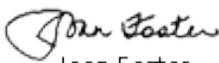


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MICHAEL D. PLANET
Executive Officer and Clerk

Joan Foster
Deputy Clerk

1 TYLER & BURSCH, LLP
Robert H. Tyler, State Bar No. 179572
2 rtyler@tylerbursch.com
Jennifer L. Bursch, State Bar No. 245512
3 jbursch@tylerbursch.com
4 Nada N. Higuera, State Bar No. 299819
nhiguera@tylerbursch.com
5 25026 Las Brisas Road
Murrieta, California 92562
6 Telephone: (951) 600-2733
Facsimile: (951) 600-4996

7 Attorneys for Defendants, Godspcak Calvary Chapel and
8 Rob McCoy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF VENTURA**

11
12 COUNTY OF VENTURA and ROBERT
LEVIN, M.D., in his capacity as Health
13 Officer for Ventura County,
14
Plaintiffs
15
v.
16 GODSPEAK CALVARY CHAPEL, ROB
McCOY and DOES 1 through 1000, inclusive,
17
Defendants.

Case No.: 56-2020-00544086-CU-MC-VTA
**OPPOSITION TO PLAINTIFFS’
APPLICATION FOR ORDER TO SHOW
CAUSE RE CONTEMPT**
Date: August 21, 2020
Time: 10:00 a.m.
Dept.: 41
Judge: Vincent J. O’Neill

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I. INTRODUCTION

Defendants Godspeak Calvary Chapel (“Church”) and Rob McCoy (“Pastor McCoy”) request that this Application be denied because the Temporary Restraining Order (“TRO”) dated August 7, 2020 issued by the Honorable Matthew P. Guasco is unconstitutional and this case is of great public importance involving a request to crush a church’s constitutional rights, warranting a noticed hearing, testimony from expert witnesses and the right of Defendants to cross examine their accusers. This Court has jurisdiction to review the validity of the TRO before issuing an order for contempt because California does not follow the “collateral bar” principle.

Additionally, Defendants will soon be filing a cross complaint against the County of Ventura and Governor Newsom in his official capacity. Governor Newsom is an indispensable party to this litigation because Defendants will assert the following: the statewide and county orders violate constitutional principles, the Governor should have terminated the state of emergency prior to when the litigation began, and the underlying statutory scheme permitting the Governor to keep the state in an indefinite state of emergency is unconstitutional.

II. FACTUAL BACKGROUND

Defendant Rob McCoy is the lead Pastor of Godspeak Calvary Chapel in Thousand Oaks. (Declaration of Rob McCoy, ¶ 1.) Starting on Sunday, April 5, 2020, Godspeak began holding in-person communion church services in defiance of California and Ventura County Orders. (McCoy Decl., ¶ 2.) During this same time, Pastor McCoy resigned from his position as City Council Member of Thousand Oaks. (McCoy Decl., ¶ 3.) His resignation and defiance of Covid-19 orders was covered by local media. (McCoy Decl., ¶ 5.) During this time, Pastor McCoy was in communication with Ventura County Officials who knew of the Church’s resumption of services. (McCoy Decl., ¶ 5.)

On June 7, 2020, Godspeak began holding multiple church services at full capacity with approximately 1,400 attendees total with three church services. (McCoy Decl., ¶ 11.) Again, County officials knew about the opening and church services. (McCoy Decl., ¶¶ 8, 11.) The Church and Pastor McCoy have a sincerely and deeply held religious belief that it is essential for them as

1 Christians to assemble and regularly gather together in person for the teaching of God’s Word,
2 prayer, worship, baptism, communion and fellowship. (McCoy Decl., ¶ 13.)

3 As of August 6, 2020, there have been no known cases from or traced back to Godspcak
4 Calvary Chapel or Pastor McCoy. (McCoy Decl., ¶ 14.) Not one Church congregant has contracted
5 COVID-19. (McCoy Decl., ¶ 15.) The Church intends on continuing to hold its in person, indoor
6 services just as it has been since early June. (McCoy Decl., ¶ 16.)

7 There are several reasons it is not feasible for the Church to meet outdoors. (McCoy Decl.,
8 ¶ 17.) A member of the Church operational staff is allergic to the sun. (McCoy Decl., ¶ 17.) It is
9 difficult, if not impossible, to find a space large enough to accommodate 1,400 attendees each
10 Sunday which also has restrooms, handicap access and accommodations, electricity, parking, and
11 other practical considerations necessary to hold multiple church services. (McCoy Decl., ¶ 17.)

