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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN - METRO DIVISION**

FATHER TREVOR BURFITT,

Plaintiff,

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 Department of Public Health

CASE NO. BCV-20-102267

IMAGED FILE

COMPLAINT FOR

**(1) Violation of California
Constitution's Guarantees of Free
Exercise and Enjoyment of Religion
without Discrimination or
Preference (Cal. Const., art. I, § 4);**

Director; ERICA PAN, in her official capacity as Acting California Public Health Officer; MATTHEW CONSTANTINE in his official capacity as Director of Public Health Services for the Kern County Health Department; DONNY YOUNGBLOOD in his official capacity as Sheriff of Kern County; GREG TERRY in his official capacity as Chief of Police of the City of Bakersfield; CORWIN PORTER in his official capacity as Chief Director of the San Bernardino County Department of Public Health; JOHN MCMAHON in his official capacity as Sheriff of San Bernardino County; MIKE HADDEN in his official capacity as Chief of Police of the City of Colton; WILMA J. WOOTEN, M.D., M.P.H in her official capacity as Chief Public Health Officer and Director of San Diego County; WILLIAM D. GORE in his official capacity as Sheriff of San Diego County; DAVID NISLEIT in his official capacity as Chief of Police of the City of San Diego; BARBARA FERRER, in her official capacity as Public Health Director of the County of Los Angeles; ALEJANDRO VILLANUEVA, in his official capacity as Sheriff of the County of Los Angeles; MUNTU DAVIS, in his official capacity as Public Health Officer of the County of Los Angeles; ERIC GARCETTI, in his official capacity as Mayor of the City of Los Angeles; MICHEL MOORE, in his official capacity as Chief of Police for the City of Los Angeles Police Department; ROBERT T. GUTHRIE, in his official capacity as Chief of Police of the Arcadia Police Department,

Defendants.

- (2) Violation of California Constitution's Liberty and Due Process Guarantees (Cal. Const., art. I, §§ 1, 7);
- (3) Violation of California Constitution's Guarantees of Liberty of Speech (Cal. Const., art. I, § 2);
- (4) Violation of California Constitution's Equal Protection Guarantees (Cal. Const., art. I, § 7).
- (5) Violation of California Constitution's Right to Assemble Freely (Cal. Const., art. 1, § 3)
- (6) Violation of California Constitution's Right to Autonomy Privacy and Bodily Integrity (Cal. Const., art. 1, §1)
- (7) Violation of California Constitution's Separation of Powers Guarantees: Non-Delegation Doctrine (Cal. Const., art. III, § 3.)
- (8) Violation of California Constitution's Separation of Powers Guarantees: Ban on Legislative Vetoes (Cal. Const., art. III, § 3.)

JURY TRIAL DEMANDED

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1 enforcing California's and Kern County's pandemic orders. He is sued in his official capacity.

2 9. Greg Terry is the Chief of Police of the City of Bakersfield. He is responsible for
3 enforcing California's and Kern County's pandemic-related health orders. He is sued in his official
4 capacity.

5 10. Defendant Corwin Porter is Director of the San Bernardino County Department of Public
6 Health. He is responsible for enforcing California's and San Bernardino County's pandemic orders.
7 He is sued in his official capacity.

8 11. Defendant John McMahon is the Sheriff of San Bernardino County. He is responsible for
9 enforcing California's and San Bernardino County's pandemic-related health orders. He is sued in his
10 official capacity.

11 12. Mike Hadden is Chief of Police of the City of Colton Police Department. He is
12 responsible for enforcing California's and San Bernardino County's pandemic-related health orders.
13 He is sued in his official capacity.

14 13. Wilma J. Wooten, M.D., M.P.H is the Public Health Officer and Director of San Diego
15 County. She has issued San Diego County's pandemic-related health orders. She is sued in her official
16 capacity.

17 14. Defendant William D. Gore is the Sheriff of San Diego County. He is responsible for
18 enforcing California's and San Diego County's pandemic-related orders. He is sued in his official
19 capacity.

20 15. David Nisleit is Chief of Police of the City of San Diego Police Department. He is
21 responsible for enforcing California's and San Diego County's pandemic-related health orders. He is
22 sued in his official capacity.

23 16. Defendant Barbara Ferrer is Los Angeles County's Public Health Director. She, along
24 with the Los Angeles County Board of Supervisors, declared a local health emergency on March 4,
25 2020. She is sued in her official capacity.

26 17. Defendant Muntu Davis, M.D. is Los Angeles County's Public Health Officer. Relying
27 on the local health emergency issued by Defendant Ferrer, he has issued Los Angeles County's
28 pandemic-related health orders. He is sued in his official capacity.

18. Defendant Alejandro Villanueva is the Sheriff of Los Angeles County. He is responsible for enforcing California's and Los Angeles County's pandemic-related health orders. He is sued in his official capacity.

19. Defendant Eric Garcetti is the Mayor of the City of Los Angeles, California. Mayor Garcetti declared a local emergency for the City of Los Angeles and promulgated the City of Los Angeles's pandemic-related executive orders. He is sued in his official capacity.

20. Defendant Michel Moore is the Chief of Police of the City of Los Angeles. He is responsible for enforcing California's and Los Angeles City's pandemic-related health orders. He is sued in his official capacity.

21. Robert T. Guthrie is Chief of Police of the Arcadia Police Department. He is responsible for enforcing California's and Los Angeles County's pandemic-related health orders. He is sued in his official capacity.

22. Each and every Defendant acted under color of state law with respect to all acts or omissions herein alleged.

INTRODUCTION

“It is incumbent **on the courts** to ensure decisions are made according to the rule of law, not hysteria.... One hopes that this great principle—essential to any free society, including ours—will not itself become yet another casualty of COVID-19.”

(*Department of Health v. Manke* (Mich. 2020) 943 N.W. 397, 398 (Viviano, C.J.) (concurring opinion).)

23. Father Trevor Burfitt is a Catholic priest who ministers to, or oversees as Prior, mission churches in the counties of Kern, San Bernardino, San Diego, and Los Angeles. Ordained in 2002, he belongs to an international society of priests, not affiliated with a particular diocese, that maintains churches, chapels, and houses of formation around the world.

24. Under the Constitution of the State of California, Father Burfitt challenges defendant Newsom’s March 4, 2020, declaration of a seemingly endless “State of Emergency” and the subsequent restrictions on constitutional rights imposed by defendant Newsom and the other named defendants under the pretext of “the threat of COVID-19.” These restrictions are hereinafter collectively referred to as Newsom’s “lockdown” of the state.

1 25. Newsom’s lockdown was originally supposed to be only a *temporary* emergency
2 measure. However, nearly seven months later it appears that, absent judicial intervention, there will
3 never be a “reopening” to normal, pre-COVID activity, despite incontestable facts—including
4 California’s own data, outlined below—showing that the lockdown is no longer warranted and is
5 causing far more harm than good.

6 26. This suit stands for three propositions:

7 **First**, under the California Constitution a public health “emergency” cannot be whatever the
8 Governor says is an emergency, nor end only when he says so—no matter how long it continues or
9 how dubious the rationale for its prolongation.

10 **Second**, the California Constitution does not permit the State’s Governor to impose any
11 “emergency” restriction of fundamental rights he deems appropriate. Rather, any restrictions or
12 measures that the Governor imposes must be narrowly tailored, limited in time, and serve interests of
13 the highest order, not any goal the Governor wishes to achieve.

14 **Third**, there cannot be absolute judicial deference to the exercise of a Governor’s purported
15 “emergency” powers. Rather, there must be a judicial inquiry into the factual basis for their invocation,
16 their limits, and their continuation, with the burden of proof at all times on the State. To hold otherwise
17 would mean tyranny by the executive branch and total abandonment of the separation of powers
18 intrinsic to California’s constitutional scheme.

19 27. Accordingly, for the protection of fundamental liberties against arbitrary and oppressive
20 state action—in this case, freedom of worship, assembly, speech, and association—a public health
21 emergency must be viewed by this Court as a matter of objective fact involving only this: serious
22 illness, hospitalization, and risk of death *on a level that cannot be handled locally* by the existing
23 health care system along with other illnesses.

24 28. By that objective standard and based on indisputable statewide and nationwide data as
25 shown below, a bona fide health emergency has not existed in California for several months. As further
26 pleaded below, nearly seven months after the virus emerged in this state, **Newsom and his co-**
27 **defendants are unable to point to any continuing serious threat to the general population in terms**
28 **of hospitalizations or deaths on account of COVID-19.**

29. Yet Newsom has declared that there must be a “new normal” he intends to impose on 40,000,000 people without a single valid legislative act by the people’s elected representatives. According to Newsom, “We need to live differently.” (Ex. 1-16.) To that end, absent any evidence of hospitalization or deaths at a level constituting a true emergency, Newsom continues his lockdown based on nothing more than a few daily positive COVID-19 tests **of overwhelmingly asymptomatic individuals** per 100,000 people in each county, compiled into a spreadsheet updated weekly. But this data actually proves what Newsom assured the public back in March: “**The vast majority of us, the overwhelming majority of us won’t have symptoms, will be perfectly fine.**” (Ex. 1-31 at 4:48.)

30. As pleaded more particularly below, Father Burfitt’s priestly ministry has been radically and severely restricted by Newsom’s lockdown in three ways:

- A severe occupancy restriction on houses of worship, not imposed on favored businesses;
- A total ban on indoor worship, which was imposed for the second time on July 13, 2020, in 38 counties comprising 86% of California’s population, including those in which Father Burfitt engages in his ministry;
- A “social distance” bubble zone of six feet around every person, which precludes the proper conduct of Catholic worship; and
- A “face covering” mandate, which not only radically interferes with Catholic worship in numerous ways but irrationally threatens individual health in the manner alleged below.

31. It is now beyond reasonable dispute that, absent judicial intervention, Newsom intends to continue indefinitely a massive and baseless suspension of the constitutional rights of plaintiff and nearly 40,000,000 other residents of the State of California, including:

- strict limits or outright prohibitions on public and private activities denominated “non-essential”—with divine worship so denominated—while favoring the activities of “essential” businesses such as liquor stores, marijuana dispensaries, and the Hollywood movie industry as well as select “non-essential” businesses;
- imposition of severely reduced occupancy or total closure of places deemed “non-essential businesses,” including churches and indoor worship, which are unquestionably essential to people’s lives;
- the increasingly absurd demand that all of California’s residents live their lives—apparently forever—behind makeshift “face coverings,” repeatedly shown to be useless and even hazardous to health by the studies and official advice noted below, while maintaining an arbitrary distance of six feet from everyone they encounter outside their homes;

- criminal and civil penalties, including imprisonment, for declining to obey any of these factually unsupported bureaucratic commands, none of which are a valid enactment by the people’s representatives in the state legislature.

32. Under this unprecedented regime of executive tyranny, retail giants like Walmart and Costco are open while even the smallest churches are closed, along with thousands of small businesses selling many of the same products as the retail giants. One can march shoulder-to-shoulder with thousands of shouting, singing, and chanting political protesters—many without masks—but one is forbidden to be closer than six feet to a fellow worshipper or to sing a religious hymn or intone Gregorian chant during Holy Mass. One can enter a bookstore and browse for as long as one wishes, but one is forbidden to set foot in a church to worship God. One is allowed to sit in various “essential” offices together with fellow office workers all day long, five days a week, but the same people are forbidden to occupy the pews inside their “non-essential” churches for even one hour on a Sunday. One can remove the mandated “face covering” while eating at a sidewalk café (indoor dining being forbidden), but must replace it when walking a few feet to the lavatory, only to remove it again when returning to one’s seat for the next course.

33. Californians, and especially faithful Catholics, have endured more than half a year of this nonsense and obvious discrimination. Yet, as shown below, the bureaucratic absurdities foisted upon 40,000,000 hapless residents of a once-thriving state have only multiplied with no end in sight. This farce must be brought to an end by appropriate declaratory and injunctive relief.

34. Before alleging the specific burdens Newsom’s lockdown unconstitutionally imposes upon Father Burfitt’s priestly ministry and mission, as set forth in Section VII of this Complaint, it is necessary to present, in Sections I through VI, an overview of the vast factual context in which Newsom’s infringement of constitutional rights emerged and has worsened over time.

I. GOVERNOR NEWSOM’S UNCONSTITUTIONAL LOCKDOWN OF THE STATE OF CALIFORNIA

35. On March 4, 2020, defendant Governor Newsom declared “a State of Emergency to exist as a result of the threat of COVID-19.” (Ex. 1-1.)

36. On March 16, then-State Public Health Officer (“SPHO”) Dr. Sonia Angell decreed that “[a]ll gatherings should be postponed or canceled,” with “gathering” defined as “any event or

1 convening that brings together people in a single room or single space at the same time, such as an
2 auditorium, stadium, arena, large conference room, meeting hall, cafeteria, or another indoor or
3 outdoor space.” (Ex. 1-2.) Thus, based on the claimed “threat of COVID-19,” religious gatherings
4 were completely banned throughout California as of March 16, 2020.

5 37. The term “gathering” logically applies to any group of people who occupy the same
6 space at the same time, whether for an economic, social, political, or religious purpose. Yet, as pleaded
7 below, for nearly seven months, Newsom and the other named defendants have arbitrarily and
8 capriciously banned disfavored “gatherings” while privileging numerous other gatherings by the
9 simple expedient of not calling them gatherings.

10 38. On March 19, 2020, Newsom issued Executive Order N-33-20 (“EO N-33-20”) in
11 which, under the purported authority of Government Code section 8625, he declared “that local
12 authority is inadequate to cope with the emergency” and that “all residents are directed to immediately
13 heed the current State public health directives” issued by the California Department of Public Health
14 (“CDPH”) and the SPHO. (Ex. 1-3.)

15 39. EO N-33-20 incorporates verbatim then-SPHO Sonia Angell’s own oppressive and
16 totally unprecedented order on the same date, decreeing that “all individuals living in the State of
17 California must stay at home or at their place of residence”—with many arbitrary and discriminatory
18 exceptions, as noted below. (Ex. 1-4.) This original “Stay-at-Home Order,” as modified, remains in
19 effect to this day.

20 40. Violation of the Stay-at-Home Order or any of its progeny restricting normal activities
21 is punishable by “a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment for not to
22 exceed six months or by both such fine and imprisonment.” (See Ex. 1-3; Gov. Code, § 8665.)

23 41. In the nearly seven months since EO N-33-20 was promulgated, Newsom, his executive
24 branch administration and agency officials, and county and municipal officials, including those sued
25 herein—all acting without a single valid legislative enactment—have imposed a vast and complex web
26 of regulations restricting virtually every aspect of the lives of 40,000,000 Californians, both business
27 and personal, and especially religious.

28 42. This entire regulatory scheme unfolded under the umbrella of Newsom’s constantly

1 morphing 4-stage “Resilience Roadmap” (“Roadmap”) for “reopening” California—after he himself
2 had locked down the entire State on his sole authority. (Ex. 1-5.) As pleaded below, the Roadmap has
3 since been superseded by Newsom’s even more restrictive “Blueprint for a Safer Economy,” which
4 reveals that there will never be a full “reopening” of the state.

5 43. Under the pretext of a supposedly temporary “emergency” that has now gone on for
6 nearly seven months, Newsom and bureaucrats at every level of government in the State of California
7 have dictated all of the following and more:

- 8 • where people may go and what they may do outside their homes and even inside their homes
9 with others;
- 10 • where, with whom, and with how many others, Californians may gather for any purpose,
11 including divine worship, social events, and recreation;
- 12 • the manner in which divine worship is to be conducted;
- 13 • which businesses may operate, the extent to which they may operate, and which must close
14 entirely;
- 15 • which goods may be bought or sold, and which services may be obtained or provided;
- 16 • how far apart California’s 40 million residents must stay from each other—six feet—and what
17 they must wear in public: “face coverings” of unproven medical benefit **but officially admitted
danger to health**, as shown below.

18 44. As also pleaded further below, Newsom has totally banned—for the second time—
19 indoor worship in houses of worship, including those over which Father Burfitt presides. The current
20 indoor worship ban extends to some 56.7% of the population of the State of California, including three
21 of the four counties in which Father Burfitt engages in his priestly ministry.

22 45. Newsom’s dictates are more or less reflected in the following county and municipal
23 “health orders” or emergency declarations, also challenged here for the same reasons as Newsom’s
24 regime and to the extent that they adhere to such dictates:

- 25 • In Kern County: Health Order of April 2, 2020. (Ex. 2-2) and any subsequent amendments or
26 additions thereto;
- 27 • In San Bernardino County: Health Order of May 8, 2020, and any subsequent amendments or
28 additions thereto (Ex. 2-3);

- In San Diego County: Order of Health Officer and Emergency Regulations, updated as to September 1, 2020, and any subsequent amendments or additions thereto (Ex. 2-4);
- In Los Angeles County: Health Order of July 18, 2020 updated through September 4, 2020 (Ex. 2-1), and any subsequent amendments or additions thereto;¹
- In the City of Colton: Resolution R 32-20 of March 17, 2020 and any subsequent amendments or additions thereto (Ex. 3-1);
- In the City of Bakersfield: Emergency Declaration of March 19, 2020, and any subsequent amendments or additions thereto (Ex. 3-5).
- In the City of San Diego: Mayor’s Executive Order 2020-3 of April 30, 2020, and any subsequent amendments or additions thereto (Ex. 3-4);
- In the City of Los Angeles: Revised Public Health Order of September 3, 2020 (Ex. 3-2); Protocol for Places of Worship, Appendix F, revised July 17, 2020 (Ex. 3-3); and any subsequent amendments or additions thereto;

The Favored Businesses and the Targeting of Religion

46. Exempted from the Stay-at-Home Order from the outset were “essential workforces” required for “federal critical infrastructure sectors”² and other businesses deemed “essential critical infrastructure” by Newsom and his public health bureaucracy, led by the head of the CDPH, the SPHO, and defendant Health Officer Pan. (Ex. 1-6.)

47. The Roadmap rapidly evolved into a bureaucratic maze of absurd complexity. Statewide, county, and municipal health directives have restricted or allowed business and personal activities based on a bewildering array of constantly morphing “health metrics” dictated by Newsom and his health officials and applied at the county and municipal level with various modifications.

48. The whole array of minute *ad hoc* regulations at all levels of California government is subject to Newsom’s unchecked power, acting directly or through his state-level designates, including the SPHO, to approve or claw back, in any or all counties, advances from Stage 1 of the Roadmap to Stages 2 and 3, and then Stage 4, which was supposed to be the final stage of a full return to pre-COVID society, but on its face provides no such thing.

¹ (See <https://tinyurl.com/y3keledj>.)

² (<https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>.)

1 49. Newsom has given no date for the arrival of Stage 3, much less final Stage 4 of his
2 Roadmap. As of August 28, 2020, however, the Roadmap has been supplanted by an even more
3 stringent “Blueprint for a Safer Economy,”³ so that as of the date of this Complaint there is no sign
4 that Newsom and his co-defendants have any intention of ever allowing Californians to return to
5 normal life, including unencumbered divine worship.

6 50. Under EO N-33-20, the favored businesses on the SPHO’s list of “essential critical
7 infrastructure” include the following:

- 8 • Gas stations
- 9 • Liquor stores
- 10 • Marijuana dispensaries
- 11 • “Essential” retailers such as Best Buy, Target, Home Depot, and Walmart
- 12 • Pharmacies
- 13 • Grocery stores
- 14 • Convenience stores
- 15 • Farmer’s markets
- 16 • Banks, investment firms, insurance companies
- 17 • Laundromats/laundry services
- 18 • Childcare
- 19 • Essential state and local government functions
- 20 • Music, film, and TV production
- 21 • Day camps

22 51. These “essential businesses” were allowed to operate under the now superseded
23 “Roadmap,” even though they involve “gatherings” as Angell had defined them on March 16, 2020
24 (i.e., any “event or convening that brings together people in a single room or single space at the same
25 time.”)

