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8 Rob McCoy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF VENTURA**

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

14 Plaintiffs

15 v.

16 GODSPEAK CALVARY CHAPEL, ROB
McCOY and DOES 1 through 1000, inclusive,

17 Defendants.
18

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

**OPPOSITION TO MOTION FOR
TEMPORARY RESTRAINING ORDER**

Date: August 7, 2020
Time: 8:30 a.m.
Dept.: 20

19 Defendants Godspeak Calvary Chapel (“Church”) and Rob McCoy (“Pastor McCoy”) requests that this Application for Temporary Restraining Order be denied because this case is of great public importance and involves a request to crush a church’s constitutional rights, warranting a noticed hearing and testimony from expert witnesses. At a minimum, however, the Church and Pastor McCoy request a continuance of 3 business days to oppose to Plaintiffs’ ex parte application because Defendants were given less than one business day to prepare an opposition. Plaintiffs rushed to file this application less than 24-hours before the hearing even though this application is not an emergency, restricts constitutional liberties, and attempts to change the status quo. The Church congregation has been worshipping inside its sanctuary since April of 2020 without any cases of COVID-19 traced to the Church.

1 In the absence of a continuance, Defendants submit this opposition.
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1 **I. INTRODUCTION**

2 Plaintiffs are not entitled to a temporary restraining order because they fail to make a
3 prima facie showing by offering admissible evidence. Specifically, plaintiffs have not
4 demonstrated a real threat of immediate and irreparable injury warranting emergency relief.
5 Defendants have been holding indoor services since April 5, 2020 and have continued to do
6 so for the past several months, with Plaintiffs' knowledge. There is no reason why suddenly
7 there is a need for emergency relief to protect against alleged imminent irreparable harm.

8 This Court should deny Plaintiffs' application because there is no evidence
9 whatsoever that Defendants' future conduct will irreparably injure plaintiffs. Further,
10 plaintiffs are not likely to succeed on the merits of their claims. Defendants accordingly request
11 that the Court deny Plaintiffs' application in its entirety.

12 **II. FACTUAL BACKGROUND**

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

21 On June 7, 2020, Godspeak began holding multiple church services at full capacity with
22 approximately 1,400 attendees total with three church services. (McCoy Decl., ¶ 11.) Again,
23 County officials knew about the opening and church services. (McCoy Decl., ¶¶ 8, 11.) The Church
24 and Pastor McCoy have a sincerely and deeply held religious belief that it is essential for them as
25 Christians to assemble and regularly gather together in person for the teaching of God's Word,
26 prayer, worship, baptism, communion and fellowship. (McCoy Decl., ¶ 13.)

27 As of August 6, 2020, there have been no known cases from or traced back to Godspeak
28 Calvary Chapel or Pastor McCoy. (McCoy Decl., ¶ 14.) Not one Church congregant has contracted

1 COVID-19. (McCoy Decl., ¶ 15.) The Church intends on continuing to hold its in person, indoor
2 services just as it has been since early June. (McCoy Decl., ¶ 16.)

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

8 In addition, the Church does not meet outdoors because of security concerns. (McCoy Decl.,
9 ¶ 18.) Since April 5, 2020 to date, protestors gather outside the Church building during services.
10 (McCoy Decl., ¶ 18.) There has been yelling and cussing at congregants by protestors. (McCoy
11 Decl., ¶ 18.) There have been death threats sent to the Church. (McCoy Decl., ¶ 18.) Security is
12 required every Sunday to prevent protesters and harassers from interfering with church services.
13 (McCoy Decl., ¶ 18.)

14 As of August 5, 2020, Ventura County has had a total of 79 deaths, 7,953 total cases of
15 confirmed Covid-19 infections, and 118,142 total people tested for COVID-19. (See Ventura
16 County Coronavirus Case Information, VC EMERGENCY (August 5, 2020)
17 <https://www.vcemergency.com/>.) This equates to a 0.934% death rate for those confirmed
18 COVID-19 cases in Ventura County. Of the 79 deaths, 64 were over the age of 65. (*Id.*) Of the 15
19 people who died that were under 65 years old, the death rate is only 0.18%. Of those 15 people,
20 many would have had underlying health issues resulting in co-morbidity. The total population of
21 Ventura County is 846, 006.¹ As is obvious, the risk of death from COVID-19 for persons under
22 65 is very small.

