

1 Jeremiah D. Graham
2 CA Bar No. 313206
3 11956 Bernardo Plaza Dr., Pmb 20968
4 San Diego, CA 92128
5 TELEPHONE: 619.633.5110
6 FASCIMILE: 619.330.4579

7 **UNITED STATES DISTRICT COURT FOR THE**
8 **SOUTHERN DISTRICT OF CALIFORNIA**

9 ABIDING PLACE MINISTRIES, a Church;
10 Plaintiff,

11 v.

12 WILMA J. WOOTEN, Public Health Officer
13 for San Diego County, in her official capacity;
14 the COUNTY OF SAN DIEGO; and DOES 1
15 through 100, inclusive,

16 Defendants.

CASE NO. **'20CV0683 BAS AHG**

**VERIFIED COMPLAINT FOR
TEMPORARY RESTRAINING ORDER,
DECLARATORY RELIEF, INJUNCTIVE
RELIEF AND DAMAGES**

17 **COMPLAINT**

18 Plaintiff Abiding Place Ministries (the “Church”) brings this Free Exercise case against
19 (1) Wilma J. Wooten, in her official capacity as the Public Health Officer of San Diego County;
20 (2) The County of San Diego; and, (3) DOES 1 through 100, inclusive, and alleges as follows:

21 **INTRODUCTION**

22
23 1. Abiding Place Ministries brings this suit to challenge the “Order of the Health
24 Officer and Emergency Regulations” promulgated by the Defendants on April 8, 2020
25 (hereinafter, the “Order,” attached as Exhibit 1), which brings a sweeping ban on Assembly, and
26 especially Religious Assembly, that is unconstitutional on-its-face and as applied, because it is
27 not narrowly tailored and does not permit less restrictive means to achieve the government’s
28 interest without burdening the Plaintiffs’ Constitutional Rights.

1 17. The Church is a small congregation, normally having less than one hundred (100)
2 persons at its Sunday meeting.

3 18. The Church congregation considers itself to be family, and all its members works
4 in close proximity with all other members during the week, being employed in essential sectors
5 on their mission base and around the County.

6 ***The Order***

7 19. In an attempt to “slow the transmission” of COVID-19, “to protect vulnerable
8 members of the public,” “to reduce the number of individuals who will be exposed to COVID-
9 19,” and to “preserve critical and limited healthcare capacity in the county,” the DEFENDANTS
10 have promulgated and sought to enforce the Order against the Church.

11 20. The Order is an administrative order, made by the Public Health Officer, and
12 states that a violation of the Order is subject to fine, imprisonment or both.

13 21. The Order is promulgated under Health and Safety Code §§ 101040, 120175 and
14 120175.5(b), which allow the Public Health Officer to take necessary preventative measure (i.e.
15 abatement, correction, removal, or other protective step against an actual public health hazard),
16 and issue orders to other governmental entities.

17 22. The Order is directed to every person in San Diego County and directs all persons
18 “to remain in their homes or at their places of residence” (subject to broad categories of
19 exemptions) and prohibits all “public or private ‘gatherings’ as defined” in the Order.

20 23. Gatherings are defined as “any event or convening that brings together more than
21 one person in a single room or single indoor or outdoor space at the same time, including people
22 in multiple vehicles in one location.”

23 24. “[E]mployees or customers travelling to or from essential businesses or activities”
24 as defined in the Order, are excepted from the Order.

25 25. Furthermore, family gatherings, gatherings at airports, gatherings on public
26 transportation, and gatherings at “essential business” as defined in the Order, are exempted from
27 the prohibition on “gatherings.”

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1 26. The Order defines essential businesses or activities as “any business or activity...
2 designated by the State Public Health Officer as “Essential Critical Infrastructure Workers” set
3 forth in” the document attached as Exhibit 2.

4 27. Exhibit 2 includes more than one-hundred-and-fifty (150) broad categorical
5 exemptions for business activities that are considered to be essential, including, but not limited
6 to: cannabis retailers, grocery stores, pharmacies, supermarkets, big box stores, banks,
7 convenience stores, pet supply stores, auto supply and repair shops, hardware and home
8 improvement stores, home appliance retailers, the entertainment industry, studios, establishments
9 related to the entertainment industry, laundromats, government facilities, television stations, radio
10 stations, the press, mental health facilities, and psychiatric facilities.

