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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

COUNTY OF LOS ANGELES, a political
subdivision of the State of California; and
MUNTU DAVIS, M.D., M.P.H., in his
capacity as Health Officer for Los Angeles
County,

Plaintiffs,

v.

GRACE COMMUNITY CHURCH OF THE
VALLEY, a California corporation; JOHN
MACARTHUR, an individual; and DOES 1-
100, inclusive,

Defendants.

CASE NO. 20STCV30695

**PLAINTIFFS' *EX PARTE* APPLICATION
FOR AN ORDER TO SHOW CAUSE RE
CONTEMPT AND FOR SANCTIONS
FOR VIOLATIONS OF COURT ORDERS**

[Filed Concurrently with Declarations of
Tokoro and Como; Request for Judicial
Notice; Notice of Lodging; and [Proposed]
Order]

Date: August 20, 2020
Time: 8:30 a.m.
Dept.: 86
Judge: Hon. Mitchell Beckloff

Assigned for All Purposes to:
Hon. Gregory W. Alarcon, Dept. 36

Action Filed: August 14, 2020
Trial Date: None set

1 **TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that pursuant to Code of Civil Procedure section 527 and
3 California Rules of Court, rules 3.1150 and 3.1200 *et seq.*, Plaintiffs County of Los Angeles (the
4 “County”) and County of Los Angeles Public Health Officer Muntu Davis, M.D., M.P.H. (“Dr.
5 Davis” or the “County Health Officer,” and collectively with the County, the “Plaintiffs”), hereby
6 apply for an order to show cause re contempt and for sanctions for violations of court orders.

7 This Application is made on the grounds that Defendants willfully violated this Court’s
8 (Hon. James Chalfant) Temporary Restraining Order issued on August 15, 2020 (the “TRO”), as
9 modified by the Court of Appeal’s Order issued on August 16, 2020 (the “Court of Appeal Order,”
10 collectively with the TRO, the “Court Orders”), by (1) holding three indoor services on Sunday,
11 August 16, 2020, and (2) denying County health officials access to the property in order to
12 observe and verify compliance with the TRO. Defendants have indicated that, despite the Court
13 Orders, they intend to continue conducting indoor services and refusing entry to County health
14 officials. Plaintiffs thus seek the following relief:

15 1. An order to show cause why Defendants should not be held in contempt of court
16 for violating the Court Orders by holding three indoor services and by refusing to allow County
17 public health officials to enter the church premises to verify compliance with the TRO; and

18 2. An order to show cause why Defendants should not be sanctioned under California
19 Code of Civil Procedure section 177.5 for violating the Court Orders.

20 Plaintiffs’ request is based on this Application, the attached Memorandum of Points and
21 Authorities, the accompanying Request for Judicial Notice, the Declarations of Mark Como and
22 Jason H. Tokoro, the Complaint on file herein, and such other and further evidence as may be
23 presented to the Court at the time of hearing.

24 On August 18, 2020, at 10:56 p.m., counsel for Plaintiffs provided notice to Defendants’
25 attorney, Charles LiMandri. Plaintiffs’ counsel informed Mr. LiMandri that Plaintiffs were filing
26 this Application, notifying him of the date, time, and place of the hearing and explaining the basis
27 for the application and relief sought. Plaintiffs understand that Defendants will oppose this
28 Application. (Declaration of Jason H. Tokoro ¶ 26 & Ex. U.)

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DATED: August 19, 2020

Respectfully Submitted,

MILLER BARONDESS, LLP

By: 

AMNON Z. SIEGEL

Attorneys for Plaintiffs

COUNTY OF LOS ANGELES and MUNTU
DAVIS, M.D., M.P.H., in his capacity as Health
Officer for Los Angeles County

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendants first deliberately disobeyed State and County public health orders. Now, they are willfully violating two Court Orders.¹ The purpose of these public health orders—and the Court Orders upholding their validity—is to combat community transmission of COVID-19 by avoiding “superspreader” events of the sort Defendants are conducting—where thousands of people sit shoulder-to-shoulder, singing and not wearing masks in an indoor setting. In doing so, Defendants are placing themselves and the community at large in grave risk of contracting and spreading COVID-19, a highly contagious disease for which there is no vaccine or treatment, and slowing the County’s progress in the fight against this pandemic.

