure physical distancing of at least 6 feet.
- Occupancy in staff restrooms, break rooms and other common areas is limited to permit physical distancing.

C. MEASURES FOR INFECTION CONTROL

- The HVAC system is in good, working order; to the maximum extent possible, ventilation has been increased through opening of doors and windows during gatherings.
- 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 all working areas.
- Hands-free equipment is installed wherever feasible (including restrooms) to reduce risk of contamination.
- Entry screenings are conducted before visitors, including congregants, arriving for faith-based services or cultural ceremonies may enter the Place of Worship. Screenings must include a check-in concerning cough, shortness of breath, difficulty breathing, fever or chills and whether the visitor is currently under an isolation or quarantine order. These checks can be done in person or through alternative methods such as on-line check-in systems or through signage posted at the entrance to the Place of Worship stating that visitors with these symptoms should not enter the premises.
- Visitors arriving at the establishment are reminded to wear a face covering at all times while in the Place of Worship or on the grounds of the Place of Worship. This applies to all adults and to children 2 years of age and older. Only individuals who have been instructed not to wear a face covering by their medical provider are exempt from wearing one. To support the safety of your employees and other visitors, a face covering should be made available to visitors who arrive without them.
- Signs in visible locations are used to remind visitors that face coverings are required during services and celebrations except for children under age 2 or others with impaired breathing or other at-risk conditions.
- Signs in visible locations prohibit visitors from engaging in handshakes, hugs, or similar greetings that pose infection risk.
- If prayer books, rugs or other direct touch items are used in services or ceremonies, individuals are instructed to bring their own or disposable items are offered for participants.
- Microphones, stands, music stands, instruments and other items on pulpits and podiums are disinfected between uses.
- Site has discontinued passing offering plates and similar items. Digital systems or touch-free collection boxes or other devices are used for collection of contributions.
- The California Department of Public Health advises that "activities such as singing and chanting negate the risk-reduction achieved through six feet of physical distancing" due to an increased likelihood for transmission from contaminated exhaled droplets. Consider practicing these activities through alternative methods (such as internet streaming) that ensure individual congregation members perform these activities separately in their own homes or alone in a separate room at the Place of Worship. Please review the State Industry



Guidance for Places of Worship and Providers of Religious Services and Cultural Ceremonies here. The Centers for Disease Control and Prevention recommends organizations consider temporarily suspending singing, chanting, or shouting, especially when indoors. If attendees choose to sing, chant, or shout, whether indoors or outdoors, encourage them to continue wearing their masks while doing so and increase the distance between people to greater than 6 feet.

- Self-service foods and beverages are not offered.
- If multiple services are conducted daily, provide for disinfection of seating areas after each use, or the replacement of disposable coverings after each use if applicable. Religious garments and linens should be washed after each service or event at the highest temperature water setting possible.
- Workspaces and the entire facility are cleaned at least daily when in use, with restrooms and frequently touched areas/objects cleaned more frequently.
- Restroom signs remind visitors to wash hands frequently for 20 seconds.
- Toilet facilities are kept operational and stocked with extra soap, paper towels and hand sanitizer, and are sanitized regularly using EPA approved disinfectants consistent with manufacturer’s directions on the following schedule:

- Hand sanitizer, tissues and trash cans are available to the public at or near the entrance of the facility.
- Optional - Describe other measures to promote infection control

D. MEASURES THAT COMMUNICATE TO THE PUBLIC

- A copy of this protocol is posted at all public entrances to the site.
- Online outlets of the Place of Worship (website, social media, etc.) provide clear information about schedules, occupancy limits to ensure physical distancing requirements are met, parking limitations, required use of face coverings, and options for virtual participation.

E. MEASURES THAT ENSURE EQUITABLE ACCESS TO CRITICAL SERVICES

- Services that are critical to congregants have been prioritized.
- Services that can be offered remotely have been moved on-line.
- Measures are instituted to assure access to faith-based services and cultural ceremonies for congregants who have mobility limitations and/or are at high risk in public spaces.

Any additional measures not included above should be listed on separate pages, which the site should attach to this document.

