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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

SOUTH BAY UNITED PENTECOSTAL
 CHURCH, a California non-profit
 corporation; and BISHOP ARTHUR
 HODGES III, an individual,

Plaintiffs,

v.

GAVIN NEWSOM, in his official capacity
 as the Governor of California, *et al.*,

Defendants.

Case No. 3:20-cv-00865-AJB-MDD

**Declaration of Jeffrey M.
 Trissell, Esq. in Support of
 Application for a Temporary
 Restraining Order, and Order to
 Show Cause Re: Preliminary
 Injunction**

Judge: Anthony J. Battaglia
 Courtroom: 4A

Oral Argument Requested

1 I, Jeffrey M. Trissell, Esq., declare and state as follows:

2 1. I am an attorney at law duly licensed to practice in the State of California
3 and in the Southern District of California, and am counsel for Plaintiffs South Bay
4 United Pentecostal Church and Bishop Arthur Hodges III. As such, I have personal
5 knowledge of the matters set forth below and could and would testify thereto if called
6 upon to do so.

7 **The Need for *Ex Parte* Relief**

8 2. On Friday, May 8, 2020, Plaintiffs filed their complaint seeking
9 declaratory and injunctive relief for violations of their constitutional rights. On the
10 same day, Plaintiffs filed an ex parte application for a temporary restraining order
11 permitting them to hold worship services on the weekend of May 16–17, 2020.

12 3. On Monday, May 11, 2020, Plaintiffs decided to file a First Amended
13 Complaint omitting Mayor Faulconer and Police Chief Nisleit, and including the
14 County of San Diego’s May 10, 2020, health order. As a result, the only remaining
15 Defendants are those affiliated with the County of San Diego and the State of
16 California—not the City of San Diego.

17 4. On Monday, May 11, 2020, at 1:00 p.m., counsel for Plaintiffs held a
18 meet and confer conference call with counsel for the County-affiliated Defendants
19 (Timothy White) and counsel for the State-affiliated Defendants (Lisa Plank and
20 Todd Grabarsky). On the call, defense counsel made clear that they were not in a
21 position to stipulate to the relief sought by the ex parte application. The County
22 Defendants stated that their Orders were predicated on the State Orders, which they
23 could not violate. The State Defendants stated that they could not agree to the relief
24 sought.

25 5. Because Plaintiffs seek relief by the weekend, Plaintiffs now move for
26 that relief on an ex parte basis. The parties also discussed the possibility of a
27 stipulated briefing schedule. At the time of this filing, however, the parties, could not
28 agree on one. As a result, Plaintiffs will be filing ex parte to set such a schedule.

The Executive Orders Prior to Reopening

6. On March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency as a result of the threat of COVID-19. A true and correct copy of that proclamation is attached hereto as **Exhibit A**.

7. On March 19, 2020, California Governor Newsom issued Executive Order No. N-33-20 in which he ordered that “all residents are directed to immediately heed the current State public health directives.” A true and correct copy of that executive order is attached to the Complaint as **Exhibit 1-1**.

8. On March 22, 2020, the California Public Health Officer designated a list of “Essential Critical Infrastructure Workers.” Included on the list of the “essential workforce” are “faith based services that are provided through streaming or other technology.” A true and correct copy of that list is attached to the Complaint as **Exhibit 1-2**.

9. I watched Governor Newsom’s March 19, 2020, press conference, about his Executive Orders. In that press conference, Governor Newsom stressed that there will be *no* police enforcement of the State Orders. A recording of that press conference is available online here: <https://www.facebook.com/CAgovernor/videos/494465634769746/>. The statements were made at approximately the 4:00 and 34:00 minute marks.

10. I watched the relevant portions of San Diego County Public Health Officer Wilma Wooten’s March 18, 2020, press conference about the County Orders. In that press conference, Dr. Wooten stressed that she was only expecting 80%-90% compliance—which would be sufficient. A recording of that press conference is available online here: <https://youtu.be/sogjrotTCSw>. The statements were made at approximately the 1:10:15 minute mark.

11. I watched the relevant portions of the City of San Diego’s Police Chief Nisleit’s March 20, 2020, press conference about the City Orders. In that press conference, Chief Nisleit stated that “the approach that we are taking” is simply

1 “asking for compliance,” and not using police enforcement. A recording of that press
 2 conference is available online here: <https://youtu.be/zIXUA3lrJYk>. The statements
 3 were made at approximately the 9:33 and 14:45 minute marks.

4 12. I viewed on the Fox 5 website the article titled “Palomar Health to Lay
 5 off 317 employees,” dated April 28, 2020, 01:30 PM. As the title indicates, the article
 6 reports on a significant layoff of medical personnel due a decline in patient visits.
 7 That article is available online here: [https://fox5sandiego.com/news/health/
 8 palomar-health-to-lay-off-317-employees/](https://fox5sandiego.com/news/health/palomar-health-to-lay-off-317-employees/). A true and correct copy of that article is
 9 attached hereto as **Exhibit B**.

10 13. I viewed on the CalMatters website the article titled “Wanted: Health
 11 care workers. Wait! Never mind...,” dated May 6, 2020. The article states that 49%
 12 of medical practices in California have had to lay off or furlough staff. It further states
 13 that hospitals are now seeking a bailout from the California government. The article
 14 is available online here: [https://calmatters.org/health/coronavirus/2020/05/health-
 15 care-workers-layoffs-california-coronavirus-nurses-furloughs-pay-cuts-hospitals/](https://calmatters.org/health/coronavirus/2020/05/health-care-workers-layoffs-california-coronavirus-nurses-furloughs-pay-cuts-hospitals/). A
 16 true and correct copy of that article is attached hereto as **Exhibit C**.

17 **Governor Newsom’s Reopening Plan**

18 14. On Tuesday, April 27, 2020, Governor Newsom held a press conference
 19 relating to the coronavirus pandemic. A recording of it is available online here:
 20 <https://www.facebook.com/CAGovernor/videos/239711700434134/>. I watched that
 21 press conference in full. During the press conference, the Governor’s main these was
 22 how Californians had done a good job during this pandemic, and as a result, have
 23 greatly stabilized the spread of the virus.

24 15. This stabilization is corroborated by (1) the website [Rt.live](https://rt.live); (3) the
 25 following page on the Statista.com website: [https://www.statista.com/statistics/
 26 1109011/coronavirus-covid19-death-rates-us-by-state/](https://www.statista.com/statistics/1109011/coronavirus-covid19-death-rates-us-by-state/); (3) the laying off of health-
 27 care workers shown in the articles attached as Exhibits B and C; and (4) the graphic
 28 published by Elon Musk: <https://twitter.com/elonmusk/status/>

1 [1255678979043778560](#).

2 16. Based on my personal transcription of the April 27, 2020, press
3 conference, at 6:03, Governor Newsom stated that we “have not only bent the curve
4 in the state of California, but stabilized it.”

5 17. At 6:40, Governor Newsom stated that “[t]he reality is, we are just a
6 few weeks away, not months away, from making measurable and meaningful changes
7 to our stay-at-home order.”

8 18. At 25:04, Governor Newsom stated the following:

9 The number of hospitalizations, 1.4% increase. Um, again,
10 we’re seeing some stabilization, decrease, modest increase,
11 decrease, modest increase, uh, in the total number of
12 people hospitalized. The number of people in ICU’s
13 basically flat from yesterday, just one individual, uh, more
14 than in the last 24 hours in the ICU—so again,
15 stabilization.

16 19. I also had a certified transcript made of the recording of that April 27,
17 2020, press conference. That transcript is attached hereto **Exhibit D**.

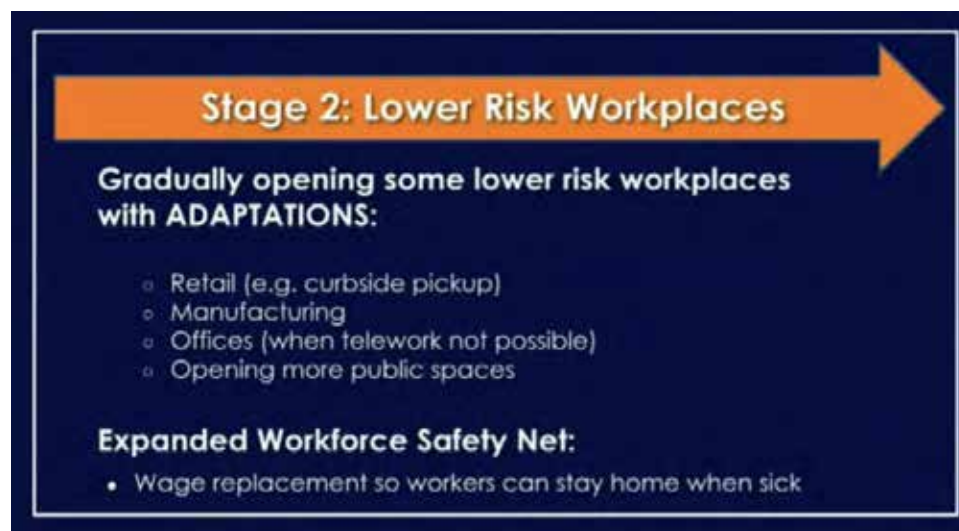
18 20. On Wednesday, April 28, 2020, Governor Newsom held another press
19 conference relating to the coronavirus pandemic. A recording of it is available online
20 here: <https://www.facebook.com/CAgovernor/videos/524013811808326/>. I also
21 watched that press conference in full. During the press conference, the Governor’s
22 main theme was outlining his four stage Reopening Plan. As part of that plan, Stage 1
23 is the period from the issuance of his March 16 executive order until it is modified,
24 Stage 2 and 3 are periods when some businesses will begin opening up, and Stage 4 is
25 when there is no executive order in place.

26 21. Based on my personal transcription, at 48:43, Governor Newsom stated
27 that “the foundational point of emphasis we want to advance today is phase 2 . . . is in
28 weeks not months, phase 3 and 4, months not weeks.”

22. During the press conference, at 37:29, Dr. Sonia Angell—the Director of
the California Department of Public Health—showed the following graphic and

1 explained Stage 2 as follows:

2 In stage 2, we're going to really start focusing on lower risk
3 workplaces, that means gradually opening some of those
4 workplaces with adaptations. These include things like:
5 Retail, allowing for curbside pickup; Manufacturing, which
6 can include things like toys, clothing, other things,
7 furniture, that was not a part of the essential sector;
8 Talking about offices, this can include things like PR firms,
9 and consulting, and other places where telework is not
10 possible, but by modifying the environment itself, it can
11 make it lower risk for individuals; and then ultimately
12 talking about opening more public spaces, things like parks
13 and trails, that may have historically been limited because
14 of our concerns, trying to think about how we can modify
15 that to make them safer for individuals to enjoy the outdoor
16 spaces because we know physical activity is so important to
17 our health, and this is also about health, clearly.



23 23. At 35:22, Dr. Angell then described Stage 3 as follows: “The third stage is
24 when we get into those areas that may be higher risk, those sectors that we think will
25 take a lot more modification to adapt in a way that can make them places where people
26 can move with lower risk.”

27 24. At 35:52, Dr. Angell further described Stage 3 as follows: “Those are
28 things like getting your hair cut, uh getting your nails done, doing anything that has

1 very close inherent relationships with other people, where the proximity is very close.”

2 25. At 46:49, Dr. Angell described Stage 4 as follows: “And then ultimately,
3 the space that we all look forward to, someday as we move forward and work diligently
4 together, is Stage 4, which would be the end of the stay-at-home order. And that’s
5 when we’d be opening all of our highest risk workplaces without modification
6 necessary at that time, because at that time we will know that we have identified a way
7 that we can keep people safe from COVID-19.

8 26. During this time, Dr. Angell showed the following graphic:



18 27. I also had a certified transcript made of the recording of that April 28,
19 2020, press conference. That transcript is attached hereto **Exhibit E**. The slides are
20 also available online here: [https://www.gov.ca.gov/wp-content/uploads/2020/04/
21 Update-on-California-Pandemic-Roadmap.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/04/Update-on-California-Pandemic-Roadmap.pdf).

22 28. On May 4, 2020, Governor Newsom issued a press release in which he
23 stated that Stage 2 will begin, in part, on Friday, May 8, 2020. According to that
24 press release, only some businesses will be allowed to reopen, like “bookstores,
25 clothing stores, florists and sporting goods stores,” but not yet “offices, seated dining
26 at restaurants, shopping malls or schools.” A true and correct copy of that press
27 release is attached hereto as **Exhibit F**.

28 29. On May 7, 2020, Governor Newsom held a press conference to

1 announce the beginning of Stage 2, and the publication of his Resilience Roadmap. A
 2 recording of it is available online here: [https://www.facebook.com/CAGovernor/
 3 videos/260976601615609/](https://www.facebook.com/CAGovernor/videos/260976601615609/). I also watched that press conference in full. During that
 4 press conference, at 50:36, Governor Newsom was asked by a journalist a why
 5 schools were being prioritized over places of worship. Based on my personal
 6 transcript, the following exchange followed:

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

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

15 30. On May 7, 2020, Governor Newsom also published his Resilience
 16 Roadmap online. That Roadmap identifies the industries that may open immediately
 17 (retail for curbside pickup, manufacturing and logistics), those that will open in a few
 18 weeks (shopping malls, car washes, schools, restaurants), and those that cannot open
 19 for several months, until Stage 3 is announced (salons, tattoo parlors, gyms, bars,
 20 movie theaters, and places of worship). A true and correct copy of a printout of the
 21 webpage containing that Roadmap is attached to the Complaint as **Exhibit 1-3**.

22 31. Under the Roadmap, for each industry that will be allowed to open in
 23 Stage 2, the Roadmap also provides industry-specific Pandemic Guidance that the
 24 industry must comply with. The industry must both comply with the guidance, and
 25 certify to the state that it is in compliance. True and correct copies of the Guidance
 26 for two industries opening immediately—manufacturing and logistics—is attached to
 27 the Complaint as part of **Exhibit 1-3**.

28 32. At the same time, Governor Newsom published a press release

1 announcing the Resilience Roadmap, and explaining the same. A true and correct
2 copy of that press release is attached to the Complaint as **Exhibit 1-4**.

3 33. On May 10, 2020, the County of San Diego issued an Order of the
4 Health Office and Emergency Regulations. That order incorporated Governor
5 Newsom's Executive Order No. N-33-20 (Ex. 1-1), and set further guidelines for
6 "essential" and "reopening" businesses operating in San Diego County. A true and
7 correct copy of the County of San Diego order is attached to the Complaint as
8 **Exhibit 2-1**.

9 34. The County order promulgated the County of San Diego "Social
10 Distancing and Sanitation Protocol" that all essential businesses were required to fill
11 out and adhere to. The County order also promulgated the County of San Diego
12 "Safe Reopening Plan" Protocol that all new businesses that were allowed to reopen
13 were required to fill out and adhere to. The order also banned all gatherings of "more
14 than one person" except at essential businesses or transit places. A true and correct
15 copy of the "Social Distancing and Sanitation Protocol" is attached to the Complaint
16 as **Exhibit 2-2**. A true and correct copy of the "Safe Reopening Plan" Protocol is
17 attached to the Complaint as **Exhibit 2-3**.

18 **Additional Helpful Exhibits**

19 1. Attached hereto as **Exhibit G** is a true and correct copy of the opinion of
20 the Sixth Circuit in *Maryville Baptist Church, Inc. v. Beshear*, as downloaded from
21 Westlaw at 2020 WL 2111316.

22 2. Attached hereto as **Exhibit H** is a true and correct copy of the opinion of
23 the Western District of Kentucky in *On Fire Christian Ctr., Inc. v. Fischer*, as
24 downloaded from Westlaw at 2020 WL 1820249.

25 3. Attached hereto as **Exhibit I** is a true and correct copy of the opinion of
26 the District of Kansas in *First Baptist Church v. Kelley*, as downloaded from Westlaw
27 at 2020 WL 1910021.

28 4. Attached hereto as **Exhibit J** is a true and correct copy of the opinion of

1 the Eastern District of Kentucky in *Tabernacle Baptist Church, Inc. of Nicholasville,*
2 *Kentucky v. Beshear*, as downloaded from Westlaw at 2020 WL 2305307.

3 5. Attached hereto as **Exhibit K** is a true and correct copy of the Statement
4 of Attorney General William P. Barr on Religious Practice and Social Distancing,
5 dated April 14, 2020.

6 6. Attached hereto as **Exhibit L** is a true and correct copy of the Attorney
7 General's Memorandum for the Assistant Attorney General for Civil Rights and All
8 United States Attorneys, dated April 27, 2020.

9 7. Attached hereto as **Exhibit M** is a true and correct copy of the U.S.
10 Department of Justice's Statement of Interest filed in *Temple Baptist Church v. City of*
11 *Greenville*, No. 4:20-cv-64-DMB-JMV (N.D. Miss. Apr. 14, 2020), at ECF No. 6.

12 8. Attached hereto as **Exhibit N** is a true and correct copy of the U.S.
13 Department of Justice's Statement of Interest filed in *Lighthouse Fellowship Church v.*
14 *Northam*, No. 2:20-cv-00204-AWA-RJK (E.D. Va. May 3, 2020), at ECF No. 19.

15 9. Additional **Exhibits O and P** are attached to the Declaration of Jeffrey
16 M. Trissell in Support of Plaintiffs' Requests for Judicial Notice.

17 I declare until penalty of perjury under the laws of the United States and the
18 State of California that the foregoing is true and correct. Executed on May 11, 2020.


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22 Jeffrey M. Trissell, Esq.
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EXHIBIT A

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

WHEREAS the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

WHEREAS on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

WHEREAS on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

WHEREAS the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

WHEREAS as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

WHEREAS as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

WHEREAS for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

WHEREAS California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and

WHEREAS experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

WHEREAS it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

WHEREAS if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

WHEREAS state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

WHEREAS I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

WHEREAS I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

WHEREAS under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

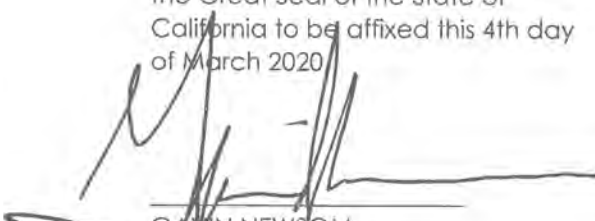
notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.

14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have
hereunto set my hand and caused
the Great Seal of the State of
California to be affixed this 4th day
of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

EXHIBIT B

72° 

FOX 5



SAN DIEGO (CNS) – Palomar Health announced Tuesday that it is laying off 317 employees effective Wednesday, citing significant patient visit declines and loss of revenue as a result of the COVID-19 pandemic.

According to the hospital, it has seen a 45% to 50% decrease in overall patient visits since the coronavirus outbreak began, absorbing a \$5.7 million operating loss in March, “with losses in April expected to be worse, yet hard to estimate given the uncertainty of the virus.”

Palomar Health, which operates multiple medical centers and clinics in north San Diego County in San Marcos, Poway, Escondido, Ramona and Rancho Bernardo, is far from the only health care provider feeling the impact.

UCSD Health Center has lost more than \$50 million in revenue since March, Voice of San Diego reported Tuesday.

The 317 positions represent 5% of Palomar’s workforce and the majority are part-time workers. The number includes 50 clinical RNs. The remaining 267 positions are spread across the organization, ranging from clerical staff to technicians.