26 52. As alleged above, the ambiguous term “gatherings” has since been applied arbitrarily

27
28 ³ (See <https://covid19.ca.gov/roadmap/>, formerly the site of the Roadmap and now the site of the
“Blueprint.”)

1 to ban or restrict disfavored “non-essential” activities while exempting favored “essential” activities
2 capriciously spared denomination as “gatherings.”

3 53. Churches were not on the list of “essential businesses” but rather were arbitrarily
4 deemed “non-essential” operations, a designation they retain to this day. The original list of the
5 “essential workforces” did allow, however, for “faith-based services that are provided through
6 streaming or other technology.” (Ex. 1-6 at p. 16, § 8, ¶ 16) Thus, from the very beginning of an
7 “emergency” now nearing its seventh month, California has targeted in-person worship in houses of
8 worship for a total ban while attempting to dictate how worship must be conducted.

9 54. Back on April 28, 2020, the aforesaid Dr. Angell—then serving as both SPHO and
10 Director of the CDPH—announced during a joint press conference⁴ with Newsom the imminent arrival
11 of Stage 2 of the Roadmap in which “lower risk workplaces” would be allowed to reopen, including
12 “non-essential” manufacturing (e.g., toys, clothing, furniture), offices where telework is not practical,
13 parks and trails, and ultimately schools.

14 55. During the same press conference, Angell advised that churches, unlike schools, would
15 not reopen until Phase 3:

16 Stage three is the space that we get into when we’re talking about higher risk
17 workplaces.... So these include places like personal haircare places, entertainment
18 venues where people are sitting closer together and sporting events without live
19 audiences. Other things that fall into this space are **in-person religious services like churches and weddings.**⁵

20 56. On May 4, 2020, Newsom issued a press release advising that Stage 2 would begin, but
21 only in part, on May 8. Only *some* Phase 2 businesses would be allowed to reopen, like “bookstores,
22 clothing stores, florists and sporting goods stores,” but not yet “offices, seated dining at restaurants,
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25 ⁴ (See California Governor, *Governor Gavin Newsom Provides an Update on the State’s Response to*
26 *the COVID-19 Pandemic* (Apr. 28, 2020) FACEBOOK, <https://bit.ly/2Wphz0v>. See also Transcript,
27 [https://www.rev.com/blog/transcripts/gov-gavin-newsom-california-covid-19-briefing-transcript-](https://www.rev.com/blog/transcripts/gov-gavin-newsom-california-covid-19-briefing-transcript-april-28)
28 [april-28.](https://www.rev.com/blog/transcripts/gov-gavin-newsom-california-covid-19-briefing-transcript-april-28))

⁵ (*Id.*, emphasis added.) All bolding or other emphasis in quotations in this Complaint has been added unless otherwise indicated.

1 shopping malls or schools.”⁶ The “Stages” of the Roadmap were thus revealed as provisional,
2 adjustable, and revocable at will in Newsom’s sole and unfettered discretion.

3 57. On May 7, 2020, Newsom was challenged at a press conference to explain why schools
4 had been prioritized for eventual Phase 2 reopening while churches were consigned to “higher risk”
5 Phase 3, even though both activities involved “gatherings” as Angell had defined them on March 19.
6 In reply, Newsom revealed the anti-religious risk-benefit calculus disguised as “science” that still
7 motivates his one-man rule over the State of California:

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

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

13 58. Having revealed his view of religious services as “**low reward**” compared with schools,
14 Newsom has ever since subjected houses of worship to a series of restrictions that indicate his personal,
15 low estimation of their social utility.

16 59. On May 19, 2020, the U.S. Department of Justice sent a letter to Governor Newsom
17 advising him that his Roadmap violated the civil rights of religious Californians. The letter, signed by
18 Eric S. Dreiband, Assistant Attorney General for the Civil Rights Division, and California’s four U.S.
19 Attorneys, stated as follows:

20 Religion and religious worship continue to be central to the lives of millions of
21 Americans. This is true now more than ever. Religious communities have rallied to
22 protect their communities from the spread of this disease by making services available
23 online, in parking lots, or outdoors, by indoor services with a majority of pews empty,
and in numerous other creative ways that otherwise comply with social distancing and
24 sanitation guidelines. We believe, for the reasons outlined above, that the Constitution
25

26 ⁶ (Office of Governor Gavin Newsom, *Governor Newsom Provides Update on California’s Progress*
27 *Toward Stage 2 Reopening* (May 4, 2020), <https://bit.ly/2WnnOSx>.)

28 ⁷ (California Governor, *Governor Gavin Newsom Provides an Update on the State’s Response to the*
COVID-19 Pandemic (May 7, 2020) FACEBOOK, <https://bit.ly/2DNy9kj> at 50:36.)

1 calls for California to do more to accommodate religious worship, including in Stage 2
2 of the Reopening Plan.⁸

3 60. On May 22, 2020, with California in view, President Donald Trump held a press
4 briefing at which he stated:

5 Today I am identifying houses of worship: churches, synagogues, and mosques, as
6 essential places that provide essential services.... These are places that hold our society
7 together and keep our people united, the people are demanding to go to church,
8 synagogue, go to their mosque, many millions of Americans embrace worship as an
9 essential part of life. The ministers, pastors, rabbis, imams, and other faith leaders will
10 make sure that their congregations are safe, as they gather and pray. I know them well,
11 they love their congregations, they love their people, they don't want anything bad to
happen to them or anybody else. The governors need to do the right thing and allow
these very important essential places of faith to open right now, for this weekend. If
they don't do it, I will override the governors.⁹

12 61. On May 25, 2020, Newsom announced that under Phase 2 individual counties that met
13 statistical benchmarks could grant churches and indoor protest gatherings what was effectively a 21-
14 day license, but only at 25% of "building capacity" or "the relevant area's maximum occupancy," with
15 a maximum of 100 persons, whichever is less, after which the CDPH would assess the "impact" of
16 indoor worship on "public health." (Ex. 1-7 at 3.) Outdoor religious gatherings were no longer
17 restricted in number.

18 62. On May 25, 2020, Newsom also amended his "Q & A" on "gatherings" to provide that
19 political gatherings indoors were also limited to 25% of building capacity with a maximum of 100
20 persons. Outdoor political gatherings were no longer restricted in number. (Ex. 1-8.)

21 63. On July 6 and again on July 29, 2020, Newsom changed the industry guidance for
22 "Places of Worship" and the Q & A page concerning political protesting to provide for a ban on "indoor
23 singing and chanting activities." (Exs. 1-9 at p. 3 & 1-10.) This led law enforcement in some counties
24
25

26 ⁸ (Letter from Eric S. Dreiband, Ass. Attorney General, to the Hon. Gavin Newsom, Governor of
27 California (May 19, 2020), <https://politi.co/2ZztR8r>.)

28 ⁹ (Transcript of Press Briefing by Press Secretary Keyleigh McEnany (May 22, 2020) WHITE HOUSE,
<https://bit.ly/2WrcmoQ>.)

1 to announce they would not enforce such an absurd command.¹⁰

2 64. On July 13, 2020, with deaths and hospitalizations attributed to COVID-19 having long
3 since declined toward statistical zero, Newsom issued a decree—bereft of scientific justification—
4 once again prohibiting indoor gatherings for worship and several other indoor activities in 35 listed
5 counties (later expanded to 38 counties). (Ex. 1-11.) The July 13 worship ban extends even to small
6 gatherings of worshippers in homes.¹¹

7 65. As pleaded more fully below, this new total worship ban was based on rising “cases”
8 of COVID-19, meaning positive COVID-19 test results in asymptomatic or mildly symptomatic people
9 whose “cases” would never have been discovered if not for the testing. The drumbeat for more testing
10 has led to more asymptomatic or mildly symptomatic “cases” and then more restrictions on people’s
11 lives, including the indoor worship ban, **with no emergent increase in either deaths or**
12 **hospitalizations.**

13 66. The counties subject to the July 13, 2020, indoor worship ban were at that time indicated
14 on a County Data Monitoring List (“CML”) that has since been supplanted, along with the Roadmap,
15 by the aforementioned “Blueprint for a Safer Economy,” as shown below.

16 67. Also closed on July 13, 2020, were indoor activities at restaurants, wineries and tasting
17 rooms, movie theaters, family entertainment (e.g., bowling alleys, miniature golf, batting cages,
18 arcades), zoos and museums, card rooms, fitness centers, protests, “non-essential” offices, personal
19 care services (e.g., nail salons, body waxing, tattoo parlors), hair salons and barbershops, and malls.
20 (Ex. 1-11.) Not closed were indoor activities at other places, such as “essential” offices, manufacturing,
21 and either essential retail—or even purportedly non-essential retail—of various kinds.

22 68. In essence, Newsom’s July 13 decree clawed back Stage 2 or 3 in counties then
23 embracing 75% of California’s population—30 million people out of 40 million—placing religious
24 gatherings back in the ghetto of a total ban on indoor worship. **Yet, as of July 13, five months after**
25

26 ¹⁰ (District Attorney of San Luis Obispo County, *SLO County DA Declared a Sanctuary County for*
27 *Singing in Houses of Worship During COVID*, YOUTUBE (Jul. 31, 2020),
<https://youtu.be/KWjn233gMNM>.)

28 ¹¹ (Alex Swoyer, *Church sues California Gov. Gavin Newsom over ban against at-home Bible studies*
(Jul. 20, 2020) THE WASH. TIMES, <https://bit.ly/2F6QIWz>.)

1 the virus first emerged in California, there was no longer any objective evidence of a statewide
2 risk of death or serious illness on account of COVID-19. This is shown by the following facts.

3 II. THE “STATE OF EMERGENCY” NO LONGER EXISTS

4 69. While every death is a tragedy, when it comes to suspending the constitutional rights
5 of nearly 40 million people and scuttling a vast economy on account of a virus—with devastating
6 physical, mental, spiritual, and economic consequences for the uninfected vast majority—hard facts,
7 and not fear, must inform rational public health policy as opposed to panic.

8 70. The hard facts demolish Newsom’s claim of a continuing health emergency:

- 9 • According to the U.S. Census Bureau, California has an estimated population of 39,512,223.¹²
10 As of September 27, California has reported a total of 15,587 deaths attributed to the virus,
11 according to California’s COVID-19 data hub.¹³
- 12 • Hence Newsom’s *ultra vires* one-man rule over California was declared necessary—by him—
13 to deal with a virus that, as of September 27, has proven fatal to about 4/100th of 1% (0.0003,
14 rounded down) of the state’s population (15,587/39,512,223).¹⁴

15 71. Statistics further demonstrate that the two leading causes of death in California have
16 the following rates out of 100,000, according to the CDC:¹⁵

Cause of Death	Death Rate per 100,000
Heart Disease	139.7
Cancer	135

17 72. In contrast, the number of deaths in California from COVID-19 per 100,000 total
18 population is only 35. (Ex. 4-1.) Even if the death rate of COVID-19 were to triple by the end of the
19 year—an obvious impossibility at what is clearly the tail end of the outbreak—it would still be
20 significantly smaller than the leading causes of death in California. **Even then it could be handled by**
21
22
23
24

25 _____
26 ¹² (*QuickFacts California*, U.S. CENSUS BUREAU (visited September 10, 2020), <https://bit.ly/2Cfenh5>.)

27 ¹³ (COVID-19 Statewide Update, <https://covid19.ca.gov/> (visited September 15, 2020).)

28 ¹⁴ (See <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx> (visited September 15, 2020).)

¹⁵ (National Center for Health Statistics, *California*, CDC (visited Jul. 15, 2020), <https://bit.ly/30hBP59>.)

1 the existing medical care system in the localities, with no justification for any statewide
2 “emergency.”

3 73. As of September 25, 2020, in the counties where Father Burfitt engages in his priestly
4 ministry, the number of deaths attributed to COVID-19 since March has ranged from statistically trivial
5 to a number well within the capacity of the local medical care system:

- 6 • In Kern County, population 900,202, a total of 369 deaths have been attributed to COVID-19
7 since last March.¹⁶
- 8 • In San Bernardino County, population 2,180,000, there have been 925 reportedly COVID-19-
9 related deaths during the same period.¹⁷
- 10 • In San Diego County, population 3,338,330, there have been 775 reportedly COVID-19-related
11 deaths during the same period.¹⁸
- 12 • In Los Angeles County, population 10,040,000, there have been 6,137 deaths attributed to
13 COVID-19 as of September 13.¹⁹
- 14 • Even in Los Angeles County, the most adversely affected by the virus, the daily death toll
15 attributed to COVID-19, according to the rolling seven-day average, has never exceeded 58
16 people out 10,000,000 people. On September 6, the reported daily death toll attributed to
17 COVID-19 was 3 people out of 10,000,000.²⁰ (Ex. 4-40) There has never been an overrun of
18 hospital capacity even in Los Angeles County during the COVID-19 outbreak.
- Los Angeles County has accounted for 41% of all the COVID-attributed deaths in the State of
California since March of 2020 (5,877/14,385), and 40% of those deaths occurred in nursing
homes, where the victims were all very elderly residents with one or more life-shortening
comorbidities. (Ex. 4-2.)

19 (See Ex. 4-3, showing toll as reported by each county.)

20 74. Even at its peak, the virus never significantly threatened California’s general population
21 of healthy people under the age of 65:

- 22 • As of August 20, 74% of the deaths attributed to COVID-19 in California have occurred within
23

24 ¹⁶ (See https://kernpublichealth.com/covid-19_dashboard/)

25 ¹⁷ (<https://sbccovid19.com/>.)

26 ¹⁸ (<https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/COVID-19%20Deaths%20by%20Date%20of%20Death.pdf>

27 ¹⁹ (http://dashboard.publichealth.lacounty.gov/covid19_surveillance_dashboard/.)

28 ²⁰ (http://dashboard.publichealth.lacounty.gov/covid19_surveillance_dashboard/. (Select
“Cases/Death by Date”.)

the 65+ age group,²¹ which comprises **only 15%** of California’s population. (Ex. 4-39.)

- At least 30% of California’s purportedly COVID-19-related deaths have occurred in nursing homes occupied **by only ¼ of 1 percent** of California’s population of 40,000,000. (Exs. 4-38 and 4-2.)
- The vulnerable elderly who have been COVID-19’s primary victims were almost all suffering from two or more life-shortening comorbidities, as the CDC data discussed below demonstrate.

75. While every one of these deaths is tragic, their overwhelming occurrence among the very elderly, nearing the end of their life spans either naturally or on account of comorbidities, **and the drastic decline of deaths even in that small cohort of the elderly over the past few months**, negates the State’s claim that COVID-19 now poses, or indeed has **ever** posed, a serious threat to 85% of California’s 40,000,000 residents.

76. In sum, even if Newsom’s draconian measures were lawful or necessary—which they are not—California’s own incontestable data demonstrate that there is certainly no longer (assuming there ever was) a “state of emergency” throughout the State of California “that local authority is inadequate to cope with....” (Gov. Code, § 8625, subd. (c).)

The CDC’s Facially Unreliable National “Provisional Death Count”

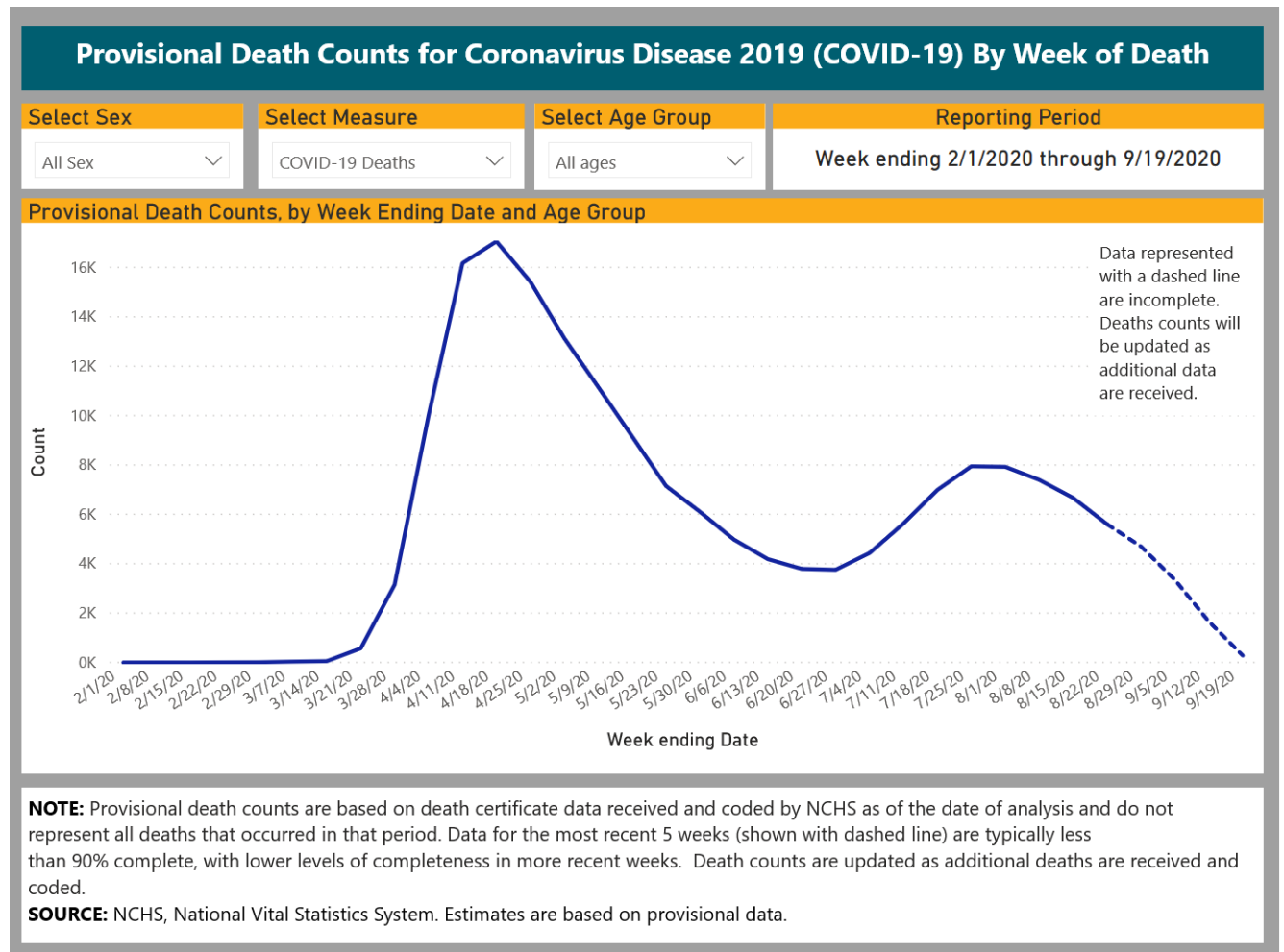
77. Meanwhile, in the nation at large, as of September 23, COVID-19 has been “involved” in the deaths of **less than 6/100th of 1% of the total population** (0.000571), if one accepts the CDC’s claim of 188,470 deaths from the virus (188,470/330,000,000) as shown in CDC Table 1, discussed below. By comparison, in 2017, the latest year for which complete statistics are available, 647,457 people died of heart disease and almost 600,000 from cancer.²²

78. According to the CDC’s own statistics in its Table 1, deaths “involving” COVID-19 peaked in April, following a bell-shaped curve typical of viral epidemics, rose again briefly in late July and early August but nowhere near the April peak, and have since plunged to statistical zero as of August 29. This is shown by the CDC’s own graph of the “Provisional Death Counts for Coronavirus

²¹ (<https://www.latimes.com/projects/california-coronavirus-cases-tracking-outbreak/>.)

²²(See CDC “Leading Causes of Death,” <https://www.cdc.gov/nchs/fastats/leading-causes-of-death.htm>.)