**You may contact the following person with any questions or
comments about this protocol:**

Site Contact Name:

Phone number:

Date Last Revised:

APPENDIX J-5

closed in Los Angeles County

Equestrian Centers

[English](#) | [简体中文](#) | [繁體中文](#) | [한국어](#)
| [Español](#)

Revised 12/02/20

Golf Courses

[English](#) | [简体中文](#) | [繁體中文](#) | [한국어](#)
| [Español](#)

Revised 12/02/20

APPENDIX L

Gym and Fitness Establishments

[English](#) | [العربية](#) | [հայերեն](#) | [អង្គភាពខ្មែរ](#)
[简体中文](#) | [繁體中文](#) | [فارسی](#) | [日本語](#)
[한국어](#) | [Русский](#) | [Español](#) | [Tagalog](#)
[Tiếng Việt](#)

Revised 12/02/20

APPENDIX U

Higher Education

APPENDIX F

Places of Worship

Places of Worship should engage in outdoor or remote faith-based services, given the significantly increased risk of community transmission of COVID-19 from the high level of new daily cases, hospitalizations, and premature deaths, and the current strain on healthcare resources, and must follow Appendix A protocols.

APPENDIX N

Pro-sport Leagues, Facilities, Training

[English](#) | [Español](#)

Revised 12/12/20

Public Demonstrations

[English](#) | [العربية](#) | [հայերեն](#) | [អង្គភាពខ្មែរ](#)

Travel Restrictions FAQ

[English](#) | [العربية](#) | [հայերեն](#) | [អង្គភាពខ្មែរ](#)
[简体中文](#) | [繁體中文](#) | [فارسی](#) | [日本語](#)
[한국어](#) | [Русский](#) | [Español](#) | [Tagalog](#)
[Tiếng Việt](#)

12/31/20

APPENDIX G

Vehicle Based Parade

[English](#) | [العربية](#) | [հայերեն](#) | [អង្គភាពខ្មែរ](#)
[简体中文](#) | [繁體中文](#) | [فارسی](#) | [日本語](#)
[한국어](#) | [Русский](#) | [Español](#) | [Tagalog](#)
[Tiếng Việt](#)

Revised 10/13/20

APPENDIX C

Warehousing, Manufacturing, Logistics

[English](#) | [简体中文](#) | [繁體中文](#) | [한국어](#)
| [Español](#)

Revised 12/04/20

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APPENDIX K-1



Superior Court of California
County of Kern

Date: 12/10/2020

Time: 8:00 AM - 5:00 PM

BCV-20-102267

FATHER TREVOR BURFITT VS GAVIN NEWSOM

Courtroom Staff

Honorable: Gregory Pulkamp

Clerk: Stephanie Lockhart

NATURE OF PROCEEDINGS: RULING

NATURE OF PROCEEDINGS: RULING ON PLAINTIFF FATHER TREVOR BURFITT'S MOTION FOR PRELIMINARY INJUNCTION; HERETOFORE SUBMITTED ON DECEMBER 10, 2020

RULING:

The Court grants Plaintiff Father Trevor Burfitt's Motion for Preliminary Injunction as to all Defendants.

DISCUSSION:

In this case, the Court is presented with issues involving two very important, but competing interests: public health and freedom of religion. Specifically, Plaintiff contends, inter alia, that the government Defendants' implementation of Covid-19 safety protocols unconstitutionally infringes on the free exercise of religion. The current motion, Plaintiff's Motion for a Preliminary Injunction, entails several complex factual and legal issues. Fortunately, the United States Supreme Court has very recently issued opinions in the case of Roman Catholic Diocese of Brooklyn v. Cuomo (2020) 592 U.S. ___, 2020 WL 6948354 (Roman Catholic Diocese) and Harvest Rock Church v. Newsom (2020) 592 U.S. ___, 2020 WL 7061630, which provide clear guidance on these issues. (See also, the subsequent orders from the U.S. Court of Appeals, Ninth Circuit, Harvest Rock Church v. Newsom, No. 20-55907, 2020 WL 7075072 and South Bay United Pentecostal Church v. Newsom, No. 20-55533, 2020 WL 7224194.) These opinions, as well as the relevant pre-existing body of law, lead this Court to conclude that Plaintiff's action has merit and that the issuance of a preliminary injunction is appropriate.

When deciding whether to issue a preliminary injunction, courts must evaluate 1) the likelihood that the plaintiff will prevail on the merits at trial and 2) the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the injunction were granted. (IT Corporation v. County of Imperial (1983) 35 Cal.3d 63, 70.) It is also clear that Plaintiff, as the moving party, has the burden to establish all the elements necessary to support the issuance of a preliminary injunction. (O'Connell v. Superior Court (2006) 141 Cal.App.4th 1452, 1481.)

In order to evaluate the likelihood of Plaintiff prevailing at trial, the Court must first determine which legal standard should be used to analyze the Covid-19 restrictions at issue. Although Defendants collectively advocate for the use of a "rational basis" standard, it is clear that when restrictions appear to treat religious activity less

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Page 1 of 6

FATHER TREVOR BURFITT VS GAVIN NEWSOM

BCV-20-102267

favorably than comparable secular activities, the restrictions are subject to "strict scrutiny." (*Church of Lukumi v. Hialeah* (1993) 508 U.S. 520, 533-38, 546, 113 S.Ct. 2217 (Lukumi).) In other words, as noted in Roman Catholic Diocese, when "the challenged restrictions are not 'neutral' and of 'general applicability,' they must satisfy 'strict scrutiny,' and this means that they must be 'narrowly tailored' to serve a 'compelling' state interest." (*Roman Catholic Diocese, supra*, at p. 3 [citations omitted].) In this case, the restrictions are not "neutral" and of "general applicability" because they assign entities into disparate classifications which results in religious activities being treated less favorably than comparable secular activities. For example, the "Purple Tier" of the "Blueprint for a Safer Economy," and the most recent "Regional Stay at Home Order," both impose a total ban on indoor religious services while simultaneously permitting a wide range of secular indoor activities to varying degrees. Entities permitted to engage in indoor activities - also known as "essential businesses" or "critical infrastructure" - include big-box retail stores, grocery stores, home improvement stores, hotels, airports, train stations, bus stations, movie production houses, warehouses, factories, schools, and a lengthy list of additional businesses. It is important to note that almost all of the entities that are allowed to host indoor operations do not engage in activity that is constitutionally protected, whereas houses of worship do. (*Calvary Chapel Dayton Valley v. Sisolak* (2020) 140 S.Ct. 2603, 2603-04 (diss. opn. of Alito, J.)) Therefore, strict scrutiny is the appropriate standard in this case.

In applying the strict scrutiny standard, Defendants are given the opportunity to justify why religious activity is treated less favorably than comparable secular activity. (*Lukumi, supra*, 508 U.S. 520 at pp. 533-39, 542-546.). In other words, Defendants must establish to a strict scrutiny standard why houses of worship are not treated like the favored class of entities. (*Ibid.* See also, *Roman Catholic Diocese, supra*, at p. 8 (conc. opn. of Kavanaugh, J.)) Stopping the spread of Covid-19 is undisputedly a "compelling state interest," so one element of the standard is satisfied. However, Defendants' efforts to distinguish the permitted secular activity from the prohibited religious activity are not persuasive. For example, Defendants contend that the congregations of shoppers in big-box stores, grocery stores, etc., are not comparable to religious services in terms of crowd size, proximity, and length of stay. To the contrary, based on the evidence presented (or lack thereof) and common knowledge, it appears that shoppers at a Costco, Walmart, Home Depot, etc. may - and frequently do - congregate in numbers, proximity, and duration that is very comparable to worshippers in houses of worship. Defendants have not convincingly established that the health risks associated with houses of worship would be any different than "essential businesses" or "critical infrastructure," assuming the same requirements of social distancing and the wearing of masks were applied across the board. As Justice Kavanaugh noted:

"Assuming all of the same precautions are taken, why can someone safely walk down a grocery store aisle but not a pew? And why can someone safely interact with a brave deliverywoman but not with a stoic minister? [citations omitted.] The Church and its congregants simply want to be treated equally to comparable secular businesses. California already trusts its residents and any number of businesses to adhere to proper social distancing and hygiene practices. The State cannot 'assume the worst when people go to worship but assume the best when people go to work or go about the rest of their daily lives in permitted social settings.'" (*South Bay United Pentecostal Church v. Newsom* (2020) 140 S.Ct. 1613, 1615 (diss. opn. of Kavanaugh, J.))

In addition, the restrictions at issue in this case are not "narrowly tailored" because the occupancy limits imposed on places of worship by the Purple Tier of the Blueprint for a Safer Economy and the Regional Stay at Home Order are zero - a total and complete ban of indoor religious services. These restrictions are arguably harsher than any other set of restrictions considered by the courts in all of the cases cited by the parties in this action. In *Roman Catholic Diocese*, the court considered New York's religious services occupancy limits of 10 persons in "Red Zones" and 25 persons in "orange zones" to be "very severe restrictions" and "far more restrictive than any Covid-related regulations that have previously come before the Court [footnote omitted], much tighter than those adopted by many other jurisdictions hard-hit by the pandemic, and far more severe than has been shown to be required to prevent the spread of the virus at the applicants' services." (*Roman Catholic Diocese, supra*, at p. 1, 2.) What then should the courts think of California's total ban on indoor services? "Narrowly tailored" regulations mean "the

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FATHER TREVOR BURFITT VS GAVIN NEWSOM

BCV-20-102267

least restrictive means available" and may potentially include a variety of less draconian measures such as "social distancing, wearing masks, leaving doors and windows open, forgoing singing, and disinfecting spaces between services." (Roman Catholic Diocese, supra, at p. 4 (conc. opn. of Gorsuch, J.)). Therefore, it seems highly probable that Plaintiffs will prevail in this case should the matter proceed to trial.

In terms of evaluating, or balancing, the interim harm to the parties, "[t]here can be no question that the challenged restrictions, if enforced, will cause irreparable harm [as] [t]he loss of First Amendment freedoms, for even minimal periods of time unquestionably constitutes irreparable injury." (Roman Catholic Diocese, supra, at p. 3.) Although Plaintiff's action does not allege violations of the First Amendment, it does allege violations of Article I, Section 4, of the California Constitution which is at least as protective of religious liberties as the First Amendment (Catholic Charities of Sacramento v. Superior Court (2004) 32 Cal.4th 527, 562.) At the time of this writing (12/10/20), California does not permit indoor religious services in the four counties in which Plaintiff operates. In fact, between the Blueprint for a Safer Economy and the Regional Stay at Home Order, the State does not currently permit indoor religious services anywhere in the entire state. The harm to Plaintiff is self-evident. On the other hand, Defendants have not shown that adding religious organizations to the long list of entities that are permitted indoor operations would negatively impact public health, assuming the same healthcare precautions were implemented. Defendants' contention that the permissibility of outdoor religious services negates Plaintiff's claims is not well received because, as noted above, several less burdensome means are available to advance the goals of public health and safety. Similarly, Defendants' protestations that religious services may still be offered through means of modern telecommunication, such as TV or web-based platforms, seem specious because, as noted in Roman Catholic Diocese, "such remote viewing is not the same as personal attendance." (Roman Catholic Diocese, supra, at p. 3.) Therefore, the interim harm to Plaintiff if the Motion for Preliminary Injunction were denied, would significantly outweigh the interim harm to Defendants if the motion were granted.

In closing, this Court wholeheartedly agrees with the following sentiment:

"Members of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area. But even in a pandemic, the Constitution cannot be put away and forgotten. The restrictions at issue here, by effectively barring many from attending religious services, strike at the very heart of the First Amendment's guarantee of religious liberty. Before allowing this to occur, we have a duty to conduct a serious examination of the need for such a drastic measure." (Roman Catholic Diocese, supra, at p. 3.)

The free exercise of religion clause in the California Constitution prohibits Defendants from treating religious activities worse than comparable secular activities. California's current Covid-related restrictions do exactly that. This Court is not in a position to rewrite the restrictions or dictate to Defendants specifically how the restrictions may be cured. However, the Court is in a position to prohibit enforcement of the restrictions against Plaintiff pending trial, and rules accordingly. The Court makes no rulings at this time with respect to Plaintiff's separation of powers claim. The Court also does not make any rulings with respect to Defendants' Covid-related restrictions that were created at the city and county levels, except that those restrictions are also not enforceable against Plaintiff to the extent that they incorporate the State of California's restrictions.

DISPOSITION:

Pending a full trial on the merits, Defendants, their agents, and representatives, are hereby enjoined from enforcing against Plaintiff the provisions of the Blueprint for a Safer Economy, the Regional Stay at Home Order, and all Covid-19 restrictions that fail to treat houses of worship equal to the favored class of entities.

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Page 3 of 6

FATHER TREVOR BURFITT VS GAVIN NEWSOM

BCV-20-102267

Plaintiff will prepare an order consistent with this ruling for the court's signature pursuant to California Rule of Court 3.1312.

Copy of minutes mailed to all parties as stated on the attached certificate of mailing.

FUTURE HEARINGS:

March 29, 2021 8:30 AM Case Management Conference
Bakersfield Division H
Pulskamp, Gregory

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Page 4 of 6

FATHER TREVOR BURFITT VS GAVIN NEWSOM

BCV-20-102267

MINUTES FINALIZED BY:

Stephanie Lockhart

ON: 12/10/2020

**FATHER TREVOR BURFITT VS GAVIN NEWSOM
BCV-20-102267**

CERTIFICATE OF MAILING

The undersigned, of said Kern County, certify: That I am a Deputy Clerk of the Superior Court of the State of California, in and for the County of Kern, that I am a citizen of the United States, over 18 years of age, I reside in or am employed in the County of Kern, and not a party to the within action, that I served the *Minutes dated December 10, 2020* attached hereto on all interested parties and any respective counsel of record in the within action by depositing true copies thereof, enclosed in a sealed envelope(s) with postage fully prepaid and placed for collection and mailing on this date, following standard Court practices, in the United States mail at Bakersfield California addressed as indicated on the attached mailing list.

Date of Mailing: December 10, 2020

Place of Mailing: Bakersfield, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Tamarah Harber-Pickens
CLERK OF THE SUPERIOR COURT

Date: December 10, 2020

By: Stephanie Lockhart
Stephanie Lockhart, Deputy Clerk

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BCV-20-102267**

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APPENDIX K-2

FILED
SUPERIOR COURT OF CA, COUNTY OF KERN

JAN - 5 2021

BY  DEPUTY

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN**

FATHER TREVOR BURFITT,

Plaintiff,

v.

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

Defendants.

CASE NO.: BCV-20-102267

IMAGED FILE

**ORDER GRANTING MOTION FOR A
PRELIMINARY INJUNCTION**

Date: December 10, 2020

Time: 8:30 a.m.

Div.: H

Judge: Hon. Gregory Pulskamp

Action Filed: September 29, 2020

1 **ORDER**

2 Plaintiff Father Trevor Burfitt's Motion for a Preliminary Injunction in the above-entitled
3 action came on for hearing on December 10, 2020 at 8:30 a.m. in Division H of the Kern County
4 Superior Court, Metropolitan Division, the Honorable Gregory Pulskamp presiding. Plaintiff Father
5 Trevor Burfitt appeared telephonically through his counsel of record, Christopher A. Ferrara and
6 Paul M. Jonna. Defendants Gavin Newsom, Xavier Becerra, Sandra Shewry, and Erica Pan appeared
7 telephonically through their counsel of record Anna Ferrari and Todd Grabarsky; Defendants
8 Matthew Constantine and Donny Youngblood appeared telephonically through their counsel of
9 record Kyle W. Holmes; Defendant Greg Terry appeared telephonically through his counsel of record
10 Heather Cohen; Defendants Corwin Porter and John McMahon appeared telephonically through their
11 counsel of record Heidi K. Williams; Defendants Wilma J. Wooten and William D. Gore appeared
12 telephonically through their counsel of record Timothy White; Defendants Barbara Ferrer, Alejandro
13 Villanueva, and Muntu Davis appeared telephonically through their counsel of record Jason Tokoro,
14 Timothy Coates, Edward Morrissey, Judy Whitehurst, and Kiva Schragger; Defendants Eric Garcetti
15 and Michel Moore appeared telephonically through their counsel of record Benjamin F. Chapman
16 and Jonathan Eisenman; Defendants Mike Hadden and Robert Guthrie appeared telephonically
17 through their counsel of record Jeffrey Dunn.

18 Based on the evidence presented, submissions of the parties, the complete file in this matter,
19 the oral argument of the parties, and good cause appearing, and as stated in this Court's Minute Order
20 dated December 10, 2020, which is copied and incorporated in its entirety below, it is hereby
21 ORDERED and DECREED as follows: The Court grants Plaintiff Father Trevor Burfitt's Motion
22 for Preliminary Injunction as to all Defendants.

23 **DISCUSSION**

24 In this case, the Court is presented with issues involving two very important, but competing
25 interests: public health and freedom of religion. Specifically, Plaintiff contends, inter alia, that the
26 government Defendants' implementation of Covid-19 safety protocols unconstitutionally infringes
27 on the free exercise of religion. The current motion, Plaintiff's Motion for a Preliminary Injunction,
28 entails several complex factual and legal issues. Fortunately, the United States Supreme Court has

1 very recently issued opinions in the case of *Roman Catholic Diocese of Brooklyn v. Cuomo* (2020)
2 592 U.S. ___, 2020 WL 6948354 (*Roman Catholic Diocese*) and *Harvest Rock Church v. Newsom*
3 (2020) 592 U.S. ___, 2020 WL 7061630, which provide clear guidance on these issues. (See also, the
4 subsequent orders from the U.S. Court of Appeals, Ninth Circuit, *Harvest Rock Church v. Newsom*,
5 No. 20-55907, 2020 WL 7075072 and *South Bay United Pentecostal Church v. Newsom*, No. 20-
6 55533, 2020 WL 7224194.) These opinions, as well as the relevant pre-existing body of law, lead
7 this Court to conclude that Plaintiff's action has merit and that the issuance of a preliminary
8 injunction is appropriate.

9 When deciding whether to issue a preliminary injunction, courts must evaluate 1) the
10 likelihood that the plaintiff will prevail on the merits at trial and 2) the interim harm that the plaintiff
11 is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely
12 to suffer if the injunction were granted. (*IT Corporation v. County of Imperial* (1983) 35 Cal.3d 63,
13 70.) It is also clear that Plaintiff, as the moving party, has the burden to establish all the elements
14 necessary to support the issuance of a preliminary injunction. (*O'Connell v. Superior Court* (2006)
15 141 Cal.App.4th 1452, 1481.)

16 In order to evaluate the likelihood of Plaintiff prevailing at trial, the Court must first determine
17 which legal standard should be used to analyze the Covid-19 restrictions at issue. Although
18 Defendants collectively advocate for the use of a "rational basis" standard, it is clear that when
19 restrictions appear to treat religious activity less favorably than comparable secular activities, the
20 restrictions are subject to "strict scrutiny." (*Church of Lukumi v. Hialeah* (1993) 508 U.S. 520, 533-
21 38, 546, 113 S.Ct. 2217 (*Lukumi*)). In other words, as noted in *Roman Catholic Diocese*, when "the
22 challenged restrictions are not 'neutral' and of 'general applicability,' they must satisfy 'strict
23 scrutiny,' and this means that they must be 'narrowly tailored' to serve a 'compelling' state interest."
24 (*Roman Catholic Diocese, supra*, at p. 3 [citations omitted].) In this case, the restrictions are not
25 "neutral" and of "general applicability" because they assign entities into disparate classifications
26 which results in religious activities being treated less favorably than comparable secular activities.
27 For example, the "Purple Tier" of the "Blueprint for a Safer Economy," and the most recent
28 "Regional Stay at Home Order," both impose a total ban on indoor religious services while

1 simultaneously permitting a wide range of secular indoor activities to varying degrees. Entities
2 permitted to engage in indoor activities – also known as “essential businesses” or “critical
3 infrastructure” – include big-box retail stores, grocery stores, home improvement stores, hotels,
4 airports, train stations, bus stations, movie production houses, warehouses, factories, schools, and a
5 lengthy list of additional businesses. It is important to note that almost all of the entities that are
6 allowed to host indoor operations do not engage in activity that is constitutionally protected, whereas
7 houses of worship do. (*Calvary Chapel Dayton Valley v. Sisolak* (2020) 140 S.Ct. 2603, 2603-04
8 (diss. opn. of Alito, J.)) Therefore, strict scrutiny is the appropriate standard in this case.

9 In applying the strict scrutiny standard, Defendants are given the opportunity to justify why
10 religious activity is treated less favorably than comparable secular activity. (*Lukumi, supra*, 508 U.S.
11 520 at pp. 533-39, 542-546.). In other words, Defendants must establish to a strict scrutiny standard
12 why houses of worship are not treated like the favored class of entities. (*Ibid.* See also, *Roman*
13 *Catholic Diocese, supra*, at p. 8 (conc. opn. of Kavanaugh, J.)) Stopping the spread of Covid-19 is
14 undisputedly a “compelling state interest,” so one element of the standard is satisfied. However,
15 Defendants’ efforts to distinguish the permitted secular activity from the prohibited religious activity
16 are not persuasive. For example, Defendants contend that the congregations of shoppers in big-box
17 stores, grocery stores, etc., are not comparable to religious services in terms of crowd size, proximity,
18 and length of stay. To the contrary, based on the evidence presented (or lack thereof) and common
19 knowledge, it appears that shoppers at a Costco, Walmart, Home Depot, etc. may - and frequently
20 do - congregate in numbers, proximity, and duration that is very comparable to worshippers in houses
21 of worship. Defendants have not convincingly established that the health risks associated with houses
22 of worship would be any different than “essential businesses” or “critical infrastructure,” assuming
23 the same requirements of social distancing and the wearing of masks were applied across the board.

24 As Justice Kavanaugh noted:

25 “Assuming all of the same precautions are taken, why can someone safely walk
26 down a grocery store aisle but not a pew? And why can someone safely interact
27 with a brave deliverywoman but not with a stoic minister? [citations omitted.] The
28 Church and its congregants simply want to be treated equally to comparable secular
businesses. California already trusts its residents and any number of businesses to
adhere to proper social distancing and hygiene practices. The State cannot ‘assume
the worst when people go to worship but assume the best when people go to work

1 or go about the rest of their daily lives in permitted social settings.” (*South Bay*
2 *United Pentecostal Church v. Newsom* (2020) 140 S.Ct. 1613, 1615 (diss. opn. of
3 Kavanaugh, J.).)

4 In addition, the restrictions at issue in this case are not “narrowly tailored” because the
5 occupancy limits imposed on places of worship by the Purple Tier of the Blueprint for a Safer
6 Economy and the Regional Stay at Home Order are zero – a total and complete ban of indoor religious
7 services. These restrictions are arguably harsher than any other set of restrictions considered by the
8 courts in all of the cases cited by the parties in this action. In *Roman Catholic Diocese*, the court
9 considered New York’s religious services occupancy limits of 10 persons in “Red Zones” and 25
10 persons in “orange zones” to be “very severe restrictions” and “far more restrictive than any Covid-
11 related regulations that have previously come before the Court [footnote omitted], much tighter than
12 those adopted by many other jurisdictions hard-hit by the pandemic, and far more severe than has
13 been shown to be required to prevent the spread of the virus at the applicants’ services.” (*Roman*
14 *Catholic Diocese, supra*, at p. 1, 2.) What then should the courts think of California’s total ban on
15 indoor services? “Narrowly tailored” regulations mean “the least restrictive means available” and
16 may potentially include a variety of less draconian measures such as “social distancing, wearing
17 masks, leaving doors and windows open, forgoing singing, and disinfecting spaces between
18 services.” (*Roman Catholic Diocese, supra*, at p. 4 (conc. opn. of Gorsuch, J.)) Therefore, it seems
19 highly probable that Plaintiffs will prevail in this case should the matter proceed to trial.