As the United States Supreme Court recognized 115 years ago: “The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one’s own will.” *Jacobson v. Massachusetts*, 197 U.S. 11, 26-27 (1905) (quotation omitted). Defendants are placing their right to worship *indoors* above the health and welfare of County residents. Under the State and County public health orders and the Court Orders, Defendants are still permitted to worship outdoors with unlimited attendance and through live streaming, both of which Defendants are already doing. But that is not enough for them. They are publicly advertising their intention to continue flouting State and County public health orders and the Court Orders by holding mass services indoors.

Defendants’ open defiance has necessitated this *ex parte* application. Plaintiffs respectfully request that the Court issue an Order to Show Cause regarding Defendants’ contempt of court and for sanctions under California Code of Civil Procedure § 177.5.

¹ Capitalized terms shall have the same definition as in the notice of application.

1 **II. STATEMENT OF FACTS**

2 **A. Last Week, The County Sought An *Ex Parte* Temporary Restraining Order**

3 Starting on July 26, 2020, Defendants Grace Community Church (“Grace Church”) and
4 Pastor John MacArthur (“MacArthur”) began holding indoor, in-person services in violation of
5 State and County public health orders.² County health officials attempted to assist Defendants to
6 comply with the health orders and believed, based on Defendants’ representations, that Defendants
7 were going to comply. However, Defendants defied the public health orders and held indoor, in-
8 person services on August 2 and August 9, 2020.

9 Last week, the County filed this lawsuit and an *ex parte* Application for a Temporary
10 Restraining Order and OSC re Preliminary Injunction (the “Application”), seeking to compel
11 compliance with the public health orders. The County’s Application was heard on August 14,
12 2020, by Judge Chalfant. The Court granted in part and denied in part the County’s Application.
13 In its TRO, the Court permitted Defendants to conduct indoor services (contrary to the public
14 health orders) as long as attendees “wear face coverings and practice physical distancing.”
15 (Declaration of Jason H. Tokoro (“Tokoro Decl.”) Ex. A (the “TRO”).) The TRO separately
16 provided that the “County Health Officer, or his designees, shall be permitted to enter onto the
17 Church premises to observe and verify compliance with this Order.” (*Id.*) Because the TRO
18 would have allowed Defendants to conduct indoor services, the County sought immediate writ
19 relief in the Court of Appeal late on Friday, August 14, 2020. (Tokoro Decl. ¶ 6 & Ex. D.)

20 **B. The Court Of Appeal Grants The County’s Request For Emergency Relief**

21 In its writ Petition to the Court of Appeal, the County explained the error made by the
22 Court (Judge Chalfant) in permitting indoor services at Grace Church contrary to the public health
23 orders: “the trial has done exactly what judicial officers across the country, including the United
24 States Supreme Court, have recognized judicial officers should not do—second guess health
25 orders issued by elected official based on advice from highly trained medical and public health
26 _____

27 ² For a detailed account of the public health orders and Defendants’ history of violating them,
28 Plaintiffs refer the Court to the papers submitted in connection with Plaintiffs’ prior Application
for a Temporary Restraining Order, which was filed on August 14, 2020.

1 officials to whom that authority has been delegated.” (*Id.* at 10.) The County requested
2 “appropriate relief barring the Church from holding indoor services and requiring compliance with
3 State and County health orders pending further order of this Court.” (*Id.* at 11.) Defendants filed
4 an opposition, to which the County replied. (*Id.* Exs. E-F.)

5 The Court of Appeal ruled on the Petition on Saturday, August 15, 2020. (*Id.* Ex. G.) A
6 copy of the Court of Appeal Order was sent simultaneously to counsel for Plaintiffs and
7 Defendants. (*Id.* Ex. H.) The Court of Appeal ruled in favor of Plaintiffs, issuing an immediate
8 “stay of that portion of the trial court’s order denying the County the right to enforce the Health
9 Order’s ban on ‘indoor religious activity’ pending [the Court of Appeal’s] final resolution of the
10 County’s petition for a writ of mandate or prohibition.” (*Id.* Ex. G at 4.) The Court of Appeal
11 held that “the County has demonstrated a likelihood that it will prevail on the merits of enforcing
12 its July 18, 2020 Health Order [which prohibits indoor services].” (*Id.* at 2-3.) The Court of
13 Appeal stated that the County’s Health Order was presumptively constitutional unless “its
14 ‘unconstitutionality clearly, positively and unmistakably appears.” (*Id.* at 3 (quoting *In re Dennis*
15 *M.*, 70 Cal. 2d 444, 453 (1969))). The Court cited cases nationwide, including from the United
16 States Supreme Court, and noted the “weight of precedent favoring the enforcement of COVID-
17 19-related restrictions.” (*Id.*)