12 In addition, the Church does not meet outdoors because of security concerns. (McCoy Decl.,
13 ¶ 18.) Since April 5, 2020 to date, protestors gather outside the Church building during services.
14 (McCoy Decl., ¶ 18.) There has been yelling and cussing at congregants by protestors. (McCoy
15 Decl., ¶ 18.) There have been death threats sent to the Church. (McCoy Decl., ¶ 18.) Security is
16 required every Sunday to prevent protesters and harassers from interfering with church services.
17 (McCoy Decl., ¶ 18.) The church’s concern for security is not without justification as numerous
18 reports of individuals entering religious gatherings to kill and injure congregants are well known¹,
19 and the church and its congregants would be far more vulnerable outdoors in an open setting.

20 **III. THE TEMPORARY RESTRAINING ORDER IS UNCONSTITUTIONAL**

21 “[A]n underlying order issued in excess of the court’s jurisdiction—such as an order that is
22 unconstitutional on its face—may not be the basis of a contempt judgment.” (*People v. Gonzalez*
23 (1996) 12 Cal.4th 804, 817.) Whereas some jurisdiction do not permit collateral challenges to
24 temporary restraining and injunctive orders, California courts permit Defendants to challenge the
25 validity of Judge Guasco’s TRO.

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28 ¹ <https://www.foxnews.com/us/texas-church-shooting-attacks-houses-worship> (listing 13 attacks
on places of worship in the United States from June 2015 to April 2019).

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In this state a person affected by an injunctive order has available to him two alternative methods by which he may challenge the validity of such order on the ground that it was issued without or in excess of jurisdiction. He may consider it a more prudent course to comply with the order while seeking a judicial declaration as to its jurisdictional validity. [Citation.] On the other hand, he may conclude that the exigencies of the situation or the magnitude of the rights involved render immediate action worth the cost of peril. In the latter event, such a person, under California law, may disobey the order and raise his jurisdictional contentions when he is sought to be punished for such disobedience. If he has correctly assessed his legal position, and it is therefore finally determined that the order was issued without or in excess of jurisdiction, his violation of such void order constitutes no punishable wrong.

(*Id.* at 818-819 (quoting *In re Berry* (1968) 68 Cal. 2d 137, 148-149).)

A. The TRO’s use of the term “Indoor Worship Services” is unconstitutionally vague and overbroad.

Judge Guasco’s TRO prohibits Defendants from

“Conducting, participating in, or attending any indoor worship services at 320 Via Las Brisas, Newbury Park, Ventura County, California [] or any other place within Ventura County.”

“Indoor worship services” is left undefined and open for differing interpretations. *In re Berry* (1968) 68 Cal. 2d 13, 156. For example, Godspcak Calvary provides a variety of “indoor” services to the community and to its members including counseling, teaching, training, benevolence, food and other social services the church believes to be essential for the spiritual and physical needs of the community and its members. Decl. McCoy ¶ 19. Godspcak teaches that these acts of service are acts of worship to God. *Id.* Worship to God is not only the act of gathering together in common on Sunday mornings for singing and teaching, but worship to God is living your life in a manner honoring to God. *Id.* When providing these humanitarian services, Godspcak makes it a regular practice to pray continually when dispensing these social services. *Id.* Teaching from the Bible is an indispensable component when providing counseling, teaching and training. *Id.* In sum, when staff and congregants gather inside the church to provide social/humanitarian services, they are worshipping God in concert with one another. *Id.* Therefore, under the TRO, “indoor worship” would necessarily prohibit the provision of humanitarian services by the church just because those services are (1) provided indoors, (2) at times when multiple persons are participating in the

1 dispensing of, or receiving the benefit of, those services, and (3) the service provided is a religious
2 act of worship, inclusive of prayer and Bible instruction.

3 Ironically, persons who provide and participate in the provision of these services fall within
4 the list of Essential Critical Infrastructure Workers as established by the State Public Health
5 Officer.² Critical workers exempt from the stay at home orders include, “workers who support food,
6 shelter, and social services, and other necessities of life for economically disadvantaged or
7 otherwise needy individuals, such as those residing in shelters.”³ Does God’s indoor
8 provision of social services and necessities of life violate the TRO’s prohibition of indoor worship
9 services? Or, are the provision of such services permissible within the terms of the TRO because
10 they are services provided by “critical” workers?

11 The distinction implied between social services provided through a religious act of worship
12 versus a secular-based humanitarian ethic is itself unconstitutional. The TRO unconstitutionally
13 prefers religion over nonreligion wherein critical services are permissible indoors but not critical
14 services provided in worship to God. Likewise, the state and county’s ban on indoor religious
15 gatherings⁴ allows critical services to be provided indoors but not if they are religious in nature.

16 The First Amendment protects the “free exercise” of religion, and fundamental to this
17 protection is the right to gather and worship. *See W. Va. State Bd. of Educ. v. Barnette*, 319 U.S.
18 624, 638 (1943). Neutral laws of general applicability that incidentally burden religious activity are
19 not subject to strict scrutiny, which requires that the government have a compelling governmental
20 interest that justifies the extent of the law. *Employment Div. v. Smith*, 494 U.S. 872, 878 (1990).

