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11 **UNITED STATES DISTRICT COURT FOR**
 12 **THE CENTRAL DISTRICT OF CALIFORNIA**
 13 **SOUTHERN DIVISION**

14 **MONICA SIX, et al.**
 15 Plaintiffs,
 16 v.
 17 **GAVIN NEWSOM, et al.**
 18 Defendants.

Case No.: 8:20-cv-00877-JSL (DFMx)

**APPLICATION FOR
 TEMPORARY RESTRAINING
 ORDER AND FOR ORDER TO
 SHOW CAUSE WHY
 PRELIMINARY INJUNCTION
 SHOULD NOT ISSUE;
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

Judge: Hon. Josephine L. Staton

23 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:**

24 PLEASE TAKE NOTICE that Plaintiffs Monica Six, Derek and Laurie Sue
 25 Medlin, Bailey Batten, and Kenneth Ball, through counsel, will and hereby do apply
 26 to this Court pursuant to Fed. R. Civ. P. 65(b) and Local Rule 65-1 for a temporary
 27 restraining order against Defendants Gavin Newsom, in his official capacity as
 28 Governor of California; Xavier Becerra, in his official capacity as Attorney General of



1 California; Mark Ghilarducci, in his official capacity as Director of the Governor’s
2 Office of Emergency Services; and Sonia Y. Angell, in her official capacity as the
3 State Public Health Officer and Director of the California Department of Public
4 Health (“Defendants”), and for the issuance of an order to show cause why a
5 preliminary injunction should not issue, as follows:

6 1. Defendants, as well as their agents, employees, and successors in office,
7 shall be restrained and enjoined from enforcing, attempting to enforce, threatening to
8 enforce, or otherwise requiring compliance with any prohibition on:

- 9 a. Plaintiff Monica Six’s (“Six”) new wedding plans, provided CDC
10 guidelines on social distancing are followed;
11 b. Plaintiffs Derek and LaurieSue Medlin’s (“the Medlins”) efforts to
12 visit with their 20-year-old special-needs son, provided CDC
13 guidelines on social distancing are followed;
14 c. Plaintiff Bailey Batten’s (“Batten”) college preparation, including
15 studying for college placement exams with her teachers and/or fellow
16 students, provided CDC guidelines on social distancing are followed;
17 d. Plaintiff Kenneth Ball’s (“Ball”) ability to practice and perform with
18 his fellow concert band musicians, provided CDC guidelines on social
19 distancing are followed except for not wearing a mask while actually
20 playing an instrument.

21 2. Defendants, as well as their agents, employees, and successors in office,
22 shall be restrained and enjoined from enforcing, attempting to enforce, threatening to
23 enforce, or otherwise requiring compliance with any prohibition on Plaintiffs’ right to
24 liberty and right to travel.

25 3. Defendants shall show cause, at a time and place to be directed by the
26 Court, why a preliminary injunction should not issue requiring Defendants to act as
27 described above; the temporary restraining order shall remain effective until such time
28 as the Court has ruled on whether a preliminary injunction should issue. Such relief is

1 necessary to prevent Defendants from further violating Plaintiffs’ constitutional rights,
2 pending trial on the merits of Plaintiffs’ claims.

3 This Application is made on the grounds that Plaintiffs are likely to succeed on
4 the merits of this case, they will suffer irreparable harm without injunctive relief, the
5 balance of equities tips sharply in their favor, and the relief sought is in the public
6 interest.

7 Good cause exists to issue the requested Order to preserve Plaintiffs’ rights
8 under the Constitution of the United States and the Constitution of the State of
9 California, and to avoid irreparable harm to those rights. This Application is supported
10 by the accompanying Memorandum of Points and Authorities, by Plaintiffs’
11 Complaint, and all exhibits attached thereto, by the declarations of Plaintiffs and their
12 counsel, Mark P. Meuser, and by such further argument and evidence that may be
13 adduced at any hearing on this matter or of which the Court may take judicial notice.

14 The Complaint in this action was filed on May 8, 2020. All papers relating to
15 this Application will be delivered by email to counsel for the California Attorney
16 General by 11:00 a.m. on May 13, 2020. As reflected in the accompanying declaration
17 of Mark P. Meuser, Plaintiffs have notified the Office of the California Attorney
18 General of Plaintiffs’ intention to file this Application and to seek a temporary
19 restraining order of the nature described above.

20 Plaintiffs request that the Court waive any bond requirement because enjoining
21 Defendants from unconstitutionally prohibiting Plaintiffs’ fundamental rights to
22 travel, liberty, and equal protection will not financially affect Defendants.

23 Respectfully submitted,

24 Date: May 15, 2020

DHILLON LAW GROUP INC.

25 By: /s/ Harmeet K. Dhillon
26 HARMEET K. DHILLON
27 MARK P. MEUSER
28 GREGORY R. MICHAEL

Attorneys for Plaintiffs

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INTRODUCTION..... 1

RELEVANT FACTUAL BACKGROUND 2

LEGAL STANDARD 6

ARGUMENT 8

I. PLAINTIFFS ARE ENTITLED TO TEMPORARY AND PRELIMINARY INJUNCTIVE RELIEF..... 8

 A. Plaintiffs Not Only Raised Serious Questions Going to the Merits, But There Is a Strong Likelihood They Will Succeed in Proving Their Claims on Multiple Constitutional Grounds..... 8

 1. The State Order Violates the Plaintiffs’ Right to Travel (Freedom of Movement) Drawn from the Fifth Amendment’s Due Process Clause. 8

 2. The State Order Violates the Plaintiffs’ Right to Liberty Drawn from the Fifth Amendment’s Due Process Clause..... 11

 3. The State Order Violates the Plaintiffs’ Fourteenth Amendment Rights to Equal Protection..... 13

 4. The State Order Violates the Plaintiffs’ Fundamental Liberties Drawn from the Fifth and Fourteenth Amendments. 14

 5. The State Order Violates the Plaintiffs’ Right to Liberty Drawn from Art. 1, Section 1 of the California Constitution. 16

 B. Plaintiffs Will Suffer Irreparable Injury if Preliminary Relief is Not Granted..... 17

 C. The Balance of Hardships Not Only Favors the Plaintiffs, it Tips Sharply in Their Favor..... 18

 D. The Plaintiffs Seek Relief that Advances the Public Interest..... 20

II. THE COURT SHOULD DISPENSE WITH ANY BOND REQUIREMENT. 20

CONCLUSION 21



TABLE OF AUTHORITIES

Constitutional Provisions

U.S. Const. amend. XIV 13, 14

California Constitution

Cal. Const. art. 1, § 1..... 16

Cases

All. for Wild Rockies v. Cottrell, 632 F.3d 1127 (9th Cir. 2011)..... 6

Bible Club v. Placentia-Yorba Linda School Dist., 573 F. Supp. 2d 1291 (C.D. Cal. 2008)..... 21