23 Currently, there are 83 COVID-19 hospitalizations, 110 additional staffed and available
24 hospital beds, 160 available ventilators and 27 of the COVID patients are in ICU. (Ventura County
25 Coronavirus Case Information, VC EMERGENCY (August 5, 2020)
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28 ¹ See Quick Facts Ventura County, United States Census Bureau (July 2019)
<https://www.census.gov/quickfacts/venturacountycalifornia>.

1 [https://www.vcemergency.com/.](https://www.vcemergency.com/)) There have been 515 hospitalizations from COVID 19 in Ventura
2 County cumulatively since the beginning of the year. (*Id.*) There are 82% of ventilators presently
3 available in the County. (*Id.*)

4 Based on a report dated July 28, 2020 presented to the County Board of Supervisors, the
5 County conducted a study of 2,719 individuals who tested positive for COVID-19 to determine
6 whether those individuals attended large gatherings within 14 days of their diagnosis. (Defendants'
7 Request for Judicial Notice, Exhibit A, COVID-19 Update, page 12.) Only 8 of the 2,719 surveyed
8 stated they attended a religious service; 7 people stated they attended a protest; 221 attended a
9 family or friend gathering; and 44 went to a "casino, funeral service, golfing, gym, etc." (*Id.*)

10 **III. STANDARD FOR ISSUANCE OF EX PARTE REQUEST FOR** 11 **TEMPORARY RESTRAINING ORDER**

12 Pursuant to Ventura County Superior Court Local Rule 15.00.A, "It is the policy of the
13 Court to discourage unnecessary ex parte applications. Except where the showing required by
14 California Rules of Court, rule 3.1202(c) is made, matters should be resolved by noticed motion."
15 California Rules of Court, rule 3.1202(c) requires "an affirmative factual showing in a declaration
16 containing competent testimony based on personal knowledge of irreparable harm, immediate
17 danger, or any other statutory basis for granting relief ex parte."

18 A temporary restraining order is an extraordinary power, to be exercised always with great
19 caution and, therefore, should rarely, if ever, be exercised in a doubtful case. "The right must
20 be clear, the injury impending and threatened, so as to be averted only by the protective preventive
21 process of injunction." (*City of Tiburon v. Northwestern Pac R. Co.* (1970) 4 Cal.App.3d 160,
22 179, quoting *Schwartz v. Arata* (1920) 45 Cal.App. 596, 601.) As one court has observed, "[I]t
23 is clear that a plaintiff must make some showing which would support the exercise of the rather
24 extraordinary power to restrain the defendant's actions prior to a trial on the merits." (*Tahoe*
25 *Keys Property Owners' Ass'n. v. State Water Resources Control Board* (1994) 23 Cal.App.4th
26 1459, 1471 (*Tahoe Keys*), emphasis added.)

27 When deciding whether to grant preliminary injunctive relief, including a temporary
28 restraining order, the trial court considers two interrelated factors: (1) the interim harm that the