Disease²³ as of the week ending September 19, 2020:



79. As in California, in the nation at large the overwhelming majority of deaths “involving” COVID-19—78.9%—have occurred among those 65-years-old and older as shown in the CDC’s Table 3 (146,847/186,101) (Ex. 4-41),

80. However, as shown by the following facts, including the CDC’s own admissions, these data are so unreliable that it would be reckless and destructive to rely upon them for public policy decisions with vast and irreparable consequences.

81. First of all, the reported COVID-19 death counts, which have driven the national panic over the virus, are inflated by the inclusion of “presumed” or “probable” COVID deaths according to **an entirely new reporting code devised just for COVID-19**, which is being used by state reporting

²³ (See National Center for Health Statistics, *Weekly Updates by Select Demographic and Geographic Characteristics*, CDC (visited Sept. 5, 2020), <https://bit.ly/3gSnALs>.)

1 agencies, including those in California. As the CDC admits: “COVID-19 deaths are identified using a
2 **new ICD–10 code**. When COVID-19 is reported as a cause of death—or when it is listed as a
3 ‘probable’ or ‘presumed’ cause—the death is coded as U07.1. This can include cases with or **without**
4 **laboratory confirmation.**” (Ex. 4-4.)

5 82. Public health policy concerning cancer deaths would never be driven by a statistic of
6 “presumed” cancer deaths without confirmation of the presence of cancer in the decedents. But
7 statistical rationality has been abandoned when it comes to COVID-19. As Dr. Deborah Birx of CDC
8 acknowledged, all deaths of patients who happen to die “with” coronavirus in their systems would be
9 classified as “COVID-19” deaths regardless of the actual cause of death. (Ex. 4-31.)²⁴

10 83. The absurd results of the CDC’s irrational and misleading death-counting protocol were
11 underscored when **the Florida Department of Health confirmed it had reported the death of a**
12 **motorcycle accident victim as a COVID-19 death due to the mere presence of the virus in his**
13 **system.**²⁵ This is doubtless the tip of a vast iceberg of unreliable data from state and county reporting
14 agencies using the newly invented code.

15 84. Further, a note to the CDC’s Table 3²⁶ reveals that among the death certificates the
16 CDC has compiled to reach the total of 188,470 deaths “involving” COVID-19 as of September 23, a
17 **mere 6%** of the certificates listed COVID-19 as the sole cause of death:

18 **Comorbidities**

19 Table 3 shows the types of health conditions and contributing causes mentioned in
20 conjunction with deaths involving coronavirus disease 2019 (COVID-19). **For 6% of**
21 **the deaths, COVID-19 was the only cause mentioned.** For deaths with conditions or
22 causes in addition to COVID-19, on average, there were 2.6 additional conditions or
causes per death. The number of deaths with each condition or cause is shown for all
deaths and by age groups. For data on comorbidities,

23 85. While this does not mean that only 11,308 people (6% of 175,866) have died from
24 COVID-19 across the nation, it does mean that in the vast majority of cases COVID-19 was only a
25 contributing factor. The same scenario arises with annual influenza, to which the elderly with
26

27 ²⁴ (Video of Birx’s remarks available @ <https://tinyurl.com/uc8o5on>.)

28 ²⁵ (Danielle Lama, *Questions raised after fatal motorcycle crash listed as COVID-19 death* (July 16, 2020) Fox 35, <https://bit.ly/31MoAu1>.)

²⁶ (See https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm#Comorbidities.)

comorbidities are particularly vulnerable.

86. In sum, at the very least, the CDC's own statistics demonstrate that it is impossible reliably to determine the true lethality of COVID-19 as a distinct disease entity—hence the hedging description of total deaths as merely “**involving** coronavirus disease 2019.”

87. Hidden in plain sight in CDC Table 1,²⁷ however, is probably a more accurate death toll from COVID-19:

▼ Table 1. Deaths involving coronavirus disease 2019 (COVID-19), pneumonia, and influenza reported to NCHS by sex and age group. United States. Week ending 2/1/2020 to 9/19/2020

Updated September 23, 2020

Sex	Age group	All Deaths involving COVID-19 (U07.1) ¹	Deaths from All Causes	Deaths involving Pneumonia, with or without COVID-19, excluding Influenza deaths (J12.0–J18.9) ²	Deaths involving COVID-19 and Pneumonia, excluding Influenza (U07.1 and J12.0–J18.9) ²	All Deaths involving Influenza, with or without COVID-19 or Pneumonia (J09–J11) ³	Deaths involving Pneumonia, Influenza, or COVID-19 (U07.1 or J09–J18.9) ⁴	Population ⁵
Total								
	All ages	188,470	2,022,937	192,312	84,930	6,699	301,553	327,167,434
	Under 1 year	20	11,313	105	3	16	138	3,848,208
	1–4 years	15	2,158	73	2	42	128	15,962,067
	5–14 years	31	3,356	102	8	52	177	41,075,169
	15–24 years	353	21,615	438	128	53	712	42,970,800
	25–34 years	1,457	44,521	1,610	651	151	2,553	45,697,774
	35–44 years	3,809	62,852	3,643	1,693	250	5,979	41,277,888
	45–54 years	10,057	115,528	9,425	4,698	577	15,256	41,631,699
	55–64 years	23,991	264,573	25,205	11,661	1,240	38,556	42,272,636
	65–74 years	40,613	401,024	42,712	19,609	1,453	64,930	30,492,316
	75–84 years	49,871	489,060	52,492	23,175	1,478	80,458	15,394,374
	85 years and over	58,253	606,937	56,507	23,302	1,387	92,666	6,544,503

88. The fifth column of the table shows the number of people who have died from pneumonia accompanied by COVID-19 but *not* influenza, thus apparently isolating COVID-19 as the cause of fatal pneumonia. That number was only 84,930 as of September 19. This suggests that around

²⁷ (https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm.)

85,000 is closer to the truth about how many Americans have died **from** COVID-19 as the chief proximate cause of death (assuming COVID-19 actually caused fatal pneumonia) as opposed to heart disease, diabetes, cancer, stroke, accident, and so forth, but merely **with** the virus present.

89. But even the reliability of this lower number is fatally compromised by the practice of merely “presuming” that COVID-19 is present in a patient **without laboratory confirmation**, so that the pairing of COVID-19 with pneumonia, excluding influenza, is also suspect.

90. Moreover, the fourth column of Table 1 inexplicably and confusingly combines “deaths involving pneumonia, with or without COVID-19, excluding influenza” into one number, that being 193,312. This statistical conflation makes it impossible to determine how many pneumonia deaths have resulted from COVID-19 as opposed to **community-acquired pneumonia** (i.e. not contracted in a nursing home or hospital), most commonly caused by *streptococcus pneumonia*—that is, a bacterial pneumonia—**which claims upwards of 100,000 lives per year**, especially among the elderly who are also the primary victims of COVID-19-related pneumonia. (Ex. 4-5.)

91. In sum, the CDC’s COVID-19 death statistics are a hopeless muddle that seems designed to preclude an accurate estimate of how many people have actually died **because** of COVID-19 as such. Yet the CDC’s fatally flawed and all-but-worthless statistics have driven both the media’s “panic porn” narrative and California’s public health policy, which has destroyed its economy and suspended the constitutional rights of Father Burfitt and 40 million other residents of the State.

92. Nevertheless, as shown above, even the CDC’s patently inflated count of deaths “involving” COVID-19 peaked in April, briefly resurged in late July, has plummeted toward statistical zero since then, and has involved—at the very most—less than 6/100th of 1% of the nation’s population, with the vast majority of the victims being very elderly people suffering from at least two life-shortening comorbidities. **These national data hardly justify Newsom’s continuing one-man rule over 40,000,000 people**, nearly seven months into an obviously dwindling pandemic in the State of California.

III. A “CASEDEMIC” REPLACES THE PANDEMIC

93. No longer able to document his claim of a statewide “health emergency” with a statistically significant number of COVID-caused deaths or hospitalizations in a population of 40

1 million, Newsom has quietly replaced the COVID-19 pandemic with a COVID-19 “casedemic.”
2 Newsom now claims that anyone who tests positive for the virus has a “case” of COVID-19, even if
3 the person tested was asymptomatic or only mildly affected, never required hospitalization or even a
4 doctor’s visit, **or never even knew he had the virus.**

5 94. Yet, back on March 19, Newsom admitted what is now obvious from his own testing
6 regime: that while millions of Californians might end up being infected by the virus, **the vast majority**
7 **would be asymptomatic:**

8 30% of the population, as high as 70% of the population, may contract the virus. In
9 California, we’ve been working with those numbers as a nation state, 40 million strong.
10 We’ve been organized around an attack rate, as we refer to it, of about 56%. That the
11 virus will impact about 56% of us. You do the math. In the State of California, that’s a
12 particularly large number. That number in and of itself, shouldn’t be overly alarming.
13 **The vast majority of us, the overwhelming majority of us won’t have symptoms,**
14 **will be perfectly fine....**²⁸

15 95. Conveniently forgetting his own admission that “infection” by the virus does not equal
16 “illness,” much less hospitalization or death, still less a statewide “emergency” justifying a statewide
17 suspension of constitutional rights, **Newsom now claims that any detectable presence of the virus**
18 **in the general population** is a dire threat to public health justifying a continuing medical dictatorship
19 with no end in sight. Father Burfitt and tens of millions of other Californians remain deprived of their
20 churches and the entire population of the state remains under a form of universal quarantine **without**
21 **precedent in the history of epidemics.**

22 96. Even if mere positive tests for a virus, without concomitant illnesses or hospitalizations,
23 constituted a public health emergency, the testing dataset is itself fraught with reliability problems. For
24 example, in experiments utilizing samples taken from subjects who had submitted to the CDC’s “gold-
25 standard” Reverse Transcriptase Polymerase Chain Reaction (PCR) test, board-certified Pathologist
26 Dr. Sin Hang Lee demonstrated that the PCR test yielded a distressingly high incidence of
27 misdiagnosis. Beyond unreliable results, Dr. Lee’s study also revealed that the CDC’s sample labels

28 ²⁸ (See https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm [at 4:48].)

were also unreliable, with some samples labeled “CDC-test-positive” being negative, and vice versa.²⁹ Dr. Lee warns that “a positive test result must be substantiated by a DNA sequencing electropherogram showing the genomic fingerprints of the virus. **False-positive test reports can easily create unnecessary panic resulting in negative impacts on local economies.**”

97. As Dr. Lee here suggests, the problem with Newsom’s “casedemic” goes far beyond unreliable PCR test results. There is the bigger problem of “positive” results that are epidemiologically worthless because the result does not indicate an active infection—the genomic fingerprints of the virus—and thus only causes public hysteria, exploited to oppress millions with unconstitutional restrictions of fundamental rights, including the worship of God.

98. As *The New York Times* has just revealed, PCR testing is being abused to maximize the number of “cases” **where there is no viral load sufficient to warrant medical concern.** This is done by running, not 30 PCR cycles, as Dr. Lee’s study notes, but 40 or more cycles until some arguable remnant of the virus is found, which is then simply reported as a “positive” without providing the cycle threshold (C.T.) values. (Ex. 4-6.) The *Times* cites Harvard epidemiologist Dr. Michael Mina concerning testing in Massachusetts, where **“from 85 to 90 percent of people who tested positive in July with a cycle threshold of 40 would have been deemed negative if the threshold were 30 cycles...** ‘I would say that none of those people should be contact-traced, not one,’ he said.”³⁰ Dr. Mina would set the cycle threshold at 30 or even less.

99. **“I’m shocked that people would think that 40 [cycles] could represent a positive,”** said Dr. Juliet Morrison, a virologist at the University of California at Riverside to the *Times*. The

²⁹ (Sin Hang Lee, *Testing for SARS-CoV-2 in cellular components by routine nest RT-PCR followed by DNA sequencing* (Jul. 17, 2020) INTERNATIONAL JOURNAL OF GERIATRICS AND REHABILITATION, 2(1):69–96, <https://bit.ly/3gTvZOB>.)

³⁰ “Contact tracing” for a virus that has already spread to millions of asymptomatic Americans is just as pointless as widespread hypersensitive PCR testing. Common sense shows the absurdity of tracking down a tiny segment of COVID-19-infected people in a sea of millions of infections. As *The New York Times* observed of the effort on July 31: “[t]he virus’s pervasiveness and major lags in testing have rendered the system almost pointless.” (Jennifer Steinhauer & Abby Goodnough, *Contact tracing is failing in many states. here’s why*, (July 31, 2020) NEW YORK TIMES, <https://nyti.ms/3mOtJMb>.) Not almost pointless, but entirely so. Pointless “contact tracing” does, however, supply an excuse to prolong Newsom’s COVID-19 dictatorship.

1 *Times* also quotes Angela Rasmussen, a virologist at Columbia University, who protests: **“It’s just**
2 **kind of mind-blowing to me that people are not recording the C.T. values from all these tests—**
3 **that they’re just returning a positive or a negative.”**

4 100. Citing Dr. Mina, the *Times* exposé reported only a month ago (August 29) that the result
5 of this abuse is a wildly inflated number of “cases” that poses no threat to public health:

6 In three sets of testing data that include cycle thresholds, compiled by officials in
7 Massachusetts, New York and Nevada, **up to 90 percent of people testing positive**
8 **carried barely any virus...** On Thursday (August 27, 2020), the United States
9 recorded 45,604 new coronavirus cases, according to a database maintained by The
10 Times. If the rates of contagiousness in Massachusetts and New York were to apply
11 nationwide, then perhaps only 4,500 of those people may actually need to isolate and
12 submit to contact tracing... **Tests with thresholds so high may detect not just live**
13 **virus but also genetic fragments, leftovers from the infection that pose no**
14 **particular risk—akin to finding a hair in a room long after a person has left, Dr.**
15 **Mina said.**

16 101. As the *Times* concluded: “But with 20 percent or more of people testing positive in
17 some parts of the country, Dr. Mina and other researchers are questioning the use of PCR tests as a
18 frontline diagnostic tool.” (*Id.*)

19 102. Based solely on testing whose reliability and utility are seriously in question, however,
20 Newsom’s health bureaucracy now declares, as noted above, that there are 802,308 “cases” of COVID-
21 19 in California as of September 27, based on more than 14 million tests performed. And there are
22 probably hundreds of thousands more “cases” to be found in the state by the same relentless testing
23 regime. But the only point of the testing is finding “cases” of COVID-19 in people who aren’t sick in
24 order to perpetuate an “emergency” and an unconstitutional dictatorship that will never end as long as
25 there are “cases” to be found.

26 103. **What all the testing is really uncovering is hidden traces of a viral presence that**
27 **become known, not because they are causing actual harm to the public, but because Newsom**
28 **and his health bureaucrats are relentlessly hunting for them.** Meanwhile, Newsom has
conveniently forgotten his own prescient advice to the public in March: “The vast majority of us, the
overwhelming majority of us won’t have symptoms, will be perfectly fine.”

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1 IV. THE IRRATIONAL “CASEDEMIC” PARADIGM
2 CAUSES MORE HARM THAN GOOD

3 104. The mere rate of positive tests for a virus, not hospitalization or death rates, is no
4 justification for suspending the constitutional rights of millions of people into the hazy future. Even if
5 hospitalization and death rates could justify some limited, narrowly tailored, and temporary restrictions
6 on constitutional rights, mere test results cannot justify such draconian measures, much less an
7 interminable medical dictatorship headed by a politician.

8 105. Positive test results do not translate into actual illness, much less illness requiring
9 hospitalization, still less death from the virus. That is why PCR testing should not be a frontline
10 diagnostic tool, as the *New York Times* exposé cited above suggests. For example, there are differing
11 mortality risks in different segments of the population. Even among the symptomatic, “The mortality
12 risk for those infected ... is not the same for all patients.... The CDC’s current best estimates are that
13 the symptomatic fatality rate from COVID-19 among patients less than 50 years old is 0.05%, **or 5 in**
14 **10,000**; 0.2% for patients between age 50 and 64; and 1.3% for patients 65 and above.”³¹

15 106. As at least one economist has noted: “The use of the number of cases to drive this policy
16 obfuscates matters and yields a flawed statistic and [is] a costly policy choice all things considered.”³²
17 One Certified Public Health Professional has observed that “commonly utilized susceptible, infectious,
18 and recovered—or “SIR”—disease transmission modeling associated with COVID-19, together with
19 WHO and CDC public health metrics, suggest that **California’s mandate is likely to make the overall**
20 **public health situation worse and not better.**”³³

21 107. **At this point in Newsom’s regime, both suicides and drug overdose deaths caused**
22 **by the response to the pandemic are outnumbering deaths attributed (however loosely) to the**
23 **coronavirus itself.**³⁴

24 _____
25 ³¹ (Declaration of Dr. Jayanta Bhattacharya ¶37, *Brach v. Newsom* (C.D. Cal. Aug. 3, 2020) No. 20-
26 cv-6472-SVW, ECF No. 28-3.)

27 ³² (*Id.* at ¶ 20.)

28 ³³ (Declaration of Sean G. Kaufmann ¶ 15, *S. Bay United Pentecostal Church v. Newsom* (S.D. Cal.
Aug. 10, 2020) No. 20-cv-865-BAS, ECF No. 53-6.)

³⁴ (*Transcript of COVID Webinar Series interview of Robert Redfield, MD* (Jul. 14, 2020) BUCK

1 108. As with so many other heavy-handed government policies, the unintended
2 consequences are causing more harm than good: “We now know that deaths due to non-specific effects
3 of society’s response to COVID-19 outnumber the deaths that might be due to COVID-19: deaths from
4 suicides due to job loss and social isolation and deaths from lack of access to healthcare.”³⁵

5 109. Yet another expert has noted that California had made policy based on “worst-case
6 predictions,” which is “unrealistic” as “society is well aware of the risks and recognizes the need to
7 protect the vulnerable.”³⁶ Instead, given the lower observed mortality rates over time, he advocates a
8 strategy that “tolerate[s] the spread of the virus as long as the hospital system is not overwhelmed.”

9 110. As shown below, massive protests, devoid of “social distancing,” demonstrate precisely
10 that a tolerated spread is not harmful. Such a controlled spread could be monitored through a Monte
11 Carlo analysis of R(t) (a variable indicating the “reproduction number of the virus over time”), daily
12 deaths, the percentage of positive tests, and daily hospitalizations in order to better track the true spread
13 and mortality rate of the virus. Such an analysis consults multiple variables for the purpose of more
14 accurately tracking the virus’ impact to “prudently use the best indicators to protect [vulnerable
15 populations].”³⁷

16 111. Despite the availability of rational alternative policies, California continues to enforce
17 an irrational model based on faulty data and the relentless detection of “cases” without serious illness.
18 Newsom and his co-defendants persist in this approach even though various municipal authorities have
19 protested that it yields an “arbitrary and constantly changing framework” that lands counties on a
20 shutdown list even as the absolute number of deaths, and even the number of “cases” itself, is
21 vanishingly small compared to the general population yet still qualifies as a “health metric” for adding
22

23 _____
24 INSTITUTE, <https://bit.ly/2FjcjWB>.)

25 ³⁵ (Declaration of James Lyons-Weiler ¶ 18, *S. Bay United Pentecostal Church v. Newsom* (S.D. Cal.
26 Aug. 10, 2020) No. 20-cv-865-BAS, ECF No. 53-7; see also Leo Sher, *The impact of the COVID-19
27 Pandemic on Suicide Rates* (JUN. 30, 2020) GQM: INT’L J. OF MED., <https://bit.ly/3iAE2QV>.)

28 ³⁶ (George Delgado, *California: Roadmap for a Balanced Recovery*, COVID PLANNING TOOLS (Jul
24, 2020), <https://bit.ly/3kFXXQ3>.)

