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11 Riverside County Public Health Officer; GEORGE JOHNSON, in his official capacity as
12 Riverside County Executive Officer and Director of Emergency Services; CHAD BIANCO,
13 in his official capacity as the Riverside County Sheriff; KEVIN JEFFRIES, in his official
14 capacity as a Riverside County Supervisor; KAREN SPIEGEL, in her official
15 capacity as a Riverside County Supervisor; CHUCH WASHINGTON, in his official
16 capacity as a Riverside County Supervisor; V. MANUEL PEREZ, in his official capacity as
17 a Riverside County Supervisor; and JEFF HEWITT, in his official capacity as a Riverside
18 County Supervisor

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

21 WENDY GISH, an individual, *et al.*,
22 Plaintiffs,

23 v.

24 GAVIN NEWSON, in his official
25 capacity as Governor of California, *et al.*,
26 Defendants.

27 Case No. 5:20-cv-00755-JGB-KK
28 Judge Hon. Jesus G. Bernal
Magistrate Judge Kenly Kiya Kato

**OPPOSITION TO PLAINTIFFS’
MOTION FOR RECONSIDERATION
AND JOINDER TO OPPOSITIONS
FILED BY THE STATE OF
CALIFORNIA AND COUNTY OF
SAN BERNARDINO**

**Date: October 5, 2020
Time: 9:00 a.m.
Dept.: 01**

Complaint Filed: April 14, 2020

TO PLAINTIFFS AND THEIR COUNSEL OF RECORD:

DEFENDANTS, CAMERON KAISER, in his official capacity as the Riverside
County Public Health Officer; GEORGE JOHNSON, in his official capacity as Riverside
County Executive Officer and Director of Emergency Services; CHAD BIANCO, in his

1 official capacity as the Riverside County Sheriff; KEVIN JEFFRIES, in his official capacity
2 as a Riverside County Supervisor; KAREN SPIEGEL, in her official capacity as a Riverside
3 County Supervisor; CHUCH WASHINGTON, in his official capacity as a Riverside County
4 Supervisor; V. MANUEL PEREZ, in his official capacity as a Riverside County Supervisor;
5 and JEFF HEWITT, in his official capacity as a Riverside County Supervisor (hereinafter
6 collectively the “County”) hereby offer the following Opposition to the Plaintiffs’ Motion
7 for Reconsideration (Docket No. 79) and hereby joins in the Opposition filed by the State
8 of California and the County of San Bernardino.
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12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I.**

14 **INTRODUCTION**

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16 On July 8, 2020, this Court granted three Motions to Dismiss brought by the
17 Defendants, but also granted Plaintiffs’ leave to amend so that they could file an amended
18 complaint challenging COVID-19 health orders that remain in effect. (Doc. 76). The Court
19 ordered Plaintiff to file an amended complaint, if any, by July 31, 2020.¹ (Doc. 76 at p. 6).
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23 Instead of filing an amended complaint that could have challenged the July 13, 2020
24 Order issued by the California Department of Public Health, Plaintiffs waited a month to
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¹ District Courts have the inherent power to dismiss a case for failure to comply with the Court’s Order, including a failure to file a timely amended complaint. (See, *Yourish v. California Amplifier*, 191 F.3d 983 (9th Cir. 1999); *Montgomery v. CIR*, 367 F.2d 917 (9th Cir. 1966))

1 file a Motion for Reconsideration – an extraordinary remedy that is simply not supported by
2 applicable law. For the reasons set forth below, Plaintiffs’ Motion should be denied.
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4 **II.**

5 **APPLICABLE LAW**

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7 Motions for Reconsideration provide an “extraordinary remedy, to be used sparingly
8 in the interests of finality and conservation of judicial resources. *Carroll v. Nakatani*, 342
9 F.3d 934, 945 (9th Cir. 2003). While Local Rule 7-18 allows for a motion for
10 reconsideration on very narrow grounds, the party bringing such a motion should identify
11 the specific federal rule governing the motion. *Hinton v. Pacific Enter.*, 5 F.3d 391, 395
12 (9th Cir. 1993).
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17 When a motion for reconsideration does not identify the Rule under which it was filed,
18 courts within the Ninth Circuit will construe it as being filed under Rule 59(e) if it was filed
19 within ten days of the filing of the judgment. *Shapiro v. Paradise Valley Unified Sch. Dist.*
20 *No. 69*, 374 F.3d 857, 863 (9th Cir. 2004).
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23 Here, as Plaintiffs did not file their Motion within ten days, Plaintiffs assert that relief
24 is appropriate under Rule 60(b) of the Federal Rules of Civil Procedure and cite to *Lemoge*
25 *v. United States*, 587 F.3d 1188, 1196-1107 in support thereto. Plaintiffs’ reliance on
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1 *Lemoge* is misplaced because that case involved excusable neglect and whether the court
2 correct utilized the *Pioneer-Briones* analysis under Rule 60.
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4 This Court should reject Plaintiffs’ attempt to shoehorn this case into Rule 60(b)
5 analysis as it is not applicable, nor is it supported by any factual argument or evidence.
6 Instead, this Court should utilize the standard set forth in *Orange Street Partners v. Arnold*,
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8 179 F.3d 656, 665 (9th Cir. 1999) and Local Rule 7-18.
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11 **III.**

