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15 *\*Pro hac vice application forthcoming*

16  
17 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

18 CALVARY CHAPEL DAYTON VALLEY,

19 *Plaintiff,*

20  
21 v.

22 STEVE SISOLAK, in his official capacity as  
Governor of Nevada; AARON FORD, in his  
23 official capacity as Attorney General of  
Nevada; FRANK HUNEWILL, in his official  
24 capacity as Sheriff of Lyon County,

25 *Defendants.*  
26

Case No.:

**VERIFIED COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

27

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**INTRODUCTION**

1  
2       1.       This action challenges Governor Steve Sisolak’s emergency orders  
3 prohibiting churches and other places of worship from holding in-person worship  
4 services of ten or more people, even when such services could be held in accordance  
5 with social distancing and public health guidelines (the “Church Gathering Ban”).

6       2.       For over two months, Calvary Chapel Dayton Valley (the “Church”)  
7 has been unable to hold an in-person worship service due to Covid-19 and the  
8 Governor’s Church Gathering Ban. The Church has patiently waited for the  
9 Governor to restore its First Amendment freedoms, trusting that the Governor  
10 would prioritize constitutional rights and allow churches to resume in-person  
11 worship services at the earliest opportunity.

12       3.       But that trust has been broken. Instead of prioritizing religious  
13 freedom, the Governor has moved “non-essential” secular businesses and activities  
14 to the front of the line and pushed churches towards the back. Incredibly, the  
15 Governor has allowed restaurants and food establishments to resume in-person, on-  
16 site dining at 50% capacity, allowed all retail establishments to open at 50%  
17 capacity, and has thrown open the doors of nail care salons, hair salons, and barber  
18 shops—businesses that the Governor’s own orders say “promote extended periods of  
19 public interaction where the risk of [Covid-19] transmission is high.” In addition,  
20 there are numerous other exceptions to the Governor’s gathering restrictions.

21       4.       Yet the Governor insists on maintaining the Church Gathering Ban,  
22 refusing to allow churches and places of worship to open their doors to ten or more  
23 people under any circumstance.

24       5.       Regardless of the justifications the Governor may think he has for this  
25 disparate treatment, they cannot survive constitutional scrutiny. Under the Free  
26 Exercise Clause, a law is not generally applicable when it “fail[s] to prohibit  
27 nonreligious conduct that endangers” the government’s interest “in a similar or  
28

1 greater degree” than the prohibited religious conduct. *Church of the Lukumi Babalu*  
2 *Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 542 (1993). That is exactly what the  
3 exemptions under the Governor’s orders do.

4 6. Indeed, under the Governor’s orders, large numbers of people in Clark  
5 County can gather for a similar amount of time as a church service at restaurants,  
6 food establishments, non-essential retail establishments, nail salons, hair salons,  
7 and barber shops, but it is illegal for the Church—which is located in rural Lyon  
8 County—to hold in-person services with ten or more people.

9 7. This is unconstitutional, and it makes no sense. As of May 20, 2020,  
10 Carson City Health and Human Services reports that Lyon County has only 16  
11 active cases of Covid-19. *See* Lyon County Covid-19 Data, attached as **Exhibit 1**.  
12 With a population of approximately 57,510, that means the per capita rate of active  
13 Covid-19 infections in Lyon County is approximately 0.028%.

14 8. Consistent with its religious beliefs, the Church plans to resume in-  
15 person worship services on Sunday, May 31, and has developed comprehensive  
16 social distancing and health and safety protocols to govern those services. Despite  
17 these health and safety measures, however, the Governor’s Church Gathering Ban  
18 threatens the Church with criminal and civil penalties.

19 9. Without a temporary restraining order and injunction, the Church will  
20 face criminal and civil penalties for assembling and worshipping God. A temporary  
21 restraining order and injunction are therefore needed to preserve the Church’s  
22 constitutional rights.

23 **JURISDICTION AND VENUE**

24 10. This civil rights action raises federal questions under the United  
25 States Constitution, specifically the First and Fourteenth Amendments, and under  
26 federal law, particularly 42 U.S.C. § 1983.

1 11. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and  
2 1343.