³⁷ (George Delgado, *Rational Policy Strategies for the COVID-19 Pandemic*, COVID PLANNING
TOOLS (July 12, 2020), <https://bit.ly/2XX164i>.)

counties to a closure list that seems designed to make escape from closure medically impossible.³⁸

112. When the consequences of the measures taken thus far are honestly assessed, it becomes apparent that the measures, and the faulty datasets on which they are ostensibly based, are the kind of “faulty counsel” that Francis Bacon, the very progenitor of the scientific method, warned against:

We may have counsel given, hurtful and unsafe (though with good meaning) and mixed partly of mischief and partly of remedy; even as if you would call a physician that is thought good for the cure of the disease you complain of, but is unacquainted with your body; and therefore may put you in way for a present cure, but overthroweth your health in some other kind; **and so cure the disease and kill the patient.**³⁹

113. Unfortunately, Bacon’s warning, like that of the scientists and statisticians discussed above, has been ignored; and now the patient is dying not from COVID-19, but rather spiritual, social, and economic maladies resulting from the government’s disastrous attack on the common good in its totality.

114. As things now stand, Walmart, Target, Ralphs, Vons, Albertson, and Macy’s are open all over the State of California, along with liquor stores, marijuana dispensaries, banks, offices, and home improvement stores. But small businesses and churches, including those at which Father Burfitt ministers to his flocks, are ordered to close in 38 counties under threat of civil and criminal penalties—based on nothing more than a handful of “cases” uncovered by a rising number of hypersensitive tests of the very people who will be “perfectly fine,” as Newsom himself admitted back in March.

V. THE ENDLESS LOCKDOWN: A “BLUEPRINT” REPLACES THE CML AND THE ROADMAP

115. As of the date of this Complaint, the still-ongoing indoor worship ban dating from July 13 and the CML now depends on an entirely new bureaucratic scheme: the “Blueprint for a Safer Economy” (BSE), which, on August 28, superseded both the Roadmap and the CML.⁴⁰

116. The CML disappeared from the Internet without a trace on or about August 28, the day

³⁸ (Eric Ting, *San Mateo County Health Officer Assails ‘Fundamentally Flawed’ State Watch List* (Aug. 6, 2020) SF GATE, <https://bit.ly/3aI9BeM>.)

³⁹ (FRANCIS BACON, *OF TRUE GREATNESS OF KINGDOMS AND ESTATES* (1612), emphasis added.)

⁴⁰ (See <https://covid19.ca.gov/safer-economy/>.)

1 Newsom announced the BSE. As the Q & A for the BSE explains in answer to the question “What
2 happened to the County Monitoring List?”:

3 The Blueprint for a Safer Economy replaces the County Data Monitoring List for
4 determining what business [sic] can and cannot open.... The Blueprint for a Safer
5 Economy is *the next evolution of our response. We’ve revised the criteria and the time*
6 *between changing tiers. We’ve made it easy for counties to see how changes affect the*
7 *disease’s trajectory and for businesses and customers to plan ahead. And we’ve given*
8 *Californians one place to look up whether a business or activity is allowed near them.*
9 (Ex. 1-12.)

10 117. In other words, the BSE is an all-encompassing regulatory replacement for the
11 Roadmap.

12 118. Tellingly, the BSE loses any semblance of concern over actual illness by abandoning
13 the CML’s three metrics which related, however minimally, to whether anyone is being hospitalized
14 on account of COVID-19 in the State of California:

- 15 • 10% or greater increase in **average** COVID-19 hospitalizations during the past 3 days;
- 16 • Fewer than 20% of ICU beds available;
- 17 • Fewer than 25% of ventilators available.

18 119. With the abandonment of these three metrics, the COVID-19 lockdown of California
19 under the BSE is now totally untethered from any requirement of actual harm to the population in the
20 form of hospitalizations or deaths. Instead, the BSE assigns counties to color-coded “tiers” of “risk”
21 no longer having anything to do with whether anyone is actually sick with COVID-19:

- 22 • **“Purple” tier - Widespread:** more than 7 “cases” per day per 100,000 people and more than
23 8% positive tests. In this tier “many non-essential indoor business operations are closed.”
- 24 • **“Red” tier - Substantial:** 4-7 “cases” per day per 100,000 people and 5-8% positive tests. In
25 this tier, “some non-essential indoor business operations are closed.”
- 26 • **“Orange” tier - Moderate:** 1-3.9 “cases” per day per 100,000 people and 2-4.9% positive
27 tests. In this tier, “some indoor business operations are open with modifications.”
- 28 • **“Yellow” tier: - Minimal:** less than one “case” per day per 100,000 people and less than 2%
positive tests. In this tier, “most indoor business operations are open with modifications.” (Ex.
1-13.)

120. The number of “cases” for purposes of the BSE data is **determined by the same**

1 **unreliable and overly sensitive PCR testing method whose grave problems are noted above:**

2 “Case rate will be determined using confirmed (by PCR) cases, and will not include state and federal
3 inmate cases.” (Ex. 1-17 at p. 3.)⁴¹ The resulting data are assessed each week and compiled into a
4 Blueprint Data Spreadsheet (BDS). (Ex. 1-18.) The “casedemic” is now an “emergency” existing on a
5 spreadsheet as opposed to what is actually happening in the real world in the lives of real people.

6 121. Further, the number of “cases” per 100,000 is “adjusted” upward on the spreadsheet by
7 an adjustment factor if the county falls below the statewide median testing volume—a “metric” known
8 only to the state and announced weekly. (Ex. 1-18)

9 122. Thus, for example, Kern County, where Father Burfitt ministers to one of his
10 congregations, remains in the “Purple” (Widespread) tier solely because its “case rate” of only 6.5 per
11 100,000 has been adjusted upward to 7.2, triggering the more-than-7 cases-per-100,000 metric. (Ex.
12 1-18, updated to September 25)

13 123. San Diego County, where another of Father Burfitt’s missions is located, is currently
14 assigned to the “Red” (“Substantial”) risk tier, in which Newsom “permits” a return to his former
15 draconian restriction of May 25, 2020: 25% indoor capacity for houses of worship or 100 persons,
16 whichever is less. (Ex. 1-23.) As pleaded below, that mission has nonetheless been driven from its
17 church. But, under the BSE, San Diego County is at risk of being ordered back into the “Purple” tier
18 and having its houses of worship and businesses shut down once again, leading the Board of
19 Supervisors to hold sessions regarding “possible legal action against the state[.]”⁴² Although the
20 County has managed to escape into the somewhat less restrictive “Red” tier, it is now threatened with
21 a return to the “Purple” tier because, at 6.8 cases per day, it is on the verge triggering Newsom’s
22 arbitrary 7-case-per-day metric, as “adjusted” by Newsom’s statewide data—to which the public has
23 no access.

24 124. The BSE is thus a recipe for the unending socioeconomic torture of millions of people
25 based on hidden, constantly changing data. The *Los Angeles Times* matter-of-factly observes how the
26

27 ⁴¹ (See <https://tinyurl.com/y4bjr3np>.)

28 ⁴² (Elizabeth Sanchez, *Businesses concerned over restrictions if San Diego County moves into Purple Tier* (Sep. 21, 2020 update) CBS8, <https://bit.ly/2HfU2u5>.)

1 torture works:

2 **It only takes one number being out-of-bounds for two weeks for a county to fall a**
3 **tier, but both numbers have to meet higher tier requirements for two consecutive**
4 **weeks in order to move up a rung** on the reopening ladder. Like the case rate
5 adjustments, positiv[ity] rate calculations use testing numbers by sample collection
6 date, meaning that **the public does not have access to the data** needed to determine
7 what the positive rate is likely to be in [each] Tuesday's report. (Ex. 4-42)

8 125. Under the BSE's low bar "metrics," a county is placed in the "Purple" tier, with a
9 closure of "many non-essential businesses" and a total ban on indoor worship, based on nothing more
10 than 70 asymptomatic people testing positive on one day per 1,000,000 county residents (or an average
11 of 7 daily new cases per 100,000 over the past 7 days). Alternatively, if over the relevant period, a
12 mere 800 people test positive out of 100,000 tests, the entire county is likewise subjected to a brutal
13 and destructive shutdown (8% of total tests performed, averaged over the past 7 days). And even if
14 only one metric threshold is met, the county is still placed in the most restrictive "Widespread" tier.
15 (Ex. 1-19.)

16 126. Amazingly, not even the "Minimal" risk tier, in which **less than one "case" per day**
17 **can be found per 100,000 people**, affords a complete escape from Newsom's dictatorship. "Non-
18 essential" businesses, including churches, are still reduced to 50% of occupancy, with continued strict
19 adherence to "social distancing" and masks on everyone, everywhere, all day long. (Ex. 1-14
20 [churches]; Ex. 1-15 [restaurants, bars, breweries].)

21 127. In short, the BSE proposes no end to Newsom's lockdown. Under the BSE houses of
22 worship are **never** allowed to return to pre-COVID freedom under the state and federal constitutions.
23 Quite to the contrary, as Newsom explained in introducing the BSE, it represents an even more
24 stringent rights-restricting regime than the one he had hitherto been imposing under the Roadmap:

25 Like every aspect of California's response, data and science are the North Star, and as
26 a result, this new framework makes a number of changes to the state's **previous**
27 **resilience roadmap.... "This Blueprint is statewide, stringent and slow,"** said
28 Governor Newsom. "We have made notable progress over recent weeks, but the disease
is still too widespread across the state. COVID-19 **will be with us for a long time and**
we all need to adapt. We need to live differently. And we need to minimize exposure
for our health, for our families and for our communities." (Ex. 1-16.)

128. "Stringent and slow." "A long time." "We need to live differently." The goal post for

reopening has clearly been moved beyond reach for the foreseeable future, even as it has become obvious that the virus no longer poses a significant threat to the oppressed people of California.

As of September 22, 2020

County risk level	New cases	Positive tests
WIDESPREAD Many non-essential indoor business operations are closed	More than 7 daily new cases (per 100k)	More than 8% Positive tests

% of Population used to justify
"Casedemic" Lockdown

STATUS	COUNTY	POPULATION (July 2019)	"CASES" per 100k	# OF "CASES"	"CASES" as % of Population	POSITIVITY RATE
WIDESPREAD	Butte County	219,186	6.9	15	0.0001	4.3%
WIDESPREAD	Colusa County	21,547	6.3	1	0.0001	7.2%
WIDESPREAD	Contra Costa County	1,153,526	6.5	75	0.0001	4.0%
WIDESPREAD	Fresno County	999,101	6.5	65	0.0001	4.8%
WIDESPREAD	Glenn County	28,393	13.1	4	0.0001	6.6%
WIDESPREAD	Imperial County	181,215	8.0	14	0.0001	9.0%
WIDESPREAD	Kern County *	900,202	6.3	57	0.0001	6.5%
WIDESPREAD	Kings County	152,940	8.5	13	0.0001	4.5%
WIDESPREAD	Los Angeles County *	10,039,107	7.7	773	0.0001	2.8%
WIDESPREAD	Madera County	157,327	9.3	15	0.0001	7.3%
WIDESPREAD	Mendocino County	86,749	5.0	4	0.0001	3.0%
WIDESPREAD	Merced County	277,680	9.4	26	0.0001	5.0%
WIDESPREAD	Monterey County	434,061	10.7	46	0.0001	5.0%
WIDESPREAD	Sacramento County	1,552,058	6.2	96	0.0001	4.6%
WIDESPREAD	San Benito County	62,808	4.9	3	0.0000	4.5%
WIDESPREAD	San Bernardino County *	2,180,085	6.0	131	0.0001	5.7%
WIDESPREAD	San Joaquin County	762,148	6.2	47	0.0001	5.5%
WIDESPREAD	Santa Barbara County	446,499	6.5	29	0.0001	4.3%
WIDESPREAD	Sonoma County	494,336	8.6	43	0.0001	4.6%
WIDESPREAD	Stanislaus County	550,660	7.5	41	0.0001	5.5%
WIDESPREAD	Sutter County	96,971	9.3	9	0.0001	6.5%
WIDESPREAD	Tulare County	466,195	11.4	53	0.0001	7.7%
WIDESPREAD	Ventura County	846,006	7.4	63	0.0001	3.8%
WIDESPREAD	Yolo County	220,500	4.3	9	0.0000	4.2%
WIDESPREAD	Yuba County	78,668	10.1	8	0.0001	9.4%

TOTAL "CASES": 1,641 0.00004

TOTAL POPULATION OF
WIDESPREAD COUNTIES: 22,407,968

TOTAL POPULATION OF
CALIFORNIA: 39,510,000

TOTAL % OF CALIFORNIA'S
POPULATION UNDER
"CASEDEMIC" LOCKDOWN: 56.7%

* Counties in which Father Trevor Burfitt's churches are closed by order of Governor Newsom, based solely on # of "cases" in those counties.

129. The statewide impact of the new BSE-mandated lockdowns is shown in the following table, prepared for this litigation:

1 130. As the table shows, to the BSE’s absurdly low bars, as of September 22, 25 counties
2 out of 59, comprising 56.7% of California’s total population of 40 million, are now in the “Purple”
3 risk tier, and thereby incur the indoor worship ban along with a general revocation of what was Stage
4 2 under the Roadmap. These counties include Kern (Ex. 1-20), San Bernardino (Ex. 1-21), and Los
5 Angeles (Ex. 1-22), where four of Father Burfitt’s five congregations are located (two in Los Angeles
6 County). As a result, all churches in those counties, including those over which Father Burfitt presides,
7 are ordered entirely closed to indoor worship

8 131. In Kern County, Newsom now bans indoor worship merely because testing has
9 uncovered **57 daily “cases” in a population of 900,000**, representing **1/100th of 1%** of Kern County’s
10 total population. In San Bernardino County, a **mere 131 “cases” out of 2,180,000 people—1/100th**
11 **of 1% of the total population**—have triggered the worship ban. And in Los Angeles County an
12 equally infinitesimal **1/100th of 1% of the population testing positive—773 “cases” out of**
13 **10,000,000 people**—has triggered Newsom’s and defendant Ferrer’s closure of all churches, including
14 the two over which Father Burfitt presides.

15 132. As the table further shows, the total number of “cases” in all 25 “Purple” (Widespread)
16 tier counties as of September 22 is 1,641, which represents an almost immeasurably small **4/1000th of**
17 **1 percent** of California’s total population. Based on this epidemiological zero, Newsom persists in
18 prohibiting divine worship in houses of worship and the devastation of California’s economy—nearly
19 seven months after his “emergency” declaration was issued.

20 133. The BSE’s plan for a “reopening” that is never fully a reopening does not end with its
21 onerous and arbitrary state-level system of “metrics”. The BSE provides that each county may impose
22 even tighter restrictions at will: “Counties can restrict further. Check your county website.” (See each
23 county’s status in the drop-down menu on the BSE page.)

24 134. Additional statewide criteria can also be added to the BSE’s testing criteria at any time,
25 creating further hurdles for each county to clear, failing which the county will not advance to a lower
26 risk tier, or if it does advance, can be forced to revert to a higher risk tier and undergo another lockdown
27 at any time. And, as Newsom’s announcement of the BSE warns: “The plan also includes an
28 ‘emergency brake’ where the state can intervene more immediately for concerning factors like

hospitalizations.” (Ex. 1-15.)

135. As of the date of this Complaint, Newsom’s additional hurdles beyond the BSE’s testing thresholds involve the continuing, and by now quite absurd, micromanagement of people’s lives by state and county officials, **literally including how heavily they may breathe and whether they are allowed to sing, shout or even raise their voices.** Various industries and activities are regulated based on the following factors:

- 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 the duration of exposure;
- Ability to limit the amount of mixing of people from differing households and communities;
- Ability to limit the number 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)**⁴³ (Ex. 1-24.)

136. By way of additional hurdles for counties to clear before they can achieve even the moderate relief of the “Minimal” risk tier, the BSE also includes a “Health Equity Measure” or “Health Equality Metric” that has yet to be specified but will be part of the data compiled weekly in the BDS. Once quantified, the “Health Equity” criteria will involve a whole new obstacle course to be cleared before a county can advance to a lower risk tier. As the CDPH explains, ominously:

In addition, the state will establish health equity measures on activities such as data collection, testing access, contact tracing, supportive isolation, and outreach that demonstrate a county’s ability to address the most impacted communities within a county. Additional measures addressing health outcomes such as case rates, hospitalizations and deaths, will also be developed and tracked for improvement. (Ex. 1-24.)

137. While the BSE establishes numerous low bars for county lockdowns, it establishes numerous high bars for “reopening,” always with the threat of “re-closure” if a county again falls below any one of the high bars at any time:

⁴³ (See <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx>.)

1 1. **To advance:**

- 2 i. A county must have been in the current tier for a minimum of three weeks,
3 except as described in the “Initial step applied on August 28, 2020” section
4 above.
- 5 ii. A county must meet criteria for the next tier for both measures for the prior
6 two consecutive weeks in order to progress to the next tier.
- 7 iii. In addition, the state will establish health equity measures on activities such
8 as data collection, testing access, contact tracing, supportive isolation, and
9 outreach that demonstrate a county’s ability to address the most impacted
10 communities within a county. Additional measures addressing health
11 outcomes such as case rates, hospitalizations and deaths, will also be
12 developed and tracked for improvement.

13 2. **To move back:**

- 14 i. During the weekly assessment, if a county’s adjusted case rate and/or test
15 positivity has been within a more restrictive tier for two consecutive weekly
16 periods, **the county must revert to the more restrictive tier.**
- 17 ii. **At any time, state and county public health officials may work together**
18 **to determine targeted interventions or county-wide modifications**
19 necessary to address impacted hospital capacity and drivers of disease
20 transmission, as needed.
- 21 iii. Counties will have three days to implement any sector changes or closures
22 unless extreme circumstances merit immediate action. (Ex. 1-24.)

23 138. The BSE describes itself as “a blueprint for reducing COVID-19 in the state with
24 revised criteria for loosening and tightening restrictions on activities.” (*Id.*) In other words, it
25 announces a potentially endless process of suspending, restoring, and suspending anew the
26 constitutional rights Newsom has been infringing for nearly seven months as the autocratic ruler of
27 40,000,000 subjects.

28 139. Newsom’s lockdown of the State of California is not only seemingly endless, but as
shown above, the BSE has already ramified into a bureaucratic thicket that threatens to dwarf the
Roadmap and the CML in complexity and interference with fundamental rights. It is bureaucracy
running amok.

140. That the BSE is positioned to become a permanent medical dictatorship is revealed on
its explanatory page (Ex. 1-24 at p. 1, ¶ 2), which states it is designed 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.” The BSE thus clearly contemplates a seamless transition into a permanent state of lockdown, in one form or another, that will tie hypersensitive testing for COVID-19—either now or upon its possible return—to actual illnesses, hospitalizations, and deaths from influenza.

141. While under the BSE “many non-essential business operations,” including “non-essential” churches, are closed in the “Widespread” risk tier that encompasses **56%** of the state’s population, the following businesses, among others, are allowed to operate indoors at full or (where indicated below) reduced indoor capacity, but with the proviso that “counties can restrict further” (Ex. 1-25 [Los Angeles County]):

“Essential” retail businesses (e.g., liquor stores, cannabis dispensaries)	Florists (25%) Gas stations
All government offices	Grocery stores (50%)
All “essential retail” offices	Hair Salons and Barbershops
Appliance Repair Shops	Higher education institutions (in “certain indoor settings, like labs and studio arts”)
Auto Repair Shops	Home improvement stores (25%)
Banks and Credit Unions	Hotels
Bookstores (25%)	Hotel fitness centers (50%)
Carwashes	Jewelry stores (25%)
Childcare	Laundromats
Convenience stores	Libraries (25%)
Day Camps (including indoor facilities)	Non-essential retail (e.g. toy stores) (25%)
Doctors and Dentists	Pet Groomers
Dry Cleaners	Pharmacies
Farmer’s markets	

142. The particular impact of the BSE on Father Burfitt’s ministry, together with that of the previous Roadmap and the CML, is more particularly pleaded below.

