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 et al.*

10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14 **SOUTH BAY UNITED  
 15 PENTECOSTAL CHURCH, a  
 California non-profit corporation;  
 16 BISHOP ARTHUR HODGES III, an  
 individual; RABBI MENDEL  
 17 POLICHENCO, an individual,**

18 Plaintiffs,

19 v.

20 **GAVIN NEWSOM, in his official  
 21 capacity as Governor of the State of  
 California; XAVIER BECERRA, in  
 22 his official capacity as Attorney  
 General of California; SONIA  
 23 ANGELL, in her official capacity as  
 Director of the California  
 24 Department of Public Health, et al.,**

25 Defendants.

3:20-cv-00865-BAS-AHG

**STATE DEFENDANTS'  
 OPPOSITION TO PLAINTIFFS'  
 OBJECTION (ECF No. 26)**

Judge: The Honorable Cynthia  
 Bashant

Action Filed: May 8, 2020

27 Plaintiffs filed an Objection (ECF No. 26) contending the opposition briefs  
 28 filed by State Defendants Gavin Newsom, Xavier Becerra and Sonia Angell (ECF

1 No. 23) and the San Diego County Defendants (ECF No. 22) are untimely. They  
2 ask the Court to deem Plaintiffs' request for a temporary restraining order  
3 unopposed and to summarily grant the requested TRO on that basis. The ultimate  
4 relief Plaintiffs seek here is an order blocking and effectively re-writing the State's  
5 risk-based pandemic reopening plan so as to permit Plaintiffs to resume large, in-  
6 person worship services this Sunday, May 17, essentially substituting the Court's  
7 discretion for that of the Governor and the State Public Health Officer about the  
8 significant public health risk associated with such events and other large, in-person  
9 gatherings. Plaintiffs' objection should be overruled and their request to strike the  
10 opposition briefs denied. Plaintiffs fail to show a clear violation of the Court's  
11 rules or, more importantly, that they have been prejudiced, let alone to a degree that  
12 would warrant the draconian sanction they seek in a matter of such overriding  
13 public importance.

14 The Court's Standing Order for Civil Cases provides, in pertinent part,

15 All motions for temporary restraining orders must be briefed. While  
16 temporary restraining orders may be heard in true *ex parte* fashion (i.e.,  
17 without notice to an opposing party), the Court will do so only in  
18 extraordinary circumstances. *The Court's strong preference is for the*  
19 *opposing party to be served and afforded a reasonable opportunity to*  
*file an opposition.*

20 Standing Order for Civil Cases of Honorable Cynthia Bashant, United States  
21 District Judge, at 8 (emphasis added). Plaintiffs filed their voluminous and complex  
22 TRO application the evening of May 11, 2020. The State Defendants informed  
23 Plaintiffs and the Court that they would be filing an opposition, and did so  
24 approximately sixty-four hours after the TRO was filed—shortly before noon on  
25 May 14. Undoubtedly, this was a reasonable period of time to oppose a TRO of this  
26 nature, as the Court's Standing Order contemplates.

27 The gist of Plaintiffs' objection is that Defendants (and the State of California)  
28 should be severely sanctioned because they followed Section 9 of the Court's

1 standing orders applicable to motions for a temporary restraining order, under  
2 which the opposing party is entitled to a reasonable opportunity to respond, instead  
3 of Section 6, under which oppositions to *ex parte* applications (of any kind) are due  
4 within two court days. Despite Plaintiffs’ protestations, their voluminous moving  
5 papers do not clearly identify their request as an “*ex parte* application” governed by  
6 Section 6, and it was not clear from the sequence of events leading up to and after  
7 the case was transferred that it was in fact an “*ex parte* application.” Therefore,  
8 Defendants proceeded under section 9, which specifically governs TROs.  
9 Defendants also filed their brief within a reasonable time—Plaintiffs do not appear  
10 to dispute that, nor could they fairly do so given the voluminous briefing and  
11 supporting declarations and exhibits they filed in support of their request for a  
12 TRO.

13 Plaintiffs also fail to show that they have been significantly prejudiced.  
14 Defendants filed and served their briefs shortly before noon yesterday, leaving  
15 Plaintiffs sufficient time to prepare for oral argument and prepare any further  
16 submissions to the Court. Plaintiffs argue they lost a “whole evening and morning  
17 to prepare,” but that is not true. Assuming Section 6 governed, the State  
18 Defendants’ brief was due at 11:59 p.m. Wednesday, i.e., two court days after the  
19 filing of the TRO—not at 5 p.m. Wednesday, as Plaintiffs imply. Plaintiffs lost, at  
20 most, twelve hours. More importantly, the sanction they seek for receiving the  
21 opposition brief shortly before noon on Thursday, instead of by midnight  
22 Wednesday, is startlingly mismatched to any prejudice they could have suffered.  
23 Particularly in a case of this magnitude, in which the public interest is paramount,  
24 striking Defendants’ oppositions, treating Plaintiffs’ request for a TRO as  
25 “unopposed,” and summarily enjoining the Governor’s public health directives in  
26 the midst of the most serious pandemic in a century would be grossly  
27 disproportionate to the claimed non-compliance.  
28

1           The State Defendants complied with the rules as they understood them. They  
2 also notified the Court in advance that they were proceeding under Section 9 of the  
3 rules, and that they intended to file their opposition by noon on Thursday.  
4 Moreover, Thursday at noon was the soonest the State Defendants *could* reasonably  
5 file their brief; counsel for the State Defendants have been defending challenges to  
6 the Governor’s pandemic directives in lawsuits all over the State, and in most of  
7 those cases have had to respond to emergency requests for injunctive relief. The  
8 request here raises a number of significant issues and required a significant amount  
9 of time and resources to address, and counsel worked long hours to meet the  
10 Court’s deadlines.

11           Although the State Defendants do not concede their brief was untimely, if the  
12 Court disagrees, they respectfully ask the Court to excuse the late-filing and accept  
13 the brief as timely filed. The State Defendants interpreted the applicable rules in  
14 good faith, and certainly did not deliberately disregard any Court rule or deadline.  
15 The State Defendants also would not object to the hearing on the TRO being  
16 postponed until later today or tomorrow if doing so would alleviate concerns about  
17 prejudice to the Plaintiffs.

18           In sum, the State Defendants respectfully submit their brief was timely, but  
19 even if not, the sanction sought by Plaintiffs is wholly unwarranted and should be  
20 rejected.

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1 Dated: May 15, 2020

Respectfully submitted,

2 XAVIER BECERRA  
3 Attorney General of California  
4 PAUL STEIN  
5 Supervising Deputy Attorney General

6 *s/ Lisa J. Plank*  
7 \_\_\_\_\_  
8 LISA J. PLANK  
9 Deputy Attorney General  
10 *Attorneys for Defendants*  
11 *Gavin Newsom, et al.*

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## CERTIFICATE OF SERVICE

Case Name: South Bay United Pentecostal Church, et al. v. Newsom, et al. Case No. 3:20-cv-00865-BAS-AHG

I hereby certify that on May 15, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

### OPPOSITION TO PLAINTIFFS' OBJECTION

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system .

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 15, 2020, at San Francisco, California.

M. Mendiola  
Declarant

  
Signature

SA2020301026