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to Govt. Code § 6103**

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THE PEOPLE OF THE STATE OF
11 CALIFORNIA, COUNTY OF SANTA CLARA,
AND SARA H. CODY, M.D., IN HER OFFICIAL
12 CAPACITY AS HEALTH OFFICER FOR THE
COUNTY OF SANTA CLARA
13

14 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
15
16

17 THE PEOPLE OF THE STATE OF
CALIFORNIA, COUNTY OF SANTA CLARA,
18 and SARA H. CODY, M.D., in her official
capacity as Health Officer for the County of
19 Santa Clara,

20 Plaintiffs,

21 v.

22 CALVARY CHAPEL SAN JOSE; MIKE
MCCLURE, and DOES 1-50,
23

24 Defendants.
25
26
27
28

No.

COMPLAINT FOR INJUNCTIVE RELIEF

1 Plaintiffs, the People of the State of California (the “People”), the County of Santa Clara (the
2 “County”), and Sara H. Cody, M.D., in her official capacity as Health Officer for the County (the
3 “County Health Officer”), allege as follows:

4 INTRODUCTION

5 1. This country is in the midst of the most severe pandemic in a century, which has
6 killed more than 17,000 people in California alone. While most County residents, businesses, and
7 institutions have complied with State and County public health orders issued to control the spread of
8 SARS-CoV-2, the virus that causes the Novel Coronavirus Disease 2019 (“COVID-19”), Defendants
9 Calvary Chapel San Jose (“Calvary”) and its Senior Pastor, Mike McClure (“McClure”), have
10 chosen to flagrantly and repeatedly violate those public health orders by conducting indoor services
11 for hundreds of people who are gathering close together, sometimes shoulder-to-shoulder, generally
12 without wearing face coverings and while engaging in activities such as singing indoors—all of
13 which public health professionals have established pose significant risk of COVID-19 transmission
14 and infection.

15 2. The State of California and County of Santa Clara have issued a series of public
16 health orders, directives, and mandatory guidance applicable to gatherings. Under the County’s
17 Mandatory Directive for Gatherings, indoor gatherings were strictly prohibited prior to October 14,
18 2020, and are currently allowed only if certain requirements are satisfied, including that the
19 gatherings must be attended by no more than 100 people or 25 percent of the facility’s capacity
20 (whichever is fewer), face coverings are worn, social distancing is followed, and singing does not
21 take place. Defendants have flouted these orders by gathering indoors prior to October 14, 2020 and
22 by continuing to gather indoors without meeting any of these applicable requirements since then.

23 3. The County has attempted to explain to Defendants that their conduct poses grave
24 risk to the public health, to request voluntary compliance with public health orders, and to
25 incentivize Defendants’ compliance through administrative fines and other efforts short of seeking
26 relief from this Court. In issuing orders to control the spread of COVID-19, the County Health
27 Officer is mindful of the importance of respecting religious freedom and appreciates that the vast
28 majority of religious institutions within the County have continued to practice their faith while also

1 complying with State and County public health orders to protect the health of their congregants and
2 the entire community, and especially the sick, elderly, and vulnerable. To that end, during the period
3 that Defendants were not permitted to hold indoor services, the County explained to Defendants that
4 they had multiple other alternatives for worshipping together—including conducting outdoor and/or
5 drive-in religious services—that many other similarly sized religious institutions have utilized to
6 continue to serve their members. Defendants refused to utilize these options. Even since October
7 14, when Defendants and all other religious institutions were allowed to hold indoor gatherings
8 provided that they complied with applicable restrictions, Defendants have refused to make
9 adjustments and instead continued to violate the public health orders.

10 4. Unfortunately, Defendants have responded to the County’s efforts to inform them
11 about and incentivize voluntary compliance with the State and County public health orders by
12 blatantly violating the orders. In May 2020, the *Mercury News* reported that Defendant McClure
13 had stated that he would reopen the church for regular services, regardless of the status of local
14 orders, and “never” close the church again. Since then, Defendants have trumpeted their intentional
15 noncompliance, live-streamed and posted videos of indoor gatherings that demonstrate their
16 noncompliance, and refused to cooperate with public health officials seeking to contain COVID-19
17 outbreaks.

18 5. Defendants’ ongoing insistence on conducting indoors services that violate the
19 applicable public health orders poses an ongoing and immediate risk of irreparable harm to the
20 public health and safety in Santa Clara County and across California. Large indoor gatherings
21 substantially increase the risk of further community spread of COVID-19, including hospitalizations
22 and death. This is particularly so when the gatherings are coupled with failures to socially distance,
23 wear face coverings, and refrain from singing. Accordingly, Defendants’ irresponsible actions might
24 ultimately result in continued or further restrictions on businesses (including other religious
25 institutions and schools) and other operations and activities within Santa Clara County, limiting the
26 quality of life for the entire community.

27 6. The County’s attempts to achieve voluntary compliance have not worked, and more
28 than \$350,000 in civil fines have not deterred Defendants’ ongoing, dangerous behavior. Indeed, at

1 an October 21, 2020 hearing before the County Hearing Officer (OCHO) that was decided in the
2 County’s favor, Calvary’s counsel represented that Calvary would continue violating the public
3 health orders indefinitely, even if its appeal before the OCHO was denied. Given these recent
4 revelations—which establish that the County’s existing mechanisms for enforcement will not bring
5 Calvary into compliance and that Calvary’s gatherings are massive in size and pose an imminent risk
6 of a superspreader event—the County Counsel and the District Attorney now jointly ask the Court to
7 enjoin Defendants’ violations and order that they comply with all applicable public health orders.