VI. THE UNNECESSARY AND UNCONSTITUTIONAL “SOCIAL DISTANCING PROTOCOL”

143. From the beginning of the “health emergency” that no longer exists by any objective measure, Newsom has imposed a statewide “social distancing protocol” (SDP) enforced by state and county health officials with civil and criminal penalties. The protocol consists of three commands: “Wear a mask, wash your hands, keep your distance.”⁴⁴

144. The required “social distance” is an arbitrary six feet in all directions, meaning a six-foot circle surrounding every one of California’s 40 million residents (immediate family excluded) whenever they are in public:⁴⁵



145. Newsom’s and his co-defendants’ unrelenting micromanagement of millions of peoples’ lives under the six-feet-of-separation rule extends even to dictating the details of their permitted outdoor recreational activities. For example, tennis, badminton, and volleyball are limited to singles while doubles are prohibited, and golfers may golf as twosomes “only if the cart has a protective partition.” (Ex. 1-26.)

146. The requirement, imposed under civil and criminal penalties, that entire populations of millions—the vast majority of the healthy along with the tiny minority of the sick—live their public lives inside personal six-foot bubble zones at all times, separating them from every other person they encounter, while also covering their faces with cloth, has no precedent in the history of the world.

⁴⁴ (<https://covid19.ca.gov/>.)

⁴⁵ (See, e.g., Santa Clara County COVID-19 website, <https://tinyurl.com/yckpu7tl> (visited September 7, 2020).)

1 147. Never before has such an irrational, institutionalized germaphobia animated public
2 health policy during a pandemic. Rather, sound health policy has always sought only to quarantine the
3 sick and protect the vulnerable through voluntary avoidance of situations where a virus could be
4 contracted. Mask-wearing was confined to voluntary adoption by people who were coughing and
5 sneezing. Nothing more than the public policy and social practice respecting influenza was ever
6 necessary here.

7 148. The radical disruption of social order caused by the SDP can hardly be overestimated.
8 Its interference with every conceivable public activity protected by the state and federal constitutions,
9 from divine worship to shopping, to simply walking where one will, is too obvious to enumerate,
10 although its effects on divine worship as to Father Burfitt are pleaded specifically below.

11 149. The official contention that the socially destructive overkill of the SDP was necessary
12 because “there is no vaccine” for COVID-19 ignores that there is no vaccine for influenza caused by
13 the H1N1 and H3N2 and B viruses; that the vast majority of people elect not to receive existing flu
14 vaccinations, even during flu seasons when scores of thousands die;⁴⁶ and that many deadly
15 communicable diseases also lack a vaccine.

16 150. Scientific debates aside—and the SDP is eminently debatable, as shown below—two
17 facts alone indicate that the SDP has had its day and must no longer be imposed on 40,000,000 people,
18 or at least not in the context of divine worship at issue here:

19 **First**, Newsom’s admission back in March, noted above, which turned out to be quite correct:
20 that **even if 56% of California’s population were infected** by COVID-19, “[t]hat number in
21 and of itself, shouldn’t be overly alarming. The vast majority of us, **the overwhelming**
majority of us won’t have symptoms, will be perfectly fine....”⁴⁷

22 **Second**, Dr. Anthony Fauci, supposedly the last word on “mitigation” of the virus, advised that
23 people have the right to assume the risk of “hooking up” for sexual encounters with strangers
via Tinder: “If you’re willing to take a risk—and you know, **everybody has their own**

24 ⁴⁶ “Just 37 percent of U.S. adults were estimated to have been vaccinated last flu season [2017], down
25 6 percentage points from the year before, according to the Centers for Disease Control and Prevention.
26 Meanwhile, the CDC estimates the flu killed more than 80,000 people and caused more than 900,000
27 hospitalizations last year.” (Angelica LaVito, *Here Are Some Reasons Why People Don’t Get The Flu*
Shot—and Why They’re Wrong (Nov. 2, 2018) CNBC, <https://tinyurl.com/yacxumuj>.)

28 ⁴⁷ (See <https://www.rev.com/blog/transcripts/transcript-gavin-newsom-orders-california-to-stay-at-home-due-to-coronavirus>.)

1 **tolerance for risks**—you could figure out if you want to meet somebody.... If you want to go
2 a little bit more intimate, well, then **that’s your choice regarding a risk.**” ⁴⁸

3 151. The overwhelming majority of Californians are indeed “perfectly fine” nearly seven
4 months after the virus first appeared. And if people are free to choose to assume the risk of random
5 sexual encounters that ignore the SDP, or the risk of mass demonstrations, discussed below, they must
6 also be free to assume the risk of going to church. The operation of motor vehicles results in millions
7 of hospitalizations and tens of thousands of deaths every year, but there is no lockdown of the highways
8 nor any suspension of the right to drive. Life must go on, no matter Governor Newsom thinks.

9 **The Mass Protests Since May Negate the Six-Foot Bubble Zone Rule**

10 152. The arbitrary six-foot bubble zone for every Californian has never been justified by
11 hard scientific evidence but rests upon the unproven theory that if people stay six feet away from each
12 other in public, a viral illness can be contained. And yet, manifestly, the virus has not been contained,
13 any more than the flu can be contained. Indeed, despite Newsom’s imposition of the SDP, California’s
14 COVID-19 website declares that as of September 27 there are 802,308 “cases” of COVID-19 in the
15 State of California, with doubtless millions more “cases” to be discovered by hypersensitive and often
16 unreliable PCR testing. ⁴⁹

17 153. Nevertheless, the health consequences of this inevitable non-containment in terms of
18 deaths and hospitalizations have been confined to a tiny minority of the population, with less than
19 15,000 people out of 40,000,000 having a fatal outcome, almost all of whom were already suffering
20 from life-shortening comorbidities. Everyone else is “perfectly fine,” as Newsom himself predicted
21 almost seven months ago.

22 154. The continued imposition of a six-foot bubble zone on some 40,000,000 healthy people
23 cannot be justified by an abstract appeal to science or computer models, as shown by the concrete
24 reality of the demonstrations that have been continuous since May 25, 2020, when a police officer in
25

26
27 ⁴⁸ (Peter Hamby, *Baseball? Coachella? Handshakes? Tinder? Anthony Fauci on the New Rules of*
28 *Living With Coronavirus* (Apr. 15, 2020) VANITY FAIR, <https://www.vanityfair.com/news/2020/04/anthony-fauci-on-new-rules-of-living-with-coronavirus>.)

⁴⁹ (<https://covid19.ca.gov/>.)

1 Minneapolis, Minnesota killed an African-American man in his custody named George Floyd. On
2 Wednesday, May 27, protests erupted in cities across the country, including a protest with hundreds of
3 participants in Los Angeles.

4 155. Protesters in Los Angeles blocked the 101 Freeway and became violent. However, from
5 the very first protest, Los Angeles officials turned a blind eye: no arrests were made for any reason—
6 neither for violence nor the blatant violations of Governor Newsom’s ban on any political protests
7 exceeding 100 persons. (See Ex. 4-7.)

8 156. Despite Newsom’s stifling COVID-19 restrictions on religious services, he publicly,
9 repeatedly, and insistently supported massive Black Lives Matter protests:

- 10 • On May 30, he issued a press release “thank[ing] ... community members who exercised their
11 right to protest.” (Ex. 4-8.)
- 12 • On June 1, 2020, he personally invoked God’s blessing on protesters from a local church: “To
13 those who want to express themselves ... God bless you. Keep doing it. Your rage is real.”
(Exs. 4-9, 4-10)
- 14 • On the same occasion, he declared: “I just again want to express my deep gratitude and my
15 deep humility, to those ... demonstrators who are reaching out.... So I just want to thank all
16 the leaders, not only again assembled here, but throughout the state, once again, for your
17 courage, because now is a time for courage, now is a time for your voice to be brought to the
18 forefront.” (Ex. 4-10.)
- 19 • He further declared that “people have lost patience” and need to protest. (*Id.*)
- 20 • He tweeted that “millions of people are lifting up their voices in anger” and that “protesters
21 have the right to protest peacefully—not be harassed.” (Ex. 4-11.)
- 22 • He re-tweeted a news article announcing an assembly of hundreds of people entitled,
23 “Hundreds gather to paint Black Lives Matter street art.” (Ex. 4-12.)

24 157. On June 1, 2020, nearly 15,000 people gathered to protest in Oakland, California, and
25 Newsom neither threatened nor imposed criminal sanctions on such gatherings despite the flagrant
26 violations of the SDP. (Ex. 4-13.)

27 158. On June 6, 2020, thousands of other protesters assembled in Sacramento, right outside
28 Newsom’s office, in blatant violation of his orders, and no criminal citations or threats were issued.
(Ex. 4-14.)

159. By Sunday, June 7, a protest in Hollywood had an estimated 100,000 people in

attendance. (Ex. 4-15.)

160. Los Angeles officials have also encouraged and even participated in protests that defy the COVID-19 restrictions. On June 2, 2020, defendant Mayor Garcetti joined a protest, taking a knee amongst a dense crowd. (Ex. 4-16.) Video footage shows him being swarmed by people not even attempting to follow the SDP:



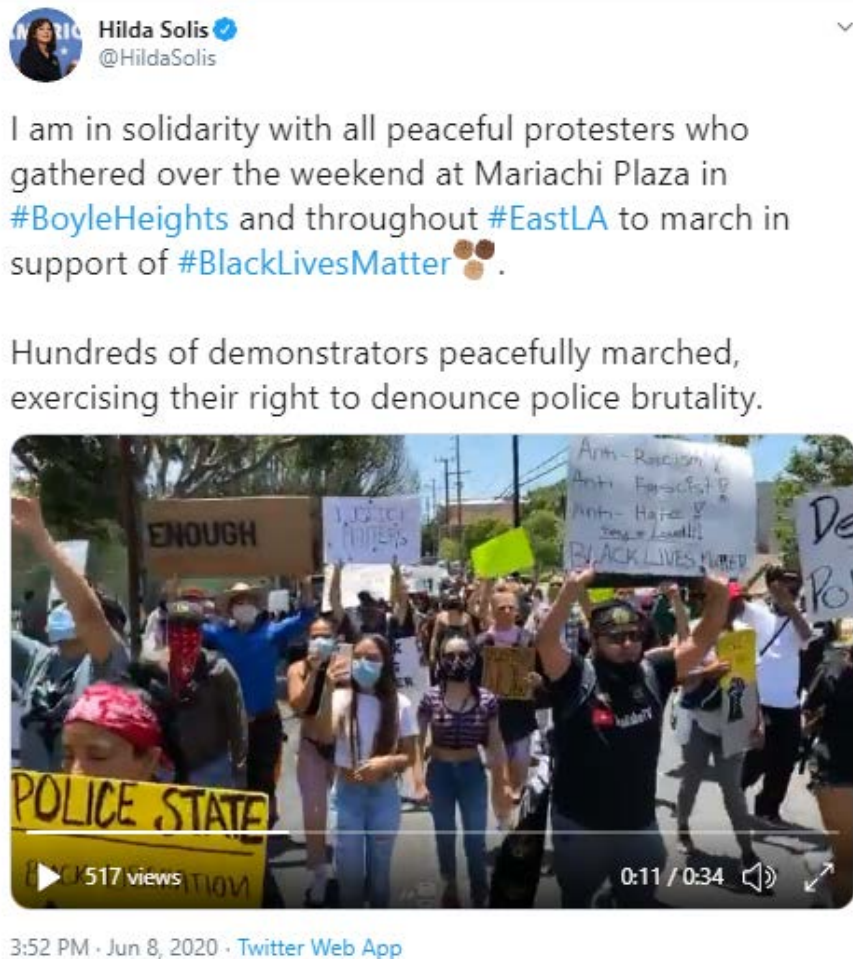
161. Los Angeles County Supervisor Hilda Solis also supported the protests, with no concern as to the SDP ordinary citizens must still obey. She openly encouraged people to take part in the protests to show unity during the pandemic: “This pandemic and economic crisis have upended our lives. I am certain we will get through this difficult moment together, which is why I urge all of you to give voice to George Floyd’s life, and the lives of all other black and brown people who were taken from us too soon due to police brutality.” (Ex. 4-17.)

162. Solis also encouraged the George Floyd protesters to exercise the First Amendment rights which the defendants have systematically denied to others: “My hope is that the right to protest is practiced, and protected, nonviolently and that everyone remains safe.” Solis made it clear that only physically taking to the streets, not remote live-streamed services such as the churches had been

⁵⁰ (See Daily Nation, *Los Angeles Mayor Drops to his Knee in a Symbolic Act of Solidarity in Honour Of Floyd*, YOUTUBE.COM (June 2, 2020), <https://youtu.be/6vZSe-3dIH4>.)

1 reduced to, is the way George Floyd is to be remembered: “We uplift George Floyd’s life by protesting
2 his death peacefully.” (*Id.*)

3 163. On June 8, 2020, Solis tweeted that she is “in solidarity with all peaceful protesters who
4 gathered over the weekend at Mariachi Plaza” and referenced “hundreds” of protesters, sharing a video
5 showing protesters:



22 164. Los Angeles Supervisor Sheila Kuehl likewise encouraged violation of the SDP,
23 posting on Facebook a video of the June 7, 2020 protests in Hollywood, which shows many thousands
24 of protesters packed together for miles on the street. Kuehl urged them to continue defying the SDP:
25 “Protest has been the bedrock of social justice movements throughout history, and we are witnessing
26
27

28 ⁵¹ (<https://twitter.com/HildaSolis/status/1270126565091753985>.)

1 a moral and cultural shift that will ultimately lead to a more just future. *Keep going.*”⁵²



Supervisor Sheila Kuehl

June 8 · 🌐

Protest has been the bedrock of social justice movements throughout history, and we are witnessing a moral and cultural shift that will ultimately lead to a more just future. Keep going.

Black Lives Matter.



instagram.com/yakooza -- June 7, Hollywood Blvd.

165. A media report of the protest estimated that as many as 100,000 people were in attendance. (Ex. 4-15.) But in her official capacity as a County Supervisor, Kuehl gave no warning to the protesters that they should adhere to the SDP. **Although older people at risk were being told to stay home from church, and families were shut out of the churches per the government’s guidelines, the supervisor encouraged people to participate in a protest where “parents brought their children and grandchildren brought their grandparents.”** (*Id.*)

166. Kuehl also authored a motion ludicrously demanding that the same protesters who had not been “socially distancing” during protests should be socially distanced when arrested for violent behavior and that the arresting officers should wear protective gear—so that the arrestees who had just ignored the SDP would not risk infection by the police. (Ex. 4-18.)

⁵² (Supervisor Sheila Kuehl, *Untitled Video* (June 8, 2020) FACEBOOK, <https://www.facebook.com/sjkuehl/videos/342233100077423>.)

1 167. When asked about the disparate treatment of family, religious, or social gatherings and
2 the often-violent protests in California, Newsom openly approved the double-standard:

3 People know what the right thing to do is. I encourage them to do the right thing. **And**
4 **people also understand that we have a Constitution, we have a right to free speech**
5 **and we are all dealing with a moment in our nation's history that is profound and**
6 **pronounced....** [B]ut I recognize the dichotomy and to the extent the dialectic between
those examples and all I can offer is this consideration: Do what you think is best not
only for you but for the health of the people you love. (Ex. 4-19.)

7 168. Immediately, health experts predicted a rise in new infections, now called “cases,” from
8 the protests. (See Ex. 4-20.) Defendant Los Angeles County Director of Public Health, defendant
9 Ferrer, admitted it was “highly likely” that the protests contributed to a rise in “cases” (Ex. 4-21)
10 because when “people are close together for longer periods of time and it’s very crowded, we are
11 certain that there is going to be spread. So, we’ve never said that there’s no spread from people who
12 were protesting.” Garcetti himself admitted this after conferring with Ferrer: “I talked again with Dr.
13 Ferrer about that this morning. She does think some of the spread did come from **our protests.**” (Ex.
14 4-22.)

15 169. Los Angeles County Supervisor Kathryn Barger also admitted that the massive protests
16 flouted the SDP. In an interview, she stated the following: “**A lot of the protesters were not wearing**
17 **a mask, and they definitely were not social distancing.** And I believe that that’s what we’re seeing
18 play out right now is as a result of that.” As she concluded: “**I definitely think there’s a direct**
19 **correlation between the protesters and the spike.**” (Ex. 4-23.)

20 170. Yet despite California’s and Los Angeles’s refusal to enforce the SDP against vast
21 crowds of closely packed demonstrators who were defying it, **the admitted “spike” in coronavirus**
22 **infection rates has *not* led to any spike in hospitalizations and deaths. Instead, the rates of actual**
23 **harm flowing from the pandemic have continued to spiral downwards to negligibility.**
24 Furthermore, County Supervisor Barger admitted, the sheer size of the crowds made contact tracing
25 “almost impossible.” (Ex. 4-23.)

26 171. The George Floyd and BLM protests involving thousands of people marching,
27 shouting, and chanting shoulder-to-shoulder, many without masks, are a massive epidemiological
28 demonstration, in the real world, that an arbitrary six-foot bubble zone around every Californian is no

1 longer necessary, if it ever was, to avoid deaths or hospitalizations due to COVID-19.

2 172. When the SDP was subjected to the demands of political correctness, it was instantly
3 abandoned as to favored protests, which continue to this day, while for the rest of California's
4 40,000,000 residents, even the smallest "gatherings" for officially disfavored purposes such as parties
5 remain subject to strict enforcement and criminal penalties for violations. The following account from
6 the press reveals the ridiculous extremes to which enforcement is taken against non-protesters who
7 simply want to live their lives:

8 LOS ALTOS, Calif. — A veteran prosecutor in Northern California has turned her
9 kitchen table into an improvised command post where she is enforcing Santa Clara
County's strict lockdown order.

10 Monitoring two computers and a cellphone, Angela Alvarado, the prosecutor, must
11 balance individual rights with infection control every time an email alert notifies her of
another complaint:

12 *A private airport is offering flying lessons. Is that OK?*

13 *People are playing tennis at a public court. Is this allowed?*

14 *A rabbit rescue shelter is hosting a nail-trimming event for bunnies. Is that really*
15 *essential? (Ex. 4-32.)*

16 173. There is no rational public health basis, but only a political one, for continuing to
17 enforce the six-foot bubble zone rule against groups of worshippers or anyone else in the State of
18 California.

19 174. The George Floyd protests have also revealed that COVID-19 public policy in
20 California is now completely divorced from preventing actual harm to Californians in the form of
21 hospitalizations and deaths, the only grounds for a true health emergency. As the new BSE bureaucracy
22 has shown, the "casedemic" is a politically flexible instrument for social control as opposed to control
23 of a pandemic in which people actually became sick.

24 **The Unscientific, Unhealthy, and Irrational "Mask Mandate"**

25 175. As for the "mask mandate," it was not until June 18, long after COVID-19 had ceased
26 to pose a serious threat to the general population, that Newsom upped the ante on the SDP by imposing
27 a universal "face covering" mandate—never actually a mask mandate—in the form of a "guidance"
28 document commanding California's entire population, including even two-year-old children, to wear

1 “cloth face coverings” whenever in public. (Ex. 1-27.) The document was updated on June 29, 2020,
2 to “clarify” that children under the age of 2 are exempt “due to risk of suffocation.” (*Id.*) Newsom’s
3 “health experts” apparently decided that the “risk of suffocation” disappears on a child’s second
4 birthday.

5 176. “Face covering” is defined as “material that covers the nose and mouth. It can be
6 secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a
7 variety of materials, such as cotton, silk, or linen. A face covering may be factory-made or sewn by
8 hand, or can be improvised from household items such as scarfs, T-shirts, sweatshirts, or towels.” (*Id.*)

9 177. Newsom’s medically useless “face covering” mandate emphatically forbids the general
10 population to purchase medical-grade masks as such:

11 **Don’t buy surgical masks for personal use.** They are part of PPE [personal protection
12 equipment] needed by medical professionals.