3 12. This Court has authority to grant the requested declaratory relief  
4 under 28 U.S.C. §§ 2201 and 2202, the requested injunctive relief under 28 U.S.C. §  
5 1343, and reasonable attorney’s fees and costs under 42 U.S.C. § 1988.

6 13. Venue is proper in this Court under 28 U.S.C. § 1391(b) because a  
7 substantial part of the events or omissions giving rise to the claims occurred in this  
8 district and Defendants reside in this district.

9 **PARTIES**

10 14. Calvary Chapel Dayton Valley (the “Church”) is a nonprofit church  
11 organized exclusively for religious purposes within the meaning of § 501(c)(3) of the  
12 Internal Revenue Code. The Church is in Dayton, Nevada (Lyon County).

13 15. Defendant Steve Sisolak is the Governor of Nevada. Governor Sisolak  
14 is responsible for issuing and enforcing the Church Gathering Ban. He is sued in his  
15 official capacity only.

16 16. Defendant Aaron Ford is Nevada’s Attorney General. Attorney General  
17 Ford is authorized to enforce and prosecute violations of the Church Gathering Ban.  
18 He is sued in his official capacity only.

19 17. Defendant Frank Hunewill is the Sheriff of Lyon County. As Sheriff of  
20 Lyon County, Defendant Hunewill has the power, both personally and through his  
21 subordinates, to enforce the Church Gathering Ban. He is sued in his official  
22 capacity only.

23 **FACTS**

24 **Calvary Chapel Dayton Valley**

25 18. Calvary Chapel Dayton Valley has operated as a Christian church in  
26 Dayton, Nevada since February 5, 2006.

1 19. The Church believes that the Bible is the inspired Word of God and  
2 infallible rule of faith and practice.

3 20. Thus, the Bible is the foundation upon which the Church operates and  
4 is the basis on which it is governed.

5 21. The Church believes, among other things, that the Bible commands  
6 Christians to gather together in person for corporate prayer, worship, and  
7 fellowship and that such assembly is necessary and good for the Church and its  
8 members' spiritual growth.

9 22. Consistent with that belief, the Church's mission and purpose is: (1) to  
10 continue steadfastly in the apostles' doctrine and fellowship, in the breaking of  
11 bread, and in prayers; (2) to worship God the Father, Son, and Holy Spirit; (3) to  
12 build up the Church of Jesus Christ through the teaching of the Word of God and  
13 the ministry of the Holy Spirit; and (4) to persuade men and women to repent and  
14 confess Jesus Christ as Lord.

15 **The Church's Response to Covid-19**  
16 **and Plan to Resume In-Person Services**

17 23. In response to federal, state, and local guidance at the beginning of the  
18 Covid-19 outbreak—but before any local or state order prohibited in-person  
19 gatherings—the Church voluntarily adopted rigorous social distancing and health  
20 safety measures for its services.

21 24. In fact, immediately after the Governor declared a state of emergency  
22 on March 12, the Church took proactive steps for its upcoming March 15 services.

23 25. The Church disinfected frequently touched surfaces such as door  
24 handles, chairs, and tables before and after services; made hand sanitizer available  
25 in multiple locations throughout the building's common areas; advised church  
26 attendees to refrain from personal contact such as handshakes and hugs; instructed  
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1 those who felt sick or lived with someone who felt sick to stay home; and encouraged  
2 online giving through the Church's website, among other things.

3 26. And the next day, on March 16, 2020, the Church temporarily  
4 suspended in-person worship services and began streaming its services online.

5 27. More than two months later, the Governor's intervening Church  
6 Gathering Ban has prevented the Church from resuming in-person worship  
7 services.

8 28. Although the Church's initial decision to temporarily suspend in-  
9 person services was voluntary, and made in an abundance of caution given the  
10 health and safety concerns at the time, the Church believes it is called to resume in-  
11 person worship services, consistent with its religious beliefs about corporate prayer,  
12 worship, and fellowship.

13 29. The Church sincerely believes that online services and drive-in  
14 services do not meet the Bible's requirement that the Church meet together in  
15 person for corporate worship.