21 _____
22 ² <https://covid19.ca.gov/essential-workforce/>

23 ³ *Id.*

24 ⁴The state’s ban on indoor worship is found at
25 <https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/COVID-19/SHO%20Order%20Dimming%20Entire%20State%207-13-2020.pdf>. The County of Ventura’s
26 implementation of the state’s order is found at https://vcportal.ventura.org/covid19/docs/2020-07-13_VC_Public_Health_Officer_Order.pdf.

1 However, “[t]he principle that government, in pursuit of legitimate interests, cannot in a selective
2 manner impose burdens only on conduct motivated by religious belief is essential to the protection
3 of the rights guaranteed by the Free Exercise Clause.” *Church of the Lukumi Balalu Aye, Inc. v.*
4 *City of Hialeah*, 508 U.S. 520, 531 (1990). Indeed, “if the object of a law is to infringe upon or
5 restrict practices because of their religious motivation, the law is not neutral . . . and it is invalid
6 unless it is justified by a compelling interest and is narrowly tailored to advance that interest.” *Id.*
7 at 533.⁵ Here, the TRO and the state’s regulatory scheme unlawfully prefers secular acts of
8 compassion over religious acts of compassion by permitting persons to dispense social services so
9 long as they do not counsel from the Bible, pray with the recipients, or do any worshipful act
10 together indoors.⁶

11 **B. The TRO should not have been granted because the underlying orders of the**
12 **County and State are unlawful.**

13 The Governor is granted the authority to declare a state of emergency when he makes a
14 finding under Government Code § 8558 (conditions required) and either (1) is requested by a City
15 or County to declare and emergency or (2) he finds that local authority is inadequate to cope with
16 the emergency. (Cal Gov Code § 8625.) A “state of emergency” under “means the duly proclaimed
17

18 _____
19 ⁵ The notion that courts should not employ the usual constitutional standards that govern Free
20 Exercise claims, such as *Lukumi*, in light of the ongoing pandemic, was explicitly rejected by Judge
21 Collins in her dissenting opinion in *S. Bay United Pentecostal Church v. Newsom*, 959 F.3d 938
22 941-43 (9th Cir. 2020), and the majority in that case also relied on *Lukumi*. *See also First Baptist*
Church v. Kelly, No. 20-1102-JWB, 2020 U.S. Dist. LEXIS 68267, at *19 (D. Kan. Apr. 18, 2020)
(concluding that *Lukumi* provides the appropriate framework in reviewing COVID related executive
orders).

23 ⁶ The state and county orders burden the Defendants worship and, therefore, Plaintiffs’ orders
24 must satisfy “strict scrutiny.” (*Catholic Charities of Sacramento, Inc. v. Superior Court* (2004) 32
25 Cal.4th 527, 562.)⁶ “That stringent standard is not watered down but really means what it says. To
26 satisfy it, government action must advance interests of the highest order and must be narrowly
27 tailored in pursuit of those interests.” (*Espinoza v. Montana Dep’t of Revenue* (2020) 140 S. Ct.
28 2246, 2260.)

1 existence of conditions of disaster or of extreme peril to the safety of persons ... caused by ...
2 epidemic ... which, by reason of their magnitude, are or are likely to be beyond the control of the
3 services, personnel, equipment, and facilities of any single county ... and require the combined
4 forces of a mutual aid region or regions to combat” (Cal. Gov. Code § 8558.) “The Governor
5 shall proclaim the termination of a state of emergency at the earliest possible date that conditions
6 warrant.” (Cal. Gov. Code § 8629.)

7
8 **1. The underlying basis for the TRO is invalid because the State of**
9 **Emergency should have already been terminated.**

10 In a letter to the President of the United States date March 18 , 2020, Governor Newsom
11 stated, “[w]e project that roughly 56% of our population - 25.5 million people - will be infected
12 with the virus over an eight week period.”⁷ He asked that the USNS Mercy Hospital Ship be sent
13 to Los Angeles to “help decompress the health care delivery system” in order to have the ability to
14 address “critical care needs.” The Governor compared Los Angeles to New York and expected that
15 the Los Angeles Region would be impacted similar to New York City.⁸ The Governor’s
16 proclamation declaring a state of emergency on March 4, 2020 reflected upon the potential that
17 “the number of persons needing medical care may exceed locally available resources” and that
18 mitigation efforts will be necessary “to respond to an increasing number of individuals requiring
19 medical care and hospitalization.”⁹

20 Instead of 5 million infected, today there are only 621,562 persons that have been infected.
21 The USNS Mercy Hospital Ship only treated 77 patients over six weeks before leaving on May 15,
22 2020. In Ventura County as of the date Defendant opposed the TRO, there were 83 COVID-19
23 hospitalizations, 110 additional staffed and available hospital beds, 160 available ventilators and
24