13 **Don’t buy N95 respirator masks for personal use.** They are part of PPE needed by
14 medical professionals. (Ex. 1-28, emphasis in original.)

15 178. Even if a given virus were a serious threat to California’s general population, there is
16 no validated scientific evidence that even medical-grade masks—which Newsom’s directive forbids
17 people to purchase—would prevent or limit the spread of COVID-19, much less makeshift “face
18 coverings.” Quite to the contrary, as recently as May 20, 2020, the CDC published a meta-review of
19 10 randomized controlled studies (“RCTs”)—the gold standard in epidemiology—showing “**no
20 significant reduction in influenza transmission with the use of face masks.**” (Ex. 4-24.)

21 179. Not a single RCT supports the government-mandated universal wearing of even
22 medical-grade masks by healthy people, much less “cloth face coverings,” as an effective means of
23 preventing the spread of COVID-19. Before COVID-19 became a political football and the face mask
24 a political symbol in the endless bickering between Democrats and Republicans, numerous studies
25 questioned even the effectiveness of medical-grade PPE in hospitals. For example:

26 “Face mask use in health care workers **has not been demonstrated to provide benefit
27 in terms of cold symptoms or getting colds.** A larger study is needed to definitively
28

1 establish noninferiority of no mask use.”⁵³

2 “While there is some experimental evidence that masks should be able to reduce
3 infectiousness under controlled conditions, there is less evidence on whether this
4 translates to effectiveness in natural settings. **There is little evidence to support the
effectiveness of face masks to reduce the risk of infection.**”⁵⁴ (Ex. 4-25.)

5 “We know that **wearing a mask outside health care facilities offers little, if any,
6 protection from infection....** The chance of catching Covid-19 from a passing
7 interaction in a public space **is therefore minimal.** In many cases, **the desire for
widespread masking is a reflexive reaction to anxiety** over the pandemic.”⁵⁵ (Ex. 4-
26.)

8 “**There is no reliable evidence of the effectiveness of non-medical facemasks in
9 community settings....** Assuming that 20% of people infectious with SARS-CoV-2 do
10 not have symptoms, and assuming a risk reduction of 40% for wearing facemask,
11 **200,000 people would need to wear facemasks to prevent one new infection per
week** in the current epidemiological situation.”⁵⁶ (Ex. 4-27.)

12 180. The last-mentioned study, by the Norwegian Institute of Public Health, reflects the
13 general official refusal in the Scandinavian countries to impose universal mask mandates because
14 **there is no hard evidence that this unprecedented measure would have any effect on the spread
15 of the virus**, as the low death rates in those largely “maskless” countries show. For example,
16 “Denmark’s health authority has discouraged mask wearing for healthy people going about their
17 normal lives, questioning its effectiveness and saying it ‘can cause more harm than good.’” (Ex. 4-28.)

18 181. For decades before April 3, 2020, when it too suddenly reversed its position, the CDC
19 recommended only that “**If you are sick** wear a cloth covering over your nose and mouth.”⁵⁷ Even
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22 ⁵³ (Joshua L. Jacobs, MD et al., *Use Of Surgical Face Masks to Reduce the Incidence of the Common
Cold Among Health Care Workers in Japan: A Randomized Controlled Trial*, (Feb. 13, 2009) AM. J.
23 OF INFECTION CONTROL, [https://www.ajicjournal.org/article/S0196-6553\(08\)00909-7/fulltext](https://www.ajicjournal.org/article/S0196-6553(08)00909-7/fulltext).)

24 ⁵⁴ (B. J. Cowling et al, *Face masks to prevent transmission of influenza virus: a systematic review*,
(Jan. 22, 2010) EPIDEMIOLOGICAL INFECTION, pp. 449–456, [http://hub.hku.hk/bitstream/10722/86552/
1/content.pdf](http://hub.hku.hk/bitstream/10722/86552/1/content.pdf).)

25 ⁵⁵ (Michael Klompas et al., *Universal Masking in Hospitals in the Covid-19 Era* (APR. 1, 2020) NEW
26 ENGLAND J. OF MED., <https://www.nejm.org/doi/full/10.1056/nejmp2006372>.)

27 ⁵⁶ (Camilla Stoltenberg, *Should individuals in the community without respiratory symptoms wear
facemasks to reduce the spread of COVID-19?* (Jun. 2020) NORWEGIAN INSTITUTE OF PUBLIC HEALTH,
<https://tinyurl.com/y2nys7tm>.)

28 ⁵⁷ (https://twitter.com/Surgeon_General/status/1234471968033951745.)

1 during the COVID-19 outbreak, the CDC warned that “medical grade facemasks are reserved for
2 healthcare workers and some first responders. You may need to make a cloth face covering using a
3 scarf or bandana.”

4 182. In late 2019, the World Health Organization (“WHO”) was still warning that: “If you
5 are healthy, you only need to wear a mask if you are taking care of a person with COVID-19. Wear a
6 mask if you are coughing or sneezing.” Like the CDC, however, the WHO suddenly reversed its
7 longstanding position in June 2020: “The organization had previously said **there wasn’t enough**
8 **medical evidence to support members of the public wearing a mask, unless they were sick or**
9 **around people with the coronavirus....**”⁵⁸

10 183. On February 29, 2020, Surgeon General Jerome M. Adams, went so far as to publish a
11 Tweet warning the public that **masks are not effective** in preventing viral transmission outside a
12 hospital setting:⁵⁹



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25 184. For all the reasons shown above, on July 31 the CDC advised public health authorities

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27 ⁵⁸ (Ralph Ellis, *WHO Changes Stance, Says Public Should Wear Masks*, (June 8, 2020) WEBMD
28 <https://tinyurl.com/ybxpdbc0>.)

⁵⁹ (See https://twitter.com/surgeon_general/status/1233725785283932160?lang=en; Exhibit J.)

1 that in attempting to “contact trace” for the spread of the virus, **it cannot be assumed that even**
2 **medical-grade personal protection equipment [PPE] offered any protection.** As the CDC
3 explained:

4 While research indicates masks **may** help those who are infected from spreading the
5 infection, there is less information regarding whether masks offer any protection for a
6 contact exposed to a symptomatic or asymptomatic patient. **Therefore, the**
7 **determination of close contact should be made irrespective of whether the person**
8 **with COVID-19 or the contact was wearing a mask.**

9 Because the general public has not received training on proper selection and use of
10 respiratory PPE, it cannot be certain whether respiratory PPE worn during contact with
11 an individual with COVID-19 infection protected them from exposure. Therefore, as a
12 conservative approach, **the determination of close contact should generally be made**
13 **irrespective of whether the contact was wearing respiratory PPE, which is**
14 **recommended for health care personnel and other trained users, or a mask**
15 **recommended for the general public.** (Ex. 4-29)

16 185. In other words, just two months ago, the CDC advised that **it is prudent to assume**
17 **that “face coverings” offer no protection whatsoever** from the spread of COVID-19, and that
18 contact with a mask-wearer is to be considered **just as risky** as contact with a maskless person. Yet
19 40,000,000 Californians are being fed the narrative that masks are so effective at “stopping the spread”
20 that every one of them must be forced to wear, not even medical-grade PPE, but entirely unproven
21 “face coverings,” many of them crudely improvised.

22 186. The same health experts who, having reversed themselves, now declare that universal
23 mask-wearing is essential also warned that **masks are health hazards in the hands of the general**
24 **population.** For example, during an interview on Fox News on March 2, Surgeon General Adams
25 warned: “**You can increase your risk of getting it by wearing a mask if you are not a health care**
26 **provider.** Folks who don’t know how to wear them properly tend to touch their faces a lot and **actually**
27 **can increase the spread of coronavirus.”**⁶⁰

28 187. A standard protocol for in-hospital mask usage by health care workers provides that
“healthcare workers do not have to wear a mask for an entire shift **unless they have direct patient**”

⁶⁰ (Connor Perrett, *The US Surgeon General once warned against wearing face masks for the coronavirus but the CDC now recommends it* (March 2, 2020) BUSINESS INSIDER, <https://tinyurl.com/ybxgxe6h>.)

1 **contact** the entire shift. Infectious **disease experts recommend using a new mask at least every four**
2 **hours** or sooner if the mask becomes too moist or soiled” and, when disposing of the mask “**perform**
3 **hand hygiene before touching any items.**” (Ex. 4-35).

4 188. The San Francisco Department of Public Health provides detailed guidance on mask
5 usage that reveals the grave hazards involved, including the following:

- 6 • Disposable face masks **should be used once and then thrown in the trash.** You
7 should also remove and replace masks when they become moist....
- 8 • Clean your hands with soap and water or hand sanitizer before touching the mask.
9 **Avoid touching the front of the mask. The front of the mask is contaminated...**
- Throw the mask in the trash. Clean your hands with soap and water or hand
sanitizer. (Ex. 4-36)

10 189. Likewise, even the CDC’s current opinion on “face coverings” warns that keeping
11 pieces of cloth fastened to one’s face for hours poses a danger to health: “**Don’t touch the face**
12 **covering,** and, if you do, wash your hands or use hand sanitizer to disinfect.” (Ex. 4-30)

13 190. The aforementioned CDC-published meta-review of studies (Ex. 4-24) advises that “in
14 lower-income settings, it is more likely that reusable cloth masks will be used rather than disposable
15 medical masks because of cost and availability” and that “[p]roper use of face masks is essential
16 **because improper use might increase the risk for transmission.**”

17 191. California’s own Department of Public Health warns: “If you must re-wear your cloth
18 face covering before washing, **wash your hands immediately after putting it back on** and avoid
19 touching your face.” In other words, “**cloth face coverings**” are a danger to health if touched. (Ex.
20 1-29)

21 192. Dr. Anthony Fauci, a putatively reliable expert in the field of epidemiology and a
22 primary member of the White House Coronavirus Task Force, said during an interview with *Sixty*
23 *Minutes* on March 8, 2020, that not only are masks unnecessary for the general population, but
24 universal mask-wearing has “unintended consequences. People keep fiddling with the mask and they
25 keep touching their face.”⁶¹

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27 ⁶¹ (Ian Schwartz, *FLASHBACK MARCH 2020: Fauci Says “There’s No Reason To Be Walking Around*
28 *With A Mask*” (May 12, 2020) REAL CLEAR POLITICS, <https://www.realclearpolitics.com/video/2020/>

1 193. In sum, **“face coverings” and even medical-grade masks pose a health hazard for**
2 **the untrained general population, especially children.** The general public will of course fail to
3 follow the above-noted protocols, will reuse and constantly touch their “face coverings,” and will
4 thereby create a danger to their health by wearing a makeshift medical device that does nothing to
5 prevent the spread of COVID-19 **and may actually facilitate its spread, as the Surgeon General**
6 **warned, because the mask itself is a source of contamination.**

7 194. Thus, Newsom’s order that 40,000,000 untrained people don homemade cloth masks,
8 bandanas, or some other makeshift “face covering” whenever in public is utterly irrational and is likely
9 causing more harm than good. Yet Newsom demands that even two-year-old children be forced to
10 wear potentially hazardous pieces of cloth over their faces for hours at a time.

11 195. Yet, as noted above, while Dr. Fauci now insists that everyone must wear masks and
12 socially distance, and that there should be no handshaking or stadium events, he allows that people are
13 free to assume the risks of maskless sexual encounters with strangers arranged via Tinder. Moreover,
14 he and his companions dispensed with both masks and their six-foot personal bubble zones while
15 attending a Washington Nationals game in a stadium declared off-limits to the public—based in part
16 on Fauci’s own advice:



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28 05/12/flashback_march_2020_fauci_says_theres_no_reason_to_be_walking_around_with_a_mask.h
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The Irrational Presumption Behind the SDP

196. The pandemic having been replaced by a “casedemic” involving people the vast majority of whom who are not sick, not hospitalized, and not dying, Newsom’s continuing chokehold on the lives of the 40,000,000 Californians via the SDP is based on the irrational presumption that each of those 40,000,000 is an asymptomatic carrier of COVID-19 who can spread the virus to others merely by breathing, talking or even being physically present within the arbitrary distance of six feet.

197. On January 28, 2020, after the COVID-19 outbreak in China had become world news, no less than Dr. Anthony Fauci made the following unequivocal statement during a U.S. Department of Health and Human Services briefing regarding the alleged asymptomatic transmission of viruses:

The one thing historically people need to realize [is] that even if there is some asymptomatic transmission, **in all the history of respiratory-borne viruses of any type, asymptomatic transmission has never been the driver of outbreaks. The driver of outbreaks is always a symptomatic person.** Even if there is a rare asymptomatic person that might transmit, **an epidemic is not driven by asymptomatic carriers.**⁶²

198. Likewise, as Dr. Maria Van Kerkhove, the WHO’s “technical lead” on the COVID-19 pandemic, admitted in June of 2020: “We have a number of reports from countries who are doing very detailed contact tracing. They’re following asymptomatic cases, they’re following contacts and **they’re not finding secondary transmission onward. It’s very rare** and much of that is not published in the literature.”⁶³

199. Thus, Newsom’s universal virtual quarantine defies the common experience of mankind and the perennial practice of medicine and appears to be little more than a medical superstition, supported only by the sudden appearance of “recent studies” that purport to justify COVID-19 lockdowns.

200. But even if viral spread in the community by asymptomatic people were producing a certain number of new “cases” of COVID-19, which is far from certain, Newsom and his co-defendants **have done nothing to prevent these “cases” when it comes to gatherings of up to 100,000 people whose causes they favor.** Thus, it is wholly irrational to demand that other, vastly smaller, groups of

⁶² (Video at <https://youtu.be/w6koHkBCoNQ?t=2642>.)

⁶³ (Available @ <https://tinyurl.com/yanrhcof> (visited Sept. 10, 2020).)

1 people be compelled to observe the SDP—“face coverings” and personal bubble zones for all—under
2 threat of criminal prosecution.

3 201. Even if Newsom’s irrational presumption were reasonable, it negates itself, for if
4 millions of asymptomatic carriers could spread the virus to others, yet deaths and hospitalizations are
5 no longer statistically significant in a population of 40,000,000, then “herd immunity” must have
6 arisen, or the virus must have lost its virulence, or it was never as virulent as health officials claimed.

7 202. It is also irrational for Newsom to continue to mandate that millions of people spend
8 hours each day, even in the open air, behind the very “face coverings” they must avoid touching
9 **because they are contaminated**—and, to boot, are so ineffective at preventing viral transmission that
10 the CDC considers their use irrelevant to “contact tracing,” however pointless that exercise is.

11 203. Finally, it is irrational for Newsom to continue demanding that even small children from
12 the age of two be forced to wear potentially dangerous face coverings they will be unable to refrain
13 from touching or removing at risk to their health.

14 **The SDP Must Be Ended**

15 204. The SDP was an unwarranted deprivation of constitutional rights from its inception—
16 a remedy that burdens freedom of worship and its cognate rights (speech, assembly, and expressive
17 association), as more particularly pleaded below, without the required narrow tailoring that precludes
18 its imposition on 40,000,000 people, the healthy vast majority along with the tiny minority of the sick.

19 205. But even assuming, *arguendo*, that the SDP had some role in “flattening the curve”—
20 the original claim for its imposition—its continuation as a way of life for Californians merely because
21 a tiny percentage of an overwhelmingly asymptomatic population of 40,000,000 people tests positive
22 for the virus, as detected by hypersensitive testing, offends reason and common sense and cannot be
23 justified by any “scientific study.”

24 206. At some point, surely indicated by the California Constitution, people must be allowed
25 to assume once again the risk of living normal lives, unimpeded by floating bubble zones and pieces
26 of cloth hiding their faces merely because of the remote possibility that they will be among the **1/100th**
27 **of 1%** of California’s population that reportedly died from COVID-19.

28 207. On that score, a study by two California physicians, one affiliated with Stanford

University and the other a professor at UCLA, concludes that “for a 50 to 64 year old individual, the median estimate of the county-level probability of a hospitalization is 1 in 709,000 person-contacts (Range: 177,000–10,200,000) and the median estimate of the county-level probability of a fatality is 1 in 6,670,000 person-contacts (Range 1,680,000–97,600.000).” (Ex. 4-33.)

208. Yet, nearly seven months into an “emergency” that now exists only on a spreadsheet of unreliable PCR test results, Newsom is still commanding 40,000,000 Californians to cover their faces with a cloth *and* to remain six feet away from each other whenever in public.

209. No matter how effective the SDP is claimed to have been, after more than six months of this virtual dictatorship in California a tipping point has surely been reached, and the balance must now tip in favor of a full restoration of constitutional rights. It is time for an end to Newsom’s patently irrational public policy, whose massive disruption of society has gone on long enough, and whose radical interference in divine worship is shown by the following facts.

VII. THE SPECIFIC IMPACT OF THE CHALLENGED RESTRICTIONS ON FATHER BURFITT’S CONSTITUTIONAL RIGHTS

210. For all the reasons set forth above, the Stay-at-Home Order, the Roadmap, the CML, the BSE, and the SDP, individually and taken together, unconstitutionally suppress and even criminally punish protected social, political, economic, and religious activity, while Newsom and his co-defendants openly declare that they can and will impose additional restrictions whenever they see fit.

211. **This has all been done without notice, an opportunity to be heard, judicial review, or any end date to defendants’ rule by executive or administrative fiat**, which has long since ceased to have any rational relationship to a health emergency of any kind which can be shown to involve serious illness or death among the general population.

212. This executive and bureaucratic dictatorship run amok has infringed Father Burfitt’s fundamental rights to freedom of worship, assembly, speech, and expressive association in the following specific aspects.

213. Father Burfitt is the Prior of four mission churches in the State of California:

- Kern County: Saint Michael’s Church, in Bakersfield;
- San Bernardino County: Saint Joseph and the Immaculate Heart of Mary Church, in Colton;

- San Diego County: Saint John Bosco Mission, located in the City of San Diego.
- Los Angeles County: Mission Maria Mare Stella, in the San Pedro neighborhood of Los Angeles;

214. Father Burfitt is also pastor of Our Lady of the Angels Church in the City of Arcadia, Los Angeles County. Our Lady of the Angels has a registered membership of close to 500, of which 450 are able to attend Mass. The capacity of the Church is 500 persons in the nave with additional seating in the choir loft. The parish supports four priests, three of whom are engaged in mission work, and one sister.

215. All told, Father Burfitt and the two other mission priests he supervises, care for 1,000 souls in Southern California. Their capacity to administer to so many souls was already stretched thin before Newsom's lockdown of the State.

216. Newsom's arbitrary gathering restrictions on indoor worship over the past six months have had a devastating impact on Father Burfitt's personal ministry and the oversight of his mission churches. As shown above, these restrictions are as follows:

- an initial total ban on indoor worship as a "non-essential gathering" from March 19, the date of the original Stay-at-Home Order until May 25;
- from May 25 to July 13, a limitation of indoor capacity to 25% or 100 people, whichever is less;
- on July 6, a ban on "chanting and singing" indoors, still in effect;
- on July 13, based solely on the arbitrary "casedemic" criteria that have replaced hospitalizations and deaths as the pretext for lockdowns, a new return to the original total ban on indoor worship in some 38 counties—first under the former CML and now the BSE, which is still in effect.

217. As shown above, under the BSE the total ban on indoor worship continues in Kern, San Bernardino, and Los Angeles counties, which have been placed in the "Widespread" risk tier based on nothing more than unreliable and/or overly sensitive PCR test results that are not detecting a true threat to public health.

218. In a radical deprivation of freedom of worship, assembly, speech, and expressive association, Father Burfitt, his congregations, and the priests he oversees as Prior, have thus been totally deprived of the use of Saint Michael's Church in Bakersfield, Saint Joseph and the Immaculate

1 Heart of Mary Church in Colton, Our Lady of the Angels Church in Arcadia, and Mission Maria Mare
2 Stella in San Pedro.