California v. Trump, 407 F.Supp.3d 869, 892 (N.D. Cal. 2019) 7

Carroll v. United States, 267 U.S. 132 (1925)..... 7

College Republicans at San Francisco State University v. Reed, 523 F. Supp. 2d 1005 (N.D. Cal. 2007) 18

Cross Culture Christian Center v. Newsom, 2:20-cv-00832 (D.C. E.D. 5/5/20) 7

Cruzan v. Director, Mo. Dep’t. of Health, 497 U. S. 261 (1990) 12

Doctor John’s, Inc. v. Sioux City, 305 F. Supp. 2d 1022 (N.D. Iowa 2004) 21

Dunn v. Blumstein, 405 U.S. 330 (1972) 9

Earth Island Inst. v. United States Forest Serv., 351 F.3d 1291 (9th Cir. 2003)..... 6

Elrod v. Burns, 427 U.S. 347 (1976)..... 17

Engquist v. Oregon Dept. of Agriculture, 553 U.S. 591 (2008) 13

Ex parte Arta, 52 Cal. App. 380 (1921)..... 17

Ex parte Martin, 83 Cal. App. 2d 164 (1948)..... 15, 16

Ex parte Milligan, 71 U.S. 2 (1866)..... 1

Gayle v. Governor of Guam, 414 F. Supp. 636 (D. Guam 1976) 7

Gish v. Newsom, 5:20-cv-00755 (D.C. C.D 4/23/20) 7



1 *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415
 2 U.S. 423 (1974). 6
 3 *Griswold v. Connecticut*, 381 U. S. 479 (1965) 12
 4 *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004)..... 12
 5 *Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900)..... 9, 16, 17
 6 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003)..... 20
 7 *Kent v. Dulles*, 357 U.S. 116 (1958) 8
 8 *Loving v. Virginia*, 388 U. S. 1 (1967)..... 11
 9 *Macias v. State of California*, 10 Cal.4th 844 (Cal. 1995)..... 15
 10 *Maher v. Roe*, 432 U.S. 464 (1977) 9
 11 *Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012)..... 17
 12 *Memorial Hospital v. Maricopa Cnty.*, 415 U.S. 250 (1974) 9
 13 *Meyer v. Nebraska*, 262 U. S. 390 (1923)..... 12
 14 *People v. McKelvy*, 23 Cal.App.3d 1027 (1972)..... 7
 15 *Pierce v. Society of Sisters*, 268 U. S. 510 (1925) 12
 16 *Plyler v. Doe*, 457 U.S. 202, 216 (1982)..... 13, 15
 17 *Rent-A-Center, Inc. v. Canyon Television and Appliance Rental, Inc.*, 944 F.2d 597
 18 (9th Cir. 1991) 17
 19 *Ross v. Moffitt*, 417 U.S. 600 (1974)..... 13
 20 *Saenz v. Roe*, 526 U.S. 489 (1999)..... 13
 21 *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535 (1942)..... 12
 22 *Stuhlberg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832 (9th Cir.
 23 2001)..... 6
 24 *Washington v. Glucksberg*, 521 U.S. 702 (1997)..... 11, 12
 25 *Willowbrook v. Olech*, 528 U.S. 562 (2000)..... 13
 26 *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008). 6



1 *Wong Wai v. Williamson*, 103 F. 1 (C.C. Cal. 1900) 9, 16, 17

2 **Statutes**

3 42 U.S.C. § 1983 passim

4 Cal. Gov’t Code § 8550..... 15

5 Cal. Gov’t Code § 8634..... 15

6 Cal. Health and Safety Code § 120225 15

7 **Rules**

8 Fed. R. Civ. P. 65. 6

9 Fed. R. Civ. P. 65(c)..... 20

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11
12
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 “The Constitution of the United States is a law for rulers and people,
3 equally in war and in peace, and covers with the shield of its protection
4 all classes of men, at all times, and under all circumstances. No doctrine,
5 involving more pernicious consequences, was ever invented by the wit of
6 man than that any of its provisions can be suspended during any of the
7 great exigencies of government. Such a doctrine leads directly to anarchy
8 or despotism, but the theory of necessity on which it is based is false; for
9 the government, within the Constitution, has all the powers granted to it,
10 which are necessary to preserve its existence[.]”

11 Justice David Davis, *Ex parte Milligan*, 71 U.S. 2, 76 (1866).

12 **INTRODUCTION**

13 Deprivation of fundamental liberties is not an appropriate societal vaccine for a
14 pandemic. The United States and California Constitutions do not contain exceptions
15 for health crises, and neither may California’s executive branch ignore fundamental
16 constitutional norms on the basis of a health emergency. In an overreaching response
17 to the coronavirus pandemic, Defendants have criminalized wedding ceremonies,
18 familial visits to special needs children, preparational studies for higher education, and
19 group musical expression across California. While protecting the health and safety of
20 the public during this crisis is critical to everyone—including Plaintiffs—the
21 Governor may not abrogate the rights and liberties enshrined by the U.S. and
22 California Constitutions to accomplish this through overbroad decrees.

23 Despite declarations of national, state, and local emergencies surrounding the
24 coronavirus outbreak, Defendants have decided to allow “essential” businesses (as
25 determined by Defendants on an *ad hoc* basis) to continue operations provided that
26 certain social distancing guidelines are followed. For example, Defendants permit
27 marijuana dispensaries, take-out restaurants, hardware stores, and laundromats to
28

1 continue operations, subject to these restrictions. Statewide, the news media have been
2 permitted to continue operations since the outset of the stay-at-home orders.

3 Gatherings to celebrate a wedding, familial visits to children, preparational
4 studies for higher education, and musical expression, however, have not made
5 Defendants’ cut, even if social distancing protocols are scrupulously followed.
6 Instead, the State Order facially and as-applied bans these activities. The United States
7 and California Constitutions do not tolerate these total and arbitrary restrictions on
8 fundamental rights while less restrictive measures are available and are being allowed
9 for entities the government deems “essential.”