16 30. In addition, some of the Church's parishioners do not have internet  
17 access or the ability to participate in online services.

18 31. The Church thus plans to resume in-person worship services on May  
19 31, 2020 (Pentecost Sunday), but the Church Gathering Ban makes such services  
20 illegal and would subject the Church to possible criminal and civil penalties.

21 32. Before Covid-19, the Church's two Sunday services could hold up to  
22 200 people each.

23 33. The Church seeks to hold in-person services at 50% of its sanctuary's  
24 capacity while also providing for proper social distancing of at least six feet  
25 separation between families and individuals, which would amount to approximately  
26 90 people in a service.

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1           34. In preparation for resuming in-person worship services, the Church  
2 has adopted—and will follow—strict social distancing and health and safety  
3 protocols.

4           35. These protocols include the following precautions:

- 5           • Holding Sunday and Wednesday services;
- 6           • Strictly limiting Sunday services to 45 minutes (as opposed to the  
7 usual 90 minutes);
- 8           • Holding up to three services each Sunday to guarantee adequate space  
9 for social distancing at each service;
- 10          • Providing ½ hour between services to allow for thorough cleaning and  
11 sanitizing of sanctuary, hallways, bathrooms, and common surfaces;
- 12          • Posting signs on walls and floors to direct traffic;
- 13          • Posting signs on restroom doors limiting use to one person at a time;
- 14          • Posting signs in the restrooms encouraging proper washing of hands;
- 15          • Making hand sanitizer stations easily accessible to attendees;
- 16          • Encouraging attendees to arrive no earlier than 25 minutes before  
17 service;
- 18          • Using parking attendants to direct cars to designated parking areas;
- 19          • Directing all attendees to a designated entrance;
- 20          • Directing attendees to sanctuary seating designed to provide 6-feet of  
21 separation between families and individuals;
- 22          • Ensuring that all traffic for each service will be in one direction by  
23 using “first in, last out” model;
- 24          • Advising attendees of proper social distancing protocols;
- 25          • Encouraging attendees to bring and wear face coverings;
- 26          • Requiring all servants greeting or directing attendees to wear face  
27 coverings;

- 1 • Prohibiting any handouts or items to be passed to attendees during
- 2 services;
- 3 • Prohibiting snacks or coffee from being served;
- 4 • Using prepacked Communion elements whenever served;
- 5 • Directing attendees out of the building to the parking area at the end
- 6 of each service;
- 7 • Instructing attendees to refrain from congregating in the building.

### 8 **The Governor's Orders**

9 36. On March 12, 2020, Governor Sisolak declared a state of emergency in  
10 response to the Covid-19 outbreak. *See* Declaration of Emergency, attached as  
11 **Exhibit 2**.

12 37. Noting that the Nevada Constitution gives him “[t]he supreme  
13 executive power of this State,” Governor Sisolak “direct[ed] all state agencies to  
14 supplement the efforts of all impacted and threatened counties” and announced that  
15 he would “perform and exercise such other functions, powers, and duties as are  
16 necessary to promote and secure the safety and protection of the civilian  
17 population.” *Id.*

18 38. Five days later, on March 17, 2020, Governor Sisolak held a press  
19 conference and explained steps the State would be taking to mitigate the risks  
20 associated with Covid-19. *See* Press Release (Mar. 17, 2020), attached as **Exhibit 3**.

21 39. While Governor Sisolak encouraged “faith leaders” during that press  
22 conference “to find ways to deliver to your congregation without bringing them  
23 together in person,” he assured them that he “cannot and will not say that places of  
24 worship should be closed.” *Id.* at 4.



1 *“Essential” and “Non-Essential” Businesses*

2 40. Three days later, Governor Sisolak issued an order mandating the  
3 closure of all “Non-Essential Businesses.” *See* Declaration of Emergency Directive  
4 003, attached as **Exhibit 4**.

5 41. The Governor’s order defined “Non-Essential Businesses” to include,  
6 among other things, businesses that “promote recreational social gathering  
7 activities” and businesses that “promote extended periods of public interaction  
8 where the risk of [Covid-19] transmission is high,” including “beauty shops, barber  
9 shops, [and] nail salons.” *Id.*, §§ 1, 2.

