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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**
15

16 **CALVARY CHAPEL SAN JOSE**, a
California Non-Profit Corporation; **PASTOR**
17 **MIKE MCCLURE**, an individual;
18 **SOUTHRIDGE BAPTIST CHURCH OF**
SAN JOSE CALIFORNIA dba
19 **SOUTHRIDGE CHURCH**, a California Non-
Profit Corporation; **PASTOR MICAIAH**
20 **IRMLER**, an individual;

21 Plaintiffs,

22 vs.

23 **GAVIN NEWSOM**, in his official capacity as
the Governor of California, **TOMAS**
24 **ARAGON, M.D.**, in his official capacity as the
Acting California Public Health Officer;
25 **SANTA CLARA COUNTY; SARA H.**
CODY, M.D., in her official capacity as Santa
26 Clara County Public Health Officer; **MIKE**
WASSERMAN, in his official capacity as a
27 Santa Clara County Supervisor; **CINDY**
CHAVEZ, in her official capacity as a Santa
28 Clara County Supervisor; **DAVE CORTESE**,
in his official capacity as a Santa Clara County

Case No.: 20-cv-03794

THIRD AMENDED COMPLAINT
FOR:

- 1) **DEPRIVATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 (FIRST AMENDMENT);**
- 2) **DEPRIVATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 (FOURTEENTH AMENDMENT);**
- 3) **DEPRIVATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 (EIGHTH AMENDMENT);**
- 4) **DEPRIVATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 (FIRST AMENDMENT RETALIATION);**
- 5) **DEPRIVATION OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 (MONELL);**

Supervisor; **SUSAN ELLENBERG**, in her official capacity as a Santa Clara County Supervisor; and **JOE SIMITIAN**, in his official capacity as a Santa Clara County Supervisor;

AND

7) VIOLATION OF BANE ACT.

Defendants.

INTRODUCTION

1. Early in 2020, California public health officials became aware that a novel respiratory virus – dubbed COVID-19 – was spreading in the state and could trigger a pandemic. Despite those concerns, state officials repeatedly told Californians that the risk to the general public was low. They encouraged Californians not to panic and to use common sense measures to combat the virus.

2. But, during March 2020, a group of local government officials in the Bay Area decided to disregard that advice and take matters into their own hands. This group was led by Defendant Sara Cody (“Dr. Cody”), Santa Clara County’s public health officer, and Defendant James Williams, Santa Clara’s County Counsel. Dr. Cody and Mr. Williams decided that COVID-19 would soon plague the country and cause millions of deaths, so they decided to issue a shelter-in-place order, effectively ordering all Santa Clara County residents under house arrest unless they left to do something the County had deemed “essential.” Dr. Cody and Mr. Williams convinced every other county in the Bay Area to issue similar orders, garnering international media attention.

3. The stay-at-home orders were unprecedented. The orders did not rely on any specific statutory authority but on vague language in the California Health and Safety Code that gives local health officers the power to issue “necessary” orders during a state of emergency.

4. The Bay Area’s COVID-19 orders prompted other counties and the State of California to issue their own stay-at-home order. Soon other states and countries followed, and by May 2020, most of the global population was living under government rules that dictated who they could see, what they could do, and how they must do it. Although the lockdowns were a global phenomenon, they started in the Bay Area—and specifically, in the minds of Dr. Cody and Mr. Williams.

1 5. Many governments chose not to enforce the orders strictly, leaving their edicts as
2 guidelines that people could choose to follow or ignore. This was not so with Santa Clara
3 County. At Dr. Cody and Mr. Williams’ urging, Santa Clara County vigorously enforced its
4 stay-at-home order and subsequent COVID-19 orders, despite a plethora of scientific literature
5 and studies connecting the lockdowns with an unprecedented mental health crisis. Churches
6 were among those most heavily punished under the State and County COVID-19 orders.

7 6. The County consistently imposed even harsher restrictions on churches and
8 adopted a fine system that authorized crippling fines on churches and other organizations that
9 did not comply with their COVID-19 orders. The County singled out churches like Plaintiffs
10 for punishment, doling out millions of dollars in fines. For example, during December 2020 and
11 January 2021, Mr. Williams sent threatening letters to Plaintiff Calvary Chapel San Jose’s
12 (“CCSJ”) bank, causing the bank to temporarily sever ties with CCSJ and forcing CCSJ to make
13 several accelerated payments to avoid a default on its mortgage.

14 7. Throughout this time, the United States Supreme Court admonished California
15 and Santa Clara County government officials that the COVID restrictions placed upon churches
16 violate the First Amendment. In February 2021, after losing in the Supreme Court, the State
17 relented and finally began to treat churches in the same manner as similarly situated secular
18 activities. Santa Clara County, on the other hand, made no change to its orders. Rather, at Mr.
19 Williams’ urging, the County ignored the Supreme Court’s rulings and continued singling out
20 churches and church officials - like Plaintiffs - for punishment. The Supreme Court had to step
21 in to enjoin the County’s ban on indoor gatherings.

22 8. Over a year into the pandemic, neither the State nor the County have explained
23 why they treated houses of worship with disregard. In fact, the County continues to single out
24 churches and church officials like Plaintiffs for punishment. County officials, led by Mr.
25 Williams, are still trying to collect millions of dollars in fines they imposed on Plaintiffs. These
26 fines are, on their face, grossly disproportional to the alleged harm Plaintiffs created. Indeed,
27 Plaintiffs did no harm. Neither the State nor the County have been able to trace a single COVID-
28 19 case to Plaintiffs’ services. The fines serve just one purpose: to punish Plaintiffs for standing

1 up to the County’s arbitrary and unlawful orders and to pressure others to pay their own fines
2 instead of challenging the orders. The Constitution forbids such actions.