11 28. In addition to the more than one-hundred-and-fifty (150) broad categorical
12 exemptions designated by the State Public Health Officer, the Order also refers to businesses and
13 activities referenced in Executive Order N-33-20, which references sixteen broad and undefined
14 “federal critical infrastructure sectors” identified by the Department of Homeland Security,
15 including a “Commercial Facilities Sector” which the Department of Homeland Security states
16 consists of eight (8) subsectors, including: “Outdoor Events (e.g. theme and amusement parks,
17 fairs, campgrounds, parades)” and “public assembly (e.g. arenas, stadiums, aquariums, zoos,
18 museums, convention centers),” along with “entertainment and media,” “gaming,” “retail,”
19 “sports leagues,” and two other broad categories.

20 29. While exempting these, and other “essential business” from the rule prohibiting
21 gatherings and requiring everyone to stay-at-home, this definition places a limit on the Free
22 Exercise of Religion that is not placed on any other activity, only exempting “[f]aith based
23 services” if they “are provided through streaming or other technology.”

24 30. This limitation is vague and requires some explanation, which was provided in a
25 letter from the Public Health Officer to the Pastor of the Church, which is attached as Exhibit 8
26 and states “...you and your employees who are essential for the operation of equipment necessary
27 to support the streaming of your services may travel to your facility. However, members of your
28 congregation are not allowed to travel to your site. This would be an unlawful gathering, even if

1 they remain in their vehicles as they did last Sunday... If the members of your congregation do
2 not abide my Order, the Sheriff will take actions necessary to enforce the Order.”

3 31. The Order allows gatherings for a multitude of businesses and activities that are
4 not constitutionally protected, only requiring them to enact social distancing and increased
5 sanitation standards. However, it does not allow a Church, which is protected by the First
6 Amendment of the Constitution, to gather, even if it enacts the strictest possible social distancing
7 and the highest possible sanitation standards.

8 *The Church’s Efforts*

9 32. The Church has sought to work with County officials, including the Public Health
10 Officer, and the County Sheriff, to find a way to assemble while advancing the Government’s
11 interests, including enacting social distancing and increased sanitation standards.

12 33. The Church has made three specific proposals in written form, and a number of
13 ancillary proposals, including enforcing social distancing at its services, requiring congregants to
14 wear protective gear (including hazmat suits), assembling in vehicles, assembling by family units
15 spread out over a large area and not permitted to interact with any other family units. The three
16 specific proposals are attached as Exhibits 3, 4 and 5.

17 34. Letters exchanged between the Church and DEFENDANTS related to these efforts
18 are attached as Exhibits 6, 7 and 8.

19 35. The Church has also offered to assemble limited by any guidance or restrictions
20 imposed by County officials.

21 36. The DEFENDANTS have informed the Church that if they assemble, no matter
22 what precautions they take, they will be in violation of the Order, and the Order will be enforced
23 against them, including misdemeanor charges, and possible arrest, fine and imprisonment.

24 37. On April 8, 2020, Counsel for the Church asked if the DEFENDANTS would be
25 willing to meet with the Church to discuss alternatives, and the DEFENDANTS refused to meet
26 with the Church.

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FIRST CLAIM

(First and Fourteenth Amendment – Free Exercise)

38. Plaintiff hereby alleges and incorporates by reference each and every allegation contained in paragraph 1 through 37 of this Complaint as though fully set forth herein.

39. The First Amendment of the United States Constitution provides that “Congress shall make no law... prohibiting the free exercise [of religion].” Under the Fourteenth Amendment, this prohibits every level of state and local government from making a law prohibiting the free exercise of religion.

40. On its face or as applied, the Order violates the First Amendment Free Exercise Clause because it constitutes an overbroad restriction on the Free Exercise of Religion and on the corollary First Amendment right to assembly.

41. On its face or as applied, the Order violates the Free Exercise Clause because it impermissibly places more stringent restrictions on the Church than are placed on secular businesses.

42. On its face or as applied, the Order violates the Free Exercise Clause because it allows a large number of secular gatherings, while prohibiting religious gatherings.

43. On its face or as applied, the Order violates the Free Exercise Clause because it is not narrowly tailored, and it is not the least restrictive means to accomplish a compelling governmental interest.

44. On its face or as applied, the Order violates the Free Exercise Clause because it constitutes a prior restraint on the exercise of the Church’s Free Exercise rights.

45. On its face or as applied, the Order violates the Free Exercise Clause because it exempts a large number of businesses and activities that are not protected by the Constitution, while not providing a sufficiently equivalent exemption for protected First Amendment activity.

46. On its face or as applied, the Order violates the Free Exercise Clause because it prohibits the Free Exercise of Religion, and abridges the right to assembly, and deprives the Church, and its members, of liberty, without due process of law.

1 47. On its face or as applied, the Order violates the Free Exercise Clause because it
2 burdens the Free Exercise of Religion and is vague and overbroad.

3 48. On its face or as applied, the Order violates the Free Exercise Clause because it is
4 not neutral, purporting to treat religious activity differently than every other category of activity.