1 applicant will sustain if the injunction is denied as compared to the harm to the defendant if the
2 injunction issues; and (2) the likelihood of success on the merits at trial. (*Choice-In-Education*
3 *League v. Los Angeles Unified School District* (1993) 17 Cal.App.4th 415, 422.) The court may
4 deny a preliminary injunction either (1) on its finding irreparable injury will not result to the party
5 seeking the injunction, or (2) that the party has failed to demonstrate a reasonable probability of
6 success on the merits. (*People v. Pacific Land Research Co.* (1977) 20 Cal.3d 10, 21.) Before the
7 trial court can exercise its discretion, the applicant must make a prima facie showing of entitlement
8 to injunctive relief. The applicant must demonstrate a real threat of immediate and irreparable
9 injury due to the inadequacy of legal remedies. (*Triple A Machine Shop, Inc., v. State of*
10 *California* (1989) 213Cal.App.3d131, 138); see also *Tahoe Keys, supra*, 23 Cal.App.4th at p.
11 1471 (interim harm by denial of preliminary injunctive relief assessed before reaching the
12 potential merits). It is also well settled that the plaintiff bears the burden of producing *evidence* of
13 irreparable interim injury. (*Loder v. City of Glendale* (1989) 216 Cal.App.3d 777, 782-783,
14 emphasis added.) “To entitle a plaintiff to injunctive relief the burden is upon him to prove actual
15 or threatened injury and a court may not infer this from mere proof of acts intended to harm.” (*E.H*
16 *Renzel Co. v. Warehousemen's Union* (1940) 16 Cal.2d 369, 373.) Mere conclusory allegations
17 that such injury will result is not sufficient. (*Ibid.*)

18 **IV. ARGUMENT**

19 **A. PLAINTIFFS FAIL TO MAKE A SHOWING OF A REAL THREAT OF IMMEDIATE** 20 **AND IRREPARABLE INJURY**

21 Plaintiffs are not entitled to a temporary restraining order because they cannot show by
22 admissible evidence any immediate injury they will suffer, let alone that they will suffer significant
23 irreparable injury. Further, plaintiffs fail to even argue the inadequacy of legal remedies.
24 Conclusory and inadmissible statements are insufficient to show irreparable interim harm.
25 (*E.H Renzel Co. v. Warehousemen's Union, supra*, 16 Cal.2d at p. 373.)

26 Plaintiffs’ application is based on three conclusory and speculative arguments: (1) “to
27 protect the public health of the citizens in the community,” (2) “prevent unnecessary strain on
28 the healthcare systems in Ventura County,” and (3) ameliorate or avoid continued and further

1 restrictions on businesses and other operations and activities within Ventura County.”
2 (Plaintiff’s TRO Application, Page 11:26-28; p. 12:1.)

3 Despite the Church holding indoor services since June 7, 2020 (and communion
4 services as early as April 5, 2020) against State and County Orders that Defendants contend
5 are unlawful, there have been zero COVID-19 cases of church attendees or anyone connected
6 to the Church. (McCoy Decl., ¶¶ 14-15.) There is no evidence that “it’s only a matter of time -
7 if it has not already happened - before there is a significant outbreak of COVID-19 cases among
8 the attendees” of the Church. (Levin Decl., paragraph 15.) The opposite is true based on the
9 last several months of indoor services at the Church and the County’s survey that only 8 of
10 2,719 individuals who tested positive had attended a worship service. There is no evidence
11 that there is a sudden impending outbreak warranting emergency relief. It is also unclear why
12 the County delayed in seeking this relief if the threat is imminent and the harm is irreparable.

13 As to the overwhelmed healthcare system, based on the County of Ventura’s data, there
14 are currently 110 staffed and available beds and 160 available ventilators. (Ventura County
15 Coronavirus Case Information, VC EMERGENCY (August 5, 2020)
16 <https://www.vcemergency.com/>.) In total, since the beginning of the pandemic, there have been a
17 total of 515 hospitalizations. (*Id.*) There is no evidence that the hospitals will suddenly be
18 overwhelmed with COVID-19 patients if the Church continues holding its services as it has been
19 pending a noticed hearing and trial on the merits. With 83 current hospitalizations, and 110
20 additional available beds, the hospitals are not even at half capacity. If the status quo is
21 maintained, there will not be a sudden influx on the healthcare system from Church attendees.
22 Any argument to the contrary is based on speculation and conjecture, rather than admissible
23 evidence.

24 Finally, the Church has no control or say in further restrictions on businesses and other
25 operations and activities the County places on Ventura County residents. This is an illogical
26 and unsupported assertion. The County is free to continue imposing draconian measures on
27 small businesses and locking families indoors for as long as the people will allow it. It is the
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1 County, not the Church, that is “detrimentally affecting the quality of life of the entire
2 community.” (Plaintiff’s TRO Application, p. 12:11-12.)