Employees who are affected will receive a severance package and are immediately eligible for unemployment and health insurance coverage through their severance period, Palomar Health officials said.

San Diego County gave the green light last week to hospitals to begin performing elective procedures, if the facility’s resources can handle it.

Palomar Health “will resume surgical procedures based on the availability of personal protective equipment and virus testing, but the loss of revenue from shutting down elective surgeries for the past six weeks cannot be recovered quickly,” according to a hospital statement.

72° **FOX 5**

occupies two formerly vacant floors of Palomar Medical Center Escondido.

Hospital officials noted that future patient visits may also be negatively impacted by the uncertainties of the economy as patients may lose insurance due to unemployment and delay non-emergency surgeries for more prosperous times.

“These are extremely tough decisions that are taken very seriously because we know they affect the livelihood of our employees,” said Palomar Health President and CEO Diane Hansen. “However, the sooner we make these tough decisions, the sooner we will be able to stabilize our business and get back on the road to recovery. It is our responsibility to ensure Palomar Health provides high-quality medical care to our community during and after this pandemic.”

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EXHIBIT C

CORONAVIRUS

HEALTH

LABOR

Wanted: Health care workers. Wait! Never mind...

BY ANA B. IBARRA



PUBLISHED: MAY 6, 2020



Medical staff walk into work as first responders show gratitude by clapping and cheering them on at Santa Clara Valley Medical Center in San Jose on April 15, 2020. Photo by Randy Vazquez / Bay Area News Group



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IN SUMMARY

California health care workers face layoffs, furloughs and pay cuts in the coronavirus pandemic, as hospitals and medical practices say they're financially bleeding.

When Aimee Paulson, a nurse practitioner, learned in late March she was being temporarily laid off from the private family practice she'd worked at for the last three years, she was disappointed but not surprised. Patient visits in the San Ramon office had gone down by almost 80% as the coronavirus outbreak kept people at home.

She called her patients, many of whom followed her from her previous workplace, and told them she hoped to be back by June.



In the midst of a public health crisis, Paulson and other health care workers are learning they aren't immune to layoffs, furloughs and pay cuts. It's an ironic twist to the pandemic: When the health care system seems to need workers the most, it can't afford to keep them all. A [recent](#)

survey of more than 3,200 physicians by the California Medical Association, for example, found that 49% of practices have had to lay off or furlough staff.

Now providers and state lawmakers are searching for ways to keep hospitals, clinics and private practices afloat and its workers employed – or face the prospect of a deeper medical jobs shortage months or years from now.

This week, California hospitals are planning to ask the state for \$1 billion before June 30 to help with immediate revenue losses, said Carmela Coyle, the CEO of the California Hospital Association. An injection of cash from the state could help hospitals avoid or reduce pay cuts and layoffs, she said. California hospitals so far have received \$3 billion in aid from the federal government, she added.

Hospitals have also asked that health insurance plans accelerate payments for claims within 30 days during the pandemic. Currently, claims can take up to 90 days to process, but “we need to move those dollars more quickly,” Coyle said during an Assembly budget hearing on Monday.

Coyle said hospitals have done their best to keep their staff, but furloughs and layoffs have begun. “And that is because 60 percent of hospital spending is for labor,” she told lawmakers.

At the outset of the pandemic, the state asked hospitals to prepare for a surge and make room for about 40,000 more patients at once. “And we did that, we answered that call. We emptied California’s hospitals to make way. That means canceling surgeries and procedures and more,” she said. “But as we begin to assess the damage, the toll is enormous.”

In late April, Gov. Gavin Newsom allowed hospitals to resume some elective surgeries, which is the bread and butter for many facilities. But some hospitals, especially smaller ones or those in rural areas, are already in a deep hole.

Meanwhile, clinics and doctors’ offices continue to struggle with a drop in revenue as patients are advised to avoid non-emergency in-person visits.

This week, the Legislature’s Latino Caucus sent a letter to the Newsom administration also warning that many of the state’s health centers will not be able to remain open much longer “without significant financial support from the state.”

Laying off and furloughing staff is a “recipe for disaster,” said Stephanie Roberson with the California Nurses Association. Last month, for instance, about 150 registered nurses in San Jose

and San Diego were temporarily laid off because of department closures and the cancellation of elective procedures, Roberson said.

Her organization has been protesting these layoffs. On Thursday, another union, SEIU-United Healthcare Workers West, will be protesting a 20% pay cut at Stanford Health Care.

"It is a weird dichotomy," said Joanne Spetz, associate director of research at the Healthforce Center at the University of California, San Francisco. The labor challenge for health systems, she said, is that not all positions transfer smoothly into surge preparedness. A nurse in a primary care office or one who specializes in orthopedic care, for example, perhaps wouldn't be the best fit to care for a coronavirus patient on a ventilator, she explained.

"So you have furloughs happening in community health centers and in certain departments of hospitals, while at the same time there is concern about a surge and we're hearing these calls for things like a health corps," she said.

In late March, Gov. Gavin Newsom announced the California's Health Corps, whose members would tend to coronavirus patients in alternate care facilities. But that surge in anticipated volume hasn't occurred and these facilities across the state remain mostly empty. Out of the approximately 94,000 people who have applied to the state's backup medical reserve, 551 have been accepted into the program.

Of these Health Corps members, 233 are on call to staff the Sleep Train Arena, the former Sacramento Kings playing venue which was prepped for up to 400 patients with mild or moderate cases of COVID-19. As of Tuesday, only five patients were being treated there. Workers are taking turns as needed, according to the state's Department of Health and Human Services. The rest are being used to staff nursing homes that need temporary or emergency support.

Democratic Assemblyman Jim Wood of Healdsburg said it makes more sense to look at laid off workers first for Health Corps jobs, rather than hire people who need to be retrained and recertified. "My rationale is they're going to go on unemployment, and then we turn around and pay someone else," Wood said.

The California Department of Health and Human Services confirmed that currently laid off workers are not prioritized for these jobs. Hiring is based on need and geography, according to the agency.

Paulson, the nurse practitioner, applied to the state's Health Corps and was recently offered a position at a clinic in Berkeley. She didn't take it. On Wednesday, she returned to the San Ramon

practice after her employer qualified for a Paycheck Protection Program loan. She'll be working partial hours until patient visits pick up again, she said.

Others may not be as fortunate. Assemblyman Wood said he believes the pandemic is "going to be a breaking point for some offices and clinics." He said he is concerned about the **loss of primary care doctors**, especially in rural districts like his that already struggle to attract and retain them.

"This will hasten the retirement of some folks, or the closing of practices," he said.

More on the coronavirus in California:



Tracking coronavirus hospitalizations in California by county

CalMatters is tracking positive and suspected cases of COVID-19 in patients who are hospitalized throughout the state, broken down by county.

EXHIBIT D

TRANSCRIPTION OF
GOVERNOR GAVIN NEWSOM'S COVID-19 PRESS CONFERENCE
APRIL 27, 2020

CERTIFIED COPY

Transcribed by:
RENAE E. LOPEZ
CSR 12142
No. 20-90688A

TRANSCRIPTION OF
GOVERNOR GAVIN NEWSOM'S COVID-19 PRESS CONFERENCE
APRIL 27, 2020

CERTIFIED COPY

1 **APPEARANCES:**

2 Gavin Newsom, Governor of the State of California

3 Mark Ghaly, M.D., Secretary, California Health and
4 Human Services Agency

5 **Members of the Press:**

6 Jonathan Ayestas, KCRA News

7 Elex Michaelson, Fox 11

8 Stephanie Baer, BuzzFeed News

9 David Baker, Bloomberg News

10 Jeremy White, Politico

11 Jim Roope, Westwood One News

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Stephanie Baer	27
David Baker	30
Jeremy White	33
Jim Roope	34

1 APRIL 27, 2020

2 ***

3
4
5
6 GOVERNOR NEWSOM: Well, good afternoon,
7 everybody.

8 I just want to begin by extending, again,
9 gratitude to 40 million Californians that, over the
10 course of the last number of weeks, have not only bent
11 the curve in the State of California, but stabilized
12 it.

13 We have made real progress in this state
14 over the course of the last number of weeks, and that's
15 why I want to just confront the topic that is top of
16 mind, and those are the images we saw over the weekend,
17 the images down in Orange County and Ventura County on
18 our beaches.

19 Those images are an example of what not to
20 see, people, what not to do, if we're going to make the
21 meaningful progress that we've made in the last few
22 weeks extend into the next number of -- number of
23 weeks.

24 The reality is we are just a few weeks away,
25 not months away, from making measurable and meaningful

1 changes to our stay-at-home order. That is a very
2 optimistic point to emphasize; however, that's driven
3 by data. It's driven by behavior, and as we change our
4 behavior, we can impact the science, the health, and
5 the data.

6 This virus doesn't take the weekends off.
7 This virus doesn't go home because it's a beautiful,
8 sunny day around our coasts. The likelihood of having
9 a virus-free world is not realistic in the next number
10 of months. We'll look forward to that day, as herd
11 immunity comes into effect, that we have a vaccine that
12 we can distribute and make available to hundreds and
13 millions of people across this country, billions around
14 the rest of the globe.

15 Until then, we have to manage it. We have
16 to manage risks. We have to manage and augment our
17 behavior, and that's why I cannot impress upon you
18 more, to those Californians watching, that we can't see
19 the images like we saw, particularly on Saturday in
20 Newport Beach and elsewhere in the State of California.

21 Look, I'm not naive. The overwhelming
22 majority of our coastline was appropriately advanced,
23 meaning the stay-at-home orders were advanced. The
24 physical distancing, the social distancing on those
25 beaches was appropriate. You didn't see those images

1 in L.A. beaches and San Diego beaches and Northern
2 California, around San Mateo County, up further north
3 towards Eureka, because we had strong guidelines that
4 were not only adopted, but were abided by, and we had
5 local partners that supported those efforts and helped
6 create the conditions on those hard park closures that
7 allowed people to continue to conduct themselves
8 appropriately.

9 Unfortunately, there were these exceptions,
10 on Saturday in particular, little less so on Sunday,
11 and we've got to confront that. And I'm encouraged. I
12 want to acknowledge that -- Newport Beach, I want to
13 acknowledge their City Council. I want to acknowledge
14 the County Board of Supervisors in Orange County.

15 I'm told they are looking to consider some
16 augmentations and some more deliberative engagement to
17 address the conditions and those concerns that were
18 highlighted over the course of the weekend, but I want
19 folks to know this as well: We're doing the same at
20 the State level, the California Highway Patrol, with
21 our stakes park -- State parks patrol with other
22 partners, and we will avail ourselves to more
23 aggressive enforcement of the stay-at-home order, of
24 the social distancing, of the guidelines and procedures
25 that we expect to be followed all across the State of

1 California.

2 I -- I deeply respect localism. I deeply
3 respect local decision making. I deeply respect the
4 work that elected officials do, ell up and down this
5 state, of all political stripes, and I recognize your
6 anxiety, and I recognize the pressures. As a former
7 county supervisor, as a former mayor, I understand
8 those local pressures intimately.

9 And I deeply understand the broader public
10 sentiment about their need to get some clarity and get
11 some confidence that we'll go back to whatever modified
12 sense of normalcy that we hope to see, that we'll see
13 that advance sooner than later, but I cannot impress
14 upon people more, the only thing that will set us back
15 is our behavior. The only thing that will set us back
16 is people stopping to practice physical distancing and
17 appropriate social distancing. That's the only thing
18 that's going to slow down our ability to reopen this
19 economy, our re- -- ability to adapt and modify the
20 stay-et-home order, as I said, weeks, not months, if
21 the data continues to be as stable as it has been over
22 the course of the last few weeks. The only thing that
23 can stop that is more images, again, like we saw over
24 this weekend.

25 So I'm looking forward to working with those

1 local government agencies, working much more
2 aggressively on the enforcement side, and continue to
3 believe that we have remarkable capacity in the State
4 to stabilize this curve and make the kind of
5 modifications that all of us are eager to make, again,
6 none more eager than I am, and I just want to extend to
7 that point tomorrow, we will be laying out more detail.

8 Last week on Wednesday, we laid out details
9 on one of our six indicators. That was on the issues
10 of testing, on tracing, on tracking, on social
11 isolation that is done with economic justice framework,
12 and the issues around quarantine.

13 Tomorrow, we're going to break down the
14 number five indicator, which goes to our business
15 environment, goes to schools and childcare facilities
16 and the like, and, again, the hope and expectation is
17 that we'll be in a position, in a number of weeks, to
18 make meaningful modifications, but, again, the data
19 will guide that. The indicators will guide that, and
20 the only thing that could disrupt that, to set us back,
21 to slow down our capacity to start to reopen our
22 economy, is behavior that's inconsistent with the
23 statewide guidelines.

24 So I just want to make that clear up top,
25 and, again, just want to thank all the incredible work

1 that was done over the weekend by parks and by our
2 public partners, and by large cities that really
3 conducted themselves appropriately and truly did
4 justice to the guidelines that, not only they set
5 locally, but that the State of California has set.

6 And we'll have a little work to do to
7 improve upon Saturday in particular, but I'm confident
8 that we can do so, and, again, look forward to robust
9 conversations this week, in that respect.

10 Also am very honored that we had some robust
11 conversations with State of Nevada and the State of
12 Colorado over the last week, and those two states have
13 joined our Western States coalition, addition to
14 Colorado and to Nevada, of course, the partners --
15 partnership that was formed a few weeks back with
16 Washington State and Oregon. This now allows all five
17 states to begin to work even more closely and more
18 collaboratively.

19 I must say it is a wonderful thing when
20 chiefs of staff, all the governors get on the phone and
21 are comparing and contrasting best practices in
22 realtime, are -- are sharing data, sharing information.
23 This partnership has already become very, very
24 meaningful, and -- and I just, again, want to extend my
25 deep gratitude to Mayor Brown, Mayor Inslee, to

1 Mayor Sisolak, and to Mayor Polis -- or, rather,
2 Governors Polis, Sisolak, Inslee, and Brown for their
3 outstanding leadership and their support in this
4 broader Western States agenda.

5 Also want to update you, just briefly, on a
6 new strategy that we'll also be employing, in terms of
7 getting to the next phase, as it relates to meaningful
8 modifications of our stay-at-home order.

9 As you may know, a few weeks back, we
10 announced a new economic advisory body, a new recovery
11 body. It was some of the best and the brightest minds
12 we can source in the State of California that are
13 advising us on our recovery efforts, short-term,
14 medium, and long-term strategies; long-term around
15 reinventing, reimagining the future.

16 One of the conversations that came out of
17 this task force was the importance of breaking down by
18 sector. We are certainly looking regionally in the
19 State, but also looking by sector, and really drilling
20 down on the specific and unique needs of every sector
21 of our economy.

22 In an effort to further that cause, and to
23 do so with some transparency, we're inviting the press
24 and others in on a series of digital roundtables that
25 I'll be hosting with leaders in small businesses,

1 medium, and large businesses, by sector, also bringing
2 in customers, and bringing in experts from our advisory
3 committee to help guide the conversations, to really
4 start to break down, not just broad strokes hospitality
5 or retail, but by type of retail, by type of sector
6 within the broader sector of hospitality, bars,
7 restaurants, and the unique nature of -- of dining
8 experiences with tablecloths, without tablecloths, and
9 the issues of bars and restaurants that are combined,
10 issues of different types of licenses and different
11 types of retail, those that could do curbside pickup,
12 those that aren't necessarily afforded that, because of
13 the way their physical construction works, are they in
14 a shopping mall, are they with multiple other
15 businesses, or on they -- a second floor?

16 All of these things will be broken down, and
17 we'll start to socialize those conversations starting
18 tomorrow, again, bringing the press in, into those
19 digital roundtables, and, again, it's not just about
20 the immediacy of working to get specific language on
21 guidance for meaningful modifications of our
22 stay-at-home order in the short term, but it's really
23 about talking about the future and what that retail
24 experience may look like a year from now, two, three
25 years from now.

1 And so having this dynamic process, these
2 two-way conversations in a more granular level, we
3 think, is not only appropriate, but will be absolutely
4 determinative, in terms of how and when those
5 guidelines are put out over the course of the next few
6 weeks, and so that was something else we wanted to
7 preview. Again, tomorrow, we'll be having that first
8 digital roundtable and inviting people in to
9 participate in that.

10 We're also pleased as well that we made some
11 progress over the course of the last number of days.
12 As you know, I'm apt to remind you of the -- all the
13 N95 masks, procedure masks, and other PPE that we've
14 procured. We have distributed some 43.7 million and 95
15 masks to date in the State of California. We have also
16 distributed roughly three million procedural masks --
17 or, rather, four million, excuse me, procedural masks.
18 Over the course of the weekend, we were able to procure
19 3.1 million additional procedure masks, so we'll go
20 from four to over seven million masks that will be
21 distributed.

22 That's very -- (video freezes briefly) -- we
23 continue the physical distancing, we appropriate
24 ourselves in public by putting on face coverings when
25 we are in contact or proximate to other people, and

1 make sure that we continue to advance our stay-at-home
2 orders.

3 I get the data, by the way. Every morning,
4 we have a dashboard that's provided on movement, a
5 number of companies we are working with that provide
6 that. We made those public a few months ago. We
7 actually showed some of that data here a few weeks
8 back.

9 It says what we all know. Not only did we
10 see an increase in movement and mobility over the
11 weekend, but we've seen, week to week, particularly in
12 the last two weeks, a modest increase. The vast
13 majority of you are still socially distancing and --
14 and are abiding by the stay-at-home order, and not
15 everybody that's moving, even an increase of movement,
16 are doing so inappropriately, but it does suggest,
17 again, that we are seeing movement all across the State
18 of California, and, boy, it wasn't just anecdotal.
19 Those photographs from those two county and the beaches
20 this weekend, we saw, specifically, data and movement
21 to the beaches that only reinforced that data, from a
22 very statistical perspective.

23 But, again, data and science and health will
24 drive our decision making, and if we continue to make,
25 again, the kind of progress we've made over the last

1 few weeks, the next few weeks, I think we can be in a
2 much better place than some had imagined and hoped for.
3 But, again, let's abide by these rules and abide by
4 these guidances.

5 Let me also, just briefly, before I get into
6 the daily numbers, mention one other sector. We've
7 been working very hard on these unemployment insurance
8 claims. Some 4.4 billion dollars has been distributed,
9 4.4 billion dollars since March 15th, just since March
10 15th. It's unprecedented amount of money that has been
11 distributed. 4.3 million checks have been cut, and we
12 continue to see claims increase -- increase. The rate
13 of growth is a little more modest than we saw a few
14 weeks ago, but, again, in record territory.

15 People have rightly commented about the call
16 center needing to be opened up beyond the 8:00 a.m. to
17 noon. We did so a week ago, 8:00 to 8:00, seven days a
18 week. People then rightly commented they're having a
19 hard time getting -- because of the call volume,
20 getting a human being to answer and have expressed
21 frustration.

22 We have acknowledged that frustration on
23 multiple occasions, and we've leaned in. We announced
24 1,340 people have been redeployed to help support our
25 unemployment insurance claim process, including

1 supporting the call center. Just for the purposes of
2 additional information and advancing that conversation
3 further, we added 600 additional people to that task in
4 the last few days.

5 Later this week, we will be putting text
6 capacity to answer question by text, so SMS. That will
7 go into place in the next few days. We put a new
8 chatbot up a few days ago on the most frequently asked
9 questions, again, all about reducing the stress,
10 reducing the volume.

