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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA CLARA**

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

13 Plaintiffs,

14 v.

15 CALVARY CHAPEL SAN JOSE; MIKE
16 McCLURE; and DOES 1-501-50, inclusive,

17 Defendants.

Case No.: 20CV372285

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' PARTIAL MOTION FOR
SUMMARY ADJUDICATION**

Date: March 14, 2023

Time: 9:00 a.m.

Dept.: D6

Judge: Hon. Evette D. Pennypacker

Complaint Filed: October 27, 2020

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 For nearly two years, Santa Clara County (“the County”) subjected Californians to a
4 draconian regime of unconstitutional public health orders in the name of COVID-19. The County
5 took drastic steps to enforce its orders by issuing staggering fines on non-complying businesses and
6 entities. Pronounced among this constitutional wreckage are Calvary Chapel San Jose and Mike
7 McClure (“Calvary”), who face millions in fines because they chose to hold religious gatherings.
8 The Supreme Court has vindicated Calvary numerous times and even admonished the County. (*See*,
9 *e.g.*, *Gateway City Church v. Gavin Newsom* (2021) 141 S.Ct. 1460 [“Gateway”].) Yet, the County
10 claims it did no wrong, and that this Court should grant summary adjudication in its favor. (*See*
11 County’s Mot. for Summary Adjudication and Memorandum of Points and Authorities in Support
12 [“County Br.”] on file.) The County is wrong for the following reasons.

13 *First*, summary adjudication is inappropriate when additional discovery is necessary to
14 properly support an opposition to summary adjudication.

15 *Second*, Calvary is not estopped from challenging the constitutionality of the Social
16 Distancing Protocol (“SDP”) and COVID-19 orders. Calvary did not have a full and fair opportunity
17 to litigate its constitutional claims, and the elements of issue preclusion are not met.

18 *Third*, the County is not entitled to relief as to the first and third causes of action because the
19 underlying orders are unconstitutional.

20 *Fourth*, nuisance *per se* is inapplicable because the underlying orders were unconstitutional.

21 *Fifth*, a triable issue of fact exists as to the amount of the fines. Notwithstanding the factual
22 issues, the County is not entitled to a collection of any fines because the underlying orders violated
23 the First Amendment and Fourteenth Amendment. The County’s fine scheme also discriminated
24 against religion by exempting comparable non-commercial activities, like private parties,
25 graduations, and wedding ceremonies.

26 *Finally*, the County is not entitled to relief because the fines are unconstitutionally excessive,
27 and the County violated the Due Process Clause by not providing Calvary adequate notice of its
28 alleged violations. Thus, this Court should deny the motion in its entirety.

1 **II. FACTUAL BACKGROUND**

2 **A. Calvary Chapel San Jose**

3 Calvary can fit over 1700 people in its sanctuary, easily accommodating the 300-500
4 congregants that attend Sunday services. (McClure Decl., ¶ 17.) From May 31, 2020 through May
5 2021, the church provided seating in the gym and entrance hallway. (*Id.*) About five to ten church
6 staff and volunteers were working at the church on the workdays and conducted essential services
7 for the church, such as providing counsel and prayer to visitors. (*Id.*, ¶ 18.) Calvary also held weekly
8 prayer gatherings, which ranged from two to twenty congregants. (*Id.*)

9 The church building’s heating, ventilation, and air conditioning (HVAC) system has superior
10 air quality. The filters are maintained for optimized infiltration. (Shepherd Decl., ¶ 5.) The system
11 draws 10% of fresh air daily and circulates it back into the entire building and sanctuary. (*Id.*, ¶ 6.)
12 Dr. Sara Cody testified, on behalf of the County, that a building’s ventilation and occupancy limits
13 impact the spread of COVID-19. (Gondeiro Decl., Ex. 29, pp. 256-57.)

14 Calvary’s religious tenets require that the church regularly gather *in person* for the teaching
15 of God’s Word, prayer, worship, baptism, communion, and fellowship. (McClure Decl., ¶ 6.) These
16 religious tenets find support in Hebrews 2:12 and 10:25, Ephesians 5:19, Acts 2:40-47, and Acts
17 5:40-42. (*Id.*) Scripture demands *in-person* fellowship for the upbuilding of the Body of Christ. (*Id.*,
18 ¶ 11.) Calvary did not force congregants to wear face coverings because it interfered with Calvary’s
19 tenets, such as worship, intercession, and counsel. (*Id.*, ¶¶ 12-15.) Calvary believes congregants are
20 to approach God with unveiled faces, beholding the glory of the Lord, and being transformed into
21 the same image from one degree of glory to another, as outlined in 2 Corinthians 3:18. (*Id.*, ¶ 12.)
22 Calvary did not sign a completed SDP because it required Calvary agree to conditions that infringed
23 on its religious tenets, such as face coverings, a singing ban, and capacity restrictions. (*Id.*, ¶ 16.)

24 **B. The County’s COVID-19 Civil Enforcement Program**

25 In August 2020, the County adopted an ordinance, so the County could enforce the COVID-
26 19 orders by issuing fines against entities that violated the orders. (Request for Judicial Notice [RJN]
27 Ex. 27.) The ordinance separated commercial and non-commercial activities and their penalties (*id.*,
28 p. 7), and the County classified a church as a commercial entity (*id.*, p. 4). The County never pursued

1 violations of non-commercial activities like private graduation parties and gatherings in homes
2 because it had “limited staffing...” (Gondeiro Decl., Ex. 30, pp. 165-66.)

3 When determining the amount of a fine, the County would consider the potential for COVID-
4 19 spread. (*Id.*, p. 176.) The County prioritized super spreader events, which featured a crowded
5 gathering, no social distancing, people present for long periods of time, and poor ventilation. (*Id.*,
6 p. 99; Ex. 33.) During enforcement, though, the County did not require enforcement officers to ask
7 entities about their ventilation system. (*Id.*, Ex. 30, p. 109.) The County’s fine matrix also imposed
8 a greater base fine penalty against entities for failing to prohibit singing or impermissible gatherings
9 than for failing to require masks. (*Id.*, Ex. 32.)