12 **ARGUMENT**

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14 Absent exceptional circumstances, only three types of arguments provide an
15 appropriate basis for a motion for reconsideration: (1) arguments based on newly discovered
16 evidence; (2) arguments that the court has committed clear error; and (3) arguments based
17 on “an intervening change in the controlling law”. *Orange Partners*, 179 F.3d at 665. Local
18 Rule 7-18 provides a similar three-part framework for analyzing a reconsideration motion:
19 (a) a material difference in fact or law from that presented to the Court; (b) the emergency
20 of a new material facts or a change of law occurring after the time of the decision; and (c) a
21 manifest showing of a failure to consider material facts presented to the court.
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26 Here, Plaintiffs have not presented any newly discovered evidence or any intervening
27 change in the controlling law. Furthermore, they have not presented any evidence or
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1 argument that the Court committed clear error or that this Court failed to consider material
2 facts. Instead, Plaintiffs re-argue and reiterate their position that the case is not moot because
3 the State has restricted in-person religious services via the July 13, 2020 Order. The Court
4 was well-aware of this possibility and specifically noted that the Plaintiffs could file an
5 amended complaint challenging the orders that remain in effect. Plaintiffs, however,
6 stubbornly refuse to file a new complaint challenging the July 13, 2020 Order or the August
7 28, 2020 Order.
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12 In short, Plaintiffs have failed to demonstrate that there has been an intervening
13 change in the law, newly discovered facts or clear error on the part of this Court.
14 Furthermore, Plaintiffs’ arguments simply repeat its written argument on the mootness issue
15 previously considered by this Court and do not comply with Local Rule 7-18.
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19 **IV.**

20 **CONCLUSION**

21 For these reasons, this Court should stand by its July 8, 2020 ruling and deny
22 Plaintiffs’ Motion for Reconsideration.
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24 Dated: September 10, 2020

By: /s/ Ronak N. Patel
RONAK N. PATEL,
Deputy County Counsel
Attorneys for Defendants, CAMERON
KAISER, GEORGE JOHNSON, CHAD
BIANCO; KEVIN JEFFRIES; KAREN
SPIEGEL, CHUCH WASHINGTON, V.
MANUEL PEREZ, and JEFF HEWITT

PROOF OF SERVICE

United States District Court Case No. 5:20-cv-00755-JGB-KK

I, the undersigned, say that I am a citizen of the United States and am employed in the county of Riverside, over the age of 18 years and not a party to the within action or proceeding; that my business address is: 3960 Orange Street, Suite 500, Riverside, CA 92501-3611.

On September 10, 2020, a true and correct copy of the foregoing document entitled:

OPPOSITION TO PLAINTIFFS’ MOTION FOR RECONSIDERATION

was served on all parties pursuant to FRCivP 5(b) as follows:

<p>Gregory Richard Michael Harmeet K Dhillon Dhillon Law Group Inc. 177 Post Street Suite 700 San Francisco, CA 94108 T: 415-433-1700 F: 415-520-6593 Email: gmichael@dhillonlaw.com harmeet@dhillonlaw.com Attorney for Plaintiffs</p>	<p>Mark P Meuser Meuser Law Group Inc. PO Box 5412 Walnut Creek, CA 94596 T: 415-577-2850 F: 925-262-4656 Email: mmeuser@dhillonlaw.com Attorney for Plaintiff</p>
<p>Penelope Alexander-Kelley Michelle Danielle Blakemore Office of the County Counsel County of San Bernardino 385 North Arrowhead Avenue, 4th Floor San Bernardino, California 92415 T: 909-387-5435 F: 909-387-5462 Email: palexander-kelley@cc.sbcounty.gov mblakemore@cc.sbcounty.gov Attorneys for Defendants</p>	<p>Todd Grabarsky Amie L. Medley CAAG – Office of Attorney General California Department of Justice 300 South Spring Street, Suite 1702 Los Angeles, California 90013 T: 213-269-6044 F: 213-897-7604 Email: todd.grabarsky@doj.ca.gov amie.medley@doj.ca.gov Attorneys for Defendants</p>
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TO BE SERVED BY THE COURT VIA THE NOTICE OF ELECTRONIC FILING (NEF). Pursuant to L.R. 5-3.2.3, the foregoing document will be served by the court via NEF and hyperlink to the document. I checked the CM/ECF docket for this case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the addresses stated.

I declare under penalty of perjury under the laws of the United States of America, State of California that the foregoing is true and correct.

Executed on September 10, 2020, at Riverside, California.

/s/ Denise Esparza

DENISE R. ESPARZA