8 THE PARTIES

9 7. Plaintiff the People of the State of California bring this suit by and through the
10 County Counsel for the County of Santa Clara and the District Attorney for the County of Santa
11 Clara pursuant to California Code of Civil Procedure § 731.

12 8. Plaintiff County of Santa Clara is a political subdivision of the State of California.

13 9. Plaintiff Sara H. Cody, M.D. is the Health Officer of the County of Santa Clara and
14 brings this suit in her official capacity.

15 10. Defendant Calvary Chapel San Jose (“Calvary”) is a domestic non-profit corporation
16 that operates a church at 1175 Hillsdale Avenue, San José, California 95118, in Santa Clara County.

17 11. Defendant Mike McClure is the Senior Pastor of the church Calvary operates.

18 12. Defendants, named as Does 1-50, inclusive, are sued under fictitious names pursuant
19 to Code of Civil Procedure § 474, for the reason that their true names and capacities are presently
20 unknown to Plaintiffs.

21 13. Plaintiffs will amend the Complaint to identify the true names and capacities of such
22 Defendants when ascertained.

23 14. Plaintiffs are informed and believe, and on that basis allege, that each of the Doe
24 Defendants is responsible in some manner for the nuisance and violations at issue in this action.

25 15. Plaintiffs are informed and believe, and on that basis allege, that at all times relevant
26 to this action, each of the Defendants were and now are the agents, officers, employees, members,
27 representatives, or alter egos of one or more of the remaining Defendants, and in doing the activities
28 alleged in this Complaint, were acting within the scope of their authority as agents, officers,

1 employees, members, representatives, or alter egos with the permission and consent of the remaining
2 Defendants.

3 **FACTUAL ALLEGATIONS**

4 **The COVID-19 Pandemic**

5 16. COVID-19 is the disease caused by SARS-CoV-2, which refers to the novel
6 coronavirus currently spreading throughout the world.

7 17. The World Health Organization (WHO) declared COVID-19 a pandemic on
8 March 11, 2020. That declaration remains in effect. The WHO, the United States Centers for
9 Disease Control and Prevention (CDC), the United States Department of Health and Human
10 Services, the National Institutes of Health, the California Department of Public Health, the County
11 Public Health Department, and United States Chief Justice John Roberts in relevant U.S. Supreme
12 Court decisions, all refer to COVID-19 as a pandemic.

13 18. COVID-19 is highly contagious, spreading primarily by respiratory droplets and
14 aerosols through the air. It is often spread by people exhibiting no symptoms.

15 19. There is currently no cure or vaccine for COVID-19.

16 20. The best way to protect the public from COVID-19 is to undertake risk-mitigation
17 measures to prevent transmission and infection, such as avoiding indoor gatherings, wearing face
18 coverings, keeping sufficient physical distance, and avoiding singing or shouting near others while
19 indoors.

20 21. As described below, public health orders are in effect throughout the County and
21 State. But even with those orders, the ongoing ravages of COVID-19 are alarming. As of October
22 26, 2020, statewide there have been 901,010 COVID-19 cases and 17,357 deaths, of which 24,313
23 cases and 388 deaths occurred among Santa Clara County residents. Recent data at the national
24 level is particularly concerning. Experts consider this outbreak the worst public health epidemic
25 since the influenza outbreak of 1918, and recent case numbers suggest the outbreak is worsening.
26 As of October 24, 2020, public health authorities have confirmed at least 8,320,491 total cases in the
27 United States, and 221,564 deaths. There were 83,757 new cases reported in the United States on

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1 October 23, 2020, eclipsing the prior single-day record of 77,300 cases in mid-July. And on October
2 24, 2020, there were 83,718 new cases reported.

3 22. While these numbers are unprecedented, the public health orders, and community
4 members' adherence to those orders, have enabled the County to "flatten the curve," and, for the
5 time being, avoid some of the more dramatic and devastating impacts from the pandemic that have
6 been experienced elsewhere around the nation and around the world. The County Health Officer's
7 initial order to limit gatherings, and later order requiring residents to shelter in place, which preceded
8 similar orders statewide and in other jurisdictions, substantially limited the spread of COVID-19 and
9 likely saved tens of thousands in the County from infection. And because the spread of COVID-19
10 is exponential, any spread prevention produces enormous risk reduction over time. Indeed, model
11 projections prepared by the County's Public Health Department in collaboration with infectious
12 disease modeling experts at Stanford University's School of Medicine documented that over just the
13 six-week period of March 16 through April 25, 2020, the County and State shelter-in-place orders
14 prevented approximately *80 percent* of infections that otherwise would have occurred.