25 _____
26 ⁷ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.18.20-Letter-USNS-Mercy-Hospital-Ship.pdf>

27 ⁸ *Id.*

28 ⁹ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

1 27 of the COVID patients were in ICU. (Ventura County Coronavirus Case Information, VC
2 EMERGENCY (August 5, 2020) <https://www.vcemergency.com/>.) There have been 515
3 hospitalizations from COVID 19 in Ventura County cumulatively since the beginning of the year.
4 (*Id.*) There are 82% of ventilators presently available in the County. (*Id.*)

5 Flattening the curve, assuring our hospital were not overrun, and ensuring there was
6 sufficient capacity in the hospitals, are the core considerations for Governor Newsom declaring a
7 state of emergency. As can be seen above, and as will be addressed by our expert witnesses at trial,
8 those objective conditions have been satisfied. I make this offer of proof to show that continuing
9 the state of emergency should have been terminated because all of the Governor’s stated concerns
10 have been sufficiently resolved. If the state of emergency is no longer valid, the TRO should not
11 have issued.

12 **2. The Emergency Services Act is unconstitutional because it grants**
13 **unbridled discretion to the governor over all liberty interests and fails to establish any**
14 **termination or judicial review process.**

15 “It is settled by a long line of recent decisions of this Court that an ordinance which . . .
16 makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the
17 uncontrolled will of an official -- as by requiring a permit or license which may be granted or
18 withheld in the discretion of such official -- is an unconstitutional censorship or prior restraint upon
19 the enjoyment of those freedoms.” (*Shuttlesworth v. Birmingham* (1969) 394 U.S. 147, 151
20 (quoting *Staub v. City of Baxley* (1958) 355 U.S. 313, 322).) Furthermore, a prior restraint that fails
21 to place limits on the time within which the decisionmaker must issue the license is impermissible.
22 (*Freedman v. Maryland* (1965) 380 U.S. 51, 59; *Vance v. Universal Amusement Co.*, 445 U.S. 308,
23 316 (1980) (striking statute on ground that it restrained speech for an “indefinite duration”).)

24 Here, the Governor wields a power even greater than the granting of a license to an
25 individual applicant for a specific act of expression. Instead, the Emergency Services Act grants
26 the Governor unbridled discretion to suspend all civil protections indefinitely including, but not
27 limited to, the suspension of any law, prohibiting all assemblies such as religious worship
28 gatherings and protests, suspending the liberty of movement, among other restrictions without due

1 process of the law. (Cal Gov Code § 8627 (“During a state of emergency the Governor shall, to
2 the extent he deems necessary, have complete authority over all agencies of the state government
3 and the right to exercise within the area designated all police power vested in the state by the
4 Constitution and laws of the State of California in order to effectuate the purposes of this chapter.
5 In exercise thereof, he shall promulgate, issue, and enforce such orders and regulations as he deems
6 necessary, in accordance with the provisions of Section 8567”); *See also*, Cal Gov Code § 8567(a)
7 (“The Governor may make, amend, and rescind orders and regulations necessary to carry out the
8 provisions of this chapter. The orders and regulations shall have the force and effect of law”); Cal.
9 Gov. Code § 8571 (the Governor may suspend any regulatory statute, or statute prescribing the
10 procedure for conduct of state business, or the orders, rules, or regulations of any state agency ...
11 where the Governor determines and declares that strict compliance with any statute, order, rule, or
12 regulation would in any way prevent, hinder, or delay the mitigation of the effects of the
13 emergency”).)

14 More than five months have passed since the Governor declared a state of
15 emergency due to COVID-19. He has suspended liberties, including Defendants’ rights to worship
16 indoors, and there is no limit on the duration for which the Governor may continue this suspension
17 of civil liberties. Therefore, the Governor’s order unlawfully violates the principles against granting
18 a single governmental official unbridled discretion over civil liberties without any limit on the
19 duration of such restrictions. The County’s authority and basis for implementing the ban on indoor
20 worship is entirely based upon the Governor’s declared state of emergency. Likewise, there is no
21 limit on the duration of the County’s orders limiting Defendants’ civil liberties. Therefore,
22 Defendants contend that the granting of the TRO was founded upon the unconstitutional authority
23 granted to the Governor and the County.