3 219. The Catholic Mass is ordered to the temple, not the outdoors. A Catholic church is
4 focused entirely upon the Holy Sanctuary where Christ in the Blessed Sacrament resides in the
5 Tabernacle. Neither the Tabernacle nor the Catholic Mass belongs in a parking lot or other outdoor
6 location, which lend themselves to the desacralization of the sacred mysteries and profanation of the
7 Blessed Sacrament. Yet Newsom has forced Father Burfitt and his congregations outdoors while
8 innumerable “essential” business activities are conducted indoors under Newsom’s ever-more-
9 elaborate web of permissions and prohibitions. To be forced by a mere politician to offer the sacred
10 mystery of the Holy Sacrifice of the Mass outside of God’s temple is in itself to undergo religious
11 persecution by the State.

12 220. Nor is there any possibility of worshipping “remotely” by “streaming or other
13 technologies that support physical distancing and state public health guidelines,” as provided in the
14 original “essential workforces” decree by the SPHO, noted above. It is a foundational Catholic tenet
15 that one cannot receive Sacraments without being physically present for their administration, as the
16 Sacraments themselves consist of both matter and form. Sacraments cannot confer their benefits by
17 video link. “Virtual worship” deprives Catholics of the incalculable benefits of divine grace as
18 conferred through the Church’s bimillennial Sacramental forms, instituted by Christ Himself.

19 221. In Arcadia, during Newsom’s total ban (via the SPHO) on “gatherings” from the March
20 19th Stay-at-Home Order until May 25, Father Burfitt and his congregation were totally deprived of
21 the use of their church, which has been operating for more than 30 years. Father Burfitt was reduced
22 to Communion services and Confession for one person or family at a time on a drive-in basis.

23 222. At 100% building capacity, Father Burfitt’s Our Lady of the Angels Church could
24 accommodate the normal attendance at High Mass on Sunday (around 220 congregants) and Sunday
25 Low Mass (around 200 congregants), even allowing for Newsom’s arbitrary six-foot personal bubble
26 zone rule, with every other pew taped off as shown in the following photo:
27
28



223. On or about April 19, however, the congregation in Arcadia moved outside for regular Masses, even though this was still technically forbidden under the March 19th Stay-at-Home Order. After being forced outdoors in Arcadia, Father Burfitt and his congregation were subjected to official harassment for failure to observe the six-foot-bubble zone rule or wear “face coverings” while in the open air and under the hot sun.

224. On or about May 18, 2020, Father Burfitt received an “Inspection Report” containing the following warning from the LA County Department of Public Health regarding his “non-essential business operation,” dictating how he and his congregation must worship:

A complaint allegation was received by Los Angeles County, Department Public Health (DPH) for non-compliance with Health Officer Order (HOO) on social distancing and face covering. **As a non-essential business operation**, your facility is required under Los Angeles County Health Officer Order (HOO) dated April 10, 2020, to discontinue all in-person gatherings with the exception of limited attendance weddings and funerals, as described in the Weddings and Funerals Guide.... All large gathering [sic] are prohibited until further notice. *Worship services, including those that occur on religious holidays or other special occasions, must be live-streamed, recorded, or taped.* (Ex. 5-1)

225. On at least two Sundays in May, Arcadia police came to Our Lady of the Angels Church in response to “complaints” about the outdoor Masses, apparently from one or more neighbors. On the

1 first occasion, on or about May 17, the responding police officer advised that he had received
2 “complaints” about the outdoor Masses and handed Father Burfitt a copy of the “Safer at Home Order”
3 for the County of Los Angeles, which warns that the Health Officer “requests that the Sheriff and all
4 chiefs of police in all cities located in Los Angeles County ensure compliance with and enforcement
5 of this Order.” (Ex. 5-2) The officer on the scene said the police would return the following Sunday,
6 as further complaints were expected, but would not commit to answering Father Burfitt’s question
7 whether the Order would be enforced or the congregation ordered to disband, even if worshipping
8 outdoors.

9 226. After this encounter, Father Burfitt located online Los Angeles County’s then
10 applicable “Guidance for Faith-Based Organizations” which declared:

11 Worship service [sic] must be live-streamed, recorded or taped. Absolutely NO in-
12 person gatherings permitted—either indoors or outdoors as per Newsom’s Stay-at-
13 Home Order.... All religious practices such as the sharing of sacramental cups and
14 wafers, or practices such as the use of anointing oils, must be suspended. Baptisms,
infant dedications, bar and bat mitzvahs, and confirmations must be postponed. (Ex. 5-3.)

15 227. On or about May 24, a squad car did arrive, and the officer surveilled the entire Mass.
16 The officer stated that he would have to file an “incident report,” as if the Mass were some sort of
17 criminal activity. Father Burfitt and his lay assistant were named in this report. Nevertheless, Father
18 Burfitt’s assistant advised the officer that the Masses outdoors would continue.

19 228. Under Newsom’s 25% indoor capacity limitation in effect from May 25 to July 13,
20 Father Burfitt was forced to offer four Masses instead of the usual two in Arcadia. Numerous
21 congregants were deprived of their usual Mass time and had to be assigned to Mass based on the
22 alphabetical order of their surnames. This arrangement implicated the Catholic priestly norm of
23 “bination,” which forbids a priest, except in emergencies, to celebrate more than two Masses per day.
24 Father Burfitt was thus required to enlist the aid of a retired priest for two of the four Masses. This
25 priest has had heart surgery, suffers from congestive heart failure and edema, and is struggling
26 physically under the extra duties.

27 229. At Mission Maria Mare Stella, located in the San Pedro neighborhood of Los Angeles,
28 the ban on indoor worship from March 19 to May 25 drove the entire congregation outdoors, where

1 Mass was offered on the landing of the church steps or the lawn, with people in cars or “socially
2 distanced” on the lawn to avoid “complaints” and run-ins with local police.

3 230. In San Pedro, under the 25% indoor capacity limitation in effect from May 25 to July
4 13, Sunday Masses for the congregation had to be multiplied, as in Arcadia, so that the congregation
5 of 100 could be accommodated, with a consequent additional heavy burden on Father Burfitt and his
6 fellow priest at that location.

7 231. At Saint Michael’s Church in Bakersfield, Masses were totally suspended from March
8 19 until May 25, when Newsom “granted” his 25% capacity limitation. Because of that limitation, the
9 congregation of approximately 80 worshippers could not be accommodated at the usual once-a-month
10 High Mass there, or the Low Mass on every third week. This situation required yet another
11 multiplication of Masses, putting further strain on the mission as one of the three mission priests now
12 had to handle four Masses and Confessions on those days instead of the usual two Masses, one in
13 Bakersfield and the other in San Pedro. This required both an emergency departure from the norm of
14 bination and a two-hour drive between San Pedro and Bakersfield, with another hour-and-a-half drive
15 back to the Priory at Our Lady of the Angels in Arcadia.

16 232. When Newsom rescinded his May 25 permission and reinstated the total ban on indoor
17 worship on July 13, Masses in Bakersfield were forced outdoors, but this proved impractical in
18 Bakersfield given the lack of outdoor space and temperatures in the range of 100 degrees. The mission
19 there has thus been reduced to Confessions in the office, one person at a time, and Communion services
20 under a tent for one person or family at a time, but no Masses. The mission church in Bakersfield has
21 essentially been rendered defunct.

22 233. At Saint Joseph and the Immaculate Heart of Mary Church in Colton, the congregation
23 of approximately 230 has been forced to worship outdoors since May 10. Before then, when all
24 gatherings, even outdoors, were forbidden by the Stay-at-Home Order, the mission was reduced to
25 Confessions and Communion services on a “drive-in” basis, with people being called inside for the
26 Sacraments one person or family at a time.

27 234. Even this limited outdoor religious activity in Colton prompted aggressive police
28 intervention. On or about April 8, a Colton police officer arrived and warned that this was illegal

activity, that the congregation must desist and leave, and that if it happened again there would be heavy fines and possible imprisonment.

235. After this incident, Confessions and Communion services were moved outside to the parking lot with people remaining in their cars, getting out only for Communion and Confession. Because only a limited number of people could be accommodated at one time in this manner, the process lasted for **three hours** on a Sunday and had to be handled by Father Burfitt personally **in addition** to his three hours of Communion services in Arcadia at that time.

236. Between May 25 and July 13, when Newsom “allowed” 25% indoor capacity for churches, Father Burfitt was forced to provide three Masses at Colton due to the limited capacity allowed. As his mission staff of priests was already taxed beyond its limits, other priests had to be flown in from other states.

237. On July 13, Newsom abruptly and arbitrarily reimposed his indoor worship ban, which would force the congregation in Colton to worship outside again in temperatures as high as 113 degrees at great danger to their health.

238. In San Diego, the congregation of Saint John Bosco Mission was dispersed when, due to Newsom’s ban on “non-essential” religious gatherings under the Stay-at-Home Order, Father Burfitt lost the lease of a mortuary chapel for his congregants, which he had overseen as Prior, thereby suffering a further deprivation of freedom of worship, assembly, speech, and expressive association.

239. Through the end of April in San Diego, Masses were not possible but only outdoor Communion services for a few people, with Confessions heard outdoors while Father Burfitt sat in a cemetery or a parishioner’s backyard. This was followed by outdoor Masses for only 10 people by appointment, two or three times a week. In essence, having no church, Saint John Bosco Mission was likewise rendered defunct until mid-May.

240. In mid-May, having no other alternative under Newsom’s regime, the San Diego mission began outdoor Masses, under a tent, in space rented from a local hotel. But the congregation, having lost its mortuary chapel during the original ban on “gatherings” in March, still remains deprived of a church.

241. Aside from the impact on regular Masses in all of the aforesaid locations, forcing

1 funeral Masses and wedding Masses outdoors violates Catholic norms for these ceremonies, which are
2 inherently ordered to the temple, not a parking lot. And even a limitation to 25% of room capacity,
3 were Newsom to “grant” this dispensation again, is an arbitrary restriction on the right to mourn the
4 loss of a loved one or to celebrate the joy of Holy Matrimony, **which restriction is not imposed on**
5 **secular gatherings of unlimited or far larger size allowed indoors for “essential businesses” such**
6 **as Costco or Walmart.**

7 242. All in all, Newsom’s yo-yo like “permission” to exercise the constitutional right to
8 worship at the Altar of God in the House of God has wreaked havoc on Father Burfitt’s ministry and
9 mission in the State of California.

10 243. Another burden on Father Burfitt’s priestly mission is Newsom’s arbitrary six-foot
11 personal bubble zone rule, applicable throughout the State. Father Burfitt and the priests he oversees
12 cannot administer Holy Communion, baptize infants, anoint sick persons, place ashes on foreheads on
13 Ash Wednesday, administer personal blessings to individuals (which involves a laying on of hands),
14 or preside over wedding vows from a distance of six feet.

15 244. This ridiculous requirement simply cannot be observed without abandoning Catholic
16 worship as such, reducing it to mere preaching from a distance. It also abridges freedom of assembly
17 and association by purporting to dictate how closely Father Burfitt can approach his own parishioners,
18 and how closely the parishioners can approach each other, with the priests and congregants literally
19 being forbidden to congregate in the normal human manner.

20 245. The six-foot personal bubble zone also further arbitrarily limits the capacity of worship
21 spaces, even if Newsom deigns to restore their use to some extent.

22 246. Newsom’s “face covering” mandate is yet another undue burden on Father Burfitt’s
23 sincerely held religious beliefs and practices as a pastor of souls. He and his assistant priests cannot
24 celebrate Mass or preach a sermon while their faces are covered. Nor, as God’s ministers, can they
25 hide their faces behind masks when administering the Most Blessed Sacrament to kneeling
26 congregants.

27 247. Nor can Father Burfitt and the priests for whom he is Prior compel congregants to wear
28 “face coverings” during Mass. “Face coverings” interfere with Holy Communion, the recitation aloud

1 of appropriate parts of the Mass by the priest, the responses by the altar servers and the congregants,
2 the singing of hymns and the intonation of Gregorian Chant, as well as being a serious distraction from
3 reverent prayer for both priests and congregants, especially small children. The “face covering”
4 mandate also reduces what should be the experience of the sacred in a sacred place to the sense that
5 one has walked into an antiseptic ICU.

6 248. It is also unthinkable that the exchange of wedding vows, baptisms, and funerals be
7 conducted behind “face coverings” that would make a mockery of the sacred proceedings. Never in
8 the entire 2,000-year history of the Catholic Church, not even during the Roman persecutions, have
9 Catholics been subjected to such preposterous secular intrusions on their Masses, prayers, and
10 Sacraments.

11 249. Finally, Newsom’s absurd July 6, 2020, ban on “chanting and singing” indoors severely
12 burdens Father Burfitt’s religion by precluding the Gregorian Chant or polyphony that is inherent to
13 the Catholic liturgy at a High Mass or a Low Mass with hymns or organ accompaniment.

14 250. In sum, Newsom’s regime of tyrannical COVID-19 control measures, enforced by
15 counties and municipalities as pleaded above, has interfered radically in virtually every aspect of
16 Catholic worship in Father Burfitt’s parish and mission churches.

17 **The Threat of a Permanent Medical Dictatorship**

18 251. By his own admission, Newsom’s originally professed goal for the lockdown—
19 “bending the curve”—was achieved back in April: “Californians ... over the course of the last number
20 of weeks have not only bent the curve in the state of California but stabilized it.”⁶⁴ Since then, the
21 curve has disappeared.

22 252. Newsom has since laid down a list of additional vague goals prerequisite to the State’s
23 “reopening,” whose achievement has been deferred to a hazy future with an express reservation of
24 Newsom’s unchecked power to reimpose the entire lockdown whenever and wherever he pleases, as
25 has been seen with the BSE.

26 253. An “update” to the superseded Roadmap, which now appears to be reduced to a single
27

28 ⁶⁴ (See Press Conference transcript <https://tinyurl.com/yy9ue3bc>.)

Web page (Ex. 1-30), announces six impossibly high hurdles that must be cleared before a “reopening” that will never really be a reopening:

- Ability to test, contact trace, isolate, and support the exposed
- Ability to protect those at high risk for COVID-19
- Surge capacity for hospital and health systems
- Therapeutic development to meet the demand
- Ability of businesses, schools, and childcare facilities to support physical distancing
- Determination of when to reinstitute measures like Stay-At-Home (*Id.*)

254. With an illusory, spreadsheet-based “casedemic” having replaced the pandemic, Newsom’s rationale for continuing the original “state of emergency” amounts to the erection of a permanent medical dictatorship on standby, always ready to “reinstitute measures like Stay-At-Home.”

255. Enough is enough. It is time to end California’s experiment in an absolute monarchy. The California Constitution, mirroring the United States Constitution, specifically protects freedom of speech, freedom of association and assembly, and free exercise of religion so that citizens could have their spiritual needs met through worshipping God together.

256. Based on all the facts pleaded above, this Complaint presents facial and as-applied challenges under California’s constitution to all of the aforementioned executive orders and guidance issued or enforced by Newsom, Attorney General Becerra, Acting Public Health Director Shewry, and Acting Public Health Officer Pan (the “State defendants”).

257. Also presented are facial and as-applied challenges to the orders issued or enforced by:

- the County of Los Angeles (Public Health Director Ferrer, Public Health Officer Davis, Sheriff Villanueva, collectively “the County of Los Angeles”);
- the City of Los Angeles (Mayor Garcetti, Police Chief Moore, collectively “the City of Los Angeles”);
- the City of Arcadia and Police Chief Robert T. Guthrie (collectively, “the City of Arcadia”);
- San Diego County (Public Health Officer Wilma J. Wooten, Sheriff William D. Gore, collectively “the County of San Diego”);
- the City of San Diego and Police Chief David Nisleit (collectively “the City of San Diego”);
- San Bernardino County (Health Department Director Corwin Porter, Sheriff John McMahon, collectively “San Bernardino County”);
- the City of Colton and Police Chief Mike Hadden (collectively, “the City of Colton”);

- Kern County (Director of Public Health Services Matthew Constantine, Sheriff Donny Youngblood, collectively “Kern County”);
- the City of Bakersfield and Police Chief Greg Terry (collectively “the City of Bakersfield”).

FIRST CLAIM FOR RELIEF

Free Exercise and Enjoyment of Religion without Discrimination or Preference: Article I, Section 4, of the California Constitution (Against all Defendants)

258. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs as though fully set forth herein.

259. In California “[f]ree exercise and enjoyment of religion without discrimination or preference are guaranteed.” (Cal. Const., art. I, § 4.)

260. “In general, the religion clauses of the California Constitution are read more broadly than their counterparts in the federal Constitution.” (*Carpenter v. City and County of San Francisco* (9th Cir. 1996) 93 F.3d 627, 629.) Prior to the U.S. Supreme Court decision in *Employment Division v. Smith* (1990) 494 U.S. 872, California courts treated the California Free Exercise clause as coterminous with the Federal Free Exercise clause, i.e., strict scrutiny or “the test set out in *Sherbert v. Verner*, *supra*, 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965, and *Wisconsin v. Yoder*, *supra*, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15, and now codified in RFRA.” (*Smith v. Fair Employment & Housing Com.* (1996) 12 Cal.4th 1143, 1177.) Following *Employment Division v. Smith*, the California Supreme Court has revisited the California Free Exercise clause three times, and in each instance has applied strict scrutiny while also refusing to expressly hold that strict scrutiny must be applied. (See, e.g., *North Coast Women’s Care Medical Group, Inc. v. Superior Court* (2008) 44 Cal.4th 1145, 1158.) As a result, all lower courts are equally required to apply strict scrutiny. (See, e.g., *Valov v. Department of Motor Vehicles* (2005) 132 Cal.App.4th 1113, 1126 & fn. 7; *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1145.)

261. To satisfy strict scrutiny, if governmental action burdens religious rights, the “government action must advance interests of the highest order and must be narrowly tailored in pursuit of those interests.” (*Espinoza v. Montana Dep’t of Revenue* (2020) 140 S.Ct. 2246, 2260.)

262. Defendants’ restrictions—the outright ban or capacity limitation on indoor worship, the

1 “social distancing protocol” enforcing distances between congregants and compelling them to wear
2 “face coverings” and the ban on “singing or chanting”—prevent Plaintiff and the souls he shepherds
3 from engaging in religious worship according to the norms and doctrines of the Catholic religion.
4 Engaging in worship is the most fundamental right protected by the Free Exercise of Religion. Thus,
5 prohibiting Plaintiff from worshipping and shepherding his congregations in the manner required by
6 his religion and priestly mission burdens his religious rights.

7 263. Defendants’ restrictions no longer further an “interest of the highest order,” if they ever
8 did. The cure has become more deadly than the disease. The “COVID-19 suicide pandemic” is greater
9 than the illusory COVID-19 “casedemic” that substitutes a spreadsheet of test results for actual harm
10 in the form of deaths or hospitalizations.

11 264. Under Defendants’ restrictions, public gatherings and worship services are prohibited
12 or severely limited in terms of capacity, even in the “Minimal” risk tier of the BSE, which also
13 continues to impose the religious interference of the six-foot bubble zone, “face coverings” and the
14 ban on “singing or chanting.”

15 265. Defendants’ restrictions are not “narrowly tailored” to further any compelling
16 governmental interest. Defendants have granted numerous special exemptions to their bans on public
17 gatherings and conduct, including for purportedly “essential” businesses and activities, including,
18 cannabis dispensaries, abortion and other medical providers, daycare and childcare, and shopping.
19 Defendants have also provided a *de facto* exemption for protests against the death of George Floyd,
20 without extending the same solicitude to Father Burfitt’s religious gatherings.

21 266. As both large-scale indoor gatherings for business and mass protest gatherings outdoors
22 are permitted, indoor gatherings for religious purposes must also be permitted.

23 267. No further limitations on religious exercise are justifiable, including the six-foot
24 personal bubble zone, the “face covering” mandate, and the ban on “singing or chanting,” especially
25 (but not only) because there is no longer a bona fide “health emergency” in the State of California.