10 From November 9, 2020 to June 21, 2021, the County fined Calvary daily for failing to
11 enforce face coverings even though an enforcement officer did not observe Calvary violating the
12 mask mandate every day. (*Id.*, Ex. 38, pp. 7-8, app. C). The fines total \$2,234,000. (Decl. of Jamila
13 G. Benkato ISO Plfs’ Mot. For Summary Adjudication [Benkato Decl.] Ex. 191, on file.) The
14 County issued daily fines for failing to submit a *completed* SDP, which total \$1,327,750. (*Id.*)

15 **C. The Applicable COVID-19 Orders**

16 The County’s Risk Reduction Order generally required individuals to follow social
17 distancing and mask requirements unless they were exempt. (RJN, Ex. 18.) The Order did not
18 require individuals wear an N95 mask, even though, according to Dr. Cody, these masks are superior
19 to cloth masks and surgical masks. (Gondeiro Decl., Ex. 29, p. 279.) The Order exempted
20 governmental entities from COVID-19 orders that “would *impede or interfere with an essential*
21 *government function...*” (RJN, Ex. 18, pp. 2-3.) (emphasis added.) The exemption gave
22 governmental entities discretion to define essential governmental functions. (*Id.*, Ex. 29, pp. 202-
23 04.) For instance, firefighters did not have to wear a mask while performing an intense cardio
24 workout with their colleagues – an activity that is required for their job. (Arata Decl., ¶ 2.)

25 California and the County prevented religious gatherings from singing. (Gondeiro Decl., 29,
26 pp. 216-17; RJN, Ex. 22, p. 8.) The County, however, did not generally ban singing in entertainment
27 studios because “they would not have been gathering a number of people in the same place for an
28 organized event.” (Gondeiro Decl., Ex. 29, pp. 178-79.)

1 The County's Directive for Programs Serving Children or Youth exempted children who
2 could not tolerate a face mask and did not prevent them from singing and changing. (RJN, Exs. 6-
3 7, p. 6.) The County's Mandatory Directive for Dining, Bars, Wineries, and Smoking Lounges
4 allowed customers to remove their mask while eating and drinking at a restaurant (*id.*, Exs. 4, 12-
5 13, p. 4), and personal care services like nail care, hair salons, cosmetology services, facial services,
6 and massage therapy services did not have to adhere to social distancing and masks if doing so
7 would prevent them from performing their service (*id.*, Exs 5, 14-15). Collegiate, professional, and
8 youth athletes competing in sports like basketball were exempt from wearing masks and socially
9 distancing and could sing and chant on the sidelines. (*Id.*, Exs 2, 8-9, 16.)

10 The County's Directive for Construction provided exemptions from masks and social
11 distancing if such requirements posed a risk during work. (*Id.*, Exs. 3, 10-11, p. 3.) For instance, one
12 construction owner recounts two occasions in June 2020 and September 2020 where his construction
13 workers were working in trenches within six feet of distance and removed their masks because they
14 could not breath. (Shepherd Decl., ¶ 2.) The construction workers, who worked both indoors and
15 outdoors, also had to remove their masks to shout and clearly communicate over the loud
16 construction equipment. (*Id.*)

17 The County's Revised Risk Reduction Order also required all businesses, including
18 churches, to sign the SDP. (RJN, Ex. 18, pp. 6-7.) The form required entities adhere to the applicable
19 COVID-19 orders. (Gondeiro Decl., Ex. 36, pp. 4-6.) The County did not accept modified forms.
20 (*Id.*, ¶¶ 9-10.)

21 **D. The County's Contract Tracing System**

22 In May 2020, the County implemented a contract tracing system and put together an
23 expanded team to investigate COVID-19 cases. (*Id.*, 46-47.) "[I]t was incredibly difficult, if not
24 impossible, to understand what single modifiable factor caused someone to get sick or could have
25 prevented them to get sick." (*Id.*, pp. 72-73.) It was not the County's practice to ask individuals who
26 contracted COVID-19 whether they were wearing a mask. (*Id.*, p. 74.)

27 In November through December 2020, the County conducted a quantitative retrospective
28 contract tracing survey to understand where individuals may have contracted COVID-19. (*Id.*, pp.

1 112-16.) During this limited period, the County did ask whether individuals were wearing a mask
2 when they contracted COVID-19. (*Id.*, pp. 116-17.) However, because the County did not have a
3 comparison group of people who did not get sick, they could not “say whether the people who got
4 sick were more or less likely to wear a mask than people who [did not]...” (*Id.*, p. 117.) The survey
5 did not “meaningfully change” the County’s understanding of the “science” regarding “what kinds
6 of activities were causing people to get sick or putting people at greatest risk of getting sick.” (*Id.*,
7 p. 120.) The County is “not aware of any cases” attributed to Calvary’s church services. (*Id.*, p. 138.)

8 III. LEGAL STANDARD

9 A court must deny a motion for summary adjudication if there is any triable issue of material
10 fact as to a particular claim or defense. (*Aguilar v. Atl. Richfield Co.* (2001) 24 P.3d 493, 506.)
11 Courts deciding motions for summary judgment or summary adjudication may not weigh the
12 evidence but must instead view it in the light most favorable to the opposing party and draw all
13 reasonable inferences in favor of that party. (*Weiss v. People ex rel. Department of Transportation*
14 (Cal. 2020) 468 P.3d 1154, 1169.) “Summary adjudication is a severe remedy and should be used
15 with caution; thus, doubts about the propriety of granting the motion should be resolved in favor of
16 the opposing party.” (*Everett v. Superior Court* (2d Dist. 2002) 104 Cal.App.4th 388, 392.)

17 When the defendant presents affirmative defenses, summary adjudication is only proper if
18 the plaintiff can negate an essential element of the affirmative defense or establish that the defendant
19 does not possess and cannot reasonably obtain evidence needed to support the defense. (*See Candy*
20 *Shops, Inc. v. Sup.Ct. (Silva)* (2012) 210 Cal.App.4th 889, 899-900.)