11 I mentioned, just before the weekend, that
12 we were integrating some of the work around call
13 centers and making sure that we're putting different
14 protocols in place. That substantially started to take
15 shape over the weekend.

16 We're not out of the woods, by any stretch
17 of the imagination. Let me tell you why. Fifteen --
18 just last week, fifteen million calls came in to that
19 call center. Fifteen million, and over one million
20 minutes were spent, one million minutes with a human
21 being answering questions.

22 So one of the things we recognize we need to
23 do is reduce that call volume. We think the SMS, the
24 text -- texting will help in that efforts. These
25 chatbots will certainly, we believe, help in that

1 effort.

2 And we're also looking at some of the rules
3 and regulation, to loosen them up, in terms of the need
4 to make as many inquiries. That's also an important
5 thing that we started doing, late last week into the
6 weekend, and, hopefully, it will be bearing fruit later
7 this week.

8 So just know, we get it. We're doing
9 everything in our power to get it done. I'm not going
10 to sit here and complain about old IT systems, except
11 we have an old IT system, and let me just acknowledge,
12 head on, that's not the only old IT system in
13 government.

14 Interestingly, this has long been a point of
15 passion for me, a large-scale IT procurement, and while
16 we were making some progress over this last year, we
17 recognize, you know, a lot more progress that needs to
18 be made, including the Department of Motor Vehicles,
19 lest I not remind you of their infamous IT system.

20 These things can't change overnight, but
21 know we're working day and night to begin to do justice
22 to your expectations and your rightful demands for
23 performance from the State of California and all of our
24 partners at the local level, and we're committed to
25 doing better every single day.

1 So I just wanted to update you on
2 unemployment insurance claims as well.

3 As we do every day, I also want to update
4 you on some trend lines before they're headlines, as it
5 relates to the data that comes in on the number of
6 deaths, hospitalization, number of positives in the
7 State of California.

8 Over the weekend, we started to see a modest
9 decline from that peak last week in the number of lives
10 lost. Over the last 24 hours, 45 lives lost. Tragic.
11 Again, human beings, not just numbers, not just
12 statistic, but encouraging sign, nonetheless, over the
13 course of the last number of days, from that peak into
14 last week.

15 We'll see where it goes in the next few
16 days. Always a point of caution, lagging indicator,
17 but that number down from over a hundred, just a number
18 of days ago. We did see 1300 new individuals test
19 positive for COVID-19, but we're also seeing
20 substantial improvement in our total testing. Now over
21 553,000 tests have been performed in the State of
22 California.

23 We're starting to hit those benchmarks that
24 we laid out to you, in terms of substantially
25 increasing our testing. I should just note, we're also

1 seeing those benchmarks of commitments I made last week
2 on those 80 new testing sites from OptumServe, first
3 one up there now in Humboldt, focusing on rural
4 Californians, others going out in realtime today and
5 through the next week.

6 Also, Verily, the partnership with
7 Verily, we talked about a number of weeks ago with
8 Google, they're also focusing on places like East L.A.,
9 inner city California, not just in the rural parts of
10 the State.

11 So not only are we increasing the numbers of
12 tests, I just want to make sure people understand where
13 we are testing is becoming more appropriate to the
14 needs of 40 million Californians, and so we're trying
15 to meet people where they are, as opposed to demanding
16 they meet where we are.

17 Again, lot of progress in that place, and
18 that progress will certainly help us with those green
19 lights of indicators of moving forward with these
20 meaningful modifications of the stay-at-home order that
21 all of us are looking forward to.

22 So that's the number of positives, over 1300
23 more in the last 24 hours. The number of
24 hospitalizations, 1.4 percent increase. Again, we're
25 seeing some stabilization, decrease, modest increase,

1 decrease, modest increase in the whole number of people
2 hospitalized. The number of people in ICU is basically
3 flat from yesterday, just one individual more than in
4 the last 24 hours in the ICU.

5 So, again, stabilization, but let's keep it
6 that way. That's why I began talking about the
7 beaches. Why run that -- I know, I'll say it again --
8 that 90-yard dash? Who does that? You're so close
9 when you've been making so much progress. Let's just
10 get through this thing together, so that we can go so
11 much farther, so much quicker.

12 The worst thing we do is we start, sort of
13 rest on our laurels, thinking somehow the virus has
14 decided to take a break or go on vacation. Virus is as
15 present -- prevalent as it's ever been. It's as
16 transmissible as it's ever been. Nothing's changed, in
17 that respect. The only thing that changed is our
18 behavior, for the better, and that mitigated the spread
19 and has provided us the opportunity to build a
20 foundation where we can then begin to make the
21 modifications.

22 And so, again, I just want to encourage
23 people to continue in that spirit, and advance in that
24 space, six feet apart minimum, practicing social
25 distancing, physical distancing, abiding by the

1 stay-at-home, and we'll do our part to make adjustments
2 and amendments when the data shows those green lights,
3 and the data provides us the indication that we can
4 move there. Hope it's in the next few weeks. I
5 believe it will be, but that's based on our behaviors
6 in the next few weeks.

7 So let's get there together, and let's get
8 there in a much stronger way than we otherwise could.

9 So that's, broad strokes, the updates
10 for the day, and I, again, want to just express great,
11 great gratitude to -- to all of you that continue to do
12 everything you can to -- to -- to really meet the
13 spirit that this moment requires, and -- and that
14 spirit includes all of you that have signed up for the
15 Californiansforall.ca.gov website to contribute your
16 time, your passion, and your expertise to volunteer.
17 It is just a wonderful thing to see those numbers
18 continue to grow and continue to expand, in terms of
19 every part of this state, people participating,
20 contributing, supporting their neighbors, supporting
21 one another at this incredibly important time. Let's
22 also keep that spirit of contribution going as well.

23 With that, happy to take questions.

24 FEMALE SPEAKER: Jonathan Ayestas, KCRA
25 News.

1 MR. ATESTAS: Hi, Governor. Thank you for
2 taking my question.

3 Earlier, you had mentioned that you had
4 possibly wanted to work with law enforcement agencies
5 to be a little more aggressive with any enforcement.
6 At least in our area, we haven't heard of any
7 citations.

8 Does this mean you're wanting to take a step
9 more towards that, or is the goal still education about
10 social distancing guidelines versus enforcement?

11 GOVERNOR NEWSOM: Yeah, I appreciate it.
12 No, the predominant focus is education. We did a lot
13 of PSAs. We did paid media. I was very explicit last
14 Thursday, little bit on Friday about our concerns and
15 the expectation, particularly in these two counties
16 that had soft openings, as opposed to hard closures,
17 and it manifested, as we were concerned, though I think
18 because of the great work the State parks and their
19 parks patrol and our partners at the local level did,
20 it was mitigated.

21 Look, there were thousands of contacts,
22 particularly on Saturday, substantially less so on
23 Sunday, for multitude of reasons. There were no
24 citations or arrests. There were a few warnings,
25 scattered all throughout the State of California.

1 I think that's a better approach. I don't
2 want to be punitive. My gosh, someone who's lost their
3 job, last thing they want to do is walk their dog,
4 they're with their kids, and they've got cabin fever,
5 and they just want to take a rest on the beach, and all
6 of a sudden, they get a citation. I don't want -- I
7 don't want to see that happen. You don't want to see
8 that happen.

9 None of us do, but if there are people
10 thumbing their nose and abusing it, putting their lives
11 at risk, because they're impacting the lives of others,
12 and ultimately setting back the cause of reopening the
13 economy as quickly as we'd like to, I think we may have
14 to do a little bit more.

15 And so I mentioned it a moment ago, let me
16 mention it again, and to -- to answer your question a
17 little more specifically. We have a all-hands
18 meeting -- we have a lot of these meetings, but with
19 this as the principal topic, with the Police Chiefs
20 Association, our County Sheriffs' Association, CSAC,
21 that's our -- our county partners, and others to see if
22 we can work even more closely together over the course
23 of this next week and the next few weeks, so that we
24 can keep this momentum going and not see a setback.

25 And everybody's saying the right things. I

1 think they want to do the right thing, including those
2 local officials that -- that wanted to open up the
3 beaches, I -- I think, to their credit, they saw what
4 happened. They've listened to the concerns, and --
5 and -- and some of the criticism that all of us have
6 received, and -- and -- and I think there's an
7 understanding and willingness to work collaborative,
8 together.

9 By the way, extends not just to enforcement.
10 It's also some strategic considerations. When we talk
11 about hard closures, it's primarily these parking
12 facilities. Soft closures include parking facilities,
13 but you broaden some of the parking restrictions even
14 beyond the formal parking areas, you begin to further
15 the efforts to mitigate a surge of visitors.

16 So there's -- there's some other things we
17 can do, and we will be doing a lot more of those things
18 in the next number of days and weeks.

19 FEMALE SPEAKER: Angela Hart, Kaiser Health
20 News.

21 MS. HART: Thanks, Governor. On this
22 testing ramp up that you've discussed, you've talked a
23 lot about increasing -- increasing testing in rural
24 towns and -- and communities of color that have seen
25 inadequate testing, but what we're hearing a lot about

1 is of -- of challenges when it comes to testing and the
2 uninsured population.

3 So can you talk about that, and to the
4 extent with which California's testing goals are being
5 complicated by a lack of health coverage?

6 GOVERNOR NEWSOM: Yeah, I have -- Dr. Ghaly
7 here could talk more specifically about that. That
8 should not, absolutely should not be an impediment, for
9 a multitude of reasons that we have announced,
10 regardless of your status in the State of California,
11 but for a multitude of reasons, that should not be an
12 issue, but Dr. Ghaly can fill in, more specifically,
13 the blanks, in terms of what those actions have been
14 and why he feels confident that that's not an
15 impediment.

16 DR. GHALY: Thank you, Governor.

17 We do continue to stand up sites across the
18 State, targeting areas that haven't had enough testing,
19 haven't had any testing in some areas, and certainly,
20 as we look at our data to target those neighborhoods
21 and communities where we know there's disparities in
22 outcomes with COVID-19, to make sure those populations
23 receive the testing, in a quantity that they deserve.
24 We're building towards that, and -- and we're making
25 new strides every day.

1 Early on in our response, the Governor made
2 some very important moves, indications that our
3 commercial health plans should and will support the
4 payment for COVID-19 testing, regardless of where an
5 individual is or what plan they're a part of. He
6 directed our team at the Department of Healthcare
7 Services, who run the Medi-Cal program, to ensure that
8 no individual, Medi-Cal beneficiary, would experience
9 any economic harm while they seek testing.

10 We have worked with our clinic partners to
11 make sure that there's clarification on how that
12 billing arrangement and payment arrangement can be
13 made, so that we don't have any issues getting an
14 individual tested, and for those who do not have either
15 commercial insurance or Medi-Cal, those who are
16 uninsured, that we make sure that anyone who runs a
17 test on an uninsured Californian is able to get
18 reimbursed adequately, so that does not become an
19 impediment.

20 We expect to see these questions more and
21 more, as individual clinics and individual settings
22 that begin to do more testing begin to ask the
23 question, and we look forward to demonstrating how they
24 can get payment for those tests, so that the community
25 message across California is if you think you need to

1 be tested, especially as we change our prioritization
2 in testing guidelines of who should and can be tested,
3 that there is no impediment to getting that done.

4 We see it as a very important part of
5 opening or modifying our stay-at-home orders in the
6 weeks to come, so we are dogged in working hard with
7 our county partners, health plan partners to make sure
8 that this and any other testing impediment is cleared.

9 GOVERNOR NEWSOM: And, Angela, as always,
10 PPE is an issue as well, accessibility, testing, but
11 you got to have the appropriate amount of personal
12 protective equipment, and so that's why we continue to
13 work so aggressively to make sure we get these masks,
14 in particular, but not just masks, gowns, shields,
15 gloves, and other PPE distributed as quickly and
16 assuredly as we receive them.

17 FEMALE SPEAKER: Alex Michaelson, Fox 11.

18 MR. MICHAELSON: Governor, thanks for taking
19 my call. There -- a lot of people, business owners,
20 employees, are grateful for all the government
21 assistance, grateful for all the charity work, but what
22 they really want to do is get back to work. So in
23 terms of what are the types of businesses that you're
24 looking at that could potentially reopen first? Are we
25 looking at maybe retail businesses with proper social

1 distancing? Give employees and business owners sort of
2 a -- a sense of what is to come.

3 GOVERNOR NEWSOM: The good news is we'll be
4 laying that out in detail tomorrow. We'll be
5 highlighting Indicator 5 of our six indicators. That
6 indicator is specific to business. We'll talk
7 regional, regions. We'll talk sectors. We'll lay out
8 a strategy for phasing those things, and, as I said,
9 preview, based upon the data to date, and based upon
10 the importance of continuing to practice social
11 distancing and physical distancing.

12 If the data leads us further, and the
13 indicators continue to hold, that in the next few
14 weeks, we'll start making some meaningful
15 modifications, not the next few months. That's why,
16 Elex, I just talked about importance of not seeing what
17 we saw this weekend on our beaches, because the only
18 thing that could set us back is our individual and
19 collective behavior.

20 FEMALE SPEAKER: Stephanie Baer, BuzzFeed
21 News.

22 MS. BAER: Hi, Governor. I have a few
23 questions about the State's contact tracing plan. Is
24 the State working with any tech companies to automate
25 contact tracing through a phone app or other

1 technology?

2 And then last week, you said that the
3 State's goal was to build a contact tracing workforce
4 of 10,000 people. How many people has the State hired
5 so far, what are their backgrounds, and how is the
6 State going about paying them?

7 GOVERNOR NEWSOM: Yeah, it was just
8 announced a few -- literally a few days ago, but we did
9 our survey. Twenty-two counties have robust tracing
10 capacity that's already in place. We're building off
11 that existing workforce.

12 We are going to announce -- I don't want to
13 get ahead of myself, but partner with a well-known
14 brand in the State of California, but not tech brand
15 yet. This is more of a well-known medical institution
16 in the State of California, guide our efforts.

17 As I specifically said last week, we had
18 done that survey, not just of the counties, but of our
19 existing workforce, on allowing people to fill out
20 forms about what their unique skill set is, so that we
21 can then redeploy that workforce. That will be
22 redeployed from, again, a bottom-up perspective,
23 building on the existing capacity and the expertise and
24 workforce at the county level, supplementing at a State
25 level, and then building capacity of partnerships

1 institution that we're very, very shortly going to
2 announce that we'll be doing -- substantially doing the
3 training that's required for the workforce.

4 We're well on our way of meeting our
5 internal goals, and over the next few weeks, you're
6 going to see thousands and thousands of people well on
7 our way to hit that 10,000 goal, sooner than actually
8 some of us had even anticipated when we made the
9 announcement last week. And, again, that's based upon
10 the extraordinarily robust existing infrastructure
11 that's in place.

12 May not be the total numbers, but it's the
13 quality of those local efforts that are consistent, by
14 the way, even in this crisis, and this is important to
15 remind people. We've been doing contact tracing for
16 years and years and years, decades in the State of
17 California, TB, measles. Substantively, you'll see a
18 lot of work in this space on STDs, some gonorrhea
19 outbreaks in the last number of years, HIV and AIDS
20 brought to a whole 'nother level.

21 And some counties are more enriched in this
22 space than others, so we're building off that local
23 expertise that already exists and then expanding it
24 with this surge workforce, based on the surveys that we
25 had conducted a number of months back, probably almost

1 two months ago, seven or so weeks, when this crisis
2 first took shape, and we started those surveys.

3 And then we'll augment on those efforts
4 through this online portal and training program that
5 we're just about to announce, and I want to do it
6 today, but I -- I don't want to get ahead of myself,
7 and so know, in the next day or two, we'll be even more
8 specific, including the answer to your question on what
9 the tech platform.

10 We have a -- multiple choices in this. I
11 just want to make sure we don't pick one too soon and
12 unnecessarily and lock ourselves in, but we are very
13 close to having that platform set up as well.

14 FEMALE SPEAKER: David Baker, Bloomberg
15 News.

16 MR. BAKER: Yes, hello, Governor. You had,
17 last week, talked about how the federal government, and
18 President Trump in particular, had promised the State a
19 hundred thousand swabs, testing swabs last week, which
20 then got ratcheted back a little bit to -- to 90,000,
21 and 250,000 this week.

22 Did you, indeed, get the 90,000 last week?
23 Are you assured that you will get the 250,000 coming up
24 this week? And, if so, are there any other testing
25 bottlenecks out there in the majorit- -- in the

1 different bottlenecks you described last week, like
2 with reagents and things like that?

3 GOVERNOR NEWSOM: Yeah, thank you. We
4 received the 90,000, distributed 90,000. Nothing to
5 believe -- it's Monday -- that this week, we won't
6 receive 260,000. They're promising to make up for the
7 10-, but when that comes in, I'll let you know, and --
8 and there's nothing to suggest it won't happen.

9 We'll still need multiples of that, and so,
10 by no stretch of the imagination, is that enough.
11 Remember, it's not just the total number of tests. We
12 want to continue to increase the number of times an
13 individual is tested, including the types of tests, the
14 serology tests, not just the traditional PCR tests, and
15 therein lies answer to the second part of your
16 question.

17 Every week, we tend to shut one concern
18 down, there's another concern that -- that rears its
19 head. And so you're correct, it was, for a while,
20 reagents, and then it was specifically RNA extraction
21 kits, and then it was swabs in this last few weeks, but
22 there's also transport media, which I mentioned in the
23 survey of the 251 largest vendors that we have,
24 including our private and public labs, our private
25 partners and public labs, that continue to be a

1 problem.

2 Remember, I said in that survey, 50 to 55
3 percent, the 251 largest testing providers said swabs
4 was the number one issue. Fifty percent said some of
5 the testing kits, the -- the transport media, the tubes
6 were also a problem. So that continues to be a space
7 where we're doing more and working, not just our
8 federal partners, but working to procure directly those
9 specific supplies. But, look, substantial progress is
10 being made, but by no stretch of the imagination does
11 everybody have ample supplies, including, again, PPE,
12 which is critical, in terms of making sure that these
13 tests are conducted at an appropriate level.

14 OptumServe -- forgive me for being a little
15 more longwinded, but I want to be precise. OptumServe
16 and those 80 sites we announced last week, those are
17 end-to-end tests, all locked in, all fully loaded, in
18 terms of supply and diagnostic capacity, and Verily has
19 substantially made progress on the six additional sites
20 that we announced last week, in terms of their supply
21 chain.

22 So we're confident in those new
23 announcements that supplies, for the moment, are --
24 are -- are -- are ample. And I'll remind you, 1.5
25 million serology tests that Abbott has committed to,

1 and we have procured, those are going to sites where
2 the machines are already in place, and we're confident
3 that those also are fully loaded commitments.

4 FEMALE SPEAKER: Jeremy White, Politico.

5 MR. WHITE: Hey, Governor, thanks for taking
6 my question. I wanted to ask you about the two states
7 that joined the regional pact today, Nevada and
8 Colorado, as you mentioned.

9 The Governor of Nevada noted how many
10 customers -- excuse me, visitors from other Western
11 states come to visit Las Vegas, for example. I'm
12 curious to know the regional framework you're
13 contemplating with other governors, would it
14 potentially include policing the borders between those
15 states, to limit the people crossing those borders,
16 depending on how different governors are rolling back
17 or keeping in place these orders?

18 GOVERNOR NEWSOM: Yeah, I think, look, you
19 scope a potential. That's a potential, but I can say
20 this, just based on my personal conversations, many of
21 these governors, we have not had that conversation, so
22 that is not our current scoping.