15 23. Over the course of the COVID-19 pandemic, evidence has grown that indoor
16 activities pose significantly greater risks than outdoor activities. Research has confirmed that, like
17 other coronaviruses, COVID-19 is primarily spread from person to person through respiratory
18 droplets and aerosols released into the air when singing, shouting, talking, coughing, or sneezing. It
19 is much easier to catch COVID-19 indoors. Respiratory droplets and aerosols can hang in the air for
20 a longer period of time indoors, adding to the potential for infection. When outdoors, more frequent
21 air movement and larger air volume disperses respiratory droplets and aerosols, and ultraviolet light
22 may inactivate the coronavirus, making transmission less likely.

23 24. Church gatherings are a common source of "superspreader" events. For example, in
24 South Korea, as of March 25, 2020, at least 5,080 confirmed cases of COVID-19 were traced back to
25 a cluster of cases at a church arising from one 61-year-old person who attended a religious service.
26 In California, as of April 2, 2020, 71 cases of COVID-19 were linked to a church in Sacramento. In
27 Kentucky, as of April 2, 2020, 28 cases of COVID-19 and two deaths were linked to a church
28 revival. In West Virginia, there were at least 51 confirmed cases and three deaths tied to the

1 resumption of mask-optional services at a church in late May. In Texas, about 50 people contracted
2 COVID-19 in June/July 2020 after a pastor told congregants they could once again hug one another.
3 In Pennsylvania, a dozen congregants at a church in Philadelphia tested positive for COVID-19 after
4 the church resumed in-person services in July 2020. In Ohio, a man with COVID-19 attending a
5 single church service in June 2020 led to 91 other people becoming infected, including 53 people
6 who had been at the same service. In Maine, after 62 people attended an indoor church wedding in
7 August 2020, more than 180 people have been infected and eight people have died; none of the
8 people who died attended the wedding. In North Carolina, more than 121 cases and at least 3 deaths
9 in early October 2020 have been linked to a church. In Maine, at least 49 cases and three
10 hospitalizations have been linked to a church that held a fellowship event in early October 2020 and
11 in-person services in which attendees did not regularly wear masks. In West Virginia, 18 outbreaks
12 in 13 counties in October 2020 have been traced to church services in the state.

13 **The County's Public Health Orders and Ordinance**

14 25. The County announced two of the earliest cases of travel-associated COVID-19 in the
15 United States on January 31 and February 2, 2020.

16 26. On February 3, 2020, Dr. Cody declared COVID-19 a local health emergency and the
17 County's Director of Emergency Services proclaimed a local emergency regarding COVID-19.
18 Those emergencies remain in effect.

19 27. On February 7, 2020, the County recorded the first death from COVID-19 in the
20 entire United States in a person who had not traveled or had contact with a known case.

21 28. Beginning on March 9, 2020, and continuing to the present, Dr. Cody has issued a
22 series of orders designed to curtail the spread of COVID-19 and protect the public health. Each of
23 these orders has been informed by the best available scientific and other data regarding COVID-19.
24 The ultimate goal of each order has been to save lives and protect the public health without any more
25 disruption to social and economic life than necessary.

26 29. Informed by this data, on July 2, 2020, Dr. Cody issued an Order Establishing
27 Mandatory Risk Reduction Measures Applicable to All Activities and Sectors to Address the

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1 COVID-19 Pandemic (the “Risk Reduction Order”). The Risk Reduction Order was in effect until
2 October 14, 2020, at which time a revised order (described below) went into effect.

3 30. The Risk Reduction Order applied to Defendants and included these provisions,
4 amongst others:

- 5 a. All businesses (which included Defendant Calvary) were required to submit a
6 Social Distancing Protocol to the County that obligated the business to
7 undertake certain facility-specific actions to mitigate the risk of spreading
8 COVID-19, such as requiring all people within the business to wear face
9 coverings, properly sanitizing the facility, training employees on how to
10 prevent spread of COVID-19, and requiring a plan for reporting positive cases
11 of COVID-19.
- 12 b. All persons were required to maintain a minimum of six feet from others not
13 in their household.
- 14 c. When inside a business facility, including a church, all individuals were
15 required to wear face coverings (unless exempted for medical reasons).

16 31. The Risk Reduction Order also imposed limitations on “gatherings,” which it defined
17 as “any indoor or outdoor event, assembly, meeting, or convening that brings together people from
18 separate households in a coordinated fashion,” including a “worship service.” It further stated that
19 any directive subsequently issued by Dr. Cody regarding conduct in particular contexts would be a
20 mandatory component of the Risk Reduction Order.

21 32. On July 8, 2020, Dr. Cody issued a Mandatory Directive for Gatherings, which was
22 later revised on July 14, July 20, September 5, and September 8, 2020 (“Gatherings Directive”). The
23 Gatherings Directive in effect during this time period included the following provisions:

- 24 a. A “‘gathering’ is an event, assembly, meeting, or convening that brings
25 together multiple people from separate households in a single space, indoors
26 or outdoors, at the same time and in a coordinated fashion—like a wedding,
27 banquet, conference, religious service, festival, fair, party, performance,
28 barbecue, protest, or picnic.”

- b. Indoor gatherings were prohibited.
- c. Members of different households must practice minimum six-foot social distancing.
- d. All attendees must wear face coverings unless medically exempt.
- e. No singing, chanting, or shouting is allowed at indoor gatherings (as of September 5, allowed at outdoor gatherings if face coverings used).
- f. Instruments played by mouth may only be played outdoors with a covering (as of September 5).
- g. The party or entity hosting the gathering must further ensure that participants comply with all applicable public health orders.

