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8 Health Officer for Ventura County

VENTURA
SUPERIOR COURT
FILED
AUG 10 2020
MICHAEL D. PLANET
Executive Officer and Clerk
BY: _____ Deputy
RACHEL JACOBS

(EXEMPT FROM FILING
FEES [Gov. Code, § 6103].)

10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

11
12 COUNTY OF VENTURA and ROBERT
LEVIN. M.D.. in his capacity as Health
13 Officer for Ventura County,

14 Plaintiffs,

15 vs.

16 GODSPEAK CALVARY CHAPEL,
ROB MCCOY and DOES 1-1000,
17 inclusive,

18 Defendants.

Case No. 56-2020-00544086-CU-MC-VTA

Reservation No. 2523708

NOTICE OF AND EX PARTE
APPLICATION FOR A FURTHER
TEMPORARY RESTRAINING ORDER
AND FOR AN ORDER TO SHOW
CAUSE RE CONTEMPT OF COURT;
MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATIONS
OF DOUG LEEPER, DEAN PHANEUF
AND JACLYN SMITH

[[PROPOSED] FURTHER TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE RE CONTEMPT OF
COURT lodged concurrently herewith]

Date: August 11, 2020

Time: 8:30 a.m.

Courtroom: 20

Judge: Matthew P. Guasco

Verified Complaint Filed: August 5, 2020

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APPROVED
SUNSHINE COURT
FILED
AUG 1 1930
RECEIVED BY CLERK
Executive Officer and Clerk
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THE STATE OF CALIFORNIA

IN SENATE

January 1, 1930

REPORT OF THE

COMMISSIONER OF THE

LAND OFFICE

FOR THE YEAR

ENDING DECEMBER

31, 1929

ALBANY, CALIF.

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PRINTED BY

THE STATE OF CALIFORNIA

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1 **TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:**

2 Pursuant to Code of Civil Procedure sections 527 and 1209 et seq. and California
3 Rules of Court, rules 3.1150 and 3.1200 et seq., plaintiffs County of Ventura and Robert
4 Levin, M.D., in his capacity as Health Officer for Ventura County, hereby apply ex parte
5 for the following relief:

6 1. A further temporary restraining order against defendants Godspeak Calvary
7 Chapel, Rob McCoy and Does 1-1,000, and each of them, and their agents, employees,
8 representatives, members, and volunteers, and all persons acting under, in concert with or
9 for them, authorizing and directing the Sheriff of Ventura County to take all actions
10 reasonable and necessary to close defendants' property at 320 Via Las Brisas, Newbury
11 Park, Ventura County, California (hereafter "Property"), including authorizing the Sheriff
12 to enter onto and into the Property for such purpose, to prevent any further indoor
13 worship services at the Property, until further order of court; and

14 2. An order to show cause why defendants Godspeak Calvary Chapel and Rob
15 McCoy should not be held in contempt of court for violating this court's temporary
16 restraining order, issued by the court and served on defendants August 7, 2020, by again
17 holding indoor worship services, at 320 Via Las Brisas, Newbury Park, Ventura County,
18 California, on August 9, 2020. Plaintiffs request that the hearing on the order to show
19 cause be set and held no later than August 14, 2020, so that further indoor worship
20 services, endangering the general public and all residents of Ventura County, can be
21 prevented.

22 The application will be based on this application, the attached Memorandum of
23 Points and Authorities, the accompanying Declarations of Doug Leeper, Dean Phaneuf
24 and Jaclyn Smith, the Temporary Restraining Order issued August 7, 2020, all other
25 papers on file herein, and such other and further evidence as may be presented to the
26 court at the time of hearing.

27 On August 10, 2020, at approximately 9:40 a.m., counsel for plaintiffs provided
28 notice to defendants' attorney, Robert Tyler, by email and telephone, of the date, time and

1 place of the hearing on this application, the basis for the application and the relief sought.
2 (See Declaration of Jaclyn Smith, ¶ 2.)

3 LEROY SMITH
4 County Counsel, County of Ventura

5 Dated: August 10, 2020

6 By  _____
7 JACLYN SMITH
8 Assistant County Counsel

9 Attorneys for Plaintiffs County of Ventura and
10 Robert Levin, M.D., in His Capacity as Health
11 Officer for Ventura County
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 FACTS

4 Last Friday, August 7, 2020, this court issued a temporary restraining order that,
5 among other things, prohibited defendants Godspeak Calvary Chapel (“Chapel”) and Rob
6 McCoy (“McCoy”) from conducting any indoor worship services at their property in
7 Newbury Park (or at any other place within Ventura County). (Declaration of Jaclyn
8 Smith [“Smith Decl.”], ¶ 3, Exh. 1.) In making the order, this court stated that, on a scale
9 of 1-10, the harm to be caused by defendants’ continued holding of indoor services was a
10 10. (*Id.* at ¶ 3.) The order was personally served on defendants later that same day. (*Id.*
11 at ¶ 4, Exh. 2.)^{1/}

12 Two days later, on August 9, 2020, in defiance of this court’s order, just as they
13 had done in defiance of the orders of the State Public Health Officer and the County
14 Health Officer, defendants held indoor services at their Newbury Park property.
15 (Declarations of Doug Leeper [“Leeper Decl.”] ¶¶ 4-13 and Dean Phaneuf [“Phaneuf
16 Decl.”], ¶¶ 4-10.) The decision to hold the indoor services was made by both the board of
17 the Chapel and McCoy. (Smith Decl., ¶ 6, Exh. 3.) Defendants held three separate
18 services on August 9, 2020. (Leeper Decl., ¶ 4 and Phaneuf Decl., ¶ 4.) Defendants have
19 made it clear that they intend to continue to violate this court’s order. (Smith Decl., ¶ 6,
20 Exh. 3.)