10 To be sure, the decision as to when to reopen the economy is perhaps one of the
11 most consequential decisions governmental bodies will make for years to come.
12 Politicians, health officials, and commentators disagree as to when the reopening
13 should occur. However, to eliminate many citizens’ fundamental rights while
14 selectively protecting the rights of “essential” businesses, violates numerous
15 constitutional protections.

16 Defendants’ actions violate the Fifth and Fourteenth Amendments of the U.S.
17 Constitution and the corresponding articles of the California Constitution. This Court
18 should immediately enjoin Defendants from further violating these fundamental
19 liberties.

20 **RELEVANT FACTUAL BACKGROUND**

21 On March 13, 2020, President Donald J. Trump proclaimed a National State of
22 Emergency as a result of the threat of the emergence of a novel coronavirus, COVID-
23 19. Complaint [Doc. #1] (“Compl.”), ¶ 21. Since the initial outbreak of COVID-19 in
24 the United States in February and March 2020, the federal government’s projections
25 of the anticipated national death toll related to the virus has decreased substantially, by
26 an order of magnitude. Compl., ¶ 22. Despite such revisions, Defendants have
27 increasingly restricted or banned Plaintiffs’ engagement in constitutionally-protected
28 activities. *Id.*

1 On March 4, 2020, California Governor Gavin Newsom (“Newsom”)
2 proclaimed a State of Emergency as a result of the threat of COVID-19. Compl., ¶ 23.
3 On March 19, 2020, Newsom issued Executive Order N-33-20 (the “State Order”) in
4 which he ordered “all residents are directed to immediately heed the current State
5 public health directive[.]” of that same date. Compl., ¶ 24. The state public health
6 directive requires “all individuals living in the State of California to stay home or at
7 their place of residence except as needed to maintain continuity of operations of the
8 federal critical infrastructure sectors ...”. Compl., ¶ 25. The public health directive
9 provides that its directives “shall stay in effect until further notice.” Compl., ¶ 26.

10 None of the powers explicitly granted under the California State Emergency
11 Services Act allow Newsom to sequester every Californian within their homes.
12 Compl., ¶ 27.

13 On or about March 22, 2020, the California Public Health Officer designated a
14 list of “Essential Critical Infrastructure Workers.” Compl., ¶ 31. The directive does
15 not designate individuals exercising their fundamental right to travel or right to liberty
16 as “Essential Critical Infrastructure Workers.” Yet, it allows businesses that violate
17 federal law—such as marijuana retail stores—to operate. Compl., ¶¶ 33-34.

18 The purpose of the State Order was to “bend the curve” and to put the
19 coronavirus “in the dustbin of history.” Compl., ¶ 35. In making the State Order,
20 Newsom predicted that 56 percent of all Californians—or 25.5 million—would
21 contract the coronavirus over the eight-week period from when the State Order was
22 imposed on March 19 through May 14. Compl., ¶ 36. He also predicted a 20 percent
23 hospitalization rate of those infected. Compl., ¶ 38. Even though 20 percent of 25.5
24 million is approximately 5.1 million, he only projected a shortfall of 19,543 hospital
25 beds over the state’s capacity of approximately 78,000 beds. *Id.* Adding California’s
26 surge capacity of 10,207 beds, the state still faced a shortfall of 9,336 beds. *Id.* These
27 numbers did not account for mitigation efforts by the public at large. Compl., ¶ 41.

28

1 Over seven weeks after the State Order was imposed, none of Newsom’s
2 predictions are remotely close to reality. Newsom now admits that the curve has been
3 bent and “arguably flattened[.]” Compl., ¶ 43. But now the goals have changed.

4 As of May 5, 2020, Californian hospitals were reporting 6,096 current
5 hospitalizations for confirmed coronavirus *and* suspected coronavirus cases. Compl.,
6 ¶¶ 44-45. This accounts for 98 percent of hospitals, so these numbers are essentially
7 comprehensive. Compl., ¶ 46. This represents only 7% of the state’s capacity.

8 This number dropped 117 over the past week. As of May 13, 2020, Californian
9 hospitals are now reporting only 5,979 current hospitalizations for confirmed
10 coronavirus *and* suspected coronavirus cases combined.¹ California’s hospitalization
11 numbers dropping is all the more reason to scrutinize the State Order even closer.

12 This is a far cry from Newsom’s prediction of a 20% hospitalization rate.
13 Compl., ¶ 47. Without minimizing its significance, 5,979 current hospitalizations
14 shows that Newsom has relied on grossly faulty numbers since the imposition of the
15 State Order. *Id.* Unfortunately, these falling numbers are not widely reported.

16 A variety of studies are showing that infection rates and hospitalization rates
17 around the country and in California are much lower than originally predicted.
18 Compl., ¶¶ 52-55. Other studies challenge the fundamental assumption that a stay-at-
19 home order like the State Order has any effect on the coronavirus, except to make it
20 worse. Compl., ¶¶ 56-59.

21 In fact, on May 13, 2020, the California Globe reported that it made a Public
22 Records Request with the California Health and Human Services Agency which asked
23 for documents relating to the shutdown orders. The California Globe reported that it
24 was:

25 seeking documents, facts, opinions, data, and analysis, that have been
26 used to guide or inform on the public health justification for the latest of

27 _____
28 ¹ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>
(last visited May 15, 2020).

1 Gov. Gavin Newsom’s updates on California’s re-opening policy, as well
2 as state or local social distancing measures to prevent Covid-19 ...²

3 The California Health and Human Services Agency replied,

4 CHHS has determined it possesses no documents responsive to your
5 request. By providing you with this information, CHH considers your
6 Public Records Act request fulfilled, and the file is now closed.³

7 Therefore, it appears that the State of California may not be using *any* scientific data
8 to justify its deprivations of Plaintiffs’ fundamental constitutional rights.

9 The State Order prohibits Plaintiffs from exercising their right to travel and
10 their right to liberty. It has already forced Plaintiff Monica Six (“Six”) to reschedule
11 her wedding ceremony while rendering useless all the personalized wedding
12 decorations and favors she purchased. Compl., ¶ 11. It removes any guarantee of
13 whether she will be able to get married in front of her friends and family this year. *Id.*

14 The State Order prohibits Plaintiffs Derek and LaurieSue Medlin (“the
15 Medlins”) from visiting their 20-year-old special-needs son. Compl., ¶ 12. It has
16 already caused their son to have two mental meltdowns. *Id.* It has also greatly
17 increased the likelihood that he will harm himself like he has in the past, because he is
18 deprived from seeing his parents. *Id.*

19 The State Order prohibits Plaintiff Bailey Batten (“Batten”) from practicing for
20 advanced placement college exams with her peers and friends even if social distancing
21 protocols are met. Compl., ¶ 13. Without being able to properly study for advanced
22 placement exams, she may completely miss out on opportunities that she would have
23 enjoyed if the State Order had not been imposed. *Id.* It has already deprived her of her
24 high school graduation ceremony, prom, and her soccer banquet. *Id.*

25
26 _____
27 ² [https://californiaglobe.com/section-2/california-health-and-human-services-agency-](https://californiaglobe.com/section-2/california-health-and-human-services-agency-denies-it-has-documents-to-justify-lockdown-or-re-opening-policy/)
28 [denies-it-has-documents-to-justify-lockdown-or-re-opening-policy/](https://californiaglobe.com/section-2/california-health-and-human-services-agency-denies-it-has-documents-to-justify-lockdown-or-re-opening-policy/) (last visited on
May 14, 2020).