33. All residents and businesses (including churches) in the County must comply with the stricter of the restrictions imposed by the County or by the State.

34. On October 5, 2020, Dr. Cody issued an order that went into effect on October 14, 2020 and remains in effect today: an Order of the Health Office of the County of Santa Clara Establishing Revised Mandatory Risk Reduction Measures Applicable to all Activities and Sectors to Address the COVID-19 Pandemic (the “Revised Risk Reduction Order”).

35. The Revised Risk Reduction Order applies to Defendants and continues to require submission of a Social Distancing Protocol. It further provides that face coverings must be worn at all times and by all individuals as specified by the California Department of Public Health’s mandatory guidance. This includes when people are inside any indoor public space, such as a church. And the Revised Risk Reduction Order continued to require that people maintain at least six feet of social distance from all people outside their household.

36. On October 13, 2020, Dr. Cody issued a revised Mandatory Directive for Gatherings, which remains in effect today (the “Revised Gatherings Directive”). While the prior Gathering Directive strictly prohibited all indoor gatherings, the Revised Gathering Directive provides that indoor gatherings are discouraged, but permitted, so long as the maximum number of people gathering is 100 people or 25% of the facility’s capacity, whichever is fewer. The Revised Gatherings Directive also allows for venues to host multiple indoor gatherings at the same time,

1 provided that each gathering is separated by a floor-to-ceiling partition and there is no interaction
2 between members of each gathering. The Revised Gatherings Directive continued to prohibit
3 singing indoors.

4 **The State Public Health Officer's Orders and Mandatory Guidance**

5 37. On March 4, 2020, the Governor declared a state of emergency in California due to
6 the threat of COVID-19. This state of emergency remains in effect.

7 38. The State Public Health Officer issued an Order on May 7, 2020 (the "State May 7
8 Order"), which provides that "a local health jurisdiction may implement or continue more restrictive
9 public health measures if the jurisdiction's Local Health Officer believes conditions in that
10 jurisdiction warrant it."

11 39. The State Public Health Officer issued an Order on July 13, 2020 (the "State July 13
12 Order"), under which places of worship in Santa Clara County were prohibited from conducting
13 indoor gatherings because the County was, throughout the period of July 15, 2020 through August
14 30, 2020, on the State's "County Monitoring List."

15 40. On July 29, 2020, the California Department of Public Health (CDPH) issued
16 COVID-19 Industry Guidance for Places of Worship and Providers of Religious Services and
17 Cultural Ceremonies (the "State July 29 Guidance"). The State July 29 Guidance establishes many
18 mandatory requirements, including provisions requiring places of worship to ensure that people
19 maintain at least six feet of social distance from people outside their household, requires that people
20 use face coverings, and which prohibits singing and chanting. The State July 29 Guidance explained
21 that "activities such as singing and chanting negate the risk-reduction achieved through six feet of
22 physical distancing."

23 41. The State Public Health Officer issued an Order on August 28, 2020 (the "State
24 August 28 Order"), effective August 31, 2020 and implemented through the CDPH "Blueprint for a
25 Safer Economy" (the "State Blueprint"). The State August 28 Order and State Blueprint rely on a
26 set of four progressive Tiers (purple, red, orange, and yellow), each of which permits a broader range
27 of reopening. Under this framework, every county in California is assigned to a tier based on two
28 criteria: (1) its test positivity rate, which is the seven-day average of the percentage of tests

1 conducted that are positive; (2) its adjusted case rate, which is the seven-day average of the number
2 of cases per 100,000 persons, with an adjustment downward if the county is conducting more tests
3 than the median county testing rate in the State. In order to advance to the next less restrictive tier,
4 each county must meet data requirements for these two criteria, as well as an equity metric or
5 demonstrate targeted investments to eliminate disparities in levels of COVID-19 transmission,
6 depending on its size.

7 42. Prior to September 8, 2020, the County was assigned to Tier 1 (purple), which is the
8 most restrictive of the four tiers. Under the State August 28 Order and State Blueprint, the State
9 prohibited businesses (including places of worship) in Santa Clara County from conducting indoor
10 gatherings altogether while the County remained in Tier 1 (purple).

11 43. On September 8, 2020, the State announced that Santa Clara County had been moved
12 from Tier 1 (purple) to Tier 2 (red). Under the State August 28 Order and State Blueprint, places of
13 worship in Tier 2 counties may hold indoor gatherings, but attendance at these gatherings is capped
14 at 25% capacity or 100 persons, whichever is fewer. In addition, those in attendance must wear face
15 coverings, properly social distance, and refrain from singing indoors.

16 44. As with prior State orders, the State August 28 Order provides that “[a] local health
17 jurisdiction may continue to implement or maintain more restrictive public health measures if the
18 jurisdiction’s Local Health Officer determines that health conditions in that jurisdiction warrant such
19 measures.” Based on the continuing risk facing the County, and the research establishing the
20 significantly elevated risk associated with indoor gatherings, Dr. Cody decided to maintain the
21 prohibition on indoor gatherings when the County entered Tier 2.