24 **3. Judge Guasco’s reliance on *Jacobson* was in error.**

25 The TRO grants Plaintiffs’ the right to restrain Defendants from exercising their First
26 Amendment right to exercise their religion. The Church and Pastor McCoy have a sincerely and
27 deeply held religious belief that it is essential for them as Christians to assemble and regularly
28 gather together in person for the teaching of God’s Word, prayer, worship, baptism, communion

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1 and fellowship. (McCoy Decl., ¶ 13.) The granting of the TRO was based, in part, on *Jacobson v.*
2 *Massachusetts* (1905) 197 U.S. 11 to support Plaintiffs’ extraordinary claim that the current
3 emergency gives the County the power to indefinitely restrict any and all constitutional rights, as
4 long as it has not acted in an unreasonable and arbitrary manner. (Plaintiff’s TRO Application, p.
5 9:6-7.) Nothing in *Jacobson* supports the view that an emergency displaces normal constitutional
6 standards. Rather, *Jacobson* provides that an emergency may justify temporary constraints within
7 those standards. As the Second Circuit has recognized, *Jacobson* merely rejected what we would
8 now call a “substantive due process” challenge to a compulsory vaccination requirement, holding
9 that such a mandate “was within the State’s police power.” (*Phillips v. City of New York* (2d Cir.
10 2015)775 F.3d 538, 542.)

11 *Jacobson*’s deferential standard of review is appropriate in that limited context. It might be
12 relevant here if Defendants assert a comparable substantive due process claim, but they are not.
13 Instead, Plaintiffs assert that the Orders are unconstitutional under the Free Exercise Clause which
14 has well-established constitutional standards. *Jacobson* had no occasion to address a Free Exercise
15 claim because that issue was not presented there. In fact, the Free Exercise Clause had not yet been
16 held to apply to the States when *Jacobson* was decided in 1905. (*See Phillips*, 775 F.3d at 543.)
17 Consequently, *Jacobson* says nothing about what standards would apply to a claim that an
18 emergency measure violates some other, *enumerated* constitutional right; on the contrary, *Jacobson*
19 explicitly states that other constitutional limitations may continue to constrain government conduct.
20 (*See* 197 U.S. at 25 (emergency public health powers of the State remain subject “to the condition
21 that no rule . . . shall contravene the Constitution of the United States, nor infringe any right granted
22 or secured by that instrument”).)Therefore, *Jacobson* does not grant Plaintiffs the unfettered and
23 unlimited discretion to suspend Defendants’ constitutional liberties.

24 **C. The TRO should not have been granted because the current conditions in**
25 **California do not justify a compelling government interest or even a rational interest for**
26 **restricting religious liberties.**

27 The restriction on religious liberties must be justified by a compelling government
28 interest where the restrictions are not neutral or generally applicable. (*Church of the Lukumi*

1 *Balalu Aye, Inc.*, 508 U.S. at 531.) But where the restrictions are neutral and generally
2 applicable, the restrictions must only be justified by a rational basis. (*Smith*, 494 U.S. at 878.)
3 Defendants contend that the conditions underlying the state of emergency no longer support
4 the governments’ interest regardless of the applicable standard. Defendants make an offer of
5 proof that the facts below will be further established though expert testimony along with
6 additional evidence that will be elicited through experts and percipient witnesses.

7 Despite the Church holding indoor services since June 7, 2020 (and communion
8 services as early as April 5, 2020) against State and County Orders that Defendants contend
9 are unlawful, there have been zero COVID-19 cases of church attendees or anyone connected
10 to the Church. (McCoy Decl., ¶¶ 14-15.) There is no evidence that “it’s only a matter of time -
11 if it has not already happened - before there is a significant outbreak of COVID-19 cases among
12 the attendees” of the Church. (Levin Decl. in Support of TRO., paragraph 15.) The opposite is
13 true based on the last several months of indoor services at the Church. Furthermore, in a report
14 dated July 28, 2020 and presented to the County Board of Supervisors, the County conducted
15 a study of 2,719 individuals who tested positive for COVID-19 to determine whether those
16 individuals attended large gatherings within 14 days of their diagnosis. (Defendants’ Request
17 for Judicial Notice, Exhibit A, COVID-19 Update, page 12.) Only 8 of the 2,719 surveyed
18 stated they attended a religious service; 7 people stated they attended a protest; 221 attended
19 a family or friend gathering; and 44 went to a “casino, funeral service, golfing, gym, etc.” (*Id.*)
20 There is no evidence that there is a sudden impending outbreak warranting emergency relief.
21 It is also unclear why the County delayed in seeking this relief if the threat is imminent and
22 the harm is irreparable.

23 Ventura County does not even have a rational basis to restrict Godspcak from holding
24 indoor church services because the COVID-19 infection and death rates in Ventura County
25 are low, especially for those who are under the age of 65. As of the issuance of the TRO,
26 Ventura County has had 79 deaths, 7,953 total cases, 4,352 recovered cases and 118,142 total
27 people tested for COVID-19. 64 of these 79 deaths were over the age of 65. (See Ventura
28 County Coronavirus Case Information, VC EMERGENCY (August 5, 2020)

1 <https://www.vcemergency.com/>.) The total population of Ventura County is 846,006. (See
2 Quick Facts Ventura County, United States Census Bureau (July 2019)
3 <https://www.census.gov/quickfacts/venturacountycalifornia>.) Based on 7,953 total cases, there
4 is a 0.99% death rate in Ventura County from COVID-19 and a 0.18% death rate for those
5 under the age of 65. Because the chances of dying of COVID-19 are so low in Ventura County,
6 there is no rational basis for eliminating constitutional liberties, the free exercise of religion,
7 the quarantining of the young and healthy, and banning the Church from holding indoor
8 worship services.