18 The Court of Appeal stated that by issuing its Order, “the Church would be denied the right
19 to conduct its services *indoors*, but would be able to conduct them *outdoors*.” (*Id.* at 3.) The Court
20 of Appeal found that the balance of the equities favored the County: “As between the harm that
21 flows from the heightened risk of transmitting COVID-19 (namely, ‘serious illness and death’)
22 and the harm that flows from having to conduct religious services outdoors instead of indoors, the
23 balance at this early stage favors issuance of a stay.” (*Id.* at 4.) The Court of Appeal made clear
24 that Defendants were prohibited from conducting indoor services until “final resolution of the
25 County’s petition for a writ of mandate or prohibition.” (*Id.*) The Court of Appeal also stated that
26 the “trial court’s previously scheduled hearing for a preliminary injunction, set for September 4,
27 2020, should go forward.” (*Id.*)

1 **C. Defendants Defy The TRO and Court of Appeal Order**

2 After the TRO was entered on Friday, August 14, 2020, Defendants indicated that they
3 were prepared to comply. MacArthur stated that “we are happy for a few weeks to comply and
4 respect what the judge has asked of us because he is allowing us to meet.” (Tokoro Decl. Ex. B.)
5 Counsel for the County told Defendants’ counsel that, consistent with the TRO, the County Health
6 Department will be present at services on Sunday to confirm compliance with the TRO. (*Id.* ¶ 5 &
7 Ex. C.) Defendants’ counsel provided a contact at the church that the County should ask for when
8 arriving at the property, indicating that Defendants would comply and permit public health
9 officials to enter the church premises, as required by the TRO. (*Id.*)

10 After the Court of Appeal Order was issued on Saturday, August 15, 2020, Plaintiffs’
11 counsel sent an email to Defendants’ counsel, requesting that Defendants confirm that they would
12 not be conducting indoor services the following day. (*Id.* ¶ 10 & Ex. I.) Plaintiffs also reminded
13 Defendants that, as ordered in the TRO, County public health “personnel will be there [at Grace
14 Church] tomorrow to conduct their compliance check.” (*Id.*)

15 However, on Sunday, August 16, 2020, Defendants blatantly violated the Court Orders.
16 They held three indoor services. (*Id.* ¶¶ 12-13, 15-18 & Exs. J, L-M; Declaration of Mark Como
17 (“Como Decl.”) ¶ 6.) Video from Phil Johnson, a pastor at Grace Church, showed a large group of
18 people gathering indoors, not observing social distancing, and nearly all were not wearing masks.
19 (Tokoro Decl. ¶ 14 & Ex. K.) At the beginning of the service, MacArthur stated: “the good news
20 is, you’re here, you’re not distancing, and you’re not wearing masks.” (*Id.* ¶¶ 15-18 & Exs. L-M.)
21 Grace Church’s indoor service in violation of the Court of Appeal Order was attended by
22 thousands and was widely reported by the media. (*See, e.g., id.* Exs. N-T.)

23 Defendants also violated the portion of the TRO stating that “[t]he County Health Officer,
24 or his designees, shall be permitted to enter onto the Church premises to observe and verify
25 compliance with this Order.” (*Id.* Ex. A at 7.) Defendants refused to allow DPH officials on the
26 property. (Como Decl. ¶¶ 5-10.) The Court of Appeal Order did not modify the portion of the
27 TRO requiring Defendants to provide access to the County Health Officer or his designees to
28 church property, as the Court of Appeal made clear that it was only modifying “that portion of the

trial court's order" relating to the prohibition on indoor services.

D. Notice Of This Application

On August 18, 2020, Plaintiffs' counsel provided notice of this Application and its basis. (Tokoro Decl. ¶ 26 & Ex. U.) Plaintiffs understand Defendants intend to oppose. (*Id.*)

III. ARGUMENT

A. The Court Should Issue An Order To Show Cause Re Contempt

Disobedience of any lawful order of the court constitutes contempt of the authority of the court. Cal. Civ. Proc. Code § 1209(a)(5). When the contempt is not committed in the immediate view and presence of the court, an order to show cause may be issued to the person charged with contempt. *Id.* § 1212. Prior to issuing an order to show cause, affidavits shall be presented to the court of the facts constituting the contempt. *Id.* § 1211(a). The affidavits "should state facts showing each of the following: (a) the making of the order; (b) knowledge of the order by the person charged; (c) ability of the person charged to comply with it; and (d) willful disobedience of the order by the person charged." 8 Bernard E. Witkin, *California Procedure* § 343 (5th ed. 2020).