22 45. On October 13, 2020, the State announced that Santa Clara County had been moved
23 from Tier 2 (red) to Tier 3 (orange). Under the State August 28 Order and State Blueprint, places of
24 worship in Tier 3 counties may hold indoor gatherings up to 50% capacity or 200 persons,
25 whichever is fewer. As in Tiers 1 and 2, those in attendance must wear face coverings, properly
26 social distance, and refrain from singing indoors. Again based on the risk facing the County, and in
27 order to limit the potential for uncontrollable superspreader events, Dr. Cody decided to allow indoor

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1 gatherings, including worship services, but to limit the size of those gatherings to the level the State
2 allows in Tier 2 (100 persons or 25% capacity, whichever is fewer).

3 **Enforcement of Public Health Orders**

4 46. State and local public health orders are mandatory directives, and violation of either is
5 punishable by law. (Health & Safety Code, §§ 120275; 120295; Government Code §§ 8567; 8571;
6 8627; 8665.)

7 47. On August 11, 2020, the County Board of Supervisors adopted Urgency Ordinance
8 No. NS-9.921 (“Urgency Ordinance”), which creates a comprehensive civil enforcement program to
9 combat the spread of COVID-19. The Urgency Ordinance is intended to facilitate enforcement of
10 the Public Health Orders and to ensure compliance with those Orders, including by providing a
11 significant deterrent to violating the Public Health Orders.

12 48. The County’s enforcement program is primarily a complaint-based system. In
13 response to complaints from the public, County Enforcement Officers designated by the Health
14 Officer investigate allegations of public health order violations and, when violations are confirmed
15 or observed, issue Notices of Violation to address the offending activity.

16 49. The Urgency Ordinance sets a schedule of fines for Notices of Violation issued
17 pursuant to the Ordinance. The minimum fine for a violation by a business entity, including a
18 church, is \$250, and the maximum fine is \$5,000. The Urgency Ordinance imposes additional
19 cumulative fines for each day a violation occurs. Each day the violation is not corrected, the daily
20 fine doubles in size, up to the maximum daily fine of \$5,000. For example, a business entity that is
21 fined \$250 and fails to correct the violation will be fined \$500 the following day, \$1,000 the day
22 after that, and \$2,000 the day after that, up to \$5,000. Once the maximum is reached, the entity will
23 continue to be fined \$5,000 for each day of the continuing violation.

24 **Defendants’ Conduct in Violation of the County and State Public Health Orders**

25 50. As described above, prior to October 14, 2020, the County Public Health Orders
26 prohibited *any* indoor gatherings, including at places of worship. Under the Revised County Public
27 Health Orders (which became effective on October 14, 2020), some indoor gatherings are now
28 permitted. However, the maximum number of people allowed to gather indoors is 100 people or 25

1 percent of the facility’s capacity, whichever is fewer. Although the State allows 200 people or 50
2 percent of the facility’s capacity, residents and businesses must follow the stricter of the County and
3 State orders.

4 51. Both before and since October 14, 2020, the County and State Public Health Orders
5 have prohibited singing indoors and required that participants engage in social distancing and wear
6 face coverings at all times. The designated host at any gathering must ensure compliance with the
7 County and State Public Health Orders.

8 52. Defendants have violated the County and State Public Health Orders, including by
9 holding indoor gatherings prior to October 14, 2020, holding indoor gatherings of more than 100
10 people since October 14, 2020, and by failing to require that participants socially distance, wear face
11 coverings, and refrain from singing.

12 53. On August 21, 2020, in response to a public complaint about Calvary, the County
13 issued a cease and desist letter demanding that Calvary immediately comply with State and County
14 Public Health Orders. Among other things, the County demanded that Calvary cease: holding indoor
15 services; failing to ensure that everyone attending, performing, or speaking at services wore face
16 coverings; failing to ensure that everyone attending, performing, and speaking at services was
17 socially distanced; failing to prevent those attending, performing, and speaking at services from
18 singing; and failing to submit a Social Distancing Protocol. The County informed Calvary that it
19 would take enforcement action if it did not immediately come into compliance.

20 54. That same day, County Enforcement Officers Melissa Gonzalez and Julius Calso
21 visited Calvary to hand deliver the cease and desist letter. The Enforcement Officers observed
22 people in the church office not wearing face coverings, as well as youth and adults on the church
23 property also not wearing face coverings. A man who identified himself as Carson Atherley
24 accepted the cease and desist letter on Calvary’s behalf. On information and belief, Mr. Atherley is
25 a staff member or volunteer for Calvary.

26 55. Defendants did not respond to the County’s cease and desist letter or submit a Social
27 Distancing Protocol. Instead, two days later—on Sunday, August 23, 2020—Defendants held an
28 indoor worship service that violated State and County Public Health Orders. County Enforcement

1 Officers Melissa Gonzalez and Beatrice Santiago conducted a site visit of Calvary that day and
2 observed the gathering from outside and inside the church. Outside the church, the Officers
3 observed numerous cars parked in the parking lot and individuals walking into the church. The
4 Officers observed that the majority of those entering the church and the staff directing traffic were
5 not wearing face coverings. The Officers then approached the church and were greeted by a woman
6 who welcomed them into the facility. Inside the church, the Officers observed at least 100 people
7 gathering who were not wearing face coverings and not maintaining a six-foot distance from other
8 attendees. The Officers also observed people singing.