10 42. Likewise, the Governor’s order limited restaurants and food  
11 establishments to “take-out, drive-through, curbside pickup, [and] delivery” service  
12 and prohibited them from providing dine-in service to any customers. *Id.*, § 3.

13 43. The Governor’s order did not close “Essential Licensed Business[es]”  
14 but rather encouraged them “to continue operation.” *Id.*, § 4.

15 44. In addition, the Governor’s order stated that “[t]he construction,  
16 mining, manufacturing, and infrastructure sector labor force may continue  
17 operations.” *Id.*, § 6.

18 45. In connection with the Governor’s order, the Nevada Department of  
19 Public Safety, Division of Emergency Management, adopted emergency regulations  
20 further defining “essential” and “non-essential” businesses. *See* Emergency  
21 Regulations, March 20, 2020, attached as **Exhibit 5**.

22 46. Businesses not delineated in the Governor’s order or in the emergency  
23 regulations could continue operations if they could “implement social distancing  
24 safeguards for the protection of their employees” and, “[t]o the extent practicable,  
25 provide services without causing members of the Nevada general public to  
26 congregate in a manner contrary to social distancing goals of a minimum of six feet  
27 of separation for more than incidental contact.” Ex. 4, § 8.

1 47. Because neither the Governor’s order nor the emergency regulations  
2 referenced churches or places of worship, they should have been allowed to continue  
3 operations and in-person services.

4 ***The Church Gathering Ban***

5 48. A few days later, Governor Sisolak issued another order—this time  
6 forbidding the “general public” from “gather[ing] in groups of ten or more in any  
7 indoor or outdoor area.” Declaration of Emergency Directive 007, § 1, attached as  
8 **Exhibit 6**.

9 49. The Governor issued his stay-at-home order shortly thereafter. *See*  
10 Declaration of Emergency Directive 010, attached as **Exhibit 7**.

11 50. And even though Governor Sisolak assured faith leaders that he would  
12 not and could not close houses of worship, he imposed a Church Gathering Ban on  
13 April 8, 2020, expressly prohibiting “[p]laces of worship” from “hold[ing] in-person  
14 worship services where ten or more persons may gather.” Declaration of Emergency  
15 Directive 013, § 4, attached as **Exhibit 8**.

16 51. Related guidance from the Governor’s office claimed that “this is not  
17 yet the time to get people together to celebrate their faith” and that “nobody should  
18 be physically attending in-person worship services.” Guidance: Directive 013 (Apr.  
19 8, 2020), attached as **Exhibit 9**.

20 52. The Church Gathering Ban is indefinite, with the applicable order  
21 stating that it will remain in place “for the remainder of the Declaration of  
22 Emergency.” Ex. 8, § 4.

23 ***Secular Exceptions to the Gathering Bans***

24 53. There are numerous secular exceptions to the Governor’s gathering  
25 restrictions.

1           54. For one thing, the Governor’s ban on gatherings of ten or more people  
2 does not apply to “the gathering of persons . . . working at or patronizing Essential  
3 Licensed Businesses or providing essential services to the public.” Ex. 6, § 1.

4           55. Thus, ten or more people could—and still can—gather for an extended  
5 period of time to, among other things, work at or patronize:

- 6           • “Essential infrastructure operations,” including “airport[s]”;
- 7           • “Businesses that ship or deliver goods directly to residences”;
- 8           • “Banks and Financial Institutions”;
- 9           • “Pawnbrokers”;
- 10          • Businesses or entities that provide “social services for economically  
11 disadvantaged individuals, vulnerable populations, or victims of  
12 crime”;
- 13          • “Laundromats and dry cleaners”;
- 14          • “Warehouses and storage facilities”;
- 15          • “Professional or technical services including legal, accounting, tax,  
16 payroll, real estate, and property management services”;
- 17          • “Child care facilities”; and
- 18          • “Newspapers, television, radio, and other media services.”