23 Frankly, our current scoping is on what
24 meaningful modifications look like, comparing and
25 contrasting conditions at the local level, recognizing

1 the regional variance, even within our states.

2 Tomorrow, again, we'll be laying out more
3 detail on our roadmap in our specific Indicator Number
4 5 and what the phased-in approach will look like.
5 You'll see conversations that we've had with other
6 governors, where we have taken some of their counsel
7 and advice and incorporated into the presentation we'll
8 be providing you tomorrow. It's just a proof point of
9 the collaboration and the sharing of best practices
10 back and forth.

11 But, look, if we're at a different phase in
12 this, and there's other concerns, I imagine that's a
13 scoping potential of -- of the purpose of the Western
14 States Compact is some consideration and some
15 collaboration, some heads up, some coordination on
16 something along the lines that you suggest, but not at
17 the moment.

18 FEMALE SPEAKER: Final question, Jim Roope,
19 Westwood One News.

20 MR. ROOPE: Thank you very much. Good
21 afternoon. Governor, I like you, and most people do
22 right now, but I have a question for Dr. Ghaly, if
23 that's okay.

24 GOVERNOR NEWSOM: My gosh, you've broken my
25 heart, or not. You've elevated me, so, Dr. Ghaly?

1 MR. ROOPE: Sorry. Thank you very much.

2 Doctor, we've been seeing a lot of
3 documentation, hearing a lot of information about how
4 the virus lives on surfaces, so on and so forth, but we
5 understand -- at least what I've understand -- -stood
6 now, through all of these briefings, is that the virus
7 is a protein, and in a droplet, it'll survive for a
8 little bit. Once that droplet dries up, while the virus
9 could be still detected, its DNA would still be there,
10 it's not necessarily infectious.

11 So we have information on how long that
12 virus can live on somewhere, how long it can be
13 detected, but do we have information about how long the
14 virus is actually infectious on these surfaces, or do I
15 have all of that wrong?

16 DR. GHALY: No, you -- thank you for the
17 question. I think it's an important one. Many people
18 are asking. We talk about how it's transmitted from
19 person to person. We're talking about six feet apart,
20 and what about the surfaces that that person that you
21 don't normally interact with was just standing at, and
22 we are learning more and more about how the
23 transmission of COVID-19 takes place.

24 I think we're learning, based on what other
25 countries are publishing in the literature, what we're

1 learning in some of those major epicenters in -- in the
2 states of where they've had many, many cases, and I
3 would say that because we are not a hundred percent
4 certain how -- how it lives on surfaces, whether it
5 transmits off of those surfaces, that we continue to
6 push out those very basic guidelines, wash your hands
7 frequently. Don't touch your face, if you can avoid
8 it, mainly, your eyes, mouth, and nose. Make sure you
9 cover your cough. Keep physical distancing as much as
10 possible. Stay at home, when you're able to, and if
11 you must leave your house to go to a necessary
12 essential visit, to the store or the pharmacy, to use a
13 face covering, and to keep as far apart as possible.

14 I think as we learn more and more whether
15 it's an hour on a surface, six hours on a surface,
16 whether that transmits and is actually infective,
17 transmissible, and can cause someone to contract
18 COVID-19, we want to be abundantly cautious with all of
19 our citizens around California in giving that
20 consistent, strong guidance of what to do now.

21 As we learn more and more about the science,
22 we will share that with you, try to be clear about what
23 it means and how it might change our requirements or
24 recommendations around how we behave, but, for the time
25 being, we continue to stick to the initial message

1 around physical distancing and doing the basic
2 common-sense things around covering your cough, washing
3 your hands, and taking normal measures to protect
4 yourself, your families, and your communities.

5 GOVERNOR NEWSOM: Thanks for asking the
6 person who went to medical school that question.

7 And let me just extend appreciation to
8 everybody, all the good work you've done to suppress
9 the spread in the State of California, and good work
10 has provided us the opportunity tomorrow to give you an
11 update on our indicator.

12 Again, six indicators. We did the update
13 last Wednesday on testing, tracking, tracing, isolation
14 and quarantine. Tomorrow, we'll be talking about
15 opportunity to begin to modify, and potentially the
16 course of the next few weeks, not months, modifications
17 to the stay-at-home order that are -- go to the
18 question of businesses, and sectors, and regions in the
19 State of California, but that's because of your good
20 work.

21 If the data starts to show different things,
22 the spread is not suppressed, if we go back to our
23 behaviors, pre-COVID-19 behaviors, too quickly, then
24 these announcements, these guidances, our ability to
25 get back to modified normalcy will simply be delayed.

1 And so, again, it's in the spirit of
2 collaboration, spirit of expectation, and in the spirit
3 that has defined the last few weeks that I just, well,
4 implore you to continue to do the great work you've
5 done and continue to tell your friends and family,
6 particularly younger folks, that that work is not over.

7 The virus is as transmissible as it's ever
8 been, and, again, it doesn't take the weekend off. It
9 doesn't take any time off. It is ubiquitous. It is
10 invisible, and it remains deadly. Ask the 45 families
11 who lost a loved one in the last 48 hours.

12 Please, please continue physical distancing,
13 social distancing, continue to abide by your local and
14 the State guidances, and continue in that spirit of
15 contribution.

16 And, as always, I'll end, just reminding you
17 if you feel the urge to contribute your time, your
18 energy, your passion, your expertise,
19 Californiansforall.ca.gov.

20 Take care, everybody.

21 ***


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EXHIBIT E

TRANSCRIPTION OF
GOVERNOR GAVIN NEWSOM'S COVID-19 PRESS CONFERENCE
APRIL 28, 2020

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Transcribed by:
RENAE E. LOPEZ
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TRANSCRIPTION OF
GOVERNOR GAVIN NEWSOM'S COVID-19 PRESS CONFERENCE
APRIL 28, 2020

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4 of Health

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6 GOVERNOR NEWSOM: Two weeks ago today, we
7 laid out a roadmap, a roadmap for reopening the
8 California economy, in a phased and thoughtful
9 approach. We specifically put forth six indicators
10 that will drive our decision making.

11 Politics will not drive our decision making.
12 Protests won't drive our decision making. Political
13 pressure will not drive our decision making. The
14 science, the data, public health will drive our
15 decision making.

16 We set forth, a week ago, a deep dive on one
17 particular indicator, around testing and tracing,
18 tracking, issues of isolation and quarantine. Today, I
19 want to update you on another indicator, and that's
20 specific to businesses, schools, and childcare
21 facilities, but first I want to remind all of you what
22 those six indicators are.

23 Mentioned testing as one of the principal
24 indicators. We've made real progress in that space,
25 not nearly where we want to go and need to be, but real

1 progress, we are now seeing in this space. Some
2 578,000 tests have been conducted in the State of
3 California. We are averaging over 20,000 tests a day,
4 and we are well on our way to meeting our 25,000
5 testing goal and getting to 60- to 80,000 very shortly
6 thereafter.

7 I mentioned, just yesterday, OptumServe that
8 was doing these end-to-end tests, being deployed at 80
9 additional locations, primarily focused on rural
10 California. I can announce today that we are putting
11 those tests, end-to-end tests, in Sutter County and
12 Shasta County, as specific proof points of the movement
13 in that space. All of those testing sites will be up
14 and operational by Monday.

15 Verily, also focusing on expanding their
16 testing on a socioeconomic -- with a socioeconomic lens
17 to diverse communities, not just in rural California,
18 but inner city California, so real progress in that
19 place.

20 Yesterday, we updated you as well on some of
21 our efforts to train workforce, starting Phase 1,
22 10,000 tracers throughout the State of California,
23 partnerships that we're forming in that space and
24 capacity building that is also well underway.

25 We talked broadly about other indicators,

1 one of the most important being how we protect the most
2 vulnerable Californians, how we protect people in
3 congregate care facilities, at our skilled nursing
4 facilities, assisted living facilities, other adult and
5 senior licensed facilities throughout the State of
6 California. We have well in excess of 8500 of these
7 facilities in the State. The SNFs, the skilled nursing
8 facilities represent 1,224, but thousands more in home
9 settings, as many as two, three people, some six or
10 seven in size, all throughout the State of California.

11 We've updated you, on a consistent basis,
12 about our efforts in that place and the sincere
13 concerns we have, demonstrable concerns we have about
14 protecting our seniors in those facilities. We
15 continue to focus on that, above and beyond anything
16 else, as it relates to the data that comes in every
17 morning, because of the vulnerability of those
18 populations, but real strategies, real plans in that
19 place give us some more confidence that we're moving in
20 the right direction.

21 Accordingly, we're doing the same for our
22 homeless population, another sensitive-needs population
23 that we have, as you know, advanced a series of
24 announcements, particularly Project Roomkey,
25 partnership with FEMA, to provide 15,000 hotel rooms.

1 We already have acquired 12,500 hotel rooms in that
2 portfolio, thousands of individuals off the streets,
3 out of congregate shelters, into these isolated units,
4 support on site, particularly, three meals a day being
5 provided.

6 This is among many, many different homeless
7 strategies throughout the State of California. It's
8 just one we have consistently highlighted in that
9 space.

10 We are doing more as well on another
11 indicator, and that's obviously securing the search
12 capacity within the hospital system and outside of the
13 hospital system, these alternative care sites that we
14 have brought up.

15 We've talked about the FMS sites, close to
16 2,000 rooms we were able to draw down, with support of
17 the federal government, the work that we have been
18 doing collectively and collaboratively with cities and
19 counties all up and down the State, to provide assets
20 as -- as points of surge, if necessary to address any
21 increase in hospitalization, increase in need for
22 isolation of vulnerable populations.

23 And we feel we have done justice in that
24 effort, and because of your good work on physical
25 distancing, social distancing, because you have

1 overwhelmingly abided by the stay-at-home order, you
2 bought us time to put together those assets, not only
3 those physical assets, but begin the process of
4 procuring a workforce through that health care
5 adaptation in the workforce that we have now identified
6 for a potential surge. Those individuals that have
7 come back from retirement or willing to come back from
8 retirement, or people that have particular job skills
9 that they believe can be transferred to meet the needs,
10 we've got a matching system, and we've got that
11 capacity now in place. So physical sites, human
12 resource sites.

13 And now some more good news on PPE.
14 Yesterday, we announced the 3.1 million masks that
15 arrived on Saturday night. We have distributed 2.87
16 million of those 3.1 million masks to our regional
17 sites throughout the State of California. Another
18 plane is literally taking off today, will be landing
19 tomorrow, and we will get a subsequent shipment. So
20 PPE is beginning to loosen up. Not even close to where
21 it needs to be, and I recognize that, and I can just
22 assure you the reason we put 2.7 -- 2.87 million masks
23 out yesterday is that was backorders just in the
24 healthcare space.

25 We want to broaden that beyond just the

1 healthcare space, provide those masks and protective
2 gear for people that are doing testing, and make sure
3 they're adequately supplied, make sure people that are
4 on the front lines, grocery workers, are adequately
5 supplied. Clearly, our skilled nursing homes, in-home
6 supportive services, and across the panoply of our
7 sectors that we'll talk about in a moment, to make sure
8 that they have adequate supplies, but progress in that
9 indicator is also being made.

10 We talked about another indicator,
11 therapeutics, and I just want to remind folks that
12 California, like Massachusetts, New Jersey, like a few
13 states, is well-endowed, well-resourced in the
14 therapeutics space. I'll remind people, in California
15 and outside California, that the State of California is
16 the birthplace of biotech. Our life science capacity
17 is second to none, biotherapeutics, bioinnovation,
18 medical devices, San Diego, the Bay Area, we are very
19 blessed. The number of National Institute of Health
20 funded facilities in this state is a point of envy for
21 many other parts of the globe, not just across this
22 country.

23 As a consequence, we are in advanced trials
24 with our partners in the private sector, working with
25 our UC medical centers and other medical centers, and

1 there's real progress, in terms of at least
2 understanding, the capacity of understanding in this
3 space.

4 I'm not going to promote any particular drug
5 or particular trial, but just as an example, Remdesivir
6 and their advanced trials happening in this state, in
7 partnership with Gilead, who's a State-based
8 headquartered company. Genentech and others in this
9 space, we are making progress, at least in
10 understanding what's real, what's not in the
11 therapeutic space, with, again, points of
12 consideration, always caution in that space. But
13 that's one of our other indicators that's important.

14 Today, again, we'll highlight the issues
15 around business and schools and childcare centers, but
16 before I get to that, briefly, I want to just mention
17 that other indicator, that sixth indicator, and that is
18 if we pull back, and we modify our stay-at-home order
19 too early, and we start to see an increase in surge in
20 cases, hospitalizations and spread, then we have to
21 have the ability to toggle back. We have to have the
22 ability to adjust. We have to have the ability to fix
23 it. And so that's a foundational indicator, number
24 six, in terms of our capacity to deliver on the
25 promise, what we're promoting today in this roadmap for

1 reopening.

2 So forgive me for being longwinded in that
3 space, but I wanted, again, contextualize the
4 framework. Six indicators. When those turn green,
5 when they move from red to yellow, it guides our
6 decision making. It allows us to make determinations.
7 Dates don't, but data does.

8 And so let me, as now I introduce this fifth
9 indicator -- again, none are prioritized, but it
10 happens to be the fifth indicator around businesses and
11 around issues of our schools and childcare centers. I
12 want to make this clear. We believe we are weeks, not
13 months away from making meaningful modifications to
14 that indicator and in this space. Weeks, not months.

15 You'll ask me, well, is weeks one week or
16 three weeks? Weeks, not months. Again, based upon the
17 data, based upon the indicators. We'll talk
18 specifically about hospitalizations and ICUs and
19 community spread.

20 Dr. Angell will come up in a moment, and
21 she'll show you our model, the graph of actuals, so you
22 can see the stability in that space, but we're still,
23 by no stretch of the imagination, out of the woods
24 there. It's just stable. We're not seeing substantial
25 declines, but, again, California and Californians know

1 we never experienced the big surge that other parts of
2 the globe, and, certainly, other parts of our country
3 had. But the stabilization is a point of some cautious
4 optimism, and that indicator allows us to make the
5 presentation that we're making today.

6 So let's talk specifically about what we're
7 talking about over the course of the next few weeks, to
8 think about and to consider, and, more importantly, to
9 plan for in realtime. Those are areas of our
10 economy -- let's talk with business, around
11 manufacturing of non-essential materials, logistics for
12 non-essential movement, areas around retail, IE,
13 curbside, retail for non-essential items, the issues
14 that have been broadly defined around the need to
15 address our kids in schools.

16 We clearly have shut down -- people well
17 aware of this, the schools are shut down for the
18 remainder of the school year. Learning continues at
19 home, distance learning and the like, but we recognize
20 there's been a learning loss, because of this
21 disruption. We're concerned about that learning loss,
22 even into the summer, and so we are considering the
23 prospect of an even earlier school year into the fall,
24 as early as late July, early August. So we are
25 beginning to socialize that.

1 We have made no decisions, definitively, in
2 that space, but I just want folks to know the concern
3 around learning loss and the concern about waiting
4 until late -- later in the year into the fall for the
5 new school year. As a parent myself, and having talked
6 to many other parents and educators, even the kids, I
7 think we might want to consider getting that school
8 year moved up a little bit.

9 And so that's one of the things that we want
10 to begin to socialize in this indicator. We need to
11 prepare for that. We need to start preparing for the
12 physical changes in the schools and the environmental
13 changes in the schools that are necessary, in order to
14 advance that conversation and make it more meaningful,
15 accordingly, in the childcare space itself.

16 We are able to make these, again,
17 announcements and begin to have a more public
18 conversation with you about opening up, with adaptation
19 and with modification, meaningful changes to our
20 stay-at-home order, again, because people have taken
21 seriously, overwhelmingly, the stay-at-home orders and
22 physical distancing.

23 But I want to caution everybody if we pull
24 back too quickly, and we walk away from our incredible
25 commitment, to not only bend this curve, but to stop

1 the spread and suppress the spread of this virus, it
2 could start a second wave that could be even more
3 damaging than the first and undo all of the good work
4 and progress that you've made, and that can happen like
5 this.

6 Virus has not gone away. Its virulence is
7 still as acute. Its ability to be transmitted still is
8 dominant, and so we, by no stretch, are out of the
9 woods. There's durability to this virus, and there may
10 be, we'll see, seasonality, and so we could be lulled
11 into this quiet sense of confidence, change our
12 behavior, put ourselves at risk, and put this broader
13 agenda of reopening with modification at risk.

14 So, again, I caution everybody, as I will be
15 doing, I assure you, on a daily basis, of the
16 importance of our individual behavior, not just
17 governmental behavior, individual behavior, and, to the
18 extent business is making decisions and modifications,
19 of our business leaders, men and women on the front
20 lines, entrepreneurs, not just organized business
21 advocates of the importance and power of their
22 individual decision making in -- in this space as well.

23 We need to protect not just the business
24 community, but customers of those businesses. One
25 thing to open a business, but if there's no demand,

1 it's a false promise. And as someone who's had the
2 privilege of starting many, many businesses, I -- I
3 recognize that I'm not a job creator. It's our
4 consumers, it's the people spending the money that
5 create the opportunity for growth and job creation, and
6 so I deeply want to emphasize the importance of
7 protecting customers. And, of course, one of the
8 business's foundational resources, most fundamental,
9 and that's workers, at the same time we're protecting
10 businesses, as entities, in the abstract.

11 But, again, I'm deeply sensitive to the
12 needs for the business community to at least get some
13 clarity, and we're trying to provide that over the next
14 few weeks, so they can start to plan and look at their
15 own supply chains, look at their own ability to change
16 the physical, environmental conditions in their
17 businesses, and look at the guidelines that we'll be
18 advancing, very specifically and prescriptively, sector
19 by sector, for guidance on what we can do and what we
20 can't do at this stage.

21 We are not going back to the way things were
22 until we get the kind of immunity that all of us look
23 forward to, or vaccine that we look forward to. So one
24 has to be cautious in this space, but also patient in
25 this space as well. But in patience, we recognize in

1 the imperative to meet that impatience in a pragmatic
2 and thoughtful way is why Dr. Angell will be up in a
3 moment to talk more specifically about phase -- these
4 new phases that we'll be rolling out with this
5 indicator.

6 Let me briefly introduce those phases, as I
7 introduce Dr. Angell. We have looked at this
8 indicator, and we looked at it through the prism of
9 four phases. Phase 1, we're currently in, which is
10 planning, workflow, focusing, again, on supply chains,
11 physical and environmental considerations, the planning
12 to do what we need to do on PPE, the planning we need
13 to do to make sure the conditions are set, so that we
14 can move forward with modifications of the stay-at-home
15 for businesses, as one example.

16 As we move into Phase 2, where businesses
17 can begin to reopen, we need to make sure that that
18 guidance is abided by and it is organized in a very
19 deliberative way. That's the job of Dr. Angell. She
20 runs Department of Public Health in the State of
21 California. It's her statewide guidelines that will
22 drive the decision making.

23 Same time, though, we want to drive
24 localism. I've often said, forgive me for repeating
25 myself again on this, and that is localism is

1 determinative. In this respect, I recognize the
2 regionality in this State, the variance in different
3 parts of the State, but I also recognize, in that
4 respect, local health departments have points of view
5 that must be considered as well.