5 49. On its face or as applied, the Order violates the Free Exercise Clause because it is
6 not generally applicable, prohibiting religious services while exempting substantial comparable
7 conduct that is not religiously motivated.

8 **SECOND CLAIM**

9 **(First and Fourteenth Amendment; California Const., Article I, § 3(a) – Assembly)**

10 50. Plaintiff hereby alleges and incorporates by reference each and every allegation
11 contained in paragraph 1 through 49 of this Complaint as though fully set forth herein.

12 51. The First Amendment of the United States Constitution provides that “Congress
13 shall make no law... abridging... the right of the people peaceably to assemble.

14 52. Article I, Section 3(a) of the California Constitution provides: “The people have
15 the right to... assembly freely to consult for the common good.”

16 53. On its face or as applied, the Order operates as a sweeping abridgement of the right
17 of the people peaceably to assemble, banning all “gatherings” that are not exempted by the Order.

18 54. On its face or as applied, the Order violates the Assembly clause because it does
19 not leave open sufficient alternative channels for the Church to exercise its right to Assemble.

20 55. On its face or as applied, the Order violates the Assembly clause because it treats
21 some assemblies as more essential than others based on arbitrary reasons.

22 56. On its face or as applied, the Order violates the Assembly clause because it treats
23 a wide variety of secular gatherings that are not otherwise protected by the Constitution as more
24 essential than a gathering in exercise of the Church’s Free Exercise right.

25 57. On its face or as applied, the Order violates the Assembly clause because it is not
26 content neutral.

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1 77. The Order is made pursuant to California Health and Safety Code sections 101040,
2 120175, and 120175.5(b), none of which authorize a sweeping abridgement of the rights to freely
3 and peaceably assembly, or to free exercise of religion.

4 78. The Order exceeds the authority provided by to the Public Health Officer by
5 Statute, because it is not a necessary preventative measure (i.e. abatement, correction, removal,
6 or other protective step against an actual public health hazard), and this is an order issued to the
7 general public and not to other governmental entities as allowed by statute.

8 79. Under California Health and Safety Code § 120175.5(b), the Public Health Officer
9 only has authority to promulgate orders directed to “other governmental entities,” and not to the
10 general public.

11 80. The California Health and Safety Code, and the laws of the State of California and
12 of the United States, provides specific instances and procedures for isolation and quarantine, that
13 have not been followed in the promulgation of this order.

14 **SIXTH CLAIM**

15 **(Deprivation of Rights – 42 U.S.C. § 1983)**

16 81. Plaintiff hereby alleges and incorporates by reference each and every allegation
17 contained in paragraph 1 through 80 of this Complaint as though fully set forth herein.

18 82. The DEFENDANTS have, under color of the Order, and or other authorization,
19 subjected the Church to deprivation of rights.

20 83. The DEFENDANTS have deprived the Church of its right to Free Exercise of
21 Religion, its right to unabridged peaceful assembly, its right to assemble freely to consult for the
22 common good, and its due process rights, as set forth in this Complaint.

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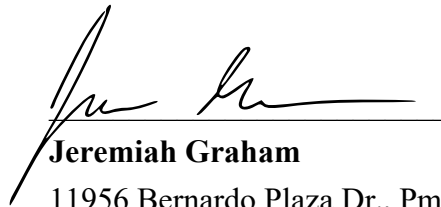
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to enter judgment against Defendant as follows:

1. Granting the Plaintiff’s concurrently filed motion for a temporary restraining order;
2. Declaring enforcement of the Order against the Church to be unlawful and/or a violation of the Church’s rights;
3. Granting an order preliminarily, and thereafter, permanently enjoining DEFENDANTS and DEFENDANTS’ officers, agents, affiliates, servants, successors, employees, and any other persons who are in active concert or participation with any of the foregoing persons from enforcing the Order against Plaintiff;
4. Entry of judgment for Plaintiff and against Defendants for deprivation of rights, including an award of damages in an amount to be determined by the Court;
5. Awarding punitive damages against any Defendant found not to be acting in an official capacity when depriving the Plaintiff of her rights;
6. Awarding Plaintiff’s costs and attorneys’ fees as authorized by Fed. R. Civ. P. 54, 42 U.S.C. § 1988, and/or any other applicable law.
7. Awarding such further relief as the Court deems just and proper.

Respectfully Submitted,



Jeremiah Graham

11956 Bernardo Plaza Dr., Pmb 20968
 San Diego, CA 92128
 T: (619) 633-5110
 jeremiahdgraham@gmail.com
Attorney for Plaintiff
ABIDING PLACE MINISTRIES

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 San Diego, CA