21 II

22 ARGUMENT

23 A. The Court Should Issue a Further Order Authorizing the Sheriff to Take
24 the Actions Necessary to Prevent Further Indoor Services at Defendants’ Property

25 The primary purpose of a temporary restraining order is to preserve the status quo
26 and avoid irreparable harm. (*Dodge, Warren & Peters Ins. Servs., Inc. v. Riley* (2003)

27 _____
28 ^{1/} Defendant McCoy also telephonically attended the hearing at which this court
issued the temporary restraining order. (Smith Decl., ¶ 3.)

1 105 Cal.App.4th 1414, 1418.) To achieve this, the court has broad discretion in
2 fashioning the relief. (See *Estate of Collins & Flowers* (2012) 205 Cal.App.4th 1238,
3 1246 [“A trial court sitting in equity has broad discretion to fashion relief.”]; see also
4 *Bechtel v. Wier* (1907) 152 Cal.443, 446, 93 P. 75 [noting “[f]rom the very nature of
5 equity a wide play is left to the conscience of the chancellor in formulating his decrees”;
6 “[i]t is of the very essence of equity that its powers should be so broad as to be capable of
7 dealing with novel conditions”].)

8 “Equity is not limited in the scope or type or relief which may be granted. Its
9 decrees are molded in accordance with the exigencies of each case and the rights of the
10 persons over whom it has acquired jurisdiction. [Citations.] As the court said in the early
11 case of *Wickersham v. Crittenden* [1892] 93 Cal. 17, 32 []: ‘It is often necessary, in order
12 that the plaintiff may obtain full justice, that the relief granted him be as varied and
13 diversified as the means that have been employed by the defendant to produce the
14 grievance complained of.’” (*People ex rel. Mosk v. National Research Co. of Cal.* (1962)
15 201 Cal.App.2d 765, 775-776.)

16 Here, defendants have shown their disrespect for this court’s authority and order.
17 To achieve the objective of this court’s order, the court should order the further requested
18 relief, authorizing the Sheriff to take the actions necessary to prevent further indoor
19 services at defendants’ property.

20 **B. The Court Should Issue an Order to Show Cause re Contempt and, at the**
21 **Hearing on the Order, Hold Defendants in Contempt of Court for Their Willful**
22 **Violation of This Court’s Temporary Restraining Order**

23 Disobedience of any lawful order of the court constitutes contempt of the authority
24 of the court. (Code Civ. Proc., § 1209, subd. (a)(5).) When the contempt is not
25 committed in the immediate view and presence of the court, an order to show cause may
26 be issued to the person charged with contempt. (Code Civ. Proc., § 1212; 8 Witkin, Cal.
27 Proc. (5th ed. 2020), Enforcement of Judgments, § 346.)
28

1 When the contempt is not committed in the immediate view and presence of the
2 court, affidavits shall be presented to the court of the facts constituting the contempt.
3 (Code Civ. Proc., § 1211, subd. (a).) The affidavits “should state facts showing each of
4 the following: (a) the making of the order; (b) knowledge of the order by the person
5 charged; (c) ability of the person charged to comply with it; and (d) wilful disobedience
6 of the order by the person charged.” (8 Witkin, Cal. Proc., *supra*, Enforcement of
7 Judgments, § 343.)

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

15 Notwithstanding the five day maximum set forth in Code of Civil Procedure
16 section 1218, subdivision (a), if the contempt consists of a party’s failure to perform an
17 act which is yet in the power of the party to perform, the party be imprisoned until the has
18 performed it. (Code Civ. Proc., § 1219, subd. (a).)

19 While defendants are not expected to deny that they violated this court’s order, the
20 declarations and other evidence submitted with these papers establish each of the
21 following: (a) the making of the order; (b) the Chapel’s and McCoy’s knowledge of the
22 order; (c) the Chapel’s and McCoy’s ability to comply with the order; and (d) the
23 Chapel’s and McCoy’s wilful disobedience of the order. Accordingly, the court should
24 issue the requested order to show cause re contempt and then, at the hearing on the order
25 to show cause, impose fines and imprisonment, or both, as it determines warranted under
26 the circumstances, both to punish defendants for their defiance of this court’s order and to
27 gain compliance with the state and county health orders.

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III
RELIEF REQUESTED

To address defendants' contemptuous conduct, plaintiffs hereby ask this court for ex parte relief as follows:

First, the court is asked to immediately issue a further temporary order authorizing and directing the Sheriff of Ventura County to take all actions reasonable and necessary to close defendants' Newbury Park property, including authorizing the Sheriff to enter onto and into the property for such purpose, to prevent any further indoor worship services at the property, until further order of court.

Second, the court is asked to immediately issue an order to show cause why the Chapel and McCoy should not be held in contempt of court for violating this court's temporary restraining order, with the hearing on the order to show cause to be set and held no later than August 14, 2020, so that further indoor worship services, endangering the general public and all residents of Ventura County, can be prevented.

LEROY SMITH
County Counsel, County of Ventura

Dated: August 10, 2020

By  _____
JACYLN SMITH
Assistant County Counsel

Attorneys for Plaintiffs County of Ventura
and Robert Levin, M.D., in His Capacity as
Health Officer for Ventura County