³ *Id.*

1 It prohibits Plaintiff Kenneth Ball (“Ball”) from performing with his concert
2 band or even practicing his instrument with fellow musicians. Compl., ¶ 14.

3 LEGAL STANDARD

4 A temporary restraining order preserves the status quo and prevents irreparable
5 harm until a hearing may be held on a preliminary injunction application. *See Granny*
6 *Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415 U.S. 423,
7 439 (1974). A temporary restraining order may be issued without providing the
8 opposing party an opportunity to be heard where “specific facts in an affidavit or a
9 verified complaint clearly show that immediate and irreparable injury, loss, or damage
10 will result to the movant before the adverse party can be heard in opposition,” and
11 “the movant’s attorney certifies in writing any efforts made to give notice and the
12 reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1).

13 The standards for issuing a temporary restraining order and a preliminary
14 injunction are the same. *See, e.g., Stuhlberg Int’l Sales Co., Inc. v. John D. Brush &*
15 *Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). The Ninth Circuit has established two
16 sets of criteria for evaluating a request for injunctive relief. *Earth Island Inst. v.*
17 *United States Forest Serv.*, 351 F.3d 1291, 1297 (9th Cir. 2003). Under the
18 “traditional” criteria, a plaintiff must show (1) a strong likelihood of success on the
19 merits, (2) a likelihood of irreparable injury to plaintiff if preliminary relief is not
20 granted, (3) a balance of hardships favoring the plaintiff, and (4) advancement of the
21 public interest. *See, e.g., Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20
22 (2008).

23 Alternatively, a temporary restraining order or preliminary injunction may be
24 appropriate when a movant raises “serious questions going to the merits” and the
25 “balance of hardships tips sharply in the plaintiff’s favor,” provided that the plaintiff is
26 able to show there is a likelihood of irreparable injury and that the injunction is in the
27 public interest. *All. for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

28

1 Although the California Emergency Services Act provides the Governor with
2 the power to unilaterally promulgate regulations in an emergency, such regulations
3 must at least be reasonable and are limited in duration⁴. Because such regulations may
4 severely impinge the civil liberties of the populace and curb an individual's freedom,
5 only a clear showing of emergent necessity may justify their imposition. Freedom of
6 movement is a fundamental right which may be restricted only where necessary to
7 further the most compelling state interest, and such regulations must be narrowly
8 circumscribed. *Gayle v. Governor of Guam*, 414 F. Supp. 636, 638-39 (D. Guam
9 1976) (citing *Carroll v. United States*, 267 U.S. 132 (1925); *People v. McKelvy*, 23
10 Cal.App.3d 1027 (1972).

11 A troubling dichotomy has emerged in California federal courts during the
12 COVID-19 pandemic. Some courts have given broad deference to the state executive
13 branch, even when it infringes upon fundamental rights, such as by the State Order.⁵
14 At the same time, other courts have closely scrutinized the constitutionality of the
15 exercise of federal executive power, striking down many executive actions taken by
16 President Trump. For example, in *California v. Trump*, 407 F.Supp.3d 869, 892 (N.D.
17 Cal. 2019), the court gave a close reading to 10 U.S.C. § 2801(a)'s use of the term
18 "military installation" to bar President Trump's use of military funds for a border wall
19 despite acknowledging that he was in the right in his declaration of a state of
20 emergency. California's federal courts have treated claims challenging executive
21 actions, including under emergency authority, very differently depending upon which
22 executive is claiming broad deference.

23 Plaintiffs may satisfy either standard, as shown below.

24 ///

27 ⁴ Cal Gov. Code § 8627.5.

28 ⁵ *Gish v. Newsom*, 5:20-cv-00755, Doc. #51 (D.C. C.D 4/23/20); *Cross Culture
Christian Center v. Newsom*, 2:20-cv-00832, Doc. #23 (D.C. E.D. 5/5/20).

1 **ARGUMENT**

2 On Wednesday, May 13, the Supreme Court of Wisconsin ruled that
3 Wisconsin’s Emergency Order 28 mandating shelter in place was unenforceable. (*See*
4 Exhibit 1, Meuser Decl.) In that case, the court found that the Secretary of the
5 Wisconsin Department of Health Services did not follow proper rule making
6 procedures. Wisconsin law requires “a properly promulgated rule before criminal
7 sanctions could follow violations.” *Id.* p. 21, ¶37.

8 In this case, Plaintiffs are challenging the constitutionality of California’s stay-
9 at-home orders. California’s stay-at-home orders similarly criminalize violations of
10 the State Orders.

11 **I. PLAINTIFFS ARE ENTITLED TO TEMPORARY AND PRELIMINARY**
12 **INJUNCTIVE RELIEF.**

13 **A. Plaintiffs Not Only Raised Serious Questions Going to the Merits,**
14 **But There Is a Strong Likelihood They Will Succeed in Proving**
15 **Their Claims on Multiple Constitutional Grounds.**

16 **1. The State Order Violates the Plaintiffs’ Right to Travel (Freedom of**
17 **Movement) Drawn from the Fifth Amendment’s Due Process**
18 **Clause.**

19 Plaintiffs’ first cause of action asserts facial and as-applied challenges to the
20 State Order pursuant to 42 U.S.C. § 1983. The right to travel is a fundamental right of
21 all citizens drawn from the due process clause of the Fifth Amendment. *Kent v.*
22 *Dulles*, 357 U.S. 116, 127 (1958). It includes both interstate and intrastate travel. *Id.*,
23 357 U.S. at 126. It includes the travel required for employment. *Id.* “It may be as close
24 to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom
25 of movement is basic in our scheme of values.” *Id.* (citations omitted). Freedom of
26 movement “is important for job and business opportunities—for cultural, political,
27 and social activities—for all the commingling which gregarious man enjoys.”
28 *Aptheker v. Secretary of State*, 378 U.S. 500, 519-520 (1964) (Douglas, J.,
concurring). It “is the very essence of our free society[.]” *Id.* If “curtailed, all other

1 rights suffer[.]” *Id.* Unless war is declared or a person is subject to criminal
 2 prosecution, there is no constitutional “way to keep a citizen from traveling within or
 3 without the country[.]” *Id.* It “is an unconditional personal right, a right whose
 4 exercise may not be conditioned.” *Dunn v. Blumstein*, 405 U.S. 330, 341
 5 (1972)(internal quotations, citations omitted).