9 56. Based on their in-person observations of Defendants’ violations on August 23, the
10 Officers prepared a Notice of Violation of Health Officer Order (“NOV”) in their automobile.
11 Before they could post or serve the NOV, however, they were approached by Mr. Atherley and
12 asked to leave the premises. They immediately did so.

13 57. Later that day, the County issued a NOV, which it served via email and certified U.S.
14 mail on Calvary and its counsel. The NOV imposed a fine of \$5,000 for holding an unlawful indoor
15 gathering on August 23, 2020; failing to comply with required social distancing practices; not
16 requiring congregants or church service-attendees to wear face coverings while attending,
17 performing, or speaking at indoor worship services; and permitting congregants or church service-
18 attendees to sing. The NOV also imposed additional fines (pending a 48-hour grace period within
19 which they could be corrected) of \$250 for failing to submit and implement a Social Distancing
20 Protocol, failing to post a Social Distancing Protocol, and failing to train staff on an implemented
21 Social Distancing Protocol.

22 58. Defendants did not come into compliance following the August 23 NOV. Instead,
23 one week later—on Sunday, August 30—they again held an unlawful indoor worship service with
24 the same accompanying violations. Enforcement Officer Gonzalez returned to Calvary that day with
25 Enforcement Officer Anjani Sircar and observed the gathering from outside the church. The
26 Officers observed cars entering the rear parking lot to Calvary Chapel and attendees, greeters, and
27 traffic controllers who were not wearing face coverings. They further observed that the church’s
28 rear parking lot was full of cars and that cars were parking along the fence line due to the overflow.

1 The Officers estimated that approximately 150 cars were parked in Calvary's parking lots and
2 approximately 90 cars were parked in Calvary's front and adjacent lots, for a total of 240 cars
3 associated with the gathering. The Officers also watched the livestream of Calvary Chapel's indoor
4 gathering occurring at that moment. During the livestream, they heard and observed individuals
5 singing and playing live instruments inside of Calvary Chapel without face coverings and observed a
6 lack of social distancing between those in attendance. The livestream video of the indoor service
7 from August 30 also includes remarks from Defendant McClure that if he had been present when the
8 County's enforcement officers came to the church, he would have responded by handing them a
9 copy of the Constitution and telling them to give it to their boss.

10 59. Later that day, the County issued a second Notice of Violation of Health Officer
11 Order. The NOV imposed a \$5,000 fine for holding an unlawful indoor gathering on August 30,
12 2020.

13 60. On September 2, 2020, the County sent a Notice of Continuing Violation and
14 Imposition of Fines. That Notice detailed the fines that had accrued to Calvary as of September 2,
15 2020 and reminded Defendants that Calvary's failure to submit a Social Distancing Protocol was an
16 ongoing violation and that Calvary would continue to receive daily fines of \$5,000 each day until it
17 corrected that violation. It further informed Defendants that if they did not immediately correct the
18 violations, the County might take additional legal action, including civil or criminal prosecution,
19 with additional resulting penalties, fees, and/or costs.

20 61. On information and belief, Defendants have continued to hold indoor worship
21 services that violate State and County Public Health Orders. Every Sunday since August 30, 2020,
22 County Enforcement Officers have returned to Calvary and observed the same pattern of violations
23 from outside the church, including numerous vehicles arriving at the church, more than 150 vehicles
24 parked in Calvary's parking lots, members of the public without face coverings walking towards the
25 church, and attendees, greeters, and traffic controllers not wearing face coverings. On information
26 and belief, Calvary has continued to hold indoor gatherings of more than 100 people from different
27 households and failed to enforce the State and County Health Officers' face covering and social
28 distancing requirements and singing prohibitions.

1 62. County Enforcement Officers also observed portions of the livestream videos of
2 Defendants' services. Archived videos posted on Calvary's website show that Defendants have held
3 indoor worship services every Sunday since August 23, 2020 (and on many Sundays prior to that),
4 and the videos show that participants are not wearing face coverings, not social distancing, and are
5 singing. Defendants' website includes archived video of their services at the following address:
6 <https://calvarysj.org/sunday-morning-messages/messages>. Video of Defendants' services are also
7 available on the church's YouTube channel: <https://www.youtube.com/user/calvarysanjose/videos>.
8 Defendants' website shows that they held indoor services each Sunday as early as May 31, 2020 and
9 continuing through at least Sunday, October 25, 2020. On information and belief, those services
10 each included at least 100 attendees.

11 63. In response to Calvary's continued violations since August 23, 2020, the County has
12 continued to issue Notices of Violation. In addition to the Notices of Violation issued on August 23,
13 2020 and August 30, 2020, the County issued further Notices of Violation on September 6, 2020;
14 September 13, 2020; September 20, 2020; September 27, 2020; October 4, 2020; October 11, 2020;
15 October 18, 2020; and October 25, 2020.