At the hearing on the order to show cause, the court shall determine whether the party is guilty of the contempt charged, and if it be adjudged that the party is guilty of the contempt, a fine may be imposed of up to \$1,000, payable to the court, or the party may be imprisoned not exceeding five days, or both. Cal. Civ. Proc. Code § 1218(a). In addition, the party may be ordered to pay to the party initiating the contempt proceedings the reasonable attorney's fees and costs incurred in connection with the contempt proceedings. *Id.*

The declarations and other evidence submitted with this Application establish all of these elements. This Court and the Court of Appeal issued the Court Orders. (Tokoro Decl. Exs. A, G.) Defendants were aware of the Court Orders. (*Id.* Exs. B; M at 1:2-14.) Indeed, on Sunday, August 16, MacArthur recited the court proceedings to the attendees:

There was a court order that granted this Church and this Church alone the right to meet indoors and the powers of the City [sic, County] were not happy about that. They were going to be asking us to do two things: social distance and wear masks. That was until yesterday—when the [County]—we agreed, look, we'll comply for a few weeks. They asked that for three weeks. We're not wanting to be defiant. We will do what is reasonable. That was not enough for the [County].

1 So they went to the appellate court at the last minute on Saturday late and had that
2 order [allowing indoor services] removed.

3 (*Id.* Ex. M at 1:2-12.)

4 MacArthur flaunted the violations and openly disregarded the dangers to public health: “So
5 the good news is you’re here, you’re not distancing, and you’re not wearing masks.” (*Id.* at 1:12.)
6 Defendants’ deliberate decision to violate the Court Orders constitutes contempt of court.

7 Defendants could have complied by holding outdoor services and by allowing health
8 officials access to the property. As set forth in the County’s TRO papers from last week,
9 Defendants have large tents, with chairs, tables and TV screens set up outside the church building
10 so that they can provide safe and compliant outdoor services, and Defendants’ stream the services
11 online. (County’s TRO *Ex Parte* at 11:4-6 & Tokoro Decl. ¶ 12.) Yet, Defendants refuse to
12 comply, continuing to hold three indoor services even after the Court of Appeal instructed them
13 not to. Defendants willfully disobeyed the Court Orders and are intent on continuing to do so.
14 (Tokoro Decl. Ex. M at 1:2-14.) Grace Church cannot thumb its nose at the Court when decisions
15 don’t go its way. Accordingly, the Court should issue the requested order to show cause re
16 contempt.

17 Defendants’ actions this past Sunday constitute at least four separate acts of contempt by
18 each Defendant. Grace Church held three indoor services, which are three separate acts of
19 contempt. (*Id.* Ex. J.) And Defendants refused to allow DPH to access the property, another act
20 of contempt. Defendants collectively committed eight acts of contempt, and the Court should
21 impose a fine of \$1,000 for each act of contempt, for a total of \$4,000 for each Defendant. In
22 addition, they should be ordered to pay Plaintiffs’ reasonable attorneys’ fees incurred in
23 connection with the contempt proceeding.

24 **B. The Court Should Issue An Order To Show Cause Re Sanctions For Violating**
25 **A Court Order**

26 In addition, the Court should impose sanctions under California Code of Civil Procedure
27 section 177.5, which provides that “[a] judicial officer shall have the power to impose reasonable
28 money sanctions, not to exceed fifteen hundred dollars (\$1,500), notwithstanding any other

1 provision of law, payable to the court, for any violation of a lawful court order by a person, done
2 without good cause or substantial justification.” The remedies in Section 177.5 are in addition to
3 the Court’s contempt power. *See People v. Hooper*, 40 Cal. App. 5th 685, 693–94 (2019) (“[A]
4 court’s authority under the contempt and sanctions statutes cannot be mutually exclusive.”).

5 Defendants’ actions this past Sunday likewise constitute four separate violations of the
6 TRO and Court of Appeal Order by each Defendant. Therefore, the Court should sanction each
7 Defendant \$1,500 per violation, for a total of \$6,000 per Defendant.

8 **IV. CONCLUSION**

9 Plaintiffs respectfully request that the Court grant this Application.

10
11 DATED: August 19, 2020

Respectfully Submitted,

12 MILLER BARONDESS, LLP

13
14 By: 

15 AMNON Z. SIEGEL

16 Attorneys for Plaintiffs

COUNTY OF LOS ANGELES and MUNTU

17 DAVIS, M.D., M.P.H., in his capacity as Health

18 Officer for Los Angeles County
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