26 268. Requiring Plaintiff to engage only in state-approved religious worship dictated by the
27 challenged restrictions violates Plaintiff’s free exercise rights under the California Constitution. This
28 burdening cannot satisfy strict scrutiny because California permits other industries and activities to

1 proceed unhindered as compared with churches.

2 269. Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm to
3 his constitutionally protected rights unless Defendants are enjoined from implementing and enforcing
4 the indoor worship ban or capacity limitations.

5 270. Plaintiff has found it necessary to engage the services of private counsel to vindicate
6 his rights under the law. Plaintiff is therefore entitled to an award of attorney fees and costs pursuant
7 to Code of Civil Procedure Section 1021.5.

8 **SECOND CLAIM FOR RELIEF**
9 **Right to Liberty and Substantive Due Process:**
10 **Article I, §§ 1 and 7, of the California Constitution**
11 **(Against all Defendants)**

12 271. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs
13 as though fully set forth herein.

14 272. In California, “[a]ll people are by nature free and independent and have inalienable
15 rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting
16 property, and pursuing and obtaining safety, happiness, and privacy.” (Cal. Const., art. I, § 1.) “A
17 person may not be deprived of life, liberty, or property without due process of law” (Cal. Const., art.
18 I, § 7.)

19 273. Federal courts in California have found that Public Health Officials could not
20 quarantine 12 blocks of San Francisco’s Chinatown because of only nine deaths due to the bubonic
21 plague. (See *Jew Ho v. Williamson* (C.C. Cal. 1900) 103 F. 10; *Wong Wai v. Williamson* (C.C. Cal.
22 1900) 103 F. 1.)

23 274. In *Jew Ho* and *Wong Wai*, the courts found that there were more than 15,000 people
24 living in the twelve blocks of San Francisco’s Chinatown who were to be quarantined. The courts
25 found it unreasonable to shut down the ability of over 15,000 people to make a living because of nine
26 deaths. This was one death for every 1,666 inhabitants of Chinatown.

27 275. In *Jew Ho*, the court stated that it was “purely arbitrary, unreasonable, unwarranted,
28 wrongful, and oppressive interference with the personal liberty of complainant” who had “never had
or contracted said bubonic plague; that he has never been at any time exposed to the danger of

1 contracting it, and has never been in any locality where said bubonic plague, or any germs of bacteria
2 thereof, has or have existed.” (*Jew Ho, supra*, 103 F. 10.)

3 276. To justify restricting liberty, California courts require “reasonable grounds [] to support
4 the belief that the person so held [quarantined] is infected.” (*Ex parte Martin* (1948) 83 Cal.App.2d
5 164.) Public Health Officials must be able to show “probable cause to believe the person so held has
6 an infectious disease....” (*Id.*) “[A] mere suspicion [of a contagious disease], unsupported by facts
7 giving rise to reasonable or probable cause, will afford no justification at all *for depriving persons of*
8 *their liberty* and subjecting them to virtual imprisonment under a purported order of quarantine.” (*Ex*
9 *parte Arta* (1921) 52 Cal.App. 380, 383 [emphasis added].)

10 277. As stated above, as of August 2020, the probability of dying of COVID-19 is
11 approximately half that of other leading causes of death, including heart attacks.

12 278. Plaintiff has never had or contracted COVID-19 and is aware of only one member of
13 his five churches having tested positive for the virus, who has remained home.

14 279. Requiring Plaintiff and his congregants and subordinate priests to abstain from, or
15 submit to severe restrictions of, religious worship in the manner required by their religion, as opposed
16 to what the defendants permit, violates California constitutional liberty and due process rights.

17 280. Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm to
18 his constitutionally protected rights unless Defendants are enjoined from implementing and enforcing
19 the challenged restrictions.

20 281. Plaintiff has found it necessary to engage the services of private counsel to vindicate
21 his rights under the law. Plaintiff is therefore entitled to an award of attorneys’ fees and costs pursuant
22 to Code of Civil Procedure Section 1021.5.

23 **THIRD CLAIM FOR RELIEF**
24 **Liberty of Speech: Article I, § 2, of the California Constitution**
25 **(Against all Defendants)**

26 282. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs
27 as though fully set forth herein.

28 283. In California, “[e]very person may freely speak, write and publish his or her sentiments
on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty

1 of speech or press.” (Cal. Const., art. I, § 2.)

2 284. “The California Supreme Court has recognized that the California Constitution is ‘more
3 protective, definitive and inclusive of rights to expression and speech’ than the First Amendment to
4 the United States Constitution.” (*Rosenbaum v. City and County of San Francisco* (9th Cir. 2007) 484
5 F.3d 1142, 1167.) “[A]rticle I’s right to freedom of speech, unlike the First Amendment’s, is
6 unbounded in range” “and “‘unlimited’ in scope.” (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th
7 468, 492–493.)

8 285. Defendants’ restrictions violate the Liberty of Speech clause, both facially and as
9 applied to Plaintiff.

10 286. Plaintiff engages in protected speech through worship, religious discussions, singing
11 hymns, spiritual counseling, and praying with their congregations.

12 287. Defendants’ imposition of their restrictions is unreasonable and has a chilling effect on
13 protected speech by outright banning in-person church services or severely restricting the capacity of
14 churches, under pain of criminal penalty.

15 288. Defendants’ restrictions are unconstitutionally overbroad, and therefore void as a matter
16 of law, both on their face, and as applied.

17 289. Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm to
18 his constitutionally protected rights unless Defendants are enjoined from implementing and enforcing
19 the worship bans.

20 290. Plaintiff has found it necessary to engage the services of private counsel to vindicate
21 his rights under the law. Plaintiff is therefore entitled to an award of attorneys’ fees and costs pursuant
22 to Code of Civil Procedure Section 1021.5.

23 **FOURTH CLAIM FOR RELIEF**
24 **Equal Protection Clause: Article I, § 7, of the California Constitution**
25 **(Against All Defendants)**

26 291. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs
27 as though fully set forth herein.

28 292. In California “[a] person may not be ... denied equal protection of the laws.” (Cal.
Const., art. I, § 7.) “California’s equal protection laws possess an independent validity from the

1 Fourteenth Amendment.” (*Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 893.)

2 293. Defendants’ restrictions violate Article I, section 7, of the California Constitution, both
3 facially and as applied to Plaintiff.

4 294. The equal protection of the laws assures that people who are similarly situated for
5 purposes of a law are generally treated similarly by the law.

6 295. “The first prerequisite to a meritorious claim under the equal protection clause is a
7 showing that the state has adopted a classification that affects two or more similarly situated groups in
8 an unequal manner. This initial inquiry is not whether persons are similarly situated for all purposes,
9 but whether they are similarly situated for purposes of the law challenged.” (*Cooley v. Superior Court*
10 (2002) 29 Cal.4th 228, 253 [citations omitted]; see also *DiMartile v. Cuomo* (N.D.N.Y. 2020), No.
11 1:20-CV-0859 (GTS/CFH), 2020 WL 4558711, at *10 [pandemic restrictions violated equal protection
12 guarantees]; *Deese v. City of Lodi* (1937) 21 Cal.App.2d 631, 635 [health restrictions which did not
13 apply to certain industries violated equal protection guarantees].)

14 296. Under Article I of the California Constitution, people have the right to come together,
15 to assemble freely, and to exercise freely and enjoy their religion without discrimination or preference.

16 297. Plaintiff and his congregations and priestly colleagues are being treated differently from
17 other similarly situated groups and people who are assembling and exercising their constitutional rights
18 under Article I of the California Constitution.

19 298. Defendants admitted that religious worshippers were similarly situated to political
20 protestors when they created a uniform regime to similarly regulate both activities starting on May 25,
21 2020. But starting on July 13, while protestors were allowed to assemble and exercise their rights to
22 petition under Article I, Plaintiff was not allowed to similarly exercise his right to worship freely and
23 enjoy his religion. Plaintiff is being discriminated against and protestors are being given preference—
24 even though both are engaged in activities absolutely protected by Article I of the California
25 Constitution, and Defendants admitted they were similarly situated.

26 299. Preferential treatment is being given to corporations, which Defendants arbitrarily
27 categorize as “essential”, such as Costco, Walmart, Target, Albertsons, Stater Bros, Trader Joes,
28 Sprouts, Macy’s, Nike, Gap, Gucci, and numerous other retail stores. All of these stores are allowed

1 to have people indoors at either their retail stores, warehouses, or manufacturing plants. On the other
2 hand, churches are categorized as “non-essential” insofar as their members are not allowed to attend
3 “indoor” worship services.

4 300. Defendants intentionally and arbitrarily categorize entities, individuals, and conduct as
5 either “essential” or “non-essential.” Those entities and persons classified as “essential”—or as
6 participating in essential services—are permitted to go about their business and activities. Those
7 classified as “nonessential”—or as engaging in non-essential activities—are required to stay home
8 unless it becomes necessary for them to leave for one of the enumerated “essential” activities.

9 301. Defendants further categorize as “gatherings” the activities they wish to limit or
10 prohibit, while not applying the same label to groups of people who also gather, but for purposes
11 Defendants officially and discriminatorily favor.

12 302. Requiring Plaintiff to abstain from religious worship in the manner required by his
13 religion violates his California Constitutional equal protection rights.

14 303. Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm to
15 his constitutionally protected rights unless Defendants are enjoined from implementing and enforcing
16 the challenged restrictions.

17 304. Plaintiff has found it necessary to engage the services of private counsel to vindicate
18 his rights under the law. Plaintiff is therefore entitled to an award of attorneys’ fees and costs pursuant
19 to Code of Civil Procedure Section 1021.5.

20 **FIFTH CLAIM FOR RELIEF**
21 **The Right to Freedom of Assembly:**
22 **Article I, § 3, of the California Constitution**
(Against All Defendants)

23 305. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs
24 as though fully set forth herein.

25 306. The outright ban on worship indoors, or the severe capacity restrictions on churches, as
26 well as the six-foot-bubble zone rule imposed by Newsom and the co-defendants, violate the right to
27 freedom of assembly under the California Constitution by prohibiting assembly in Plaintiff’s churches
28 altogether, or severely limiting the size of the assemblies over which Plaintiff may preside, and also

1 by dictating how far apart each member of Plaintiff's congregations, and Plaintiff himself, must remain
2 from all those assembled, thereby interfering in the religious purposes of the assembly as pleaded
3 above.

4 307. Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm to
5 his constitutionally protected rights unless Defendants are enjoined from implementing and enforcing
6 the challenged restrictions.

7 308. Plaintiff has found it necessary to engage the services of private counsel to vindicate
8 his rights under the law. Plaintiff is therefore entitled to an award of attorneys' fees and costs pursuant
9 to Code of Civil Procedure Section 1021.5.

10 **SIXTH CLAIM FOR RELIEF**
11 **The Right to Autonomy Privacy and Bodily Integrity:**
12 **Article I, § 7, of the California Constitution**
(Against All Defendants)

13 309. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs
14 as though fully set forth herein.

15 310. The California Constitution enshrines an "explicit right of privacy ... in making
16 intimate personal decisions or conducting personal activities without observation, intrusion, or
17 interference ('autonomy privacy') as well as "freedom to choose to reject, or refuse to consent to,
18 intrusions of [] bodily integrity." Moreover, a "competent, informed adult has a fundamental right of
19 self-determination **to refuse or demand the withdrawal of medical treatment of any form**
20 **irrespective of the personal consequences.**" (*California Advocates for Nursing Home Reform v. Smith*
21 (2019) 38 Cal.App.5th 838, 862.)

22 311. The challenged "face-covering mandate" violates these rights by forcing upon Father
23 Burfitt and his mission churches the use of unproven medical devices—i.e., makeshift "cloth face
24 coverings"—that interfere with bodily integrity, constitute unwanted medical treatment, and are
25 actually hazardous to health, as the federal government's and California's warnings about the dangers
26 of contaminated "face coverings" admit.

27 312. There is no rational basis for requiring millions of healthy and asymptomatic people,
28 including Father Burfitt, to cover their faces with pieces of cloth for many hours at a time when in

1 public, thus exposing them, including Father Burfitt, to the risk of disease from the cloth coverings
2 forced upon their faces by government edict.

3 313. Plaintiff has no adequate remedy at law and will suffer serious and irreparable harm to
4 his constitutionally protected rights unless Defendants are enjoined from implementing and enforcing
5 the “face covering” mandate.

6 314. Plaintiff has found it necessary to engage the services of private counsel to vindicate
7 his rights under the law. Plaintiff is therefore entitled to an award of attorneys’ fees and costs pursuant
8 to Code of Civil Procedure Section 1021.5.

9
10 **SEVENTH CLAIM FOR RELIEF**
11 **Separation of Powers, Non-Delegation Doctrine:**
12 **Article III, Section 3, of the California Constitution**
13 **(Against the California State Defendants)**

14 315. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs
15 as though fully set forth herein.

16 316. The Separation of Powers Clause of the California Constitution is an express
17 separation-of-powers provision not found in the U.S. Constitution and many other state constitutions:
18 “The powers of state government are legislative, executive, and judicial. Persons charged with the
19 exercise of one power may not exercise either of the others except as permitted by this Constitution.”
20 (Cal. Const., art. III, § 3.)

21 317. Under Article III of the California Constitution, if the state legislature delegates to the
22 Governor or the executive branch the power to restrict civil liberties, strict scrutiny applies. The
23 legislative delegation must be narrowly tailored to meet a compelling state interest.

24 318. Nearly seven months ago, on March 4, 2020, Governor Newsom declared a State of
25 Emergency in response to COVID-19 under the California Emergency Services Act, sections 8565
26 through 8574 of the Government Code.

27 319. On March 19, 2020, in reliance on sections 8567 and 8267 of the Government Code,
28 Governor Newsom promulgated Executive Order N-33-20, which delegated wholesale authority to
non-elected decision-makers in the California Department of Public Health (“CDPH”) to fashion the
state’s protocols for creating and enforcing restrictions related to COVID-19.

1 320. In doing so, the Executive Order grants CDPH complete discretion to decide
2 fundamental issues of policy that surround the controversial topic of restricting how people may
3 worship. These issues include questions related to how churches and their flocks can and should
4 worship, whether the public has a right to worship **inside** their churches, whether people can sing while
5 they worship, as well as the appropriate level of restrictions relating to how, when, and where people
6 worship, including the six-foot bubble zone rule and the “face covering” mandate.

7 321. Then, on July 13, 2020, then-CDPH Director Sonia Angell—relying on Executive
8 Order N-33-20—ordered “places of worship” to close indoor operations—putting them in the same
9 category as “gyms and fitness centers,” “offices for non-Critical Infrastructure sectors,” “massage
10 parlors, and tattoo parlors,” “hair salons and barbershops, and malls.” (Ex. 1-11)

11 322. Non-elected decision-makers in the CDPH are making judgments about what is
12 important to a certain religion and what is not. But these decisions need to be made by the religions
13 themselves—not the government. (See Cal. Const., art. I, § 4.)

14 323. Newsom’s and the CDPH’s orders’ failure to address these fundamental policy issues
15 has resulted in a complete lack of ascertainable standards to contain and guide CDPH’s exercise of
16 delegated power to fashion restrictions on worship.

17 324. The consequence of Governor Newsom declaring a State of Emergency in response to
18 COVID-19 under the California Emergency Services Act, sections 8565 through 8574 of the
19 Government Code, has resulted in a deprivation of civil liberties.

20 325. Sections 8565 through 8574 of the Government Code are not narrowly tailored to meet
21 a compelling state interest because these sections lack legal text limiting the Governor’s and executive
22 branch’s restriction of civil liberties to the “the least restrictive alternative” or something similar—as
23 found, for example, for court appointment of conservators in section 1800.3 of the Probate Code.

24 326. Under the California Constitution, the legislature cannot delegate legislative power to
25 the Governor or executive branch to restrict civil liberties without “the least restrictive alternative”
26 legal text or something similar.

27 327. As a result of the absence of this limiting language, the statutes and actions under the
28 statutes restricting civil liberties violate the Separation of Powers Clause in California’s Constitution.

1 328. The challenged restrictions are, therefore, per se unconstitutional even apart from the
2 question of free exercise and its cognate rights to freedom of speech, assembly, and association

3 **EIGHTH CLAIM FOR RELIEF**
4 **Separation of Powers, Ban on Legislative Vetoes:**
5 **Article III, Section 3, of the California Constitution**
6 **(Against the California State Defendants)**

7 329. Plaintiff incorporates by reference all allegations contained in the preceding paragraphs
8 as though fully set forth herein.

9 330. The Separation of Powers Clause of the California Constitution is an express
10 separation-of-powers provision not found in the U.S. Constitution and many other state constitutions:
11 “The powers of state government are legislative, executive, and judicial. Persons charged with the
12 exercise of one power may not exercise either of the others except as permitted by this Constitution.”
(Cal. Const., art. III, § 3.)

13 331. Under Article IV of the California Constitution, the state legislature passes bills and
14 presents them to the Governor under the Presentment Clause.

15 332. On March 4, 2020, Governor Newsom declared a State of Emergency in response to
16 COVID-19 under the California Emergency Services Act, sections 8565 through 8574 of the
17 Government Code.

18 333. The termination of such emergency power is subject to a legislative veto in section 8629
19 of the Government Code, “All of the powers granted the Governor by this chapter with respect to a
20 state of emergency shall terminate when the state of emergency has been terminated ... by concurrent
21 resolution of the Legislature.”

22 334. Such a legislative veto violates the Article III separation of powers provision and the
23 Article IV Presentment Clause.

24 335. The legislative veto of section 8269 is not severable because the legislative intent was
25 to ensure that the legislature had input in terminating a state of emergency.

26 336. As a result, the statutes and actions restricting civil liberties violate the Separation of
27 Powers Clause in California’s Constitution. Therefore, the Governor’s executive orders are themselves
28 invalid.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff Father Trevor Burfitt respectfully prays for judgment against
3 Defendants and requests the following relief:

- 4 A. An order and judgment declaring that the Executive Orders and their state,
5 county, and local implementation, including the Resilience Roadmap, the
6 County Monitoring List (CML), the Blueprint for a Safer Economy (BSE), and
7 the Social Distancing Protocol (SDP) (collectively, “the challenged coronavirus
8 pandemic regulations”), or any subsequent iterations thereof, violate Article I,
9 Sections 1, 2, 4, and 7 of the California Constitution, and Article III, Section 3
10 of the California Constitution, both facially and as applied to Plaintiff;
- 11 B. An order temporarily, preliminarily, and permanently enjoining and prohibiting
12 the State Defendants, Kern County, the City of Bakersfield, San Bernardino
13 County, the City of Colton, San Diego County, the City of San Diego, the
14 County of Los Angeles, the City of Los Angeles, and the City of Arcadia from
15 enforcing the challenged coronavirus pandemic regulations against Plaintiff and
16 his churches, including, but not limited to the following: any ban or size
17 limitation on religious gatherings; any limitation of indoor capacity in Plaintiff’s
18 churches; the six-foot “social distancing” and “face covering” mandates during
19 worship, and the ban on singing or chanting during worship;
- 20 C. In the alternative, but only if the relief requested in paragraphs A and B not be
21 granted, an order temporarily, preliminarily, and permanently enjoining and
22 prohibiting any of the aforementioned Defendants from imposing any limitation on
23 Plaintiff and his churches under the challenged coronavirus pandemic
24 regulations stricter than those imposed on “essential businesses” in the
25 “Minimal” risk tier of the BSE;
- 26 D. For attorneys’ fees and costs; and
- 27 E. Such other and further relief as the Court deems appropriate and just.
- 28

Respectfully submitted,

LiMANDRI & JONNA LLP



DATED: September 29, 2020

By: _____

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THOMAS MORE SOCIETY



DATED: September 29, 2020

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(subject to *pro hac vice* admission)