16 64. The County has fined Calvary \$5,000 for each of its indoor gatherings for which
17 Calvary did not require attendees to wear face coverings, maintain adequate social distance, or
18 refrain from singing. In addition, as described above, the County fined Calvary \$250 for its failure
19 to implement a Social Distancing Protocol. Pursuant to the Urgency Ordinance, the fines imposed
20 for each subsequent day Calvary has failed to submit and implement a Social Distancing Protocol
21 have "automatically double[d]" until the fines reached \$5,000 per day (the maximum amount set
22 forth in the ordinance). Since reaching the maximum daily fine, Calvary has been fined \$5,000 per
23 day for its ongoing failure to implement a Social Distancing Protocol.

24 65. To date, Calvary has accrued fines of more than \$350,000 for unlawful gatherings
25 failure to comply with face covering, social distancing, and non-singing requirements, as well as
26 failing to submit and implement a Social Distancing Protocol.

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1 **Defendants’ Continued Violation of County and State Public Health Orders in the Face of**
2 **Accumulating Fines**

3 66. Defendants have knowingly and repeatedly violated the County Public Health Orders
4 and the State Public Health Orders and continue to do so.

5 67. On May 24, 2020, the *Mercury News* published an article quoting Defendant McClure
6 as publicly avowing to defy public health orders. That article, titled “San Jose: Church pastor vows
7 to fully reopen next week, regardless of stay-at-home orders” (available at

8 [https://www.mercurynews.com/2020/05/24/san-jose-church-pastor-vows-to-fully-reopen-next-week-](https://www.mercurynews.com/2020/05/24/san-jose-church-pastor-vows-to-fully-reopen-next-week-regardless-of-stay-at-home-orders/)
9 [regardless-of-stay-at-home-orders/](https://www.mercurynews.com/2020/05/24/san-jose-church-pastor-vows-to-fully-reopen-next-week-regardless-of-stay-at-home-orders/)), reported that Defendant McClure “said in an outdoor sermon
10 Sunday he would reopen the church for regular service next week, regardless of the status of local
11 orders mandating public closure, and that he will ‘never’ close the doors to his church again.”

12 68. The County has attempted to explain to Defendants that their conduct poses grave
13 risk to the public health, to discuss alternative options for worship (including outdoor gatherings and
14 drive-in gatherings) and changes in the public health orders, and to request voluntary compliance
15 with public health orders. None of these discussions have resulted in Defendants’ coming into
16 compliance with the County and State Public Health Orders. Moreover, as described above, in
17 response to a public complaint, and pursuant to the enforcement powers granted in the August 11
18 Urgency Ordinance, the County has repeatedly issued Notices of Violation against Calvary. These
19 NOVs have not resulted in Defendants’ coming into compliance with the County and State Public
20 Health Orders.

21 69. Nor have the fines the County has levied against Calvary resulted in Defendants’
22 coming into compliance. As described above, Defendants have accrued more than \$350,000 in fines
23 to date. Calvary could have avoided the accrual of these fines by complying with the County and
24 State Public Health Orders, but it has refused to do so.

25 70. Indeed, Defendants have admitted that they have no intention of complying with the
26 County and State Public Health Orders, despite the issuance of NOVs and imposition of fines. The
27 archived footage of worship services that took place between August 23, 2020 and October 25, 2020
28 show that Defendant McClure made statements to attendees in which he referenced Calvary’s

1 noncompliance with County rules and the County’s imposition of fines and referred to the indoor
2 gatherings as “protests.” These statements show that Defendants are well-aware that they are in
3 violation of the State and County Public Health Orders and undeterred by the fines accruing against
4 them.

5 71. In light of the frequency and size of Defendants’ indoor gatherings, as well as the fact
6 that COVID-19 spreads so easily and quickly from person to person indoors, Defendants’ conduct
7 creates an immediate and serious risk to the health and safety of the people of the County and the
8 State of California, and to the ability of the County to maintain its status in Tier 3 allowing for a
9 broader economic reopening.

10 72. Because Defendants will not voluntarily comply with the County Public Health
11 Orders and the State Public Health Orders, and because the monetary fines imposed by the County
12 have proven to be an insufficient deterrent to Defendants’ ongoing unlawful conduct that is
13 irreparably injurious to the public health, injunctive relief is the only remedy that will protect the
14 health and welfare of the residents of the County of Santa Clara.

15 73. Indeed, Defendants recently made clear that they have no intention of complying
16 voluntarily with the Public Health Orders. During an October 21, 2020 administrative hearing that
17 Calvary requested to challenge the fines imposed for its numerous violations of the Public Health
18 Orders, counsel for Defendants represented that Calvary was “not disputing that it is in violation of
19 the orders and that it has been holding indoor services without enforcing social distancing or mask
20 wearing and without adhering to the capacity limitations” and made clear that Defendants have no
21 intention of complying with the Orders. The hearing officer found that Calvary had, as he described
22 it, “thumbed its nose at the County, saying, ‘We’re just going to keep on doing what we’re doing,
23 and we don’t care what the law is,’” by repeatedly holding gatherings that could be superspreader
24 events. Because Defendants showed no interest in complying with the Public Health Orders, the
25 hearing officer upheld the fines, which totaled \$327,750 on that date. These recent representations
26 by counsel for Defendants underscored that injunctive relief is the only remedy that will protect the
27 health and welfare of the residents of the County of Santa Clara.

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1 74. The fines continue to accrue because Defendants continue to flagrantly violate the
2 Public Health Orders. To date, Calvary Chapel has accrued more than \$350,00 in administrative
3 fines for its continued violations of the Public Health Orders.