19 Ex. 5 (NAC 414.XXX(1)).

20           56. What is more, Governor Sisolak’s recent order implementing “Phase  
21 One” of the State’s reopening plan has exempted some “non-essential” businesses  
22 and activities from the ban, allowing even more gatherings of ten or more people for  
23 secular reasons. For example, the Governor’s “Phase One” order allows:

- 24          • All restaurants and food establishments to resume onsite, in-person  
25 dining—up to “50% of the maximum seating capacity under normal  
26 circumstances”;
- 27          • All retail businesses to reopen at 50% capacity;

- 1 • Auto showrooms, furniture showrooms, home furnishing showrooms,
- 2 and appliance showrooms to reopen at 50% capacity;
- 3 • Cannabis dispensaries to resume in-person sales; and
- 4 • Nail care salons, hair salons, and barber shops to reopen.

5 Declaration of Emergency Directive 018, §§ 13, 15, 16, 17, 22, attached as **Exhibit**  
6 **10**; *see also* Ex. 8, § 3.

7 57. By allowing restaurants, food establishments, nail care salons, hair  
8 salons, and barber shops to reopen, the Governor has allowed businesses and  
9 entities to reopen that the State previously determined “promote extended periods  
10 of public interaction where the risk of [Covid-19] transmission is high.” Ex. 4, § 2.

11 58. Yet the Governor has refused to provide a similar accommodation to  
12 churches and other places of worship.

13 59. Nor has the Governor given any indication of when churches could  
14 expect to resume in-person services of ten or more people.

15 60. In fact, on May 14, 2020, nearly 200 hundred churches (including  
16 Plaintiff) sent a letter to Governor Sisolak respectfully asking him to lift the ban on  
17 in-person worship services. At a press conference the next day, and in response to a  
18 question about whether he received and read the letter from the churches, the  
19 Governor first answered no but then said he read “parts of the letter.” He then  
20 doubled down on his prior orders, stating that there would be no effort to amend  
21 phase one to include churches.

22 61. If the Church does not comply with the Governor’s orders or emergency  
23 regulations, it would be “subject to criminal prosecution and civil penalties.” Ex. 4, §  
24 9; Ex. 6, § 5; *see also* Ex. 8, § 11.

25 62. The Nevada Attorney General and “[a]ll law enforcement agencies in  
26 the State of Nevada,” including the Lyon County Sheriff’s Office, are authorized to  
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1 enforce the Governor's orders and the emergency regulations. Ex. 4, § 9; Ex. 6, § 5;  
2 *see also* Ex. 8, § 11.

3 63. Thus, Calvary Chapel Dayton Valley may not hold its planned in-  
4 person services without subjecting itself to criminal and civil penalties, even though  
5 its services would amount to less than 50% of the building's capacity and would  
6 adhere to strict social distancing and sanitation measures.

7 64. But Governor Sisolak does not have the authority under Nevada law to  
8 impose the Church Gathering Ban.

9 65. Rather, the power to investigate and quarantine people with  
10 communicable or infectious diseases is given to health authorities, not the  
11 Governor.

12 66. Without declaratory and injunctive relief, the Church's religious  
13 exercise will continue to be chilled and the Church will continue to suffer violations  
14 of its constitutional rights and irreparable harm.

15 **COUNT I**

16 **Violation of the First Amendment to the U.S. Constitution**

17 **(Free Exercise)**

18 67. Plaintiff incorporates by reference paragraphs 1 through 66.

19 68. Plaintiff's sincerely held religious beliefs teach that the Bible is the  
20 inspired word of God and the sole authority for faith and practice.

21 69. Plaintiff sincerely believes that the Bible teaches the necessity of  
22 gathering together for corporate prayer, worship, and fellowship and that such  
23 assembly is necessary and good for the Church and its members' spiritual growth.

24 70. The Governor's Church Gathering Ban substantially burdens  
25 Plaintiff's religion by prohibiting it from holding in-person church services with ten  
26 or more persons.

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1 71. The Governor's Church Gathering Ban interferes with Plaintiff's  
2 religious autonomy and ability to carry out its religious doctrine, faith, and mission.

3 72. The Governor's Church Gathering Ban targets, discriminates against,  
4 and shows hostility towards churches, including Plaintiff.

5 73. The Governor's Church Gathering Ban is neither neutral nor generally  
6 applicable because it is riddled with exceptions and is based on a system of  
7 individualized assessments.