3 9. Furthermore, despite the Supreme Court’s admonitions, County officials insist
4 that they have the power to close churches in the future if they decide it is necessary to protect
5 public health. State officials also believe they have such authority. There is a real risk of that
6 happening, especially with a new variant of COVID-19 spreading across the globe. Neither the
7 State nor Santa Clara County have ruled out future lockdown orders to respond to the new
8 variant.

9 10. The Plaintiffs ask this Court to find that the State and County COVID-19 orders
10 violate their freedom of religion and assembly under the First Amendment and California civil
11 rights law. Plaintiffs also contend that the \$3.5 million of fines the County has imposed on them
12 violate the Eighth Amendment’s prohibition on excessive fines. Plaintiffs also seek damages,
13 pursuant to the Bane Act, for the Defendants’ violation of their civil rights.

14 **PARTIES, JURISDICTION AND VENUE**

15 11. Plaintiff CALVARY CHAPEL SAN JOSE (“CCSJ”), a California non-profit
16 corporation, is a Christian church organized exclusively for religious purposes. CCSJ is located
17 in the city of San Jose, California. Calvary Christian Academy is a ministry branch of CCSJ
18 that is operated separately from CCSJ.

19 12. Plaintiff MIKE MCCLURE is a resident of Santa Clara County and serves as the
20 lead pastor of CCSJ.

21 13. Plaintiff SOUTHRIDGE CHURCH (“Southridge”) is a domestic non-profit
22 corporation Christian church organized exclusively for religious purposes within the meaning
23 of Section 501(c)(3) of the Internal Revenue Code. Southridge Church is located in the City of
24 San Jose, California.

25 14. Plaintiff MICAIAH IRMLER is a resident of Santa Clara County and serves as
26 the lead pastor of Southridge.

27 15. Defendant GAVIN NEWSOM is sued in his official capacity as the Governor of
28 the State of California.

1 16. Defendant TOMAS ARAGON, M.D. is sued in his official capacity as the Acting
2 California Officer of the California Department of Public Health (CDPH). Aragon succeeded
3 Erica Pan and Sonia Angell.

4 17. Defendant Gavin Newsom and Tomas Aragon are hereinafter referred to as the
5 “State Officials.”

6 18. Defendant SARA H. CODY, M.D. is the Public Health Officer for Santa Clara
7 County, California. She is sued in her official capacity only. She promulgated Santa Clara
8 County’s health orders and guidelines.

9 19. Defendants MIKE WASSERMAN, CINDY CHAVEZ, DAVE CORTESE,
10 SUSAN ELLENBERG, and JOE SIMITIAN are each sued in their official capacities as
11 members of the Santa Clara County Board of Supervisors. The County Board of Supervisors
12 are responsible for adopting the challenged Urgency Ordinance authorizing Santa Clara County
13 to issue fines against the Plaintiffs.

14 20. Defendant JAMES WILLIAMS is sued in his official capacity as the County
15 Counsel of Santa Clara County. In that role, he is charged with enforcing the County’s public
16 health orders and as alleged below, helped promulgate the orders in March 2020.

17 21. Dr. Cody, Mr. Williams and the Santa Clara County Board of Supervisors are
18 hereinafter collectively referred to as the “County Officials.”

19 22. Defendant SANTA CLARA COUNTY is a political subdivision of the State. It is
20 sued herein based on the actions of the County Officials as final policymakers under *Monell v.*
21 *Department of Social Services*.

22 23. Plaintiffs’ claims arise under the United States Constitution and 42 U.S.C. § 1983.
23 The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

24 24. This Court has authority to grant the requested declaratory relief under the
25 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, implemented through Rule 57 of the
26 Federal Rules of Civil Procedure. This Court is also authorized to grant injunctive relief and
27 damages under 28 U.S.C. § 1343, pursuant to Rule 65 of the Federal Rules of Civil Procedure,
28 and award reasonable attorney’s fees and costs under 42 U.S.C. § 1988.

1 at least the end of March. State health officials also issued their first guidelines for “social
2 distancing” and suggested other measures people could voluntarily undertake to slow the spread
3 of the coronavirus.

4 33. The Governor issued an executive order on March 12, 2020, that reflected the new
5 guidelines (“the March 12 Executive Order”). Among other things, the order noted the “need to
6 secure numerous facilities to accommodate quarantine, isolation, or medical treatment of
7 individuals testing positive for or exposed to COVID-19....” Thus, the order cited the
8 Governor’s authority under the California Emergency Services Act “to ensure adequate
9 facilities exist to address the impacts of COVID-19” A true and correct copy of the March
10 12 Executive Order is attached hereto as **Exhibit “2.”**

11 34. In issuing the March 12 Executive Order, the Governor said: “Changing our
12 actions for a short period of time will save the life of one or more people you know.”

13 35. The March 12 Executive Order was not a criminal law. It did not require any
14 businesses or schools to close. It did not tell people what they could and could not do, what was
15 essential or non-essential. It was narrowly tailored to protect individual rights while promoting
16 the State’s interest in ensuring that it had enough hospital beds to treat COVID-19 patients.

17 36. A few days later, a group of government officials in the Bay Area—covering
18 almost every Bay Area County – took a further step and ordered all their residents to “shelter in
19 place” indefinitely. This group was spurred into action by Defendants Cody and Williams, with