9 Moreover, the majority of deaths from COVID-19 are from those who have an
10 underlying medical condition and people who are over the age of 65. Using a CDC study of
11 10,647 COVID-19 decedents for whom supplementary data were collected during February
12 12–April 24, 2020, at least one underlying medical condition was reported for 8,134 (76.4%)
13 of the decedents. 83.1% of decedents under age 65 had underlying health conditions. (See
14 Characteristics of Persons Who Died with COVID-19 — United States, February 12–May 18,
15 2020, CDC (July 17, 2020)
16 <https://www.cdc.gov/mmwr/volumes/69/wr/mm6928e1.htm>.) This means that only 23.6% of
17 the total decedents of COVID-19 did not have an underlying medical condition. It also means
18 that only 16.9% of the decedents who were under 65 years old did not have an underlying
19 health condition.

20 Correlating this information to Ventura County, we can estimate that 76.4% of the 79
21 decedents (or 60 people) in Ventura County had co-morbidity or underlying health issues. This
22 means that the risk of death to an otherwise healthy person in Ventura County, regardless of
23 age is only 0.23% (23.6% multiplied by 79 divided by 7,953).

24 Additionally, we know that only 15 of the 79 decedents in Ventura County were under
25 65 years old. Therefore, it can be assumed that the risk of death for an otherwise healthy person
26 in Ventura County is only 0.032% (16.9% multiplied by the 15 decedents under 65, divided
27 by 7,953). Therefore, the risk of death for persons under 65 who are otherwise healthy is only
28 0.032% based on 7,953 total cases.

1 Moreover, based on testing results from 863 adults, a research team at the University
2 of Southern California estimated that approximately 4.1% of Los Angeles County's adult
3 population has an antibody to the virus as of April 2020. (Early antibody testing suggests
4 COVID-19 infections in L.A. County greatly exceed documented cases, USC News (April 20,
5 2020) [https://news.usc.edu/168987/antibody-testing-results-covid-19-infections-los-angeles-](https://news.usc.edu/168987/antibody-testing-results-covid-19-infections-los-angeles-county/)
6 [county/](https://news.usc.edu/168987/antibody-testing-results-covid-19-infections-los-angeles-county/).) If these results were extrapolated to Ventura County this means an estimated 34,686
7 adults in Ventura County had at some point already (or presently) acquired the COVID-19
8 infection, many of them without realizing it. Therefore, rather than using the tested and
9 confirmed number of cases (7,953), it would be reasonable to use 34,686 as the more accurate
10 number of actual COVID-19 cases in Ventura County. **Using 34,686 as the case number, the**
11 **overall death rate of those in Ventura County based on 79 persons is 0.22%. Therefore,**
12 **the risk of death for Ventura County residents under 65 years old is only 0.043% based**
13 **on 34,686 total cases (15 persons divided by 34,686).** And the number of those with an
14 antibody is likely much higher in August than it was in April. Furthermore, the risk of death
15 from a COVID-19 infection for persons who are healthy is statistically insignificant.

16 In reality, there are many other activities in society that people voluntarily undertake
17 that have a higher risk of death than dying from COVID-19, yet the government does not
18 prohibit it. For example, in a study of 130,235 cases of elective surgery, JAMA found that .4%
19 of the elective surgeries resulted in the death of the patient and 6.7% of the elective surgeries
20 resulted in patient morbidity.¹⁰ **In sum, the risk of death from elective surgery is far greater**
21 **than the risk of death from COVID-19, yet the County of Ventura does not prohibit all**
22 **elective surgeries.** Rather, the County allows elective surgeries, for example, to eliminate
23 pain or to change one's appearance (i.e. plastic surgery). Elective surgeries can enhance a
24 person's physical and mental well-being. Then how much more should this Court protect the
25 right of individual's First Amendment liberties to find spiritual and mental well-being through
26 congregational worship.