8 74. Defendants do not have a compelling reason for prohibiting Plaintiff's  
9 in-person church services when attendees can practice adequate social distancing,  
10 especially when compared to the numerous secular activities exempted under the  
11 Governor's orders.

12 75. Defendants have not selected the least restrictive means to further any  
13 purported interest.

14 76. The Church Gathering Ban violates the Free Exercise Clause of the  
15 First Amendment to the United States Constitution, both facially and as applied.

16 77. Without declaratory and injunctive relief, Plaintiff will be irreparably  
17 harmed.

18 **COUNT II**

19 **Violation of the First Amendment to the U.S. Constitution**

20 **(Right to Assemble)**

21 78. Plaintiffs incorporate by reference paragraphs 1 through 66.

22 79. The First Amendment prohibits Defendants from violating Plaintiff's  
23 right to peaceably assemble.

24 80. The Governor's Church Gathering Ban violates Plaintiff's right to  
25 peaceably assemble because the ban on in-person services does not serve any  
26 legitimate, rational, substantial, or compelling governmental interest, especially  
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1 when viewed in light of the numerous secular activities exempted under the  
2 Governor's orders.

3 81. Defendants have alternative, less restrictive means to achieve any  
4 interest that it might have.

5 82. The Church Gathering Ban violates the right to assemble under the  
6 First Amendment to the United States Constitution, both facially and as applied.

7 83. Without declaratory and injunctive relief, Plaintiff will be irreparably  
8 harmed.

9 **COUNT III**

10 **Violation of the First Amendment to the U.S. Constitution**

11 **(Free Speech)**

12 84. Plaintiffs incorporate by reference paragraphs 1 through 66.

13 85. The Governor's Church Gathering Ban violates Plaintiff's freedom of  
14 speech by prohibiting it from engaging in religious speech through its church  
15 services, which occur exclusively on private property.

16 86. The Governor's Church Gathering Ban specifically targets meetings of  
17 ten or more people for the purpose of religious expression, while permitting  
18 meetings of the same or greater size for secular purposes.

19 87. The Governor's Church Gathering Ban is thus is content- and  
20 viewpoint-based in violation of the First Amendment.

21 88. The Governor's Church Gathering Ban gives government officials  
22 unbridled discretion with respect to enforcement of the order and the imposition of  
23 any penalty, making the order susceptible to both content- and viewpoint-based  
24 discrimination.

25 89. Prohibiting or punishing Plaintiff's religious speech does not serve any  
26 legitimate, rational, substantial, or compelling governmental interest.

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1 90. The State also has alternative, less restrictive means to achieve any  
2 interest that it might have.

3 91. The Church Gathering Ban violates the Free Speech Clause of the  
4 First Amendment to the United States Constitution, both facially and as applied.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff respectfully requests that the Court:

7 a. Enter a temporary restraining order, preliminary injunction, and  
8 permanent injunction prohibiting Defendants from enforcing those portions of the  
9 Governor's orders that limit in-person church services to fewer than 10 persons,  
10 thereby allowing Plaintiff and its congregants to resume corporate prayer and  
11 worship while following adequate social distancing and public health guidelines.

12 b. Enter a judgment declaring that those portions of the Governor's  
13 orders that limit in-person church services to fewer than 10 persons violate the U.S.  
14 Constitution's Free Exercise and Right to Assemble Clauses, both facially and as-  
15 applied;

16 c. Award Plaintiff court costs and reasonable attorney's fees; and

17 d. Award such other and further relief as to which Plaintiff may be  
18 entitled.

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1 Respectfully submitted this 22nd day of May 2020.

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3 Kristen K. Waggoner (AZ Bar 032382)\*  
4 Ryan J. Tucker (AZ Bar 034382)\*  
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*\*Pro hac vice application forthcoming*

**VERIFICATION**

I declare under penalty of perjury that the foregoing Verified Complaint has been examined by me and that the factual allegations therein are true to the best of my knowledge, information, and belief.

Dated: May 21, 2020



Pastor Garry Leist  
Calvary Chapel Dayton Valley

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