6 Any abridgment of the right to travel invokes the strict scrutiny test. *Dunn*, 405
 7 U.S. at 339. It does not matter if the State Order actually deters any travel at all—the
 8 mere reality that it “penalize[s] the exercise of th[e] right to travel” triggers strict
 9 scrutiny. *Id.*, 405 U.S. at 340 (parentheses omitted); *Maher v. Roe*, 432 U.S. 464, 488
 10 (1977)(Brennan, J., dissenting). Under strict scrutiny review, the law may be justified
 11 only if it furthers a compelling government purpose, and there must be no less
 12 restrictive alternative available. *Memorial Hospital v. Maricopa Cnty.*, 415 U.S. 250,
 13 257-258 (1974).

14 Furthermore, recognizing the importance of Freedom of Movement for both
 15 work and social activities, California courts have found that there was no compelling
 16 governmental reason to quarantine 12 blocks of San Francisco Chinatown because of
 17 nine (9) deaths due to bubonic plague. *See Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal.
 18 1900), and *Wong Wai v. Williamson*, 103 F. 1 (C.C. Cal. 1900). This was one death
 19 for every 1,666 inhabitants of Chinatown. Compl., ¶ 156.

20 As of May 15, 2020, there have been 3,032 deaths allegedly related to the
 21 coronavirus.⁶ Based on an approximate California population of 39,512,223 (Compl.,
 22 ¶ 157), this is approximately one death for every 13,031 Californians.

23 These numbers, while concerning, do not comprise a compelling governmental
 24 interest in shutting down the entire state of California any more than there is a
 25 compelling governmental reason to keep marijuana retail stores, uniform
 26

27 _____
 28 ⁶ <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>
 (last visited May 15, 2020).

1 manufacturers, animal diagnostic laboratories, energy commodity traders, mass
 2 transit, printer manufacturers, dry cleaners, bicycle repair shops, hotels (but only for
 3 COVID-19 workers), and the entertainment industry open.⁷ If mass transit is allowed
 4 to function with no specific requirements,⁸ then wedding venues should be allowed to
 5 remain open, too. If the entertainment industry is allowed to operate as long as it
 6 “follow[s] covid-19 public health guidance around physical distancing[,]” there can be
 7 no compelling reason why a wedding venue is not permitted to do the same.⁹ If car
 8 dealerships may stay open if they “adher[e to] public health guidance issued by
 9 CDPH[,]” then there is no compelling reason why a wedding venue is not permitted to
 10 do the same.¹⁰

11 Each of these examples may be applied with equal or greater force to the
 12 situations presented by the other Plaintiffs. There is no governmental interest at all—
 13 much less a compelling one—for the State Order to restrict the Medlins from visiting
 14 their son. There is no compelling governmental interest in preventing Batten from
 15 studying safely with her fellow classmates or teachers in order to prepare for her
 16 college classes this fall. There is no compelling governmental interest in keeping Ball
 17 from practicing with his fellow musicians or performing for open-air events if they
 18 choose.

19 Defendants may argue that shutting down Six’s wedding venue, restricting the
 20 Medlins’ visitation, prohibiting Batten’s study plans, and barring Ball’s practices and
 21 performances are all done to promote public health and safety and prevent the spread
 22 of the coronavirus. This begs the question of why similar and less-important industries
 23 are permitted to operate while the Plaintiffs are not. Bicycle repair is not a
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 26 ⁷ See, e.g., <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf> (last
 27 visited May 12, 2020).

28 ⁸ *Id.* at 10-11.

⁹ *Id.* at 23.

¹⁰ *Id.* at 11.

1 fundamental right like the right to marry. Energy commodity trading is not a
 2 fundamental right like the right to be free to visit one's family. Getting your clothes
 3 dry cleaned is not a fundamental right like the right like the right to associate with
 4 others in educational pursuits. Buying a printer is not a fundamental right like the right
 5 to practice and perform music. Defendants cannot show that the ban on Plaintiffs'
 6 proposed activities furthers any compelling governmental interest.

7 Defendants cannot show that the State Order is the least restrictive means of
 8 accomplishing the state's objectives. While it bans the Plaintiffs' conduct, it allows
 9 similar or less-important activities under the guise of calling them "essential." While
 10 Plaintiffs do not concede that they should follow CDC guidelines absent a showing of
 11 proof by the government, each of the Plaintiffs could perform his or her proposed
 12 activity safely while following them, but are denied that right by the state.

13 Newsom's dire predictions continue to remain a mirage. The time has come for
 14 judicial scrutiny of his actions. Each of these considerations show that Plaintiffs have
 15 not only raised serious questions going to the merits of their claims, they have shown
 16 that they have a substantial likelihood of success on their right to travel claim.

17 Plaintiffs are entitled to temporary and preliminary injunctive relief.

18 **2. The State Order Violates the Plaintiffs' Right to Liberty Drawn**
 19 **from the Fifth Amendment's Due Process Clause.**

20 Plaintiffs' second cause of action asserts facial and as-applied challenges to the
 21 State Order pursuant to 42 U.S.C. § 1983. The right to liberty is a fundamental right
 22 and may not be infringed upon "no matter what process is provided, unless the
 23 infringement is narrowly tailored to serve a compelling state interest." *Washington v.*
 24 *Glucksberg*, 521 U.S. 702, 721 (1997) (internal quotations omitted).

25 The U.S. Constitution protects—in addition to all the enumerated freedoms in
 26 the Bill of Rights—a wide array of liberties including the right to marry,¹¹ to have
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¹¹ *Loving v. Virginia*, 388 U. S. 1 (1967).

1 children,¹² to direct your children’s education,¹³ to privacy,¹⁴ and to refuse unwanted
2 medical treatment.¹⁵ *Id.* 521 U.S. at 720. Freedom from confinement and the right to
3 freely come and go from one’s home are included in these protections. *Hamdi v.*
4 *Rumsfeld*, 542 U.S. 507, 531 (2004); *Aptheker*, 378 U.S. at 520 (Douglas, J.,
5 concurring).