21 IV. ARGUMENT

22 A. Summary Adjudication Is Inappropriate Because More Discovery Is Needed

23 Section 437c, subdivision (h) of the California Code of Civil Procedure provides: “if it
24 appears from the affidavits submitted in opposition to a motion for... summary adjudication... that
25 facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the
26 court shall deny the motion, or order a continuance to permit affidavits to be obtained or discovery
27 to be had or may make any other order as may be just.” Subdivision (h) was added to section 437c
28 “[t]o mitigate summary judgment’s harshness” (*Frazer v. Seely* (2002) 95 Cal.App.4th 627, 634

1 [internal citations omitted]), “for an opposing party who has not had an opportunity to marshal the
2 evidence[.]” (*Mary Morgan, Inc. v. Melzark* (1996) 49 Cal.App.4th 765, 770.)

3 In July 2022, Calvary learned that the County did not fine non-commercial activities.
4 (Gondeiro Decl., ¶ 19.) In November 2022, Calvary received an excel spreadsheet of specific
5 complaints regarding non-commercial activities like private gatherings and wedding receptions.
6 (*Id.*, ¶ 24, Ex. 41.) Calvary has sought to depose the District Attorney’s Office to determine what
7 efforts it made to prosecute private gatherings and have sought information regarding the nature of
8 the private gatherings sent to the Office. (*Id.*, ¶ 25.) Additional discovery is also necessary to
9 determine the identity of the random person the County supposedly served the November 9, 2020
10 notice of violation (NOV) on. (*Id.*, ¶ 27.) This information supports Calvary’s affirmative defenses.
11 (*Id.*, ¶ 27.) Accordingly, this Court should deny summary adjudication pursuant to Section 437(c),
12 subdivision h until this critical information is provided.

13 **B. Calvary Is Not Precluded From Challenging The COVID-19 Orders**

14 Estoppel does not apply because Calvary had no opportunity to litigate its constitutional
15 affirmative defenses fairly and fully, and the elements of issue preclusion are not met.

16 *I. Calvary did not have a full and fair opportunity to litigate its constitutional claims*

17 Collateral estoppel does not apply when the underlying administrative proceeding is not of
18 the requisite judicial character, or a party did not have a “full and fair opportunity to litigate” the
19 issue. (*Pac. Lumber Co. v. State Water Res. Control Bd.* (2006) 126 P.3d 1040, 1054–55 [discussing
20 requisite judicial character]; *Parklane Hosiery Company, Inc. v. Shore* (1979) 439 U.S. 322, 332–
21 333 [“Shore”] [discussing full and fair opportunity to litigate].) To that end, the courts have
22 recognized that certain circumstances exist that so undermine the confidence in the validity of the
23 prior proceeding that the application of collateral estoppel would be “unfair” to the defendant as a
24 matter of law. (*Kremer v. Chemical Construction Corporation* (1982) 456 U.S. 461, 481
25 [“Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or
26 fairness of procedures followed in the prior litigation”].) These circumstances include when
27 “without fault of [its] own... [the defendant] was deprived of crucial evidence or witnesses in the
28 first litigation” (*Blonder-Tongue Lab’ys, Inc. v. Univ. of Illinois Fund* (1971) 402 U.S. 313, 333

1 ["Blonder-Tongue"]), when the defendant does not have incentive or opportunity to vigorously
2 litigate the issue in the prior action (*Roos v. Red* (2005) 130 Cal.App.4th 870, 880 [internal citations
3 omitted]), and when the second action “affords the defendant procedural opportunities unavailable
4 in the first action that could readily cause a different result.” (*Shore, supra*, 439 U.S. at p. 331.)

5 a) OCHO administrative hearing

6 In the fall of 2020, Calvary appealed \$327,750 in COVID-19-related fines to the Office of
7 the County Hearing Officer (“OCHO”). (Higuera Decl., ¶ 2.) The fines were based on Calvary’s
8 Sunday gatherings and failure to submit an SDP from August 2020 through October 2020. (*Id.*) **The**
9 **fin**es for failing to enforce face coverings based upon the November 9, 2020 NOV were not at
10 issue. (*Id.*) Calvary was prohibited from conducting written discovery, deposing Dr. Sara Cody, or
11 cross-examining Dr. Cody during the OCHO hearing regarding the constitutionality of the COVID-
12 19 orders (Higuera Decl., ¶ 3), as evidenced in the Administrative Law Judge’s (ALJ) order. (*Id.*, ¶
13 2.)

14 **The only issue litigated in the OCHO hearing was whether the fines were warranted**
15 **under Urgency Ordinance No. NS-9.291 (“Urgency Ordinance”)** because the California
16 Constitution explicitly divests administrative entities of the ability to rule on the constitutionality of
17 statutes. (Cal. Const., art. III, § 3.5.) Litigants do not “waive the issue of the constitutionality of [a
18 statute] by failing to raise it in the administrative agency.” (*Hand v. Board of Examiners* (1977) 66
19 Cal.App.3d 605, 619–20.)

20 Thus, Calvary, “without fault of [its] own,” had no opportunity to litigate its constitutional
21 affirmative defenses. (*Blonder-Tongue, supra*, 402 U.S. at p. 333.)

22 b) Review by the superior court

23 Calvary subsequently appealed to this Court. When a superior court is reviewing an
24 administrative decision, review is limited to the administrative record to “examine the administrative
25 record for errors of law and exercise its independent judgment upon the evidence.” (*JKH*
26 *Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1057.) The
27 Court addressed the constitutionality of the \$327,750 in fines and capacity restrictions on the limited
28 administrative record but never substantively ruled on the constitutionality of the social distancing

1 requirements, singing ban, and face covering guidance. Judge Lie’s order only referenced social
2 distancing and face coverings to demonstrate how Calvary’s case was different from other cases
3 because Calvary was not enforcing social distancing or face coverings. (Higuera Decl., Ex. 48.)