3 Plaintiffs’ application is fatally defective because Plaintiffs have not established with
4 admissible evidence that they will suffer significant interim irreparable harm because of
5 Defendants’ future actions. This is especially true given that Defendants are maintaining the status
6 quo of the last several months. There is no reason why suddenly there is a need for emergency
7 relief to protect against imminent irreparable harm. (*See Gray v. Bybee* (App. 3 Dist. 1943) 60
8 Cal.App.2d 564, 141 P.2d 32 (a “temporary restraining order” amounts to a mere preliminary or
9 interlocutory order to keep the subject of litigation in status quo pending determination of the action
10 on its merits.).)

11 On the other hand, if this application is granted, Defendants will suffer irreparable injury to
12 their constitutional right to exercise religion. The Supreme Court held in *Elrod v. Burns* (1976) 427
13 U.S. 347, 373 that the “loss of First Amendment freedoms, for even minimal periods of time,
14 unquestionably constitutes irreparable injury.” The Church and attendees’ fundamental right to
15 assemble and worship will suffer irreparable injury because of a temporary restraining order. The
16 Church is unable to meet outside as Plaintiffs desire. (McCoy Decl., ¶¶ 17-18.)

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

24 The Kaiser Family Foundation conducted a study from March 25 to 30, 2020 and found
25 that 45 percent of adults said the pandemic had affected their mental health, and 19 percent said it
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28 ² [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30460-8/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30460-8/fulltext)

³ <https://www.cnn.com/2020/05/17/politics/child-abuse-pandemic/index.html>.

1 has had a major impact.⁴ According to CNN, the Disaster Distress Helpline, a federal crisis hotline,
2 saw an increase of 891% in March 2020 compared to March 2019.⁵ And a recent modeling study
3 from Well Being Trust, relying in part upon unemployment data from the Great Recession of 2008-
4 2009, warns of the likely potential that 75,000 to 150,000 people will die from suicide due to the
5 economic conditions. The Trust further warned that a higher estimate may be more accurate
6 considering the negative impact of isolation and uncertainty during the shutdown. Reports of
7 persons relapsing and/or overdosing on opioids and other drugs due to the stress of the shutdown
8 are widespread.⁶

9 The Church and Pastor McCoy are convinced the act of congregational worship and Bible
10 teaching that occurs at Godspoke is essential to the health and welfare its congregation and the
11 community it serves. For example, a study published on May 6, 2020, in JAMA Psychiatry found
12 “that religious service attendance is associated with a lower risk of death from despair among
13 registered nurses and health care professionals. These results may be important in understanding
14 trends in deaths from despair in the general population.”⁷

15 In sum, a great crisis has arisen from the secondary effects of the COVID-19 shutdown.
16 The societal effects are not temporary and will last a lifetime in many individuals. This is not a
17 time to shut down worship services when the secondary effects of the COVID-19 shutdown have
18 created an economic crisis and a mental health pandemic that far exceeds the risks of contracting
19 COVID-19.

24 ⁴ https://www.washingtonpost.com/health/coronavirus-is-harming-the-mental-health-of-tens-of-millions-of-people-in-us-new-poll-finds/2020/04/02/565e6744-74ee-11ea-85cb-8670579b863d_story.html

25 ⁵ <https://www.cnn.com/2020/04/10/us/disaster-hotline-call-increase-wellness-trnd/index.html>.

26 ⁶ <https://www.cnn.com/2020/05/14/health/opioids-addiction-appalachia-coronavirus-trnd/index.html>.

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

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

28 ⁷ https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2765488?utm_campaign=articlePDF%26utm_medium%3darticlePDFlink%26utm_source%3darticlePDF%26utm_content%3djamapsychiatry.2020.0175.