6 Plaintiffs incorporate their arguments above regarding the right to travel here.
7 Newsom cannot show a compelling state interest for the State Order, nor that it was
8 narrowly tailored to serve this interest, nor that there was no less restrictive way to
9 accomplish it.

10 Shutting down Six’s wedding venue, restricting the Medlins’ visitation,
11 prohibiting Batten’s study plans, and barring Ball’s practices and performances – none
12 of these actions is the least restrictive way to promote public health and safety and
13 prevent the spread of the coronavirus. If similar and less-important industries are
14 permitted to operate while the Plaintiffs are not, then completely shutting down the
15 Plaintiffs’ activities is neither necessary nor the least restrictive means to accomplish
16 public health or safety. Bicycle repair, energy commodity trading, dry cleaning
17 clothes, and buying a printer are not fundamental rights yet they are permitted.
18 Newsom cannot show that the ban on Plaintiffs’ proposed activities furthers any
19 compelling governmental interest.

20 Each of these considerations show that Plaintiffs have not only raised serious
21 questions going to the merits of their claims, they have shown that they have a
22 substantial likelihood of success on their right to liberty claim.

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26 ¹² *Skinner v. Oklahoma ex rel. Williamson*, 316 U. S. 535 (1942).

27 ¹³ *Meyer v. Nebraska*, 262 U. S. 390 (1923); *Pierce v. Society of Sisters*, 268 U. S. 510
(1925).

28 ¹⁴ *Griswold v. Connecticut*, 381 U. S. 479 (1965).

¹⁵ *Cruzan v. Director, Mo. Dep’t. of Health*, 497 U. S. 261 (1990).

1 **3. The State Order Violates the Plaintiffs’ Fourteenth Amendment**
 2 **Rights to Equal Protection.**

3 Plaintiffs’ third cause of action asserts facial and as-applied challenges to the
 4 State Order pursuant to 42 U.S.C. § 1983. No state may “deny to any person within its
 5 jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. Equal
 6 protection violations exist when “governmental classifications ... affect some groups
 7 of citizens differently than others.” *Engquist v. Oregon Dept. of Agriculture*, 553 U.S.
 8 591, 128 S.Ct. 2146, 2152 (2008) (citations omitted). Equal protection even applies to
 9 a “class of one.” *Willowbrook v. Olech*, 528 U.S. 562, 563 (2000).

10 The touchstone of this analysis is whether a state creates disparity “between
 11 classes of individuals whose situations are arguably indistinguishable.” *Ross v.*
 12 *Moffitt*, 417 U.S. 600, 609, 94 S.Ct. 2437 (1974). Any classification that impairs a
 13 fundamental right is “presumptively invidious[.]” *Plyler v. Doe*, 457 U.S. 202, 216,
 14 102 S.Ct. 2382 (1982) (holding that a state’s denial of free public education to
 15 undocumented children was unconstitutional).

16 Any classification imposing a penalty on the exercise of the right to travel or
 17 right to liberty is a violation of the equal protection clause unless it is “necessary to
 18 promote a *compelling* governmental interest[.]” (*Saenz v. Roe*, 526 U.S. 489, 499
 19 (1999)(italics in original)), and “has been precisely tailored to serve” this interest
 20 (*Plyler*, 457 U.S. at 217).

21 Newsom’s arbitrary, unilateral categorization of some activities as “essential”
 22 and others as “non-essential” has shut down Six’s wedding venue, barred the Medlins’
 23 visits to their son, canceled Batten’s school activities, and prohibited Ball’s concert
 24 band practices and performances while leaving other businesses open—such as
 25 marijuana retail stores, uniform manufacturers, animal diagnostic laboratories, mass
 26 transit, printer manufacturers, hotels (but only for COVID-19 workers and the
 27 homeless), and the entertainment industry—several of which have no connection to
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1 fighting the COVID-19 emergency.¹⁶ Plaintiffs are similarly situated to many of the
2 businesses listed as “essential.”

3 This disparate classification and treatment violates Plaintiffs’ fundamental
4 rights, and is presumptively invidious. This is reinforced by the State Order’s blessing
5 on a business that violates federal law—marijuana retail stores—while restricting
6 Plaintiffs’ lawful pursuits. Compl., ¶ 33. Allowing a politically-connected business
7 that violates federal law to continue operating during the pandemic while shutting
8 down other businesses and activities that follow the law violates the core principles of
9 equal protection.

10 There is no compelling reason to shut down wedding venues, adult care
11 facilities, and concert bands when retail stores are allowed to remain open. Compl., ¶
12 123. There is not even a rational basis for this. Compl., ¶ 125. The ability to exercise
13 fundamental rights to travel and liberty should not be dependent on the size of your
14 lobbying budget. Defendants bear the burden of defending their liberty-restricting
15 choices, which on their face are irrational and indefensible.

16 **4. The State Order Violates the Plaintiffs’ Fundamental Liberties**
17 **Drawn from the Fifth and Fourteenth Amendments.**

18 Plaintiffs’ fourth cause of action asserts as-applied challenges to the State Order
19 pursuant to 42 U.S.C. § 1983. Not only does the State Order violate Plaintiffs’
20 fundamental liberties under the U.S. Constitution, it also violates Plaintiffs’ due
21 process and equal protection rights drawn from California law.

22 The Fourteenth Amendment to the United States Constitution provides that
23 “[n]o State ... deny to any person within its jurisdiction the equal protection of the
24 laws.” Any classification that impairs a fundamental right is “presumptively
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28 ¹⁶ <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf> (last visited
May 12, 2020).

1 invidious[.]” *Plyler*, 457 U.S. at 216. Many of Californians’ fundamental rights are
2 contained in the California Emergency Services Act. Cal. Gov’t Code § 8550, *et seq.*

3 Newsom has no authority to suspend substantive statutes, the U.S. Constitution,
4 or the right of citizens to exercise their fundamental rights. Compl., ¶ 133. The State
5 Order denies due process by usurping the power of local health officials to declare
6 quarantines without providing any process at all. Cal. Health and Safety Code §
7 120225; Cal. Gov’t Code § 8634. Compl., ¶ 135. The State Order provides for no
8 opportunity for a hearing; no appeal; no reconsideration. *Id.*

9 If a local official declared a quarantine, then certain procedures must be
10 followed. *Ex parte Martin*, 83 Cal. App. 2d 164 (1948). The fact that Newsom took
11 over local health officials’ authority and declared a statewide quarantine, does not
12 exempt him from complying with due process. Compl., ¶ 137. The State Order’s
13 position of “no process” is not due process. Compl., ¶ 138.