4 Calvary mistakenly believed it could conduct discovery related to the constitutionality of the
5 orders, as evidenced by its case management conference statement. (Gondeiro Decl., ¶ 15, Ex 39.)
6 The Court did not allow any additional discovery and only requested that the administrative record
7 be lodged with the court within 15 days. (*Id.*, ¶ 16.) Calvary could not produce evidence revealing
8 how the SDP and orders burdened its religious tenets, nor could it depose and/or serve Dr. Cody
9 with discovery regarding the County’s disparate treatment of religion. (*Id.*) Calvary declined to
10 cross-examine the enforcement officers on the same issues presented during the OCHO hearing **but**
11 **never abandoned discovery or cross-examination related to the constitutional issues.** (*Id.*)

12 Since the decision affirming the ALJ’s order, Calvary has uncovered information related to
13 the County’s disparate treatment of religion and its justification, or lack thereof, for its orders,
14 including the SDP, singing ban, and social distancing and mask requirements, during Dr. Cody’s
15 deposition and discovery produced in this case. (*Id.*, ¶¶ 20-22.) This evidence was critical to
16 adequately prove Calvary’s constitutional claims and show that the religious gatherings were
17 comparable to other exempt entities and activities from a public health standpoint.

18 Calvary could not have discovered or produced “crucial evidence” that supports its
19 constitutional claims regarding the COVID-19 orders because discovery was prohibited, whereas
20 such discovery is available here and could “readily cause a different result.” (*Shore, supra*, 439 U.S.
21 at p. 330.) Thus, collateral estoppel does not apply.

22 2. *The elements of issue preclusion are not satisfied*

23 Issue preclusion applies (1) after a final adjudication on the merits (2) of an identical issue
24 (3) actually litigated and necessarily decided in the first suit and (4) asserted against one who was a
25 party in the first suit or one in privity with that party. (*DKN Holdings LLC v. Faerber* (2015) 352
26 P.3d 378, 387.) “These elements are conjunctive, meaning that if just one is unsatisfied, issue
27 preclusion cannot apply.” (*Tukes v. Richard* (2022) 81 Cal.App.5th 1, 21.) The County fails to
28 satisfy the first three elements.

1 First, the decision affirming the \$327,750 in fines was not a final judgment on the merits of
2 Calvary’s constitutional claims and the \$2.87 million the County seeks to collect here. An
3 “adjudication is on the merits if the substance of the claim or issue is tried and determined.”
4 (*Parkford Owners for a Better Community v. Windeshausen* (2022) 81 Cal.App.5th 216, 227
5 (internal quotation omitted.) Neither the ALJ nor this Court considered the constitutionality of the
6 face covering guidance, singing ban, social distancing requirements, or the November 9, 2020
7 citation. Because this Court’s review was “limited to examining the administrative record...,” the
8 only judgment this Court can consider is the finding that Calvary violated the public health orders.
9 (*JKH Enterprises, Inc., supra*, 142 Cal.App.4th at p. 1056–1057; *See* § V(B)(1), *supra*.)

10 Second, this case does not pose an identical issue as the OCHO appeal. This element
11 considers whether identical factual allegations are at stake in the two proceedings, not whether the
12 ultimate issues or dispositions are the same. (*Thompson v. Crestbrook Insurance Company* (2022)
13 81 Cal.App.5th 115, 126.) Simply put, “the factual predicate of the legal issue decided in the prior
14 case must be sufficient to frame the identical legal issue in the current case, even if the current case
15 involves other facts or legal theories that were not specifically raised in the prior case.” (*Ibid.*)

16 The factual predicate in the OCHO appeal was whether the \$327,750 in fines were warranted
17 under the Urgency Ordinance, while the factual predicate here concerns whether the SDP, singing
18 ban, social distancing and mask requirements, November 9, 2020 citation, and \$2.87 million in fines
19 are constitutional. (*See Alpha Mechanical, Heating & Air Conditioning, Inc. v. Travelers Casualty*
20 *& Surety Co. of America* (2005) 133 Cal.App.4th 1319, 1333 [characterizing defendant’s affirmative
21 defenses as issues for determining whether collateral estoppel applied].)

22 Third, Calvary’s constitutional affirmative defenses were not actually litigated or necessarily
23 decided. An issue is actually litigated “[w]hen [it] is properly raised, by the pleadings or otherwise,
24 and is submitted for determination, and is determined.” (*People v. Sims* (1982) 651 P.2d 321, 331.)
25 Again, the only issue raised in the ALJ hearing was whether the \$327,750 in fines were warranted
26 under the Urgency Ordinance. The constitutionality of the SDP, face covering and social distancing
27 requirements, November 9, 2020 citation, and \$2.87 million in fines were never actually litigated in
28 the administrative hearing or on appeal. Thus, estoppel is inapt.

1 Finally, in California, issue preclusion is not applied automatically or rigidly, and courts are
2 permitted to decline to grant preclusive effect to prior judgments in deference of countervailing
3 considerations of fairness, particularly where preclusion “would result in manifest injustice.”
4 (*F.E.V. v. City of Anaheim* (2017) 15 Cal.App.5th 462, 465.) It “would not comport with the policies
5 of preserving the integrity of the judicial system” to allow the OCHO decision to stand when neither
6 the ALJ nor this Court afforded Calvary a full and fair opportunity to litigate its constitutional
7 claims, the \$2.87 million in fines, and the November 9, 2020 citation. (*Id.* at p. 476.)

8 **C. The County Is Not Entitled To Relief As To The First And Third Causes Of Action**

9 As a threshold matter, this Court cannot grant the County the relief requested in the first and
10 third causes of action because the COVID-19 orders are a moot issue. Even if this Court entertains
11 these causes of action, the County is still not entitled to relief because the COVID-19 orders violated
12 the First Amendment and Fourteenth Amendment.

13 *I. This Court has no jurisdiction to consider the first and third causes of action because*
14 *the COVID-19 orders are moot*

15 The repeal or expiration of a statute or regulation during the pendency of a cause of action
16 “will render further consideration thereof moot.” (*In re Schuster* (2019) 42 Cal.App.5th 943, 953.)
17 An “action that originally was based on a justiciable controversy cannot be maintained... if all the
18 questions have become moot by subsequent acts or events.” (*Building a Better Redondo, Inc. v. City*
19 *of Redondo Beach* (2012) 203 Cal.App.4th 852, 866.) This Court has “no duty to proceed to
20 determine the rights and duties of the parties” where “questions presented by an action for
21 declaratory relief are, or have become, moot.” (*Pittenger v. Home Sav. and Loan Ass’n of*
22 *Los Angeles* (1958) 166 Cal.App.2d 32, 36.)