1 **B. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS OF THEIR**
2 **CLAIMS**

3 Plaintiffs essentially seek a preliminary injunction to restrain Defendants from exercising
4 their First Amendment right to exercise their religion. The Church and Pastor McCoy have a
5 sincerely and deeply held religious belief that it is essential for them as Christians to assemble and
6 regularly gather together in person for the teaching of God’s Word, prayer, worship, baptism,
7 communion and fellowship. (McCoy Decl., ¶ 13.) Moreover, the Orders Plaintiffs seek to enforce
8 are likely unconstitutional.

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

18 *Jacobson*’s deferential standard of review is appropriate in that limited context. It might be
19 relevant here if Defendants assert a comparable substantive due process claim, but they are not.
20 Instead, Plaintiffs assert that the Orders are unconstitutional under the Free Exercise Clause which
21 has well-established constitutional standards. *Jacobson* had no occasion to address a Free Exercise
22 claim because that issue was not presented there. In fact, the Free Exercise Clause had not yet been
23 held to apply to the States when *Jacobson* was decided in 1905. (*See Phillips*, 775 F.3d at 543.)
24 Consequently, *Jacobson* says nothing about what standards would apply to a claim that an
25 emergency measure violates some other, *enumerated* constitutional right; on the contrary, *Jacobson*
26 explicitly states that other constitutional limitations may continue to constrain government conduct.
27 (*See* 197 U.S. at 25 (emergency public health powers of the State remain subject “to the condition
28

1 that no rule . . . shall contravene the Constitution of the United States, nor infringe any right granted
2 or secured by that instrument”).)

3 Defendants contend that Plaintiffs will not succeed on the merits because the Orders are
4 subject to, and do not pass, the strict scrutiny standard of review. Even if the *Jacobson* differential
5 standard were applicable, which it is not, the Orders still violates the First Amendment because
6 there is not even a rational basis for the closure based on Ventura County statistics.

7 Ventura County does not have a rational basis to restrict Calvary Chapel Thousand Oaks
8 from holding indoor church services because the COVID-19 infection and death rates in Ventura
9 County are low, especially for those who are under the age of 65. Ventura County has had 79
10 deaths, 7,953 total cases, 4,352 recovered cases and 118,142 total people tested for COVID-19 as
11 of August 5, 2020. 64 of these 79 deaths were over the age of 65. (See Ventura County Coronavirus
12 Case Information, VC EMERGENCY (August 5, 2020) <https://www.vcemergency.com/>.) The
13 total population of Ventura County is 846,006. (See Quick Facts Ventura County, United States
14 Census Bureau (July 2019) <https://www.census.gov/quickfacts/venturacountycalifornia>.) This
15 equates to a .00934% death rate in Ventura County from COVID-19 and a .0018% death rate for
16 those under the age of 65. There is a .07% death rate of those tested and .013% death rate of those
17 tested and under the age of 65. Because the chances of dying of COVID-19 are so low in Ventura
18 County, there is no rational basis for eliminating constitutional liberties, the free exercise of
19 religion, the quarantining of the young and healthy, and banning the Church from holding indoor
20 worship services.

21 Moreover, the majority of deaths from COVID-19 are from those who have an underlying
22 medical condition and people who are over the age of 65. Using a CDC study of 10,647 COVID-
23 19 decedents for whom supplementary data were collected during February 12–April 24, 2020, at
24 least one underlying medical condition was reported for 8,134 (76.4%) of decedents for whom
25 supplementary data were collected, including 83.1% of decedents aged <65 years. (See
26 Characteristics of Persons Who Died with COVID-19 — United States, February 12–May 18,
27 2020, CDC (July 17, 2020) <https://www.cdc.gov/mmwr/volumes/69/wr/mm6928e1.htm>.) This
28 means that only 23.6% of the total decedents of COVID-19 did not have an underlying medical

1 condition. It also means that only 16.9% of the decedents under 65 years old did not have an
2 underlying health condition.