6 And so, for example, the Bay Area announced
7 today extending their stay-at-home order through the
8 end of the month. I am not here, as Governor, to make
9 an announcement preempting their right, at the local
10 level, to be even more stringent. I'm going to respect
11 that, and I want folks to know, not just in those six
12 Bay Area counties, a few extra cities, that's the case,
13 but all across the State of California.

14 Accordingly, we have a regional variance
15 that we also want to recognize for people that want to
16 go even sooner, based upon regional conditions, and I
17 am well aware, having received many letters, most of
18 them very publicly provided to me in tweets and public
19 pronouncements, even before I had the privilege of
20 reading them.

21 Personally, I recognize a lot of those
22 regions are -- are moving forward, making their
23 recommendations. Dr. Angell will talk about what the
24 expectations we have of making any regional
25 augmentations. They're going to be stringent. We're

1 not -- just because people think they're ready to
2 reopen, even loose -- more loosely than the State
3 guidelines, we're not going to just blithely do that,
4 without, for example, community surveillance
5 obligations that are attached to those regional
6 efforts.

7 Dr. Angell could talk more about the seven
8 that are currently underway, the five that we will be
9 doing very soon in 12 different counties in total, but
10 community surveillance becomes foundational if we're
11 going to loosen, on a regional basis, any of these new
12 guidelines that we'll be rolling out over the next few
13 weeks.

14 So that's Phase 1 and Phase 2. Again,
15 retail, logistics, manufacturing, non-essentials,
16 schools that we begin in the summer and preparation in
17 the early fall, childcare facilities and centers with
18 strict physical distancing and environmental
19 considerations at hand, workforce protections,
20 customer, consumer protections.

21 There's a third and fourth phase. Just four
22 phases. The third phase is personal care. It's the
23 areas around, you know, well, a lot of discussion
24 around gyms and spas and nail salons, and people
25 wanting to get haircuts, all of us. Those would fall

1 into the third phase category. Dr. Angell, again, will
2 lay out some details on that.

3 And then, of course, ultimately, the fourth
4 phase, which are these highest risk activities, not the
5 higher risk activities in Stage 3, the highest risk
6 activities. That's the larger public venues, the
7 conventions, the concerts, the larger entertainment
8 venues with crowds that would be in that category.

9 Don't want to get ahead of myself. She'll
10 walk you through those four phases. Phase 2 is really
11 the phase that is upon us, we believe, in the next few
12 weeks, and perhaps most important, in terms of at least
13 getting everybody's attention and focus, so that we can
14 prepare for it, and realtime.

15 I'll just close, before I put Dr. Angell up,
16 and just say this: When I say prepare in realtime,
17 what we're doing, I mentioned yesterday, I'll be doing
18 it right after this press conference and this
19 presentation, we'll be meeting, sector by sector, with
20 our recovery -- economic recovery team. We'll be
21 meeting today on the retail sector with some of the
22 biggest retailers, some of the well-known brands, like
23 the Gap CEO will join us, but with small businesses,
24 small retail sector, to help them help us work on the
25 guidelines for this second phase that, again, we're

1 hoping to advance in the next few weeks.

2 So that's just an example of the work we're
3 going to have to do, sector by sector, every day over
4 the next days and weeks, in order to prepare for this
5 augmentation, this modification to the stay-at-home
6 order.

7 So I've spoken long enough. Forgive me, a
8 lot of what I said will be said much more definitively
9 and -- and succinctly, and most likely eloquently by
10 Dr. Angell, who I'm proud is here to make her
11 presentation. We'll follow up, of course, with
12 questions, and I'll do my daily update as briefly as I
13 possibly can.

14 With that, Dr. Angell.

15 DR. ANGELL: Thank you, Governor. It's a
16 pleasure to join you today with a message of what I
17 would described (sic) as cautious optimism, as we've
18 just heard, optimism that's based upon us looking at
19 the data and understanding where we are today, and
20 giving you some insight into the way that we're
21 thinking about where we might be, within potentially
22 weeks and the months to come, as -- as our governor has
23 just mentioned.

24 Again, we're guided by the data, and so I'm
25 pleased to share with you a little more insight as to

1 thinking about how we're moving forward, anchored in
2 that.

3 So I'd like to start, first, with a reminder
4 of what we shared with you two weeks ago when we came
5 and shared with you our original roadmap, and that was
6 to discuss with you that everything that we do will be
7 a reflection upon six indicators. These indicators
8 reflect sort of domains of work that we know are
9 inherently important, as we think about moving forward
10 in ways to modify our stay-at-home order, in a way that
11 minimizes risk.

12 Now, remember, this is not about a process
13 that is going to remove the risk from all of us, but it
14 will be a process in which we can think about, until
15 that time when we are all protected from COVID --
16 COVID-19, at that time where we either have broad-scale
17 immunity, or vaccinations, or other mechanisms through
18 which we know we can be safe, there is going to be a
19 time where we have to be very, very thoughtful about
20 the way we move, and these six indicators which I have
21 here are the ones that we've just been reminded about.

22 Again, I'm going to mention them to you, so
23 as we go through here, we can understand, really, how
24 these -- this has informed our work today. So the six
25 indicators that we shared with you included the

1 following: First is the ability to test, contact, and
2 trace, isolate and support those people who might have
3 been exposed. A very, very important tool that we
4 have, in particular, as we're thinking about moving
5 from the first to the second, as we were just
6 described -- as was just described to us, stage, and
7 I'll give you more information on this, but, really, a
8 very important tool for all of our communities to be
9 able to keep ourselves safe, as we move around further.

10 The second is the ability to protect those
11 that are at high risk for COVID-19. Those are our
12 individuals who are in congregate care settings, or
13 those who are 65 or older, or those with comorbidities
14 that we know for whom if they're exposed, their risk is
15 much greater. And around everything that we've done,
16 we've made sure that that's been a very central part of
17 our dialogue and our activities.

18 It's also critical that we maintain surge
19 capacity for hospital and healthcare systems. As I
20 mentioned, as we move to this next stage, it's not
21 about removing the risk entirely, it's about minimizing
22 risk. Even as people move in an environment with
23 minimal risk, there is the possibility of in- --
24 increased cases, and we must make sure that our care
25 delivery system is there to support them in need.

1 Therapeutic development to meet the demand
2 is an area that we're working on as well, to make sure
3 that we help move the work forward. And then finally,
4 we're going to talk today about the -- the -- the
5 indicator that focuses on businesses and schools and
6 care -- childcare facilities, making sure that we
7 support and make sure those environments are safe for
8 them, and that's what this next period is all about.

9 And, most importantly, and as I move on to
10 this next slide, is our ability to determine when we
11 may have -- that we're moving in a way that's safe and
12 best for Californians, also recognizing that there is
13 some risk involved.

14 So Dr. Ghaly presented to you this slide
15 that helps share with you a little bit about what, at
16 this moment, has given us the sense that it is the
17 right moment to start talking about preparedness for a
18 potential modification, and that is a recognition of
19 the way in which -- and this is a surrogate marker for
20 the amount of COVID-19, and how COVID-19 might be
21 moving in our communities.

22 We are doing that at this time because of
23 the absence of broad-scale surveillance. We are doing
24 that at this time with something that is an excellent
25 indicator for us at this moment, which is an

1 understanding of trends and hospitalizations over time.
2 And this slide has shown us, from the very beginning,
3 first of all when we introduced our stay-at-home
4 orders, and over this period of time, it appears -- and
5 we're watching this cautiously -- but appears that
6 we've reached, really, a period of stabilization over
7 the past couple of weeks or so, in that the total
8 number of hospitalizations from COVID-19 and the total
9 number of admissions into ICUs from COVID-19 have
10 remained stable.

11 Again, as the governor mentioned, we're
12 watching this carefully, and should that change, that
13 will certainly change the way that we talk about our
14 opportunities to move forward, but at this point, this
15 is the right moment for us to have this conversation
16 with you.

17 So let me move on to what the different --
18 what the progress will look like. But a couple of
19 quick reminders. First of all, that COVID-19 is not
20 going away soon. This is going to be a while, but
21 there are things -- as long as COVID-19 is here, there
22 are ways that we can modify the way we move around in
23 the environment that will make it more possible, and
24 that's what we're moving towards.

25 So we're talking about modifications in the

1 stay-at-home order, but they will be guided by health
2 risk and our commitment to equity, as we think about
3 the kinds of interventions that are appropriate at this
4 time.

5 The final thing that's really important for
6 all of us to remember, though, is that ultimately, we
7 all have some responsibility in this. Take -- the
8 responsibility exists at all levels, from the
9 individual, from the way -- way you make decisions
10 about the way you move in the environment, from
11 businesses, from the ways in which they change in the
12 environment to lower the risk, and ultimately also to
13 government, in the ways that we help support and lift
14 up appropriate policies.

15 So the four stages that we discussed, the
16 first stage is the stage that we're in. This is the
17 stage where we are all either at home or engaged in the
18 essential workforce. We know that there's work that
19 still needs to be done here before we move on to Stage
20 2, and that is about making the essential workforce
21 environment as safe as possible for all of those who
22 are workers and for any of those who may be staying at
23 home, but may be interacting with the essential
24 workforce, with essential businesses, as part of doing
25 those activities of daily living that we must do, like

1 going to the grocery store.

2 That's where we are focused right now, and
3 we will continue the work that we are doing across all
4 of those indicators, to make sure that we are safe and
5 secure as can be in the current stage, but we are also
6 planning forward to Stage 2.

7 So Stage 2 will be a focus on those that can
8 be created -- those lower risk workplaces. So the goal
9 here will be creating opportunities for lower risk
10 sectors to adopt and reopen, and when I talk about
11 lower risk sectors, which I'll go into a little more
12 detail later, we're talking about things like
13 manufacturing that may not have been a part of the
14 essential sectors that are currently opening.

15 We also, at this first -- in Stage 2 will be
16 talking about modifying our school programs and
17 including childcare reopening. The third stage is when
18 we get into those areas that may be higher risk, those
19 sectors that we think will take a lot more
20 modification, to adapt in a way that can make them
21 places where people can move with lower risk.

22 So those kinds of environments, we'll be
23 talking a little bit more as well, but we really want
24 to create an opportunity for those, but we know it will
25 be longer in coming, and so that is why those fall into

1 Stage 3. Again, those are things like getting your
2 hair cut, getting your nails done, doing anything that
3 has very close inherent relationships with other
4 people, where the proximity is very close, and it will
5 be -- we need a very thoughtful process, to ensure that
6 people don't put themselves at great risk in doing
7 those activities.

8 And then finally, Stage 4 is the point at
9 which we know that we can begin to modify our
10 stay-at-home order and -- and have people moving much
11 more freely, because the risk is much lower, and that
12 will require therapeutics to be in place.

13 Okay. So safety and preparedness. Stage 1,
14 this is where we are right now. The things that we're
15 going to be actively doing is continuing to build out
16 our testing, contact tracing. We're going to be
17 building up our stores of PPE, to make sure they're
18 secured, not only for our current needs, but also in
19 anticipation of -- of what will be needed for Stage 2,
20 when we do begin to open other sectors that may also
21 rely upon PPE.

22 And we'll also be really focusing on
23 maintaining our hospital surge capacity for the time
24 being, but also anticipating that we may need more, as
25 we move forward.

1 We'll be continuing to make essential
2 workplaces as safe as possible, as I mentioned. That
3 includes really thinking about the physical work
4 environment that we're in, changing workflows, to make
5 sure that people are safe.

6 We're going to make sure that we enhance our
7 essential -- our safety net for our essential workers,
8 continue to move forward, making PPE more available,
9 and then also continuing to remind all of you, in your
10 daily behaviors, that there is something for all of us
11 to do. Maintaining our physical distance and doing all
12 of those things that we've reminded you can help to
13 keep you safer and at lower risk.

14 In Stage 2, we're going to really start
15 focusing on lower risk workplaces. That means
16 gradually opening some of those workplaces with
17 adaptations. These include things like retail,
18 allowing for curbside pickup, manufacturing, which can
19 include things like toys, clothing, other things,
20 furniture, that had -- was not a part of the essential
21 sector.

22 Talking about offices, this can include
23 things like PR firms and consulting and other places
24 where telework is not possible, but by modifying the
25 environment itself, they can make it lower risk for

1 individuals.

2 And then ultimately talking about opening
3 more public spaces, things like parks and trails that
4 may have historically been limited, because of our
5 concerns, trying to think about how we can modify that,
6 to make them safer for individuals to enjoy the outdoor
7 spaces, because we know physical activity is so
8 important to our health, and this is also about health,
9 clearly.

10 And then finally, another area that we need
11 to think about, besides the physical environment, is
12 really the environment, the safety net itself. So what
13 are we providing for workers, so that if they get sick,
14 that they can be supported to stay at home, if they
15 need to, rather than feel like there is a need for them
16 to go to work?

17 Then there's the whole environment and -- of
18 childcare and schools. And so for adults, maybe we
19 talk about, you know, work for adults, and for -- for
20 our -- our -- our younger adults, our children, school
21 is their place that's so important and critical for
22 them, and their learning, and we really, really feel
23 strongly that when it's safer for them, when we can
24 create environments that allow them to go back, we do
25 want them to go back.

1 We realize, however, this is going to take
2 more planning, and that's why we are now -- we are
3 discussing this now, because we need to roll up our
4 sleeves now and be really thinking critically about how
5 to do this.

6 As has already started, we need to continue
7 that discussion and continue it more in earnest. So
8 we're talking about summer programs and the next school
9 year potentially starting sooner, perhaps in July or
10 August.

11 We're talking about childcare facilities and
12 trying to find ways to help them provide more care, to
13 create more childcare availability to our workforce in
14 particular. We think it's fundamental that we focus on
15 this, because we have to address learning gaps, which
16 have occurred as a result of this. We've been
17 protecting all of us by limiting the amount of access
18 in this environment, but we have to make up for those
19 gaps that may have -- have occurred over this time.

20 We're -- we'd be focused importantly on
21 making sure that the environment is safe for kids, but
22 also safe for teachers, safe for others that are in the
23 school, safe for those who are providing essential
24 services and supporting those environments where our
25 kids will be.

1 And ultimately, as we open up schools, as we
2 make sure that -- that childcare is more broadly
3 available, it also makes it more possible for parents
4 to go back to work.

5 So school will look very different, but we
6 really are focusing on enhancing that -- those
7 opportunities.

8 So what will we be doing? What do we need
9 to do to get from Stage 1 to Stage 2, from the
10 essential sector environment that we're in, from the
11 stay-at-home with -- with quite limited engagement, to
12 one that will create more opportunities to -- for lower
13 risk workplaces?

14 So the things that need to happen and that
15 we'll be focusing now together will be, first of all,
16 focusing on government action. So what are the kinds
17 of policies that we need to have in place that will
18 allow people to stay home when they're sick?

19 We need to provide guidance, and we'll
20 continue to do that and make it available for how
21 people can reduce risk, to continue to provide people
22 with the best scientific information that we have about
23 this virus, to help people prepare themselves, to move
24 into environment that is not parti- -- not -- not fully
25 safe, but certainly lower risk, so we can all make

1 decisions ourselves in a very informed way.

2 Businesses will need to think more about
3 wage replacement, so that workers can stay home when
4 sick. They'll need to be implementing adaptations to
5 lower risk workplaces now, so that when we are ready in
6 a few weeks, those changes will be in place and -- and
7 when the data tells us the moment is right, those
8 environments can start to open.

9 And then we, again, just sort of emphasize
10 that in those places where workers can continue to work
11 from home, we'll continue to encourage businesses to --
12 to support those opportunities, because, really,
13 staying apart at this time still is the safest place
14 for all of us.

15 And then what about as individuals? Well,
16 we all need to continue to practice safety precautions,
17 which is the physical distancing, using face coverings
18 when appropriate. We need to avoid all non-essential
19 travel. That will continue on. That's an important
20 thing. That decreases our exposure, our potential
21 exposure to others.

22 And we also need to, as individuals,
23 continue to support and care for those people that we
24 know are at higher risk, continue to make those phone
25 calls to people that you know are in their home and

1 socially distancing themselves, continuing, make sure
2 that their needs are met, and thinking about how you
3 might be part of the solution for them.

4 So when are we going to be ready for Stage
5 2? So again, we will refer back to those six
6 indicators. As mentioned, all of those six indicators
7 are not exactly the same. There are some that may be
8 more important to this first stage than to stages that
9 come in the future, but I want to share with you some
10 of our thinking now about which elements of the
11 indicators that we've discussed earlier will be key.

12 So, first of all, we'll be watching those
13 hospital and ICU trends carefully and thoughtfully, and
14 they need to remain stable for us to remain confident
15 that we are in a position where the stay-at-home orders
16 could be modified in a way that would continue to
17 maintain lower risk.

18 We need to maintain hospital surge capacity,
19 so that as we move through the -- to the next stage, we
20 can be confident that if there are any increased
21 infections from increased movement, that we do have the
22 facility to be able to respond and to support and care
23 for those patients.

24 We need to make sure that there is PPE
25 available to support the demands that will come, not

1 only from the existing environment, the existing
2 conditions that we're in, but also anticipating what
3 the needs will be for the future, and being sure that
4 we're confident we can secure those.

5 We need to make sure that there's sufficient
6 testing capacity to meet the -- the demand. That's
7 been a key focus of much of our work, and you've heard
8 a lot about our plans. We'll continue to work
9 diligently on that.

10 And, finally, we'll be looking at contact
11 tracing capacity statewide. We'll be working with
12 local health authorities and governments, to make sure
13 that the capacity is there.

14 So I want to talk a little bit about the
15 opportunity for regional variations, which I know also
16 has been a -- a hot topic of discussion, as the
17 governor had mentioned and, as the State Public Health
18 Officer, I'm in constant communication with local
19 health authorities in understanding, really, where --
20 where they -- they -- where they are and -- and where
21 their needs and desires are.

22 During Stage 2, counties can choose to relax
23 stricter local orders at their own pace. That's very
24 much about what we've been talking about in the Bay
25 Area. The State order is -- stay-at-home order is the

1 basis for everyone, but there are some counties in
2 which the local disease epidemiology was such that the
3 local health officers felt that it was important to be
4 stricter, and we appreciate, respect, and we think
5 that's exactly the right thing, when local health
6 officers understand the needs of the community, that
7 they act appropriately, following the science.

8 Similarly here, as we lift some of the --
9 and make some modifications in our stay-at-home order,
10 there may be counties that aren't ready to go as fast,
11 and that will be supported, and that is a regional
12 variation, which is absolutely fine.

13 Following Stage 2, once we have a statewide
14 COVID-19 surveillance system in place, it will make it
15 possible for us to understand what other types of
16 regional variation might be possible. That -- and --
17 and the reason that's so important is that we know that
18 this virus doesn't respect boundaries of counties
19 necessarily, and we know that as there are
20 modifications in orders, people move differently across
21 there.

22 We need to understand not only what's
23 happening in specific counties, what's -- but what's
24 also happening in surrounding counties, to really
25 understand if the disease transmission has occurred,

1 and if we can modify in a way that's safe. We'll be
2 working very closely with our local health authorities
3 and governments in consulting for that.

4 The final two stages that we discussed are
5 Stage 3 and Stage 4. Stage 3 is the -- the space that
6 we get into when we're talking about higher risk
7 work -- workplaces, and that's one of the later phases,
8 because we know that will take much more modification.
9 We need to know much more about the movement of disease
10 to be able to make data-informed decisions about what's
11 safe for folks. So these include places like personal
12 hair care places, entertainment venues where people are
13 sitting close -- closer together, and sporting events
14 without live audiences.