23 Here, the County has requested declaratory relief on its first and third causes of action. But
24 the County has since rescinded the COVID-19 orders at issue, including the Revised Risk Reduction
25 Order and SDP requirement. Courts in California have consistently dismissed similar COVID-19-
26 related cases on mootness grounds, including the Northern District of California in the parallel
27 federal action nearly a year ago. (*See., e.g., Calvary Chapel San Jose v. Cody* (N.D. Cal., Mar. 18,
28

1 2022, No. 20-CV-03794-BLF) 2022 WL 827116, at *8.) Thus, the County is not entitled to relief as
2 to the first and third causes of action.

3 2. *The COVID-19 orders were unconstitutional*

4 ***California Constitution.*** The face covering and social distancing requirements, singing ban,
5 and capacity restrictions violated the California Constitution because they burdened Calvary’s
6 religious exercise. “[T]he religion clauses of the California Constitution are read more broadly than
7 their counterparts in the federal Constitution.” (*Carpenter v. City and County of San Francisco* (9th
8 Cir. 1996) 93 F.3d 627, 629.) Courts “therefore review [a] challenge...under the free exercise clause
9 of the California Constitution in the same way [they] might have reviewed a similar challenge under
10 the federal constitution after *Sherbert*... In other words, [they] apply strict scrutiny.” (*Catholic*
11 *Charities of Sacramento, Inc. v. Superior Court* (2004) 32 Cal.4th 527, 562 (citations omitted).)

12 Calvary’s religious beliefs require that the church gather in person, worship (i.e. sing) with
13 unveiled faces, intercede for one another, and lay hands on one another in prayer. (McClure Decl.,
14 ¶¶ 6-16.) The County burdened Calvary’s religious tenets when it ordered congregants to wear
15 masks, refrain from singing, and socially distance, as these requirements inhibit fellowship, worship,
16 and intercession – activities required by Calvary’s religious tenets. (*Id.*, ¶¶ 12-15.) As explained
17 below, these requirements fail strict scrutiny.

18 ***United States Constitution.*** The orders violated the First Amendment to the U.S.
19 Constitution because they were not neutral and generally applicable and treated numerous secular
20 entities and activities more favorably than churches. (*See Roman Catholic Diocese Brooklyn v.*
21 *Cuomo* (2020) 141 S.Ct. 63 [“Brooklyn Diocese”].) In *Brooklyn Diocese*, when finding New York’s
22 capacity restrictions unconstitutional, the Supreme Court emphasized the disparate treatment of
23 churches in comparison to non-analogous places such as transportation facilities, campgrounds,
24 acupuncture facilities, and manufacturing plants. (*Id.* at pp. 66–67.)

25 In *Calvary Chapel Dayton Valley v. Sisolak* (9th Cir. 2020) 982 F.3d 1228, 1233, the Ninth
26 Circuit noted that the Supreme Court’s approach in *Brooklyn Diocese* “arguably represented a
27 seismic shift in Free Exercise law.” Like *Brooklyn Diocese*, the Ninth Circuit, when finding
28 Nevada’s orders were unconstitutional, compared churches to a wide array of entities and activities

1 like “[c]asinos, bowling alleys, retail businesses, restaurants, arcades...” (*Ibid.*) The Supreme Court
2 subsequently enjoined California’s at-home religious gathering ban, comparing churches to “hair
3 salons, retail stores, personal care services, movie theaters, private suites at sporting events and
4 concerts, and indoor restaurants...” (*Tandon v. Newsom* (2021) 141 S.Ct. 1294, 1297 [“Tandon”].)

5 There is no doubt the County’s capacity restrictions are a dead letter. The Supreme Court
6 has already admonished California and the County. (*See Gateway, supra*, 41 S.Ct.)

7 As to the remaining restrictions, they, too, are unconstitutional. The County exempted
8 government entities and their contractors *at their own discretion* from social distancing, wearing
9 masks, or any other restriction “to the extent that such requirements would impede or interfere with
10 an essential government function...” (RJN, Ex. 18, p. 3.) This exemption applied to firefighters
11 working out without a mask. (Arata Decl., ¶ 2.) The County provided exemptions from the social
12 distancing and mask requirements to construction workers, personal care services, restaurants, youth
13 programs, and athletes competing in sports like basketball, football, and wrestling. (*Id.*, Exs. 2-3, 6-
14 11, 16.) Entertainment studios, childcare facilities, and sporting events were also allowed to sing
15 and chant unlike churches. (*Id.*, Exs. 2, 6-7 at p. 6, 8-9, 16; Gondeiro Decl., Ex. 29, pp. 178-79.)

16 The Supreme Court has clearly demonstrated that these entities and activities are comparable
17 for purposes of the First Amendment, and there is simply no evidence that churches posed a greater
18 risk of COVID-19 spread than any of these activities. (*See Tandon, supra*, 141 S.Ct. at pp. 1296-
19 97.)

20 **Strict Scrutiny.** Because the orders were neither neutral nor generally applicable, they must
21 satisfy strict scrutiny. (*Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah* (1993) 508 U.S.
22 520, 546 [“Lukumi”].) “Where the government permits other activities to proceed with precautions,
23 it must show that the religious exercise at issue is more dangerous than those activities even when
24 the same precautions are applied.” (*Tandon, supra*, 141 S.Ct. at p. 1297.)

25 The County has no evidence churches are inherently more dangerous than the exempt entities
26 and activities, justifying harsher treatment. Calvary’s expert, Dr. Ram Duriseti, explains that “there
27 was no reason for a regulation to be applied more stringently to a high-ceiling gathering place with
28 fresh air flowing during services and a modern ventilation system than exempted establishments

1 with less favorable circumstances.” (Duriseti Decl., ¶ 26.) Indeed, Dr. Stephen Petty also explains
2 that Calvary was far safer than other secular entities considering its superior ventilation system.
3 (Petty Decl., ¶ 57.)