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION – PUBLIC NUISANCE**

6 **AGAINST ALL DEFENDANTS**

7 75. Plaintiffs reallege and incorporate by reference paragraphs 1 through 74 of this
8 Complaint.

9 76. A nuisance *per se* exists when a legislative body with appropriate jurisdiction
10 expressly declares that an activity constitutes a nuisance. The County Board of Supervisors is a
11 legislative body with appropriate jurisdiction. The Board of Supervisors found and declared in
12 Ordinance NS 9.291 (the “Urgency Ordinance”) that violations of the County Public Health Orders
13 and State Public Health Orders constitute an imminent threat and menace to public health and are a
14 public nuisance. (Ordinance NS-9.291 at §§ 1(a), 3.)

15 77. The Risk Reduction Order and Revised Risk Reduction Order further state that any
16 violation of those orders constitutes a nuisance and an imminent threat and menace to public health.
17 (Risk Reduction Order at ¶¶ 1b; 15; Revised Risk Reduction Order at ¶¶ 1b; 15.)

18 78. The wrongful conduct of Defendants and each of them, as alleged herein, constitutes
19 a public nuisance *per se*.

20 79. Indoor gatherings, alone and especially when coupled with failures to socially
21 distance, wear face coverings, and refrain from singing, significantly heightens the risk of
22 widespread transmission throughout the community of COVID-19. Such conduct is injurious to
23 health on a community-wide basis, poses a danger to human life, and is unsafe and detrimental to the
24 public health, safety, and welfare. Accordingly, the wrongful conduct of Defendants and each of
25 them, as alleged herein, constitutes a public nuisance in violation of state law and County ordinance.

26 80. The public nuisance created by Defendants, and each of them, as alleged herein,
27 unless enjoined and restrained by the Court, will cause and continue to cause great and irreparable

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1 injury to the general public, including all persons within Santa Clara County, by creating a
2 significant risk of further community spread of COVID 19, including hospitalizations and deaths.

3 81. Plaintiffs have no adequate remedy at law because the amount of the damages to the
4 general public's health, safety, and welfare is unascertainable and damages cannot compensate for
5 the societal disruption, illness, and deaths caused by Defendants' disregard of mandatory public
6 health orders that are designed to slow the spread and minimize the ill effects of a devastating
7 pandemic.

8 82. Plaintiffs also have no adequate remedy at law because Defendants are undeterred by
9 monetary fines.

10 **SECOND CAUSE OF ACTION – VIOLATION OF COUNTY AND STATE PUBLIC**
11 **HEALTH ORDERS**
12 **AGAINST ALL DEFENDANTS**

13 83. Plaintiffs reallege and incorporate by reference paragraphs 1 through 82 of this
14 Complaint.

15 84. In light of Defendants' continued and intentional noncompliance with the County
16 Public Health Orders and State Public Health Orders, despite and in the face of the County's efforts
17 to obtain compliance through methods short of litigation, this litigation has become a necessary
18 measure to protect the public health by preventing further or wider community spread of COVID-19
19 and thereby to prevent additional cases of COVID-19, including serious illnesses and deaths.

20 85. The wrongful conduct of Defendants, and each of them, as alleged herein, unless
21 enjoined and restrained by the Court, will cause and continue to cause great and irreparable injury to
22 the general public, including all persons within Santa Clara County, by creating a significant risk of
23 further community spread of COVID-19, including hospitalizations and deaths.

24 86. Plaintiffs have no adequate remedy at law because the amount of the damages to the
25 general public's health, safety, and welfare is unascertainable and damages cannot compensate for
26 the societal disruption, illnesses, and deaths caused by Defendants' disregard of mandatory public
27 health orders designed to slow the spread and minimize the ill effects of a global pandemic.

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1 87. Plaintiffs also have no adequate remedy at law because Defendants are undeterred by
2 monetary fines.

3 **PRAYER**

4 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as to all
5 causes of action as follows:

- 6 A. For a temporary restraining order, a preliminary injunction, and a permanent
7 injunction, all enjoining and prohibiting Defendants, and each of them, and their
8 agents, employees, representatives, members, volunteers, officers, alter egos, and all
9 persons acting under, in concert with, or for them, from conducting any gathering or
10 service that does not fully comply with relevant State and County public health
11 orders, including the Risk Reduction Order, the Gatherings Directive, the State
12 August 28 Order, the Revised Risk Reduction Order, and the Revised Gatherings
13 Directive;
- 14 B. For costs of suit;
- 15 C. For attorney's fees; and
- 16 D. For such other and further relief as the court deems just and proper.

17 Dated: October 27, 2020

Respectfully submitted,

18 JAMES R. WILLIAMS
19 County Counsel

20 By: /s/ Melissa R. Kinyalocis
21 Melissa R. Kinyalocis
22 Lead Deputy County Counsel

23 JEFFREY F. ROSEN
24 District Attorney

25 By: /s/ David Angel
26 David Angel
27 Assistant District Attorney

28 Attorneys for Plaintiffs
PEOPLE OF THE STATE OF CALIFORNIA,
COUNTY OF SANTA CLARA, and SARA H.
CODY, M.D., in her capacity as Health Officer for the
County of Santa Clara