15 Other things that fall into this space are
16 in-person religious services, like churches and
17 weddings, and we'll need to think carefully about what
18 kinds of provisions can be put in place so that people
19 can join, but in a way that doesn't expose them to
20 increased risk for COVID-19.

21 And then ultimately, the space that we all
22 look forward to, some day, as we move forward and work
23 diligently together, is Stage 4, which would be the end
24 of the stay-at-home order, and that's when we'd be
25 opening all of our highest risk workplaces, without

1 modification necessary at that time, because at that
2 time, we will know that we have identified a way that
3 we can keep people safe from COVID-19, either from
4 population immunity, from the -- or from vaccinations.

5 So with that, I just want to remind you that
6 this is the time and not of -- of staying in one place.
7 We are in Stage 1, but it's actually an important time
8 of work, and that's why we wanted to give you this
9 opportunity to understand our planning at this time.

10 The first thing I want to tell you is that
11 if you want to be a part of the solution, you need to
12 stay home, if you're staying at home, and if you're
13 part of the essential workforce, we want you to stay
14 home when you're not working. That is the best way to
15 protect yourself, but if you do need to go out to go to
16 the grocery store, make sure that you continue to
17 practice physical distancing and all the other things
18 that we tell you. That's the first thing you can do to
19 be part of the solution.

20 The second thing is that we're enlisting all
21 Californians to help inform the development of the
22 guidance for sectors across our economy. If you're
23 somebody who has particular insight, if you -- if
24 you're a business person yourself, you're going to be
25 invited to provide information, and we'll put the

1 website up in -- shortly for you, but we want to hear
2 from you, because ideas that you have about how you can
3 create work -- safe workplaces are ideas that we want
4 to know about.

5 We're going to be providing this guidance in
6 a framework, ultimately, to help companies, businesses
7 and -- and our schools reopen in the way that reduces
8 risk, but it really will continue to rely upon all of
9 us to keep us moving forward.

10 Thank you.

11 GOVERNOR NEWSOM: Thank you, Dr. Angell.

12 And, of course, Dr. Angell will available,
13 as will I, for questions.

14 But the foundational point of emphasis we
15 want to advance today is Phase 2, as was presented by
16 Dr. Angell, is in weeks, not months. Phase 3 and 4,
17 months, not weeks.

18 And I think that's what's important, so
19 people have a sense of where we are and where we
20 believe, based, again, on the data, we are going. What
21 I just said can substantially change, if the data
22 changes, if the health prevalence and the spread of the
23 disease changes, if our behavior erratically changes,
24 and we put ourselves at higher risk, but risk is the
25 frame that we're advancing.

1 Lower risk, we will focus broadly across
2 sectors to begin reopening. Higher risk, we'll be more
3 cautious, not weeks, but months, and highest risk,
4 along the lines of that Stage 4, where we are back at
5 concerts and convention halls, and with tens of
6 thousands of fans in large stadiums, will take some
7 time.

8 But nonetheless, we believe we do have a
9 framework that we can achieve, and we can achieve
10 together, with the kind of earnestness of effort that
11 Dr. Angell advanced, in terms of being able to break
12 these things down in very, very prescriptive terms and
13 begin a framework of, again, not just protecting those
14 sectors of our economy, but protecting the workforce
15 within those sectors and consumers that attach
16 themselves to those sectors as well.

17 Let me, as I do daily, attach you to the
18 latest data and numbers to reinforce and strengthen
19 what you saw on the screen a moment ago, as it relates
20 to the stabilization, but also caution you, as today's
21 numbers should, about where we are, as it relates to
22 the suppression of this disease.

23 Yesterday, we had 45 individuals that lost
24 their lives. Today, we have 54 individuals that lost
25 their lives. I mentioned that's roughly half of what

1 we saw last week, where we really saw a peak in the
2 terms of another (sic) of deaths. It's still too many,
3 too many lives torn apart. And, again, not stats, not
4 data. Real people, real families, real loved ones, and
5 so our hearts go out to each and every one of them.

6 We also mentioned yesterday that we're 1300
7 new positives in the State of California. Today, on --
8 I announce there were 1,576. 1300, now over 1576
9 individuals that have tested positive. Yesterday, I
10 mentioned that there were a increase -- there was an
11 increase in hospitalization rate of 1.4 percent.
12 Today, actually went up to 2.5 percent.

13 The only good news in that data is ICU
14 numbers today went down slightly and were stable
15 yesterday. Just gives you a sense. Again, we're not
16 out of the woods stable, though those numbers are
17 relative to so many other parts of the country. We
18 still need to see that downward movement, and we're
19 going to monitor that data on a daily, hourly basis
20 over the next few weeks, before we move forward with
21 these modifications.

22 If the data changes, we start to see some
23 spikes, some increase in our community surveillance, we
24 start seeing numbers that raise alarm bells, that's an
25 indicator that's no longer green or even a caution

1 light, turns red, and as a consequence, we adjust in
2 realtime.

3 So just want to remind folks of the dynamic
4 nature of this effort, and the very sober framework to
5 which we make decisions, again, on the basis of fact
6 and data, not ideology, not what we want, not what we
7 hope, but what actually is, and what we confidently can
8 predict in a short and median time.

9 So lot of work for a lot of sectors of our
10 economy to -- to do in the next few weeks. We look
11 forward to doing that with them, and certainly for the
12 schools, I just want to -- once again, as a father of
13 four, that learning loss is very real. And, from a
14 socioeconomic frame, from a racial justice frame, this
15 is even more compounding and more challenging, and so
16 it is incumbent upon us, I think, to -- to think anew,
17 in respect to the school year.

18 And, again, I am looking forward to those
19 robust conversations about the prospects of an earlier
20 school year that I do think is warranted, considering
21 the consequences of neglecting our next generation,
22 because of the inconvenience and the realities of this
23 virus and its spread.

24 That's, broad strokes, where we -- where we
25 are today. I'll just end, as I always do, as a

1 reminder, before we open up to questions, that you too
2 can participate, not only in -- in a sector-by-sector
3 conversation. We have our digital roundtable in that
4 respect, again, for retail today, but, moreover, to
5 volunteer your time, your passion, your attention, your
6 focus, your particular expertise to
7 Californiansforall.ca.gov website.
8 Californiansforall.ca.gov website.

9 Happy now to answer any questions.

10 FEMALE SPEAKER: Mariana Dale, KPCC.

11 MS. DALE: Hi. Thank you. So today, you
12 talked about expanding childcare facilities and
13 availability in the coming weeks.

14 I've talked to a lot of providers who say
15 they still can't purchase supplies, and that the 50
16 million dollars that had been promised on April 10th
17 has still not been distributed to childcare centers and
18 agencies. What's the status of that funding, and when
19 can childcare providers expect more support?

20 GOVERNOR NEWSOM: Yeah, as I said, 2.87
21 million masks were distributed in the last 24 hours.
22 As soon as we get the supplies in, we get those
23 supplies out. We're going to start seeing a cadence of
24 substantial increase in PPE, not just procedures --
25 procedural masks, but, soon, N95 masks, gowns, shields,

1 gloves, other personal protective gear. As it comes
2 in, it comes right out.

3 And it's not just for childcare workers, but
4 across the panoply of support, in-home supportive
5 service workers, grocery workers, logistics workers,
6 manufacturers, farm workers. We have a lot of
7 migrant -- seasonal migrant farm workers now coming
8 into the State of California, working on protocols and
9 procedures for PPE in that sector as well.

10 So across the panoply, but you're absolutely
11 right. As it relates to childcare, I had a wonderful
12 meeting yesterday, a virtual meeting with the Women's
13 Caucus. The entire subject matter was on childcare.
14 The number of pop-up childcare facilities, over 300.
15 Now we've opened recently the hundred million dollars
16 that we've put into the sector and emergency aid.
17 You're correct, 50 million of it was for PPE. Getting
18 those out on the sites, to the sites is critical and
19 can't come soon enough, and so that was highlighted.

20 Kim Johnson, to answer your question, at the
21 Department of Social Services, on the line, she's
22 working to monitor the distribution of those funds and
23 make sure that the advocacy of those funds takes shape.

24 It's not just for PPE, it's for deep
25 sanitization and for physical modifications, just

1 temporary, to accommodate for new size cohorts, based
2 upon our guidance for childcare workers and for their
3 children.

4 This is a point of passion for me. Last
5 year in January, I announced a substantial enhancement
6 in childcare funding to the State of California, and
7 just as late as January of this year, announced our
8 next phase of investment.

9 With the budget deficits looming, I caution
10 that that progress in that space may be impeded by the
11 new reality of our obligation to balance a budget. No
12 printing press here in the State of California.

13 And so I can assure you this is an area of
14 deep concern and concentrated effort, because childcare
15 is economic development. Childcare is foundational to
16 getting people back to work. If they cannot get the
17 kind of quality -- quality childcare that they deserve,
18 they are less likely to get back to work and jump-start
19 this economy. And so I deeply recognize there's a
20 reason it was incorporated into the business sector,
21 the childcare component, the inner relationship between
22 the two.

23 FEMALE SPEAKER: Doug Sovern, KCBS Radio.

24 MR. SOVERN: I have a question I want to ask
25 you about the State's model, but as the father of two

1 kids in kindergarten, I -- I would be remiss if I
2 didn't ask you to elaborate a little bit on reopening
3 the schools early, specifically, you know, why, what
4 the thinking is there. Is it a matter of getting more
5 in-person education before next flu season? Or I'll
6 let you explain why, and also when. Parents will want
7 to know when that announcement or decision might be
8 made.

9 But then also, I'm curious. California's
10 model has seemed to be an outlier, certainly overly
11 pessimistic at best, compared to the other models that
12 are out there, projecting a much later peak, a much
13 later surge. And I'm wondering if now, have you guys
14 tweaked the State model? Do you believe we are past
15 the peak? Is the worst behind us? Was there something
16 wrong with the way the data was being fed into that
17 model? And what -- what have you learned that might
18 let you adjust that or -- or approach it differently
19 next time, God forbid there is a next time?

20 GOVERNOR NEWSOM: Well, I'll let Dr. Ghaly
21 put that model together, and has been updated on a
22 weekly basis, that model, preemptively answering that
23 question in realtime, going back a few months. By the
24 way, every state in our nation doing the same,
25 including some of the well-known chronicled modelers

1 that, even yesterday, came out with an adjustment to
2 their previous adjustment out of the State of
3 Washington, only highlighting and reinforcing frame of
4 your question.

5 But as it relates to the data, in terms of
6 our decision making, the reason we're making the
7 announcement today is, regardless of our model, the
8 facts that are coming in, the facts that are presenting
9 themselves in ICUs, on hospitalizations and spread give
10 us confidence in the next few weeks we're able to make
11 these Stage 2 adjustments.

12 Let me be specific, Doug. We want to get
13 you back to work, or at least allow you more time to
14 work, sooner than later. Our kids have lost a lot with
15 this disruption. I am not naive. We announced a week
16 or so ago, my wife and the Superintendent of Public
17 Education, some good work that's being done on new WiFi
18 hotspots, on distance learning, the application,
19 support of thousands, over 70,000 tablets and
20 Chromebooks, and other capacity to provide distance
21 learning. Still inadequate, to the magnitude of six
22 million children, all throughout the State of
23 California in rural districts and -- and some urban
24 districts that just simply don't have the high quality
25 download speed and capacity or anything to download

1 into.

2 And so there's been a learning loss, and you
3 can either just roll -- you know, roll over and just
4 accept that, or you can do something about it. So
5 that's our thinking, if we can maybe start up the
6 school year a little earlier, that would help mind that
7 gap a little bit, close that gap a little bit.

8 It's a -- it's a -- it's a deep
9 conversation. The reason I'm having it with you is I
10 was having it privately over the last few days. I want
11 to socialize those private conversations as quickly as
12 I can with you. I mentioned over the next few weeks,
13 this is in the Stage 2 of our framework of decision
14 making.

15 So the next few weeks, we'll get some more
16 clarity to answer your question on -- on the
17 possibility of that, what the costs are, what that
18 actually looks like. It's a conversation above and
19 beyond just summer school.

20 With that, I'll ask that Dr. Ghaly can come
21 up.

22 DR. GHALY: Thank you, Governor, and thank
23 you for the question.

24 We continue to look at our model. We have
25 been here for the last few weeks, talking about, not

1 just the model, but the actual cases that we're
2 tracking, both in the hospital and our ICUs. We have
3 conveyed a message of cautious optimism.

4 We knew, when we put together the models
5 many, many months ago now, weeks ago when we shared
6 them first with all Californians and started to talk to
7 colleagues around the nation about what their models
8 were and how they were using them, we knew that these
9 models were not going to be precise, that they would
10 point us in the right direction, and I think they have.

11 We continue to update them and look at them
12 closely, to make sure that we aren't being misguide --
13 guided in how we use them, and we believe in today's
14 announcement and the announcements over the last couple
15 of weeks that our models and the actuals are preparing
16 us for this area of stabilization with our data, with
17 our hospitalizations and ICU visits.

18 As we increase our testing capacity, that
19 bears out in what we're seeing as a percentage positive
20 among those increasing number of tests across the --
21 across the State, that we are preparing in weeks, not
22 months, to begin to modify those.

23 And that we're going to continue looking at
24 that model, making the adjustments, so that we can use
25 it as a planning tool, but that our actuals mean more,

1 and that we will continue to look at that to -- to
2 guide decisions that come from the State, to inform our
3 local partners with their individual county-level data,
4 so they too can make those plans, as they consider how
5 their local orders guide the decisions at that level.

6 We know that many folks are looking at the
7 models and deciding whether we were too pessimistic or
8 too optimistic, whether those led us to be too
9 conservative or too liberal with some of our decisions,
10 and we stand firm in our decision to do the things
11 we've done over the last many weeks, and as we move
12 forward, to use that same information to guide
13 decisions.

14 So we are always looking at these models.
15 We're always interested in updating them, so they're
16 more usable, but we continue to look at those actual
17 data points to guide the decisions, as we move forward.

18 GOVERNOR NEWSOM: Decisions, not conditions,
19 again, determine our fate in future, and that's why I
20 just want to remind everybody of their own individual
21 decisions, importance of physical distancing, continue
22 to advance the stay-at-home order. If we make bad
23 decisions, conditions can radically change, models can
24 change overnight.

25 Actuals, reality is radically impacted,

1 again, by those individual decisions. Hundreds and
2 hundreds a day, millions, millions of people marching,
3 we hope, in the right and same direction. We'll get
4 out of this sooner if we maintain that directive sense
5 of focus and continue to advance our commitment and
6 resolve.

7 FEMALE SPEAKER: Final question, Sophia
8 Bollag, Sac Bee.

9 MS. BOLLAG: Governor, I'm wondering if you
10 can give us a more specific update about the testing
11 status in nursing homes and elder care facilities.

12 How much testing are we doing in those
13 facilities, and is it enough? And if not, how much
14 more testing do we need to be doing in those facilities
15 to reach a point where you're going to feel satisfied?

16 GOVERNOR NEWSOM: Oh, a lot more. It's not
17 enough. That's -- that's the honest truth. I've been
18 very clear with the testing task force, one of their
19 top priorities was focusing on all of our licensed
20 facilities, not just skilled nursing facilities.

21 As you know, we've made three or four
22 announcements in the skilled nursing facility and
23 licensed facility space, including increasing the
24 testing, as a priority in that space, increasing the
25 supply of PPP -- PPE in that space, and, as you know,

1 redirecting national guard to help support medical
2 guardsmen and women in that space, including folks from
3 the USNS Mercy. We retrained over 600 nurses, we're
4 doing those daily check-in calls. We have organized
5 ourselves in a much more thorough and deliberative way.

6 We're currently just -- Sophia, to -- just
7 to update you, we're monitoring 192 skilled nursing
8 facility sites that have a test of positive, either a
9 staff member or a patient. Currently, 2,302
10 individuals that we're currently monitoring, just in
11 the SNF space. Again, that's a universe of 1224
12 skilled nursing facilities, about 119,000 total
13 capacity. It doesn't include the total number of
14 staff.

15 Forgive me for throwing those numbers out,
16 except I think they're important, but the answer to
17 your question is we need to do more, and this is part
18 of moving from Phase 1 to Phase 2. It's one of the
19 principal indicators on testing that will allow us
20 to -- to continue to make some real progress.

21 FEMALE SPEAKER: Final question,
22 Carla Marinucci, Politico.

23 MS. MARINUCCI: On the call, you mentioned
24 reopening, and I think one of the questions is the
25 reopening of the legislature. Several members of the

1 California Assembly have expressed concern about the
2 need for remote voting. The Speaker has said that
3 there's a constitutional necessity for physical
4 presence.

5 But what do you think on this one? I mean,
6 does the pandemic require a new assessment of this, of
7 legislative business and how to get it done in -- in
8 California?

9 And if I could, quickly, several people on
10 Twitter have asked me to ask you this today, including
11 Hank Plante, why is the California EDD website so
12 woefully unprepared and frozen on this big day when
13 freelancers and contractors are supposed to apply for
14 PUA unemployment?

15 We got that question on Twitter from many
16 people.

17 GOVERNOR NEWSOM: Yeah, so let me -- as it
18 relates to independent branch of government,
19 legislature, they'll make their decisions, based upon
20 their best assessment and analysis. I know that I'm
21 aware of those decisions, fact, had a brief
22 conversation with the speaker today. I haven't been
23 tracking it as closely as I've been tracking all of
24 these other decisions, but I -- I respect whatever
25 determination they make, and have the confidence in

1 their leadership to make the right decision for their
2 members and those that they're trying to represent in
3 the State of California.

4 As it relates to the UI issues and the PUA
5 issues, we've been very aggressive on a daily basis, as
6 you know, to try to tackle the -- and as quickly as we
7 can to address the magnitude of the number of calls
8 that have come in.

9 Yesterday, I made some announcements, about
10 600 additional personnel, on top of the 1340 that we
11 had hired for the call centers, and we talked about the
12 new texting technology. We talked about the new
13 chatbots that we put into place. We talked about the
14 total number of connections that we actually have made
15 went from 417,000 minutes of individual talk time last
16 week to one million just yesterday from the previous
17 weeks.

18 So substantial increase in connection and
19 volume. 5.33 billion dollars, that's the new number.
20 5.33 billion dollars has been distributed through that
21 system, just since March 15th. 926 million, just on
22 Sunday alone. I'll repeat that. 926 million dollars
23 was distributed just on Sunday. So you're correct, we
24 have the PUAs up today, and, not surprising, the first
25 few hours, we've got to figure this out, but we said

1 we'd get it up today, and they're putting it together,
2 they're architecting it today. Julie and her team at
3 EDD doing everything in their power to continue to get
4 these UIs out and start to get the PUAs up.

5 But here's the good news on the PUAs. A lot
6 of states have put up PUA sites. It's just an
7 application, takes weeks and weeks to get the checks.
8 Our expectation is not only when this site is more
9 stable today and tomorrow, next few days, they'll be
10 24- to 48-hour turnaround, in terms of those checks
11 being distributed.

12 So you're just dealing with unprecedented
13 amount of call volume. And folks over at EDD, an
14 unprecedented amount of responsibility and work to
15 improve, to do better, to do more. You deserve that,
16 Hank deserves that, the American people, 40 million
17 strong in the State of California, particularly the 3.5
18 million that have applied for unemployment insurance
19 since March 12th, and those that will be applying under
20 the PUA deserve it.