14 In addition, Newsom’s violation of the California Emergency Services Act
15 denies equal protection of the laws by allowing some businesses and professions to be
16 exercised, but all other professions and events are prohibited. Compl., ¶ 139.

17 Newsom is required to exercise his authority under the Emergency Services Act
18 “to the fullest extent possible **consistent with individual rights and liberties.**”
19 *Macias v. State of California*, 10 Cal.4th 844, 854, 897 P.2d 530, 536-37 (Cal. 1995)
20 (emphasis added). He has not done so. Instead, he has shut down wedding venues
21 while allowing some retail stores to remain open. Compl., ¶ 143. He has banned
22 musicians from performing and even practicing. *Id.* He has shut down high school
23 graduations and is preventing high school seniors from properly preparing for college.
24 *Id.* Many fundamental liberties of California residents have been rent asunder on a
25 wholesale basis by Defendants, with no attempt at the narrow tailoring that must apply
26 to such restrictions at all times, including in emergencies.

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1 **5. The State Order Violates the Plaintiffs’ Right to Liberty Drawn**
2 **from Art. 1, Section 1 of the California Constitution.**

3 Plaintiffs’ fifth cause of action asserts facial and as-applied challenges to the
4 State Order pursuant to 42 U.S.C. § 1983.

5 All Californians “are by nature free and independent and have inalienable
6 rights. Among these are enjoying and defending life and liberty, acquiring, possessing,
7 and protecting property, and pursuing and obtaining safety, happiness, and privacy.
8 Cal. Const. art. 1, § 1. Understanding the basic fundamental right of liberty, California
9 courts have held that Public Health Officials’ authority is limited. Before exercising
10 their full powers to quarantine, there must be “reasonable grounds [] to support the
11 belief that the person so held is infected.” *Ex parte Martin*, 83 Cal. App. 2d 164
12 (1948). Public Health Officials must be able to show “probable cause to believe the
13 person so held has an infectious disease ...” *Id.*

14 In a case that is somewhat analogous to what Californians are facing with the
15 coronavirus pandemic of 2020, California courts found that Public Health Officials
16 could not quarantine 12 blocks of San Francisco Chinatown because of nine deaths
17 due to bubonic plague. *See Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900); *Wong*
18 *Wai v. Williamson*, 103 F. 1 (C.C. Cal. 1900). These courts found it “purely arbitrary,
19 unreasonable, unwarranted, wrongful, and oppressive interference with the personal
20 liberty of complainant” who had “never had or contracted said bubonic plague; that he
21 has never been at any time exposed to the danger of contracting it, and has never been
22 in any locality where said bubonic plague, or any germs of bacteria thereof, has or
23 have existed.” *Jew Ho*, 103 F. at 10.

24 In *Jew Ho* and *Wong Wai*, the courts found that there were more than 15,000
25 people living in the twelve blocks of San Francisco Chinatown who were to be
26 quarantined. The courts found it unreasonable to shut down the ability of over 15,000
27 people to make a living because of nine deaths. This was one death for every 1,666
28 inhabitants of Chinatown. As of May 10, 2020, there have been 2,770 deaths allegedly

1 related to the coronavirus.¹⁷ Based on an approximate California population of
 2 39,512,223 (Compl., ¶ 157), this is approximately one death for every 14,264
 3 Californians. This is far fewer than the courts in *Jew Ho* and *Wong Wai* used to strike
 4 down governmental actions.

5 California courts have found that “a mere suspicion [of a contagious disease],
 6 unsupported by facts giving rise to reasonable or probable cause, will afford no
 7 justification at all *for depriving persons of their liberty* and subjecting them to virtual
 8 imprisonment under a purported order of quarantine.” *Ex parte Arta*, 52 Cal. App.
 9 380, 383 (1921) (emphasis added). Plaintiffs have never contracted the coronavirus.

10 Requiring Plaintiffs to forego their California constitutional liberty rights
 11 violates the due process and equal protection clauses of the U.S. Constitution. The
 12 State Order has proximately caused noneconomic harm to Plaintiff Six by depriving
 13 her of a wedding date that has lasting personal significance; devastating noneconomic
 14 harm to the Medlins by blocking their efforts to visit their son; substantial
 15 noneconomic harm to Batten by cancelling her high school functions and blocking her
 16 efforts to prepare for college; and preventing Ball from practicing his hobby and
 17 bringing joy and hope to an entire community.

18 **B. Plaintiffs Will Suffer Irreparable Injury if Preliminary Relief is Not**
 19 **Granted.**

20 Any “deprivation of constitutional rights unquestionably constitutes irreparable
 21 injury.” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)(internal quotation
 22 marks omitted)(*quoting Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Irreparable harm
 23 is an injury that cannot be remedied by money damages. *Rent-A-Center, Inc. v.*
 24 *Canyon Television and Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991).

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28 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>
 (last visited May 12, 2020).

1 Plaintiffs have alleged and can prove that their constitutional rights under both
2 the U.S. and California constitutions are being violated by the State Order. Six has
3 been harmed by missing her anniversary wedding date, and she continues to be
4 harmed by the State Order as she cannot plan for a new wedding date due to its
5 indefinite duration. The Medlins have been harmed by being restricted from visiting
6 their son and both they and their son continue to be devastated by their inability to
7 reunite as a family, with medical consequences for their son. Batten has already been
8 harmed and will continue to be harmed by the State Order's prohibition on her efforts
9 to study and prepare for college. Ball has already been harmed and will continue to be
10 harmed by the State Order's total ban on his musical practice sessions and
11 performances with his fellow musicians.

12 All of these injuries are noneconomic and cannot be remedied by payment of
13 money damages. Each of them represents a missed opportunity, a lost day of time, a
14 constitutionally-protected moment that is now gone forever.

15 **C. The Balance of Hardships Not Only Favors the Plaintiffs, it Tips**
16 **Sharply in Their Favor.**

17 In cases implicating constitutional rights, "the balancing of the hardships factor
18 also tends to turn on whether the challengers can show that the regulations they attack
19 are substantially overbroad." *College Republicans at San Francisco State University*
20 *v. Reed*, 523 F. Supp. 2d 1005, 1011 (N.D. Cal. 2007) (internal quotation marks,
21 citations omitted).