4 Moreover, Dr. Sarah Rudman has already testified on behalf of the County that it was
5 difficult, if not impossible, to determine the source of COVID-19 transmission, and there is no
6 evidence that Calvary’s church services contributed to the spread of COVID-19. (Gondeiro Decl.,
7 Ex. 31, p. 138.) In fact, with respect to masks, Dr. Rudman testified that it was not clear “whether
8 the people who got sick were more or less likely to wear a mask than people who [did not]...” (*Id.*,
9 p. 117.) This statement is fatal. There is no triable issue of fact that Calvary’s services posed a greater
10 threat of COVID-19 transmission than essential government actors, restaurants, childcare facilities,
11 construction sites, personal care services, entertainment studios, and athletic events.

12 The County’s suggestion that other, non-capacity restrictions are constitutional because the
13 Supreme Court mentions social distancing and wearing masks as acceptable precautions in *Brooklyn*
14 *Diocese* and *South Bay* is a red herring. (County Br. at p. 19.) Justice Gorsuch mentioned wearing
15 masks and social distancing in his concurrence in *Brooklyn Diocese* to highlight the unnecessarily
16 harsh capacity restrictions imposed on churches. (*Brooklyn Diocese, supra*, 141 S.Ct. at p. 69
17 [“Churches and synagogues are limited to a maximum of 25 people. These restrictions apply even
18 to the largest cathedrals and synagogues, which ordinarily hold hundreds. And the restrictions apply
19 no matter the precautions taken, including social distancing, wearing masks, leaving doors and
20 windows open, forgoing singing, and disinfecting spaces between services.”]) That was the extent
21 of the Court’s discussion of masks and social distancing. In fact, when holding New York did not
22 employ the least restrictive means, the Court specified that a less restrictive measure could include
23 tying the “maximum attendance at a religious service...to the size of the church or synagogue” but
24 did not suggest masks and social distancing. (*Id.* at p. 67.)

25 Similarly, in *South Bay*, the concurring justices mention social distancing and masks to show
26 how California’s capacity restrictions on churches were not narrowly tailored. Specifically, they
27 wrote, “[n]or, again, does California explain why the narrower options it thinks adequate in many
28 secular settings – such as social distancing requirements, masks, cleaning, plexiglass barriers, and

1 the like – cannot suffice here.” (*South Bay United Pentecostal Church v. Newsom* (2021) 141 S.Ct.
2 716, 718-19 [“South Bay”].) Stated another way, the Court did not find that the complete ban on
3 churches was narrowly tailored when public transit businesses and retailers could remain open while
4 observing “narrower options.” (*Ibid.*)

5 In sum, the County cannot show that Calvary’s services and prayer meetings were more
6 dangerous than exempt entities. Thus, the face covering and social distancing requirement and
7 singing ban also violated the Free Exercise Clause to the United States and California Constitutions.¹

8 ***Social Distancing Protocol.*** The SDP is unconstitutional as it impermissibly infringed on
9 Calvary’s right to free exercise under the First Amendment. The SDP required all entities to agree
10 to all public health orders. (Gondeiro Decl., Ex. 36, pp. 4-6.) Calvary did not agree to all conditions
11 in the SDP because it interfered with the “[c]hurch’s religious tenets....” (McClure Decl., ¶ 16.)
12 The County did not accept modified forms. (*Id.*) The SDP violated the Free Exercise Clause because
13 it penalized Calvary for engaging in lawful religious practices. (*See, e.g., Gateway, supra*, 141 S.Ct;
14 *People v. Calvary Chapel San Jose* (Ct. App. 2022) 298 Cal.Rptr.3d 262².) This Court need only
15 find one COVID-19 order unconstitutional to void all the fines related to the SDP because they were
16 combined together and are therefore non-severable. (*Id.* at p. 278.)

17 Further, because the SDP punished Calvary for exercising its constitutional rights, it also
18 violated due process. (*In re Lewallen* (1979) 23 Cal.3d 274, 278.) “To punish a person because he
19 has done what the law plainly allows him to do is a due process violation of the most basic sort....”
20 (*Bordenkircher v. Hayes* (1978) 434 U.S. 357, 363 [citing cases].) Thus, the County is not entitled
21 to the fines for Calvary’s failure to sign the SDP because they violate the Due Process Clause.

22 Further, the SDP form amounted to an unconstitutional condition. The unconstitutional
23 condition’s doctrine “vindicates the Constitution’s enumerated rights by preventing the government
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26 ¹ Because the face covering requirement violated Calvary’s rights under the Free Exercise Clause, the Court must
27 conclude that it violated the Equal Protection Clause because it “jeopardize[d] the exercise of a fundamental right.”
28 (*Nordlinger v. Hahn* (1992) 505 U.S. 1, 10; accord *Ashaheed v. Currington* (10th Cir. 2021) 7 F.4th 1236, 1251 [equal
protection claim triggered strict scrutiny because it alleged “a deprivation of free exercise, a fundamental right,” and a
classification based on religion].)

² A ruling in an appellate court is binding on all inferior courts in all subsequent proceedings related to the same parties
in the same action. (*Morohoshi v. Pacific Home* (2004) 34 Cal.4th 482, 491.)

1 from *coercing* people into giving them up.” (*Koontz v. St. Johns River Water Management Dist.*
2 (2013) 570 U.S. 595, 604 [emphasis added] [“Koontz”].)

3 This Court previously held on demurrer that this doctrine does not apply because there was
4 no withholding of a “benefit.” (Demurrer Ruling at p. 10.) However, that is a distinction without a
5 difference. The actual injury is that Calvary was punished for not agreeing to unconstitutional
6 conditions. It is irrelevant how the government chooses to coerce people into “forfeiture of [their]
7 constitutional rights.” (*Koontz, supra*, 570 U.S. at p. 608.) The government could do so by
8 withholding a benefit OR imposing fines. Thus, the doctrine applies.

9 **D. The Doctrine of Nuisance Per Se Is Inapplicable Because The Underlying Public**
10 **Health Orders Were Unconstitutional**

11 Calvary’s constitutional defenses render the doctrine of nuisance *per se* inapplicable (first
12 cause of action). In discussing nuisance *per se*, the County fails to state a vital part of the applicable
13 legal standard. (County Br. at pp. 15-16.) Importantly, actions only constitute a nuisance *per se* if
14 the underlying statute is constitutionally valid. (*City of Bakersfield v. Miller* (1966) 410 P.2d 393,
15 398; *People ex rel. Dept. of Transportation v. Outdoor Media Group* (4th Dist. 1993) 13
16 Cal.App.4th 1067, 1076-77 [“when a nuisance per se is shown to exist, the only issues before the
17 trial court in an action to enjoin the nuisance are whether a statutory violation exists and whether
18 the underlying statutes are constitutionally valid.”].) Because the underlying public health orders
19 were unconstitutional, as established above, the County is not entitled to summary adjudication as
20 to the first cause of action.

21 **E. The County Is Not Entitled To Relief As To The Fourth And Fifth Causes Of Action**

22 The County is not entitled to a collection of fines for numerous reasons. As a threshold
23 matter, triable issues of fact exist as to the amount of the fines. Second, the fines related to not
24 enforcing face coverings (November 9, 2020 NOV) and SDP are predicated upon unconstitutional
25 orders, as established above. (*See* § V(C)(2), *supra*.) Third, the Urgency Ordinance (i.e., fines)
26 violated the First Amendment because it discriminated against religion. Fourth, the fines are
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1 unconstitutionally excessive in violation of the Excessive Fines Clause. Finally, the County is not
2 entitled to the fines related to face coverings because the County did not properly serve Calvary.

3 *1. There are triable issues of fact as to the amount of the fines*

4 A triable issue of fact exists as to the amount of the fines, specifically concerning the
5 County's observance of alleged health order violations and the legitimacy of the County's
6 November 9, 2020 NOV. First, the Urgency Ordinance requires that every fine be based on an
7 individual violation of the public health orders. (RJN, Ex. 27, § 4.) The County required physical
8 observation. (Gondeiro Decl., Ex. 42, pp. 85-88.) From November 9, 2020 to June 21, 2021, the
9 County fined Calvary daily for failing to enforce face coverings even though an enforcement officer
10 did not observe a violation every day. (*Id.*, Ex. 38, pp. 7-8, app. C.) These facts create a triable issue
11 of fact as to the daily fines related to face coverings.

12 Additionally, the November 9, 2020 citation is in dispute because former pastor Carson
13 Atherley, who was acting as the agent of CCSJ, was never personally delivered, emailed, or mailed
14 a NOV on November 9, 2020. (Atherley Decl., ¶¶ 2-5.) Atherley was unaware of any other
15 authorized agent of CCSJ at the time. (*Id.*, ¶ 2.) Neither Calvary nor its counsel received the notice
16 via email. (Higuera Decl., ¶ 5, Ex. 49; Gondeiro Decl., ¶ 8, Ex. 35.) The only NOVs received in
17 November 2020 were dated November 8, 15, 22, and 29. (*Id.*) The first time Calvary received the
18 notice was in discovery. (*Id.*) Thus, summary adjudication is inappropriate.

19 *2. The Urgency Ordinance unlawfully discriminated against religion*

20 A regulation is not neutral if it discriminates against a religious practice on its face, or if in
21 its real operation it targets a religious practice. (*Lukumi, supra*, 508 U.S. at p. 534.) Additionally, a
22 regulation is not neutral and generally applicable where it "treat[s] any comparable secular activity
23 more favorably than religious exercise." (*Tandon, supra*, 141 S.Ct. at p. 1296 [emphasis in
24 original].)

25 In November 2022, the County sent Calvary a list of complaints received from the public
26 regarding non-commercial activities. (*Id.*, ¶ 24, Ex. 41.) These complaints reported homes hosting
27 large, maskless gatherings with live bands in violation of the County's orders. (*Id.*) One complainant
28 reported a house hosting several wedding receptions in its backyard for months during the height of

1 the pandemic. (*Id.*) The County never cited these activities for violating COVID-19 orders.
2 (Gondeiro Decl., Ex. 30, pp. 165-66; Ex. 38, p. 5.) The County has no rational, much less
3 compelling, justification for levying fines against Calvary for holding church services and prayer
4 meetings but not large, maskless private gatherings. Thus, the County is not entitled to the fines.

5 3. *The fines are unconstitutionally excessive*²

6 A fine violates the Eighth Amendment’s Excessive Fines Clause if it “is grossly
7 disproportional to the gravity of a defendant’s offense.” (*U.S. v. Bajakajian* (1998) 524 U.S. 321,
8 334.) The Supreme Court considers the following factors: (1) the defendant’s culpability; (2) the
9 relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4)
10 the defendant’s ability to pay. (*Id.* at pp. 337–38.) The California Supreme Court also summarizes
11 these factors. (*People v. Lowery* (2020) 43 Cal.App.5th 1046, 1057.)

12 *First*, Calvary did not exhibit a high degree of culpability. While the County frames
13 Calvary’s violations of the public health orders as “blatant” and a “refus[al] to comply,” Calvary
14 did not have any nefarious or reckless motives. (County Br. at p. 21.) Rather, Calvary acted in
15 adherence with its sincerely held religious beliefs – beliefs the Supreme Court has vindicated
16 numerous times. (McClure Decl., ¶¶ 4-16; *See, e.g., South Bay, supra*, 141 S.Ct.) As a matter of
17 law, that is not culpable conduct. (*Cf. Newland v. Achute* (S.D.N.Y. 1996) 932 F.Supp.529, 534
18 [explaining that, in Eighth Amendment excessive force context, culpable conduct does not include
19 behavior conducted in good faith].)

20 *Second*, the County’s super spreader myth is speculative and has been repeatedly rejected
21 by the Supreme Court. (*See, e.g., Brooklyn Diocese, supra*, 141 S.Ct. at p. 67.) The County’s
22 speculative theories as to Calvary’s gatherings cannot be accepted as fact on a motion for summary
23 adjudication. “Expert declarations cannot create a triable question of fact if the expert’s opinion is
24 based upon factors which are remote, speculative, or conjectural.” (*Travelers Cas. & Sur. Co. v.*
25 *Superior Court* (1998) 63 Cal.App.4th 1440, 1462.) Dr. Cody’s declaration is insufficient for
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27 ³ Calvary is not estopped from litigating this claim because it was never litigated and raised before Judge Lie. (County
28 Br. at p. 21.) Judge Lie considered whether the fines were excessive under the Urgency Ordinance, not the Excessive
Fines Clause. (Gondeiro Decl., ¶ 17.)

1 summary adjudication purposes because the County cannot prove that congregants were exposed to
2 COVID-19 at Calvary’s church gatherings as opposed to somewhere else. (Gondeiro Decl., Ex. 31,
3 p. 138; *See also Millipore Corp. v. Travelers Indem. Co.* (1st Cir. 1997) 115 F.3d 21, 34.)

4 Moreover, based upon the County’s own civil enforcement procedure, the continuing, daily
5 fines levied against Calvary for not enforcing face coverings are excessive. The fines are duplicative
6 because the County had already levied a continuing, daily \$5,000 fine against Calvary for not
7 agreeing to all conditions in the SDP, which required the church agree to enforce face coverings.
8 (Gondeiro Decl., Ex. 36, pp. 4-6.) Considering the County’s arbitrary enforcement against Calvary,
9 the duplicative fines, and the lack of evidence of actual harm, the fines are grossly excessive.

10 The proportionality factor also weighs in Calvary’s favor because its good faith adherence
11 to its religious beliefs renders its culpability low. (*See Pimentel v. City of Los Angeles* (9th Cir.
12 2020) 974 F.3d 917, 923.) The County’s reliance on *City and County of San Francisco v. Sainez*
13 (2000) 77 Cal.App.4th 1302, 1322–23 [“Sainez”] and other analogous cases does not support a
14 different conclusion. (County Br. at pp. 22-23 [citing cases].) In *Sainez*, the plaintiff was not
15 willingly accumulating penalties in adherence to his constitutional rights. (*Sainez, supra*, 77
16 Cal.App.4th at pp. 1315–16.) In fact, conflating this case with *Sainez* and like cases would have a
17 devastating effect on the rule of law. It would allow government officials to brazenly violate the
18 Constitution by threatening citizens with staggering fines if they do not agree to forego their
19 constitutional rights. Such conduct is unconstitutional. (*See Koontz, supra*, 570 U.S. at p. 604.)

20 *Third*, contrary to the County’s claim, its fines scheme is not like other counties. (County
21 Br. at pp. 23-24.) The County’s Urgency Ordinance differs because it treats churches as commercial
22 activities while other counties do not. (RJN, Ex. 19, pp. 8-9; Ex. 20, pp. 9, 11; Ex. 21, p. 4.)
23 Consequently, the County assessed the maximum \$5,000 penalty against Calvary for commercial
24 entities instead of the maximum \$500 penalty for non-commercial activities. (*Id.*, Ex. 27, p. 7.)

25 *Finally*, the County need not raise the “ability to pay” factor because “*Bajakajian* does not
26 mandate the consideration of any rigid set of factors.” (*U.S. v. Mackby* (9th Cir. 2003) 339 F.3d
27 1013, 1016.) In any event, this factor weights in Calvary’s favor because the fines would
28 substantially handicap Calvary’s ability to serve the public and church community. (McClure Decl.,

1 ¶¶ 19-20.) Thus, the County is not entitled to the fines because they are unconstitutionally excessive
2 under both the United States and California Constitutions.

3 4. *The County violated the Due Process Clause*

4 The County violated the Due Process Clause by: 1) failing to give Calvary proper notice of
5 the November 9, 2020 NOV and related fines; and 2) arbitrarily enforcing its Urgency Ordinance.

6 *First*, fines are unlawful if the penalized party is not afforded procedural due process. To
7 satisfy proper notice, due process requires that a person must receive fair notice of both the “conduct
8 that will subject him to punishment” and the “severity of the penalty that a State may impose.”
9 (*BMW of North America, Inc. v. Gore* (1996) 517 U.S. 559, 574[“BMW”].) The Urgency Ordinance
10 requires that a NOV be served “upon the owner or other Responsible Party” by personal service,
11 certified mail, or email. (RJN, Ex. 27, § 7.) A Responsible Party is “any individual or legal entity,
12 or the agent or legal guardian of such individual or entity....” (*Id.*, § 2.)

13 The County never served the November 9, 2020 NOV on a proper party. Melissa Huerta, a
14 county enforcement officer, claims she served an unidentified person who she saw on another
15 occasion and figured was “the representative of the church.” (Gondeiro Decl., Ex. 42, pp. 119-20.)
16 The County did not properly serve an officer or representative of Calvary based upon the evidence
17 on the record. (*See Destfino v. Reiswig* (9th Cir. 2011) 630 F.3d 952.) Pastor McClure is considered
18 the owner and/or person in charge, and he was never served with the citation. (McClure Decl., ¶ 21.)
19 Former assistant pastor Carson Atherley was acting as the agent for Calvary. (Atherley Decl., ¶¶ 2-
20 3.) No other party was authorized to accept service on behalf of Calvary. (*Id.*) The County never
21 served Atherley or his attorneys by email, certified mail, or personally (*id.*, ¶ 5; Higuera Decl., ¶ 5,
22 Ex. 49; Gondeiro Decl., ¶ 8, Ex. 35), nor did the County follow up to ensure Atherley received the
23 November 9, 2020 NOV, even though Ms. Huerta testified that “he was always the person that
24 would address [her] at inspections and lead the inspections.” (*Id.*, Ex. 42, pp. 32-33, 38-39, 121).⁴
25 Summary adjudication is therefore improper because Calvary was not properly served.

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28 ⁴ Even if the County served Calvary via email, the service would still be insufficient. (*See* Code of Civil Procedure, sections 414.10, 1013; Health & Saf. Code § 260207; *Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 138 [discussing email as an insufficient service method].)

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DATED: February 28, 2023

ADVOCATES FOR FAITH & FREEDOM

By: Mariah Gondeiro
Mariah R. Gondeiro, Esq.
Attorneys for Defendants **Calvary Chapel San
Jose and Mike McClure**

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PROOF OF SERVICE

The People of the State of California v. Calvary Chapel San Jose
Santa Clara Superior Court Case No. 20cv372285

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 February 28, 2023, I served a copy of the following document(s) described as **DEFENDANTS' OPPOSITION TO PLAINTIFFS' PARTIAL MOTION FOR SUMMARY ADJUDICATION** 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 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).

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.



Susan Y. Kenney