21 And so we'll continue to -- to do all we
22 can, everything in our power to improve upon that
23 experience in these historic and unprecedented times,
24 and, no, good enough never is.

25 And, yes, every day, this is one of our top

1 points of conversation, concern, and effort, and -- and
2 I can assure you that I -- I'm not only being held to
3 account, but some of the brightest people that I know
4 are as well in this space.

5 Look, as it relates to being held to
6 account, let us not be judged not to have been held in
7 account of supporting others in need at this time of
8 need for millions of Californians, not just applying
9 for unemployment insurance or pandemic unemployment
10 assistance, PUA, but also those that need your
11 contribution of blood, maybe your willingness just to
12 call and check in, check in on a neighbor, a senior,
13 maybe deliver a meal in a safe way or provide some care
14 and support.

15 Please, if you're willing, you're able, go
16 to [Californiansforall.ca.gov](https://californiansforall.ca.gov), [Californiansforall.ca.gov](https://californiansforall.ca.gov)
17 website, and share your passion, with real action.

18 Take care, everybody. Stay safe. Look
19 forward to seeing you tomorrow at noon.

20 ***
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1 I, RENAE E. LOPEZ, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

3 That a record of the audio proceedings was
4 made by me using machine shorthand, which was
5 thereafter transcribed under my direction; that the
6 foregoing transcript is a true record of the audio
7 transcription.

8 I further certify that I am neither
9 financially interested in the action nor a relative or
10 employee of any attorney or any party to this action.

11 IN WITNESS WHEREOF, I have this date
12 subscribed my name.

13
14 Dated: May 5, 2020



15 Renae E. Lopez
16 CSR No. 12142
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EXHIBIT F

legally sufficient justification for treating Plaintiff differently from non-retail businesses or other permitted assemblies that may be comparable. The Commonwealth has not yet responded to Plaintiff's allegations that it permits non-retail businesses, such as law or accounting offices, to gather in numbers greater than ten so long as they use social distancing. Likewise, the Commonwealth has not yet responded to Plaintiff's allegations that various comparable secular gatherings are permitted. Based on the materials before the Court, Plaintiff has demonstrated a likelihood of success on the merits of its claim under the Free Exercise Clause of the U.S. Constitution that the Commonwealth's executive orders have prohibited religious gatherings at places of worship, even with social distancing and personal hygiene protocols, while allowing comparable secular gatherings to proceed with social distancing. It thus becomes the Commonwealth's burden to demonstrate that it has compelling reasons to treat Plaintiff differently than similar non-religious businesses, and that it has pursued its objectives through the least restrictive means. Because the Commonwealth has not yet filed any response, it has not satisfied its burden.

On May 2, 2020, the United States Court of Appeals for the Sixth Circuit granted an Injunction Pending Appeal in a case raising issues similar to those in this case, *Maryville Baptist Church, Inc. v. Beshear*, No. 20-5427, slip op. (6th Cir. May 2, 2020) (per curiam). The Sixth Circuit there concluded: "[t]he Governor has offered no good reason so far for refusing to trust the congregants who promise to use care in worship in just the same way it trusts accountants, lawyers, and laundromat workers to do the same." *Id.* at 8.

Similarly, here, the Commonwealth has not explained why it differentiates and "refus[es] to trust" this small congregation's worship activities that, as alleged, follow social distancing and personal hygiene protocols, while allowing and trusting non-retail businesses to gather more than

ten people in such a fashion. As Plaintiff has made an initial showing that the Commonwealth's executive orders treat religious organizations less favorably than similar secular organizations, and the Commonwealth has not yet carried its strict-scrutiny burden of justifying its differential treatment of religion, the Court should grant Plaintiff's motion and grant an injunction pending appeal.

INTEREST OF THE UNITED STATES

The United States of America respectfully files this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General "to attend to the interests of the United States in a suit pending in a court of the United States." The United States also enforces 34 U.S.C. § 12601, which allows the United States to bring suit when law enforcement officers engage in a pattern or practice that deprives individuals of their federal constitutional or statutory rights.

The United States has a substantial interest in the preservation of its citizens' fundamental right to the free exercise of religion, expressly protected by the First Amendment. To that end, the United States regularly files statements of interest and amicus briefs on important issues of religious liberty in courts at every level, from trial courts to the Supreme Court of the United States. In addition, the Attorney General has issued comprehensive guidance interpreting religious-liberty protections available under the United States Constitution and federal law, *Federal Law Protections for Religious Liberty*, 82 Fed. Reg. 49668 (Oct. 26, 2017) ("Attorney General Guidelines"). As relevant here, the Attorney General Guidelines explain that "[a]lthough government generally may subject religious persons and organizations to neutral, generally applicable laws," government cannot "apply such laws in a discriminatory way" or otherwise "target persons or individuals because of their religion." *Id.* at 49669.

The United States also has a strong interest, especially in the midst of the COVID-19 pandemic, in ensuring the development and maintenance of the best possible public health strategies to combat the virus and protect the people of the United States from harm. But that interest must be balanced with constitutional liberties. This case raises issues of national public importance regarding the interplay between the government's compelling interest in protecting public health and safety from COVID-19 and citizens' fundamental right to the free exercise of religion.

BACKGROUND²

This suit was brought by the Lighthouse Fellowship Church in Chincoteague Island, Virginia against Governor Ralph Northam (the "governor" or the "Commonwealth") alleging that the governor has ordered restrictions on gatherings in response to the COVID-19 virus that improperly restrict religious gatherings at places of worship while allowing comparable secular gatherings, including the continued operation of any "business operations offering professional rather than retail services." ECF 1-3, ¶ 8.

Lighthouse "is a small congregation without the resources or equipment to . . . conduct parking lot or drive-in services." ECF 1, ¶ 9. This church has a specialized ministry catering to the socioeconomically disadvantaged. "[M]any of the members it serves are recovering drug addicts, former prostitutes" and others "trying to put their lives together, who do not have the resources to watch worship services over the Internet." *Id.* For "those members, Lighthouse is their only family and assembling with their church family is everything." *Id.*

² The United States assumes the truth of the facts alleged in the complaint and reflected in the accompanying exhibits for purposes of this brief.

According to the complaint, the Town of Chincoteague Police Department has understood the governor's orders to prohibit Lighthouse from hosting religious services with more than ten people and has enforced these orders against the church. Specifically, the Town of Chincoteague Police Department "imposed criminal sanctions against [its] religious gatherings that included 16 people . . . even though these 16 people were separated by more than six feet in the 225-seat sanctuary." ECF 1, ¶ 2 (emphasis omitted). Indeed, on April 5, 2020, Lighthouse's pastor, Kevin Wilson, was issued a criminal citation and summons because of this sixteen-person worship service. ECF 1, ¶ 8; ECF 1-7. During that service, Lighthouse maintained "social distancing and personal hygiene protocols, including extensive and enhanced sanitizing of common surfaces in Lighthouse's building prior to the service," and "requir[ed] attendees to remain at least six feet apart and use hand sanitizer prior to entering and during movement inside Lighthouse's building." ECF 1, ¶ 54.

Over the last two months, the governor has issued a series of Executive Orders prohibiting religious gatherings of more than ten people, while permitting secular gatherings of more than ten people to occur under an array of circumstances (collectively, the "Orders"). Governor Northam's Executive Order Amended Number Fifty-Three issued on April 15, 2020, bans "all public and private in person gatherings of more than 10 individuals." ECF 1-3, ¶ 1. Executive Order Number Fifty-Five, which Governor Northam issued on March 30, 2020, further specified that prohibited activities "include[] parties, celebrations, *religious*, or other social events." ECF 1-4, ¶ 2 (emphasis added). Violations of the Orders are charged criminally and—according to the Virginia State Police—"can result in an individual[] or business being charged with a class one misdemeanor, which carries up to a year in jail and \$2,500 fine." ECF 1-5, at 1.

The Orders, however, permit various secular activities resulting in gatherings of more than ten people, so long as “to the extent possible, [they] adhere to social distancing recommendations, enhanced sanitizing practices on common surfaces, and other appropriate workplace guidance from state and federal authorities while in operation.” ECF 1-3, ¶ 6. First, the Orders permit any and all “business operations offering professional rather than retail services [to] remain open,” with only an advisory that “they should utilize teleworking as much as possible.” ECF 1-3, ¶ 8; *see also* ECF 1-4, ¶ 2.a (excluding from the ten-person gathering limit any business “not required to close to the public under Executive Order 53”). The Commonwealth publicly confirmed that “[n]othing in the Executive Order impacts business sectors that are not explicitly listed” such that the prohibitions “only cover[] (1) recreation and entertainment businesses, (2) brick and mortar non-essential retail businesses, and (3) restaurants, dining establishments, food courts, breweries, microbreweries, distilleries, wineries, tasting rooms, and farmers markets.”³ Accordingly, the Orders do not limit the ability of employees of any non-retail business, including but not limited to professional services businesses, to gather. The Orders impose no limit, for example, on the ability of the workforce to assemble in conference rooms or anywhere else at those worksites. *See id.*

Second, the Orders contain various exceptions authorizing gatherings of more than ten individuals across an array of “retail businesses,” including “[b]eer, wine, and liquor stores,” “[h]ome improvement, hardware, building material, and building supply retailers,” “[l]aundromats and dry cleaners,” and any “department store” that includes a food or pharmacy section. ECF 1-3, ¶ 5. Third, all other “brick and mortar retail business[es]” not specifically

³ *See* Virginia’s Statewide Stay at Home Order: Frequently Asked Questions, “I am not a business sector explicitly listed in the Executive Order, but I believe that I am an essential business. What should I do?,” <https://www.virginia.gov/coronavirus/faq/>.

exempted from the ten-person limit “may continue to operate” if they “limit all in-person shopping to no more than 10 patrons per establishment” with social distancing. *Id.* ¶ 6. The Orders do not impose any numerical caps on the number of staff members who can be present in such retail businesses to service those ten patrons. *See id.*

Lighthouse has submitted photographs reflecting application of these exceptions in practice. For example, some photographs show that various big-box retail stores remain open and are drawing large crowds inside the stores, as evidenced by full parking lots of vehicles. *See* ECF 1, ¶¶ 59-60 (declaration averring that “there were 268 cars in the WalMart parking lot,” “156 cars in the Target parking lot,” and “162 cars in the parking lot” of Lowe’s). A photograph of one of the governor’s press conferences shows the use of social distancing in an enclosed space where more than ten people have gathered. *See* ECF 1, ¶ 58.

Lighthouse filed this suit on April 24, 2020, raising claims under, *inter alia*, the Free Exercise Clause of the First Amendment to the United States Constitution. This Court denied Lighthouse’s Emergency Motion for a Temporary Restraining Order and Preliminary Injunction on May 1, 2020. ECF 16.

For the reasons set forth below, the United States believes that the church has set forth a strong case that the Orders, by exempting other activities permitting similar opportunities for in-person gatherings of more than ten individuals, while at the same time prohibiting churches from gathering in groups of more than ten—even with social distancing measures and other precautions—has impermissibly interfered with the church’s free exercise of religion. Unless the Commonwealth can prove that its disparate treatment of religious gatherings is justified by a compelling reason and is pursued through the least restrictive means, this disparate treatment violates the Free Exercise Clause, and the Orders may not be enforced against the church. This

proof simply has not occurred because the Commonwealth has not yet submitted any argument or evidence in this case.

This is not to say that the Commonwealth must necessarily permit live, indoor church gatherings. As discussed below, there are good reasons to discourage gatherings of more than ten people and to encourage people to stay home whenever possible. But the Free Exercise Clause generally mandates that restrictions on gatherings be applied equally. Thus, an order purportedly aimed at promoting social distancing cannot impose a greater restriction on religious gatherings than similar secular gatherings absent the most compelling, narrowly tailored reasons. It will be difficult for the Commonwealth to justify having one set of rules that allows for secular gatherings—such as in-person operations for any non-retail business and various other exemptions permitting large-scale retail gatherings—while denying to Lighthouse the ability to worship in modest numbers with appropriate social distancing and sanitizing precautions.

ARGUMENT

I. Constitutional Rights Are Preserved During a Public Health Crisis

The federal government, the District of Columbia, and all fifty States have declared states of emergency, and have taken unprecedented and essential steps to contain the spread of the novel coronavirus and the consequences of the life-threatening COVID-19 pandemic.⁴ The President issued “Coronavirus Guidelines for America,” which, among other measures, urge the public to “follow the directions of [their] state and local authorities,” to “avoid social gatherings in groups of more than 10 people” and to “use drive-thru, pickup, or

⁴ See, e.g., Presidential Proclamation, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

delivery options” instead of “eating or drinking at bars, restaurants, and food courts.”⁵ The Centers for Disease Control and Prevention recommended that individuals “[s]tay at home as much as possible” and when in public keep “about 6 feet” away from others.⁶ States and localities, in turn, imposed a variety of measures, including mandatory limitations on gatherings. And more recently, President Trump also “unveiled Guidelines for Opening Up America Again, a three-phased approach based on the advice of public health experts” to “help state and local officials when reopening their economies, getting people back to work, and continuing to protect American lives.”⁷ Following these guidelines is the best path to swiftly ending COVID-19’s profound disruptions to our national life and resuming the normal economic life of our country. Citizens who seek to do otherwise are not merely assuming risk with respect to themselves, but are exposing others to the same danger. Accordingly, state and local governments, seeking to protect the public health, are restricting in-person assemblies, including religious assemblies.

Moreover, the Constitution does not hobble government from taking necessary, temporary measures to meet a genuine emergency. According to the Supreme Court, “in every well-ordered society charged with the duty of conserving the safety of its members the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.” *Jacobson v. Commonwealth of Massachusetts*, 197 U.S.

⁵ The President’s Coronavirus Guidelines for America (Mar. 16, 2020), https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

⁶ Centers for Disease Control and Prevention, How to Protect Yourself and Others (Apr. 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention-H.pdf>.

⁷ Guidelines: Opening Up America Again (April 16, 2020), <https://www.whitehouse.gov/openingamerica/>.

11, 29 (1905). In *Jacobson*, for example, the Court explained that “[a]n American citizen arriving at an American port” who had traveled to a region with yellow fever “may yet, in some circumstances, be held in quarantine against his will.” *Id.* The “settled rule [from *Jacobson*],” a court of appeals recently noted, “allows the state to restrict, for example, one’s right to peaceably assemble, to publicly worship, to travel, and even to leave one’s home.” *In re Abbott*, 954 F.3d 772, 784 (5th Cir. 2020). And, critically, “[t]he right to practice religion freely does not include the liberty to expose the community . . . to communicable disease.” *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944). Emergency public health measures such as gathering limitations and social distancing requirements in response to COVID-19 are evaluated under the Supreme Court’s decision in *Jacobson*. Courts owe substantial deference to government actions, particularly when exercised by states and localities under their police powers during a bona fide emergency.

But there is no pandemic exception to the Constitution and its Bill of Rights. Indeed, “individual rights secured by the Constitution do not disappear during a public health crisis.” *In re Abbott*, 954 F.3d at 784. These individual rights, including the protections in the Bill of Rights made applicable to the states through the Fourteenth Amendment, are always operative and restrain government action. Accordingly, the Supreme Court has instructed courts to intervene “if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety, has no real or substantial relation to those objects, or is, *beyond all question, a plain, palpable invasion of rights secured by the fundamental law.*” *Jacobson*, 197 U.S. at 31 (emphasis added). Thus, if the record establishes a “plain, palpable” violation of constitutional rights, then a court must grant relief. *See In re Abbott*, 954 F.3d at 784. Courts reviewing measures designed to address the “society-threatening epidemic” of COVID-19 should

be vigilant to protect against clear invasions of constitutional rights while ensuring they do “not second-guess the wisdom or efficacy of the measures” properly enacted by the democratic branches of government, on the advice of public health experts. *Id.* at 784-85.

II. The Free Exercise Clause Prohibits Unequal Treatment of Religious Individuals and Organizations

A. The Free Exercise Clause guarantees to all Americans the “right to believe and profess whatever religious doctrine [they] desire[.]” *Emp’t Div. v. Smith*, 494 U.S. 872, 877 (1990). It also protects their right to act on these beliefs, through gathering for public worship as in this case, or through other acts of religious exercise in their daily lives. While the protections for actions based on one’s religion are not absolute, *id.* at 878-79, among the most basic requirements of the Free Exercise Clause are that government may not restrict “acts or abstentions only when they are engaged in for religious reasons, or only because of the religious belief that they display,” *id.* at 877, nor “target the religious for special disabilities based on their religious status,” *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019 (2017) (citation and internal quotation marks omitted); *see also* Attorney General Guidelines, 82 Fed. Reg. at 49672. To determine whether a law impermissibly targets religious believers or their practices, the Supreme Court has directed courts to “survey meticulously” the text and operation of a challenged law to ensure that it is neutral and of general applicability. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 534 (1993). The Court explained: “The principle that government, in pursuit of legitimate interests, cannot in a selective manner impose burdens only on conduct motivated by religious belief is essential to the protection of the rights guaranteed by the Free Exercise Clause.” *Id.* at 543; *see also* Attorney General Guidelines, 82 Fed. Reg. at 49672.

Under the Free Exercise Clause, a law or rule, or the application of a law or rule, that is not both neutral and generally applicable is subject to heightened scrutiny. *Church of the Lukumi Babalu Aye*, 508 U.S. at 531.

A law or rule is not neutral if it singles out particular religious conduct for adverse treatment; treats the same conduct as lawful when undertaken for secular reasons but unlawful when undertaken for religious reasons; “visits gratuitous restrictions on religious conduct”; or “accomplishes . . . a religious gerrymander, an impermissible attempt to target [certain individuals] and their religious practices.” *Id.* at 533-35, 538 (citations and internal quotation marks omitted); *see also* Attorney General Guidelines, 82 Fed. Reg. at 49672.

A law is not generally applicable if “in a selective manner [it] impose[s] burdens only on conduct motivated by religious belief,” including by “fail[ing] to prohibit nonreligious conduct that endangers [its] interests in a similar or greater degree than does” the prohibited conduct. *Church of the Lukumi Babalu Aye*, 508 U.S. at 534; *see also* Attorney General Guidelines, 82 Fed. Reg. at 49672. In *Church of the Lukumi Babalu Aye*, the Court found that the challenged ordinances were “underinclusive with regard to the [government’s] interest in public health” because they outlawed the religious conduct at issue but failed to prohibit various nonreligious conduct that had an equal or greater impact on public health. 508 U.S. at 543-45. The ordinances were thus not generally applicable. *Id.*

“A law is underinclusive, and thus not generally applicable, when it fails to prohibit secular activity that endangers the same interests to a similar or greater degree than the prohibited religious conduct.” *First Baptist Church v. Kelly*, No. 20-1102-JWB, 2020 WL 1910021, at *6 (D. Kan. Apr. 18, 2020); *accord Central Rabbinical Congress of U.S. & Canada v. New York Dep’t of Health*, 763 F.3d 183, 197 (2d Cir. 2014) (A law is not generally applicable

if it “is substantially underinclusive such that it regulates religious conduct while failing to regulate secular conduct that is at least as harmful to the legitimate government interests purportedly justifying it.”); *Ward v. Polite*, 667 F.3d 727, 738 (6th Cir. 2012) (“If the law appears to be neutral and generally applicable on its face, but in practice is riddled with exemptions . . . the law satisfies the First Amendment only if it ‘advance[s] interests of the highest order and [is] narrowly tailored in pursuit of those interests.’” (citation omitted)); see also *Church of the Lukumi Babalu Aye*, 508 U.S. at 534 & 538; Attorney General Guidelines, 82 Fed. Reg. at 49672.