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

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

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

26 In reality, there are many other activities in society that people voluntarily undertake that
27 have a higher risk of death than dying from COVID-19, yet the government does not prohibit it.
28 For example, in a study of 130,235 cases of elective surgery, JAMA found that .4% of the elective

1 surgeries resulted in the death of the patient and 6.7% of the elective surgeries resulted in patient
2 morbidity.⁸ **In sum, the risk of death from elective surgery is far greater than the risk of death**
3 **from COVID-19, yet the County of Ventura does not prohibit all elective surgeries.** Rather,
4 the County allows elective surgeries, for example, to eliminate pain or to change one's appearance
5 (i.e. plastic surgery). Elective surgeries can enhance a person's physical and mental well-being.
6 Then how much more should this Court protect the right of individual's First Amendment liberties
7 to find spiritual and mental well-being through congregational worship.

8 Finally, there is no rational basis that enforcing the Orders will result in a burden on the
9 healthcare system. The hospitals in Ventura County are not overwhelmed as there is plenty of
10 hospital beds and an excess of ventilators available. Currently, there are 83 hospitalizations, 110
11 staffed and available hospital beds, 160 available ventilators and 27 COVID patients in ICU.
12 (Ventura County Coronavirus Case Information, VC EMERGENCY (August 5, 2020)
13 <https://www.vcemergency.com/>.) There have been 515 hospitalizations from COVID 19 in Ventura
14 County cumulatively since the beginning of the year. (*Id.*) There are 82% of ventilators available
15 and the county had a goal of 25% of ventilators to be available as of August 6, 2020. *Id.* This is
16 57% more ventilators than the goal set by the County. With 110 staffed and available beds and
17 plenty of available ventilators, there is no evidence that the hospitals are overwhelmed with
18 COVID-19 patients and that there is a capacity shortage at Ventura County hospitals. This is
19 evidence that COVID-19 is not overwhelming Ventura County hospitals and COVID-19 is not as
20 life threatening as the County is depicting, especially for those under the age of 65 and those who
21 have no underlying medical conditions.

22 Defendants request a fully noticed hearing with expert testimony to present this data to the
23 Court. The science and data do not justify, even under rational basis review, closure of the Church
24 services. A full trial on the merits, with experts to ascertain the data, is essential to the protection
25 of the Church's and Pastor McCoy's constitutional liberties.

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28 ⁸ <https://jamanetwork.com/journals/jamasurgery/fullarticle/2625129>

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CONCLUSION

The Orders are unconstitutional, and Plaintiffs are unlikely to succeed on the merits of their claims at trial. For the reasons stated above, Defendants respectfully request that the Court deny Plaintiffs’ application in its entirety.

DATED: August 6, 2020

TYLER & BURSCH, LLP

By: /s/Nada Higuera
Robert H. Tyler, Esq.
Nada N. Higuera, Esq.
Attorneys for Defendants **Godspeak Calvary
Chapel and Rob McCoy**

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PROOF OF SERVICE

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

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

On August 6, 2020, I served a copy of the following document(s) described as **OPPOSITION TO MOTION FOR TEMPORARY RESTRAINING ORDER** on the interested party(ies) in this action as follows:

SEE ATTACHED SERVICE LIST

- ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by electronic transmission. Said electronic transmission reported as complete and without error.
- ☐ **BY FACSIMILE TRANSMISSION.** Pursuant to agreement and written confirmation of the parties to accept service by facsimile transmission, I transmitted copies of the above-referenced document(s) on the interested parties in this action by facsimile transmission from (951) 600-4996. A transmission report issued as complete and without error.
- ☐ **BY UNITED STATES POSTAL SERVICE.** I am readily familiar with the practice for collection and processing of correspondence for mailing and deposit on the same day in the ordinary course of business with the United States Postal Service. Pursuant to that practice, I sealed in an envelope, with postage prepaid and deposited in the ordinary course of business with the United States Postal Service in Murrieta, California, the above-referenced document(s).
- ☐ **BY OVERNIGHT DELIVERY.** I enclosed the above-referenced document(s) in an envelope or package provided by an overnight delivery carrier and addressed as above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- ☐ **BY PERSONAL SERVICE.** I caused copies of the above-referenced documents to the addressee(s) noted above served by process server.

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

s/ Nada Higuera
Nada Higuera

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SERVICE LIST

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

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