22 The hardship to the Plaintiffs is significant. Six is unable to order invitations for
23 a rescheduled wedding date, or make the necessary preparations to protect her guests.
24 A wedding is a major life event, a fundamental human right, and the State Order is
25 keeping Six in limbo. The Medlins are unable to visit their own son due to the State
26 Order, except for twice a week in a way that does not provide their son with the
27 affection that he needs. Their son has already had two episodes since the imposition of
28 the State Order, and his next one could be triggered at any moment. Given his history

1 of self-harm, the Medlins' inability to maintain their former level of contact with their
 2 son has had and will continue to have dramatic consequences. Batten has been
 3 preparing for college for years and now, during the critical last few months before she
 4 starts her collegiate studies, she is banned from collaborating with her peers and
 5 teachers to get ready for the advanced placement tests that are necessary for entrance
 6 and placement in a college of her choice. Ball's entire life has been turned upside
 7 down by his inability to practice as a group with his fellow musicians even if he
 8 follows safe social distancing guidelines. These hardships range from physical pain to
 9 relational banishment, from educational restrictions to occupational prohibitions and
 10 ceremonial proscriptions.

11 In contrast, the hardship to the Defendants is minor, if there can be said to be
 12 any hardship at all. Defendants have already crafted numerous specific carve-outs in
 13 the State Order for certain businesses. The guidelines promulgated after the State
 14 Order allow marijuana retail stores, uniform manufacturers, animal diagnostic
 15 laboratories, energy commodity traders, mass transit, printer manufacturers, dry
 16 cleaners, bicycle repair shops, hotels (but only for COVID-19 workers), and the
 17 entertainment industry to remain open.¹⁸ Specifically, the entertainment industry is
 18 allowed to operate as long as it "follow[s] covid-19 [sic] public health guidance
 19 around physical distancing."¹⁹ Car dealerships are also allowed to stay open if they
 20 "adher[e to] public health guidance issued by CDPH."²⁰ If these industries are
 21 permitted to operate if they follow CDC guidelines, then there is no reason why
 22 Plaintiffs' activities should be banned.

23 The balance of the hardships tips sharply in the Plaintiffs' favor.

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26 ¹⁸ See, e.g., <https://covid19.ca.gov/img/EssentialCriticalInfrastructureWorkers.pdf>
 27 (last visited May 12, 2020).

28 ¹⁹ *Id.* at 23.

²⁰ *Id.* at 11.

1 **D. The Plaintiffs Seek Relief that Advances the Public Interest.**

2 The public has an interest in combatting the coronavirus. It also has a strong
3 interest in avoiding societal overreaction to the pandemic, and the consequent human
4 suffering that the Plaintiffs, and millions of Californians, are now enduring. Plaintiffs
5 have suffered, are suffering, and will continue to suffer, hardships and noneconomic
6 loss from the imposition of the State Order on their constitutional rights. The public
7 has an interest in each of the Plaintiffs' plights. Six is not the only bride who was
8 forced to reschedule her special day. The Medlins are not the only parents restricted
9 from visiting a family member or loved one who could harm themselves or suffer
10 mental or emotional breakdowns due solely to the lack of familial contact. Batten is
11 not the only rising college student who needs to study with her teachers and/or peers
12 to adequately prepare for college. Ball is not the only musician banned from rehearsals
13 and performances. Californians across the state would benefit from the removal of the
14 State Order, or at a minimum, a relaxation of its restrictions.

15 Even if "balancing the equities ... is lawyers' jargon for choosing between
16 conflicting public interests[,]” the public interests in this case fall on the side of the
17 Plaintiffs.

18 This Court should grant Plaintiffs temporary and preliminary injunctive relief.

19 **II. THE COURT SHOULD DISPENSE WITH ANY BOND REQUIREMENT**

20 Rule 65(c) of the Federal Rules of Civil Procedure provides that a TRO or
21 preliminary injunction may be issued "only if the movant gives security in an amount
22 that the court considers proper to pay the costs and damages sustained by any party
23 found to have been wrongfully enjoined or restrained." Fed. R. Civ. P. 65(c).

24 However, the Court has discretion as to whether any security is required and, if so, the
25 amount thereof. *See, e.g., Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003).

26 Plaintiffs request that the Court waive any bond requirement because enjoining
27 Defendants from unconstitutionally enforcing the orders as to First Amendment
28 protected activities will not financially affect Defendants, who already categorically

1 exempt specified non-First Amendment activities from compliance. A bond would,
2 however, be burdensome on already burdened Plaintiffs under these circumstances.
3 *See, e.g., Bible Club v. Placentia-Yorba Linda School Dist.*, 573 F. Supp. 2d 1291, n.6
4 (C.D. Cal. 2008) (waiving requirement of student group to post a bond where case
5 involved “the probable violation of [the club’s] First Amendment rights” and minimal
6 damage to the District issuing injunction); *citing Doctor John’s, Inc. v. Sioux City*,
7 305 F. Supp. 2d 1022, 1043-44 (N.D. Iowa 2004) (“requiring a bond to issue before
8 enjoining potentially unconstitutional conduct by a governmental entity simply seems
9 inappropriate, because the rights potentially impinged by the governmental entity’s
10 actions are of such gravity that protection of those rights should not be contingent
11 upon an ability to pay.”).

12 CONCLUSION

13 Plaintiffs respectfully request that the Court grant Plaintiffs’ motion for a
14 temporary restraining order, and issue an order to show cause why a preliminary
15 injunction should not be issued, as follows:

16 Defendants shall permit the following actions: Six to get married on her
17 rescheduled date, the Medlins to freely visit their son, Batten to study with her
18 teachers and/or fellow students to prepare for college, and Ball to practice and perform
19 with his fellow concert band musicians.

20 Defendants, as well as their agents, employees, and successors in office, shall
21 be restrained and enjoined from enforcing, attempting to enforce, threatening to
22 enforce, or otherwise requiring compliance with any prohibition on Plaintiffs’ rights.

23 Defendants shall show cause, at a time and place to be directed by the Court,
24 why a preliminary injunction should not issue requiring Defendants to act as described
25 above; the temporary restraining order shall remain effective until such time as the
26 Court has ruled on whether a preliminary injunction should issue.

27 Such relief is necessary to prevent Defendants from further violating Plaintiffs’
28 constitutional rights, pending trial on the merits of Plaintiffs’ claims.

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Date: May 15, 2020

Respectfully submitted,
DHILLON LAW GROUP INC.

By: /s/ Harmeet K. Dhillon
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