27
28 ¹⁰ <https://jamanetwork.com/journals/jamasurgery/fullarticle/2625129>

1 Finally, there is no rational basis that enforcing the Orders will result in a burden on
2 the healthcare system. The hospitals in Ventura County are not overwhelmed as there is plenty
3 of hospital beds and an excess of ventilators available. Currently, there are 83
4 hospitalizations, 110 staffed and available hospital beds, 160 available ventilators and 27
5 COVID patients in ICU. (Ventura County Coronavirus Case Information, VC EMERGENCY
6 (August 5, 2020) <https://www.vcemergency.com/>.) There have been 515 hospitalizations from
7 COVID 19 in Ventura County cumulatively since the beginning of the year. (*Id.*) There are
8 82% of ventilators available and the county had a goal of 25% of ventilators to be available as
9 of August 6, 2020. *Id.* This is 57% more ventilators than the goal set by the County. With
10 110 staffed and available beds and plenty of available ventilators, there is no evidence that the
11 hospitals are overwhelmed with COVID-19 patients and that there is a capacity shortage at
12 Ventura County hospitals. This is evidence that COVID-19 is not overwhelming Ventura
13 County hospitals and COVID-19 is not as life threatening as the County is depicting, especially
14 for those under the age of 65 and those who have no underlying medical conditions. Plaintiffs’
15 application for TRO was fatally defective because Plaintiffs did not establish with admissible
16 evidence that they would suffer significant interim irreparable harm because of Defendants’ future
17 actions. This is especially true given that Defendants were maintaining the status quo of the last
18 several months. There is no reason why suddenly there was a need for emergency relief to protect
19 against imminent irreparable harm. (*See Gray v. Bybee* (App. 3 Dist. 1943) 60 Cal.App.2d 564,
20 141 P.2d 32 (a “temporary restraining order” amounts to a mere preliminary or interlocutory order
21 to keep the subject of litigation in status quo pending determination of the action on its merits..))

22 On the other hand, Defendants will suffer irreparable injury to their constitutional right to
23 exercise religion should they comply with the TRO. The Supreme Court held in *Elrod v. Burns*
24 (1976) 427 U.S. 347, 373 that the “loss of First Amendment freedoms, for even minimal periods
25 of time, unquestionably constitutes irreparable injury.” The Church and attendees’ fundamental
26 right to assemble and worship will suffer irreparable injury because of the TRO. As stated
27 previously, the Church is unable to meet outside as Plaintiffs demand. (McCoy Decl., ¶¶ 17-18.)
28

1 Furthermore, the Church’s worship services are critical for the spiritual, physical, and
2 mental health of its community and congregation. It should not be surprising that the secondary
3 effects of quarantine on mental health are wide ranging and long lasting. According to one study,
4 post-traumatic stress scores were four times higher in children who had been quarantined than
5 children who were not.¹¹ Although child abuse reporting may actually be lower than before the
6 COVID-19 shutdown, experts in the field are even more concerned that children at risk are going
7 unnoticed by their teachers, pastors, and other mandatory reporters.¹²

8 The Kaiser Family Foundation conducted a study from March 25 to 30, 2020 and found
9 that 45 percent of adults said the pandemic had affected their mental health, and 19 percent said it
10 has had a major impact.¹³ According to CNN, the Disaster Distress Helpline, a federal crisis hotline,
11 saw an increase of 891% in March 2020 compared to March 2019.¹⁴ And a recent modeling study
12 from Well Being Trust, relying in part upon unemployment data from the Great Recession of 2008-
13 2009, warns of the likely potential that 75,000 to 150,000 people will die from suicide due to the
14 economic conditions. The Trust further warned that a higher estimate may be more accurate
15 considering the negative impact of isolation and uncertainty during the shutdown. Reports of
16 persons relapsing and/or overdosing on opioids and other drugs due to the stress of the shutdown
17 are widespread.¹⁵

18 The Church and Pastor McCoy are convinced the act of congregational worship and Bible
19 teaching that occurs at Godspeak is essential to the health and welfare of its congregation and the
20 community it serves. A study published on May 6, 2020, in JAMA Psychiatry found “that religious

21 _____
22 ¹¹ [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30460-8/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30460-8/fulltext)

23 ¹² <https://www.cnn.com/2020/05/17/politics/child-abuse-pandemic/index.html>.

24 ¹³ https://www.washingtonpost.com/health/coronavirus-is-harming-the-mental-health-of-tens-of-millions-of-people-in-us-new-poll-finds/2020/04/02/565e6744-74ee-11ea-85cb-8670579b863d_story.html

25 ¹⁴ <https://www.cnn.com/2020/04/10/us/disaster-hotline-call-increase-wellness-trnd/index.html>.

26 ¹⁵ <https://www.cnn.com/2020/05/14/health/opioids-addiction-appalachia-coronavirus-trnd/index.html>.

27 <https://www.cnn.com/2020/05/07/health/opioid-epidemic-covid19-pandemic-trnd/index.html>.

28 <https://www.addictioncenter.com/news/2020/04/covid-19-is-causing-people-to-relapse/>.