A “prohibition that society is prepared to impose upon [religious] worshippers but not upon itself,” the Supreme Court held, is not generally applicable and is subject to strict scrutiny. *Church of the Lukumi Babalu Aye*, 508 U.S. at 545 (citation omitted); see also *American Life League, Inc. v. Reno*, 47 F.3d 642, 654 (4th Cir. 1995) (recognizing that a law would not be generally applicable if the same conduct is not “outlawed for all,” or if a violation under a law depended on “whether a violator acts on the basis of religious conviction or temporal views”).

Accordingly, the Supreme Court’s Free Exercise Clause decisions instruct this Court to “survey meticulously,” *Church of the Lukumi Babalu Aye*, 508 U.S. at 534, the risks and character of the various activities the state chooses to permit. “All laws are selective to some extent, but categories of selection are of paramount concern when a law has the incidental effect of burdening religious practice. The Free Exercise Clause protect[s] religious observers against unequal treatment.” See *id.* at 542 (internal citation omitted).

Here, the Court must determine whether the Commonwealth’s distinctions between religious and secular gatherings are truly neutral and generally applicable. In other words, the

Court must ensure that like things are treated as like, and that religious gatherings are not singled out for unequal treatment.

If the Court determines that the Orders fail to prohibit secular activities comparable to Lighthouse's gathering of more than ten individuals, then the Court must review the Commonwealth's purported justifications and determine if they meet strict scrutiny, *i.e.*, whether the Commonwealth has demonstrated a compelling governmental interest, pursued through the least restrictive means. *See id.* at 546 ("The compelling interest standard that we apply . . . is not 'water[ed] . . . down' but 'really means what it says.'" (internal citation omitted)); *see also Jesus Christ Is The Answer Ministries, Inc. v. Baltimore County, Md.*, 915 F.3d 256 (4th Cir. 2019) ("A government decision fails strict scrutiny if it is not narrowly tailored to advance a compelling state interest.").

The Court must be appropriately deferential to the expertise of public health officials in evaluating potential distinctions between secular gatherings listed in the Orders and religious gatherings. *See Jacobson*, 197 U.S. at 31; *In re Abbott*, 954 F.3d at 784-85. But such deference will not justify action that is "beyond all question, a plain, palpable" violation of free exercise principles. *Jacobson*, 197 U.S. at 31; *see also In re Abbott*, 954 F.3d at 784-85. Thus, if the Court determines that the Orders plainly are not neutral and generally applicable, then the Court may sustain their disparate treatment of religious gatherings only if it meets the demands of strict scrutiny.

B. In prohibiting church services or other religious gatherings that exceed ten people, despite permitting various other gatherings that may result from secular activities, the Commonwealth's Orders appear, at least, not to be generally applicable.

The Orders' exemption of all non-retail businesses, including professional services, from the mass-gathering limit, is not generally applicable. Under this exemption, a large law firm, real estate firm, or any other non-retail business, such as a production facility, is free to operate using its entire workforce, without any limits on the size of meetings or any prohibitions on gathering in conference rooms or any other part of these offices. As the Supreme Court made clear in *Church of the Lukumi Babalu Aye*, a "prohibition that society is prepared to impose upon [religious worshippers] but not upon itself," is not generally applicable. 508 U.S. at 545 (citation omitted). Or as then-Judge Alito explained, "[a] law fails the general applicability requirement if it burdens a category of religiously motivated conduct but exempts or does not reach a substantial category of conduct that is not religiously motivated and that undermines the purposes of the law to at least the same degree as the covered conduct that is religiously motivated." *Blackhawk v. Pennsylvania*, 381 F.3d 202, 209 (3d Cir. 2004). And this is what the Sixth Circuit held recently in *Maryville Baptist Church, Inc. v. Beshear*, No. 20-5427, slip op. (6th Cir. May 2, 2020) (per curiam). The Sixth Circuit determined that because "[t]he Governor has offered no good reason so far for refusing to trust the congregants who promise to use care in worship in just the same way it trusts accountants, lawyers, and laundromat workers to do the same," *id.* at 8, a rule was not generally applicable under *Church of the Lukumi Babalu Aye* and strict scrutiny applied. *Id.* at 6, 8.

The inconsistent treatment in the Orders of conduct that appears to endanger the Commonwealth's interest to a similar degree to permitted activities shows, on this record, that the Commonwealth has not acted in a generally applicable manner.⁸ It is thus incumbent on the

⁸ Because the Orders are not generally applicable, strict scrutiny applies, and the Court need not reach the issue of whether the Orders are neutral toward religion. The United States notes, however, that "[n]eutrality and general applicability are interrelated, and . . . failure to satisfy one

Commonwealth to show how it is in fact not treating Lighthouse in a disparate manner. It is not possible for the Commonwealth to do so on this record because it has not yet responded to the motion for a TRO or preliminary injunction. Likewise, Lighthouse has made at least an initial showing of irreparable injury. See *Stuart Circle Parish v. Board of Zoning Appeals of City of Richmond*, 946 F. Supp. 1225, 1235 (E.D. Va. 1996) (recognizing that “plaintiffs will suffer irreparable injury [where] they will be prevented from practicing the free exercise of their religion”). And the Commonwealth has not come forward with any reasons why the equities and public interest would weigh against Plaintiff’s proposed gatherings, which, as alleged, serve an essential function for its congregants while complying with all social distancing and sanitation guidelines. Thus, on this record, a preliminary injunction should have issued and an injunction pending appeal is warranted.

C. The United States does not take a position in this Statement on the advisability of in-person gatherings in Virginia or in any of its localities at this time, as the proper response to the COVID-19 pandemic will vary over time depending on facts on the ground. But the Commonwealth cannot treat religious gatherings less favorably than other similar, secular gatherings. To be clear, this principle does not prevent a government from seeking to establish “that mass gatherings at churches [of the sort Lighthouse proposes] pose unique health risks that

requirement is a likely indication that the other has not been satisfied.” *Church of the Lukumi Babalu Aye*, 508 U.S. at 531. The value judgment inherent in providing exemptions for secular activities that impact the Commonwealth’s interests while not providing exemptions for Plaintiff’s religious activities tends to indicate that the Commonwealth’s actions may not be religion-neutral. See *Fraternal Order of Police v. Newark*, 170 F.3d 359, 365 (1999) (Alito, J.) (“[I]n *Smith* and *Lukumi*, it is clear . . . the Court’s concern was the prospect of the government’s deciding that secular motivations are more important than religious motivations”); *id.* at 366 (heightened scrutiny attaches when government “makes a value judgement in favor of secular motivations, but not religious motivations”).

do not arise” in the context of the activities that the Orders permit. *First Baptist Church*, 2020 WL 1910021 at *7; *see infra* Part III. As discussed in Part III, however, the Commonwealth has not yet asserted any such carefully tailored approach, and Lighthouse would be entitled to relief unless the Commonwealth can carry its burden on strict scrutiny. *See, e.g., id.* at *3 & 7 (holding that “secular facilities that are still exempt from the mass gathering prohibition or that are given more lenient treatment,” including “airports, childcare locations, hotels, food pantries and shelters, detoxification centers,” “shopping malls,” and “office spaces,” demonstrated religious targeting that failed strict scrutiny and called for a temporary restraining order against the Kansas Governor’s COVID-19 Order).

III. The Compelling Interest / Least Restrictive Means Test Is a Searching Inquiry

A law burdening religious practice that is not neutral or not of general application must undergo the most rigorous of scrutiny. To satisfy the commands of the First Amendment, a law restrictive of religious practice must advance “‘interests of the highest order’” and must be narrowly tailored in pursuit of those interests. *Church of the Lukumi Babalu Aye*, 508 U.S. at 546. “The compelling interest standard that we apply . . . is not ‘water[ed] . . . down’ but ‘really means what it says.’” *Id.*; *see also Axson-Flynn*, 356 F.3d at 1294 (Where a law or rule is not neutral and generally applicable, defendants “face the daunting task of establishing that the requirement was narrowly tailored to advance a compelling governmental interest.”). This is a difficult standard for the Commonwealth to meet.

As a general matter, prohibiting large gatherings to slow the spread of COVID-19 undeniably advances a compelling government interest. The Fifth Circuit has recently recognized “the escalating spread of COVID-19, and the state’s critical interest in protecting the public health.” *In re Abbott*, 954 F.3d at 778. Moreover, the Supreme Court has noted that

“‘context matters’ in applying the compelling interest test, and has emphasized that strict scrutiny’s fundamental purpose is to take ‘relevant differences’ into account.” *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 431 (2006). For example, in *Cutter v. Wilkinson*, the Supreme Court applied the compelling interest standard in a manner that directed that prison administrators be afforded deference on what constitutes safety and good order. 544 U.S. 709, 723 (2005). Similarly, here, a court must apply this standard in the context of the pandemic.

However, that is not the end of the inquiry. In *O Centro*, the Supreme Court considered under the federal RFRA whether banning a religious group from using a particular controlled substance in its worship service was supported by the compelling interest of enforcing the drug laws. *See O Centro*, 546 U.S. at 428-39. The Court recognized that while enforcing the drug laws undoubtedly constitutes a compelling interest as a general matter, the government had to show more: a compelling interest in applying those laws to the small religious group that sought to use a drug in religious ceremonies that was not a sought-after recreational drug and thus not prone to diversion. Drawing on its Free Exercise Clause precedents, the Supreme Court held that courts must look “beyond broadly formulated interests justifying the general applicability of government mandates and scrutinize[] the asserted harm of granting specific exemptions to particular religious claimants.” *Id.* at 431. And given that “a law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited,” the existence of other exemptions for similar conduct will be relevant in determining whether denying the desired religious exemption survives strict scrutiny. *Id.* at 433.

Because a compelling interest must be evaluated in context rather than by reference to a broad general principle such as health or safety, and because the “least-restrictive-means standard is exceptionally demanding,” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014), a court must engage in a searching inquiry.

The ultimate question for this Court, then, is whether the Commonwealth’s prohibition on in-person religious worship exceeding ten people to Lighthouse’s sixteen-person gathering—while exempting all non-retail businesses and others from the ten-person limit—furtheres a compelling interest, and whether there is no less restrictive measure the Commonwealth could use to achieve that interest while allowing the church to hold its services. If, in this fact-intensive and context-laden analysis, the Court determines that there are no “relevant differences,” *O Centro*, 546 U.S. at 431-32, with regard to efficacy in slowing the spread of COVID-19, between allowing the church to meet as proposed and allowing these various preferred gatherings, then the Commonwealth’s Orders must yield to the church’s sincerely held religious exercise. At this stage of the case, where the Commonwealth has yet to respond, it is not possible to reach that conclusion.

CONCLUSION

The United States respectfully requests that the Court consider these arguments in deciding the Plaintiff’s Motion for an Injunction Pending Appeal. The facts on this record show that the Commonwealth has imposed limits on religious activity it has not imposed on comparable secular activities. If proven, the facts alleged in Lighthouse’s complaint would thus establish a Free Exercise violation unless the Commonwealth demonstrates that its actions satisfy the demanding strict scrutiny standard. The Commonwealth has not yet filed its response and has introduced no evidence. It therefore has not satisfied its burden. Accordingly, based on this

Court's decision to deny the motion for a preliminary injunction at this stage, the United States respectfully requests that the Court either grant the Injunction Pending Appeal, or in the alternative, hold a hearing on Plaintiff's motion to ensure that Defendant's responses can be evaluated.

Dated: May 3, 2020

Respectfully submitted,

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EXHIBIT M



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Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Tuesday, April 14, 2020

Attorney General William P. Barr Issues Statement on Religious Practice and Social Distancing; Department of Justice Files Statement of Interest in Mississippi Church Case

Attorney General William P. Barr issued the following statement:

"In light of the COVID-19 pandemic, the President has issued guidelines calling on all Americans to do their part to slow the spread of a dangerous and highly contagious virus. Those measures are important because the virus is transmitted so easily from person to person, and because it all too often has life-threatening consequences for its victims, it has the potential to overwhelm health care systems when it surges.

To contain the virus and protect the most vulnerable among us, Americans have been asked, for a limited period of time, to practice rigorous social distancing. The President has also asked Americans to listen to and follow directions issued by state and local authorities regarding social distancing. Social distancing, while difficult and unfamiliar for a nation that has long prided itself on the strength of its voluntary associations, has the potential to save hundreds of thousands of American lives from an imminent threat. Scrupulously observing these guidelines is the best path to swiftly ending COVID-19's profound disruptions to our national life and resuming the normal economic life of our country. Citizens who seek to do otherwise are not merely assuming risk with respect to themselves, but are exposing others to danger. In exigent circumstances, when the community as a whole faces an impending harm of this magnitude, and where the measures are tailored to meeting the imminent danger, the constitution does allow some temporary restriction on our liberties that would not be tolerated in normal circumstances.

But even in times of emergency, when reasonable and temporary restrictions are placed on rights, the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. Thus, government may not impose special restrictions on religious activity that do not also apply to similar nonreligious activity. For example, if a government allows movie theaters, restaurants, concert halls, and other comparable places of assembly to remain open and unrestricted, it may not order houses of worship to close, limit their congregation size, or otherwise impede religious gatherings. Religious institutions must not be singled out for special burdens.


Today, the Department filed a Statement of Interest in support of a church in Mississippi that allegedly sought to hold parking lot worship services, in which congregants listened to their pastor preach over their car radios, while sitting in their cars in the church parking lot with their windows rolled up. The City of Greenville fined congregants \$500 per person for attending these parking lot services – while permitting citizens to attend nearby drive-in restaurants, even with their windows open.[1] The City appears to have thereby singled churches out as the only essential service (as designated by the state of Mississippi) that may not operate despite following all CDC and state recommendations regarding social distancing.

As we explain in the Statement of Interest, where a state has not acted evenhandedly, it must have a compelling reason to impose restrictions on places of worship and must ensure that those restrictions are narrowly tailored to advance its compelling interest. While we believe that during this period there is a sufficient basis for the social distancing rules that

have been put in place, the scope and justification of restrictions beyond that will have to be assessed based on the circumstances as they evolve.

Religion and religious worship continue to be central to the lives of millions of Americans. This is true more so than ever during this difficult time. The pandemic has changed the ways Americans live their lives. Religious communities have rallied to the critical need to protect the community from the spread of this disease by making services available online and in ways that otherwise comply with social distancing guidelines.

The United States Department of Justice will continue to ensure that religious freedom remains protected if any state or local government, in their response to COVID-19, singles out, targets, or discriminates against any house of worship for special restrictions."

[1]  The City has since stated it will drop the fines, but will continue to enforce the order.

Attachment(s):

[Download Statement of Interest](#)

Topic(s):

Coronavirus

Component(s):

[Office of the Attorney General](#)

Press Release Number:

20-380

Updated April 21, 2020

EXHIBIT N



Office of the Attorney General
Washington, D. C. 20530

April 27, 2020

**MEMORANDUM FOR THE ASSISTANT ATTORNEY GENERAL FOR CIVIL RIGHTS AND
ALL UNITED STATES ATTORNEYS**

FROM: THE ATTORNEY GENERAL *W. Barr*
SUBJECT: Balancing Public Safety with the Preservation of Civil Rights

The current national crisis related to COVID-19 has required the imposition of extraordinary restrictions on all of our daily lives. Millions of Americans across the nation have been ordered to stay in their homes, leaving only for essential and necessary reasons, while countless businesses and other gathering places have been ordered to close their doors indefinitely. These kinds of restrictions have been necessary in order to stop the spread of a deadly disease—but there is no denying that they have imposed tremendous burdens on the daily lives of all Americans.

In prior Memoranda, I directed our prosecutors to prioritize cases against those seeking to illicitly profit from the pandemic, either by hoarding scarce medical resources to sell them for extortionate prices, or by defrauding people who are already in dire circumstances due to the severe problems the pandemic has caused. We have pursued those efforts vigorously and will continue to do so. Now, I am directing each of our United States Attorneys to also be on the lookout for state and local directives that could be violating the constitutional rights and civil liberties of individual citizens.

As the Department of Justice explained recently in guidance to states and localities taking steps to battle the pandemic, even in times of emergency, when reasonable and temporary restrictions are placed on rights, the First Amendment and federal statutory law prohibit discrimination against religious institutions and religious believers. The legal restrictions on state and local authority are not limited to discrimination against religious institutions and religious believers. For example, the Constitution also forbids, in certain circumstances, discrimination against disfavored speech and undue interference with the national economy. If a state or local ordinance crosses the line from an appropriate exercise of authority to stop the spread of COVID-19 into an overbearing infringement of constitutional and statutory protections, the Department of Justice may have an obligation to address that overreach in federal court.

I am therefore directing the Assistant Attorney General for Civil Rights, Eric Dreiband, and Matthew Schneider, the U.S. Attorney for the Eastern District of Michigan, to oversee and coordinate our efforts to monitor state and local policies and, if necessary, take action to correct them. They should work not only with all Department of Justice offices and other federal agencies, but with state and local officials as well.

Memorandum from the Attorney General

Page 2

Subject: Balancing Public Safety with the Preservation of Civil Rights

Many policies that would be unthinkable in regular times have become commonplace in recent weeks, and we do not want to unduly interfere with the important efforts of state and local officials to protect the public. But the Constitution is not suspended in times of crisis. We must therefore be vigilant to ensure its protections are preserved, at the same time that the public is protected.

I thank you for your attention to this important initiative and for your service to our country.

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4 UNITED STATES DISTRICT COURT
5
6 SOUTHERN DISTRICT OF CALIFORNIA

7 SOUTH BAY UNITED
8 PENTECOSTAL CHURCH, a California
9 non-profit corporation; and BISHOP
ARTHUR HODGES III, an individual,

10 Plaintiffs,

11 v.

12 GAVIN NEWSOM, in his official capacity
13 as the Governor of California, *et al.*,

14 Defendants.
15
16
17

Case No. 3:20-cv-00865-AJB-MDD

**[Proposed] ORDER ON
PLAINTIFFS'
APPLICATION FOR A
TEMPORARY
RESTRAINING ORDER,
AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION**

18 Having reviewed Plaintiffs South Bay United Pentecostal Church and Bishop
19 Arthur Hodges III's Application for a Temporary Restraining Order, and Order to
20 Show Cause re: Preliminary Injunction, and good cause appearing, the application is
21 hereby **GRANTED**.

22 1. Defendants, their agents, employees, and successors in office, are
23 restrained and enjoined from enforcing, trying to enforce, threatening to enforce, or
24 otherwise requiring compliance with any prohibition on Plaintiffs' engagement in
25 religious services, practices, or activities at which the County of San Diego's Social
26 Distancing and Sanitation Protocol and Safe Reopening Plan is being followed.

27 2. Defendants shall show cause, on _____, 2020, at _____
28 why a preliminary injunction should not issue requiring Defendants to act as described

1 in above; the temporary restraining order shall remain effective until such time as the
2 Court has ruled on whether a preliminary injunction should issue. Such relief is
3 necessary to prevent Defendants from further violating Plaintiffs' constitutional rights,
4 pending trial on the merits of Plaintiffs' claims.

5
6 **IT IS SO ORDERED.**

7
8 DATED: _____

Hon. Anthony J. Battaglia
United States District Judge