20 In terms of evaluating, or balancing, the interim harm to the parties, “[t]here can be no
21 question that the challenged restrictions, if enforced, will cause irreparable harm [as] [t]he loss of
22 First Amendment freedoms, for even minimal periods of time unquestionably constitutes irreparable
23 injury.” (*Roman Catholic Diocese, supra*, at p. 3.) Although Plaintiff’s action does not allege
24 violations of the First Amendment, it does allege violations of Article I, Section 4, of the California
25 Constitution which is at least as protective of religious liberties as the First Amendment (*Catholic*
26 *Charities of Sacramento v. Superior Court* (2004) 32 Cal.4th 527, 562.) At the time of this writing
27 (12/10/20), California does not permit indoor religious services in the four counties in which Plaintiff
28 operates. In fact, between the Blueprint for a Safer Economy and the Regional Stay at Home Order,
the State does not currently permit indoor religious services anywhere in the entire state. The harm

1 to Plaintiff is self-evident. On the other hand, Defendants have not shown that adding religious
2 organizations to the long list of entities that are permitted indoor operations would negatively impact
3 public health, assuming the same healthcare precautions were implemented. Defendants' contention
4 that the permissibility of outdoor religious services negates Plaintiff's claims is not well received
5 because, as noted above, several less burdensome means are available to advance the goals of public
6 health and safety. Similarly, Defendants' protestations that religious services may still be offered
7 through means of modern telecommunication, such as TV or web-based platforms, seem specious
8 because, as noted in *Roman Catholic Diocese*, "such remote viewing is not the same as personal
9 attendance." (*Roman Catholic Diocese, supra*, at p. 3.) Therefore, the interim harm to Plaintiff if the
10 Motion for Preliminary Injunction were denied, would significantly outweigh the interim harm to
11 Defendants if the motion were granted.

12 In closing, this Court wholeheartedly agrees with the following sentiment:

13 "Members of this Court are not public health experts, and we should respect the
14 judgment of those with special expertise and responsibility in this area. But even in
15 a pandemic, the Constitution cannot be put away and forgotten. The restrictions at
16 issue here, by effectively barring many from attending religious services, strike at
17 the very heart of the First Amendment's guarantee of religious liberty. Before
allowing this to occur, we have a duty to conduct a serious examination of the need
for such a drastic measure." (*Roman Catholic Diocese, supra*, at p. 3.)

18 The free exercise of religion clause in the California Constitution prohibits Defendants from
19 treating religious activities worse than comparable secular activities. California's current Covid-
20 related restrictions do exactly that. This Court is not in a position to rewrite the restrictions or dictate
21 to Defendants specifically how the restrictions may be cured. However, the Court is in a position to
22 prohibit enforcement of the restrictions against Plaintiff pending trial, and rules accordingly. The
23 Court makes no rulings at this time with respect to Plaintiff's separation of powers claim. The Court
24 also does not make any rulings with respect to Defendants' Covid-related restrictions that were
25 created at the city and county levels, except that those restrictions are also not enforceable against
26 Plaintiff to the extent that they incorporate the State of California's restrictions.

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DISPOSITION

Pending a full trial on the merits, Defendants, their agents, and representatives, are hereby enjoined from enforcing against Plaintiff the provisions of the Blueprint for a Safer Economy, the Regional Stay at Home Order, and all Covid-19 restrictions that fail to treat houses of worship equal to the favored class of entities.

IT IS SO ORDERED.

Dated: 1/5/21

JUDGE OF THE SUPERIOR COURT

Gregory A. Pulskamp
Hon. Gregory Pulskamp