1 service attendance is associated with a lower risk of death from despair among registered nurses
2 and health care professionals. These results may be important in understanding trends in deaths
3 from despair in the general population.”¹⁶

4 In sum, a great crisis has arisen from the secondary effects of the COVID-19 shutdown.
5 The societal effects are not temporary and will last a lifetime in many individuals. Meanwhile, the
6 original fears upon which the COVID-19 shutdown was justified are no longer a reality. Our experts
7 are prepared to testify that the current mitigation efforts of the state and county are not justified by
8 either a compelling interest or even a rational basis. Furthermore, even if the state and county’s
9 interest satisfied the compelling standard, our experts will testify that those interests can be satisfied
10 through less restrictive means than to ban all indoor worship services. (*Church of the Lukumi Balalu*
11 *Aye, Inc.*, 508 at 531 (a restriction on religious practice that is not neutral and generally applicable
12 must be narrowly tailored to advance that interest).)

13 CONCLUSION

14 The TRO is unconstitutional on its face and is founded upon orders that are unconstitutional.
15 Defendants request a fully noticed hearing with expert testimony to present this data to the Court
16 before this court issues any order of contempt. The science and data do not justify, even under
17 rational basis review, closure of the Church services. A full trial on the merits, with experts to
18 ascertain the data, is essential to the protection of the Church’s and Pastor McCoy’s constitutional
19 liberties. The Church and McCoy request the right to cross-examine their accusers as to their
20 assertions.

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28 ¹⁶https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2765488?utm_campaign=articlePDF%26utm_medium%3darticlePDFlink%26utm_source%3darticlePDF%26utm_content%3djamapsychiatry.2020.0175.

1 For the reasons stated above, Defendants respectfully request that the Court delay ruling
2 on Plaintiffs' request for an order of contempt until after a complete trial on the merits is held.

3
4 DATED: August 17, 2020

TYLER & BURSCH, LLP

5
6 By: /s/Robert H. Tyler

Robert H. Tyler, Esq.

Nada N. Higuera, Esq.

Attorneys for Defendants **Godspeak Calvary
Chapel and Rob McCoy**

1 **PROOF OF SERVICE**

2 *County of Ventura v. Godspcak Calvary Chapel, et al.*
3 *Ventura Superior Court Case No. 56-2020-00544086-CU-MC-VTA*

4 I am an employee in the County of Riverside. I am over the age of 18 years and not a party
5 to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California
6 92562.

7 On August 17, 2020, I served a copy of the following document(s) described as
8 **OPPOSITION TO PLAINTIFFS’ APPLICATION FOR ORDER TO SHOW CAUSE RE
9 CONTEMPT** on the interested party(ies) in this action as follows:

10 **SEE ATTACHED SERVICE LIST**

11 **BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an
12 agreement of the parties to accept service by e-mail or electronic transmission, I transmitted
13 copies of the above-referenced document(s) on the interested parties in this action by
14 electronic transmission. Said electronic transmission reported as complete and without
15 error.

16 **BY FACSIMILE TRANSMISSION.** Pursuant to agreement and written confirmation of
17 the parties to accept service by facsimile transmission, I transmitted copies of the above-
18 referenced document(s) on the interested parties in this action by facsimile transmission from
19 (951) 600-4996. A transmission report issued as complete and without error.

20 **BY UNITED STATES POSTAL SERVICE.** I am readily familiar with the practice for
21 collection and processing of correspondence for mailing and deposit on the same day in the
22 ordinary course of business with the United States Postal Service. Pursuant to that practice,
23 I sealed in an envelope, with postage prepaid and deposited in the ordinary course of business
24 with the United States Postal Service in Murrieta, California, the above-referenced
25 document(s).

26 **BY OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an
27 envelope or package provided by an overnight delivery carrier and addressed as above. I
28 placed the envelope or package for collection and overnight delivery at an office or a
regularly utilized drop box of the overnight delivery carrier.

BY PERSONAL SERVICE. I caused copies of the above-referenced documents to the
addressee(s) noted above served by process server.

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct and that I am an employee in the office of a member of the bar of this
Court who directed this service.

s/ Ashlee M. Simison
Ashlee M. Simison

Ventura Superior Court Accepted through eDelivery submitted 08-17-2020 at 03:54:47 PM

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SERVICE LIST

County of Ventura v. Godspeak Calvary Chapel, et al.
Ventura Superior Court Case No. 56-2020-00544086-CU-MC-VTA

Leroy Smith, Esq.
County Counsel, County of Ventura
Michael G. Walker, Esq.
Chief Assistant County Counsel
Jaclyn Smith, Esq.
Assistant County Counsel
800 South Victoria Avenue, L/C #1830
Ventura, CA 93009
Tel: (805) 654-2580
Fax: (805) 654-2185
Jaclyn.smith@ventura.org

Attorneys for Plaintiffs, County of Ventura
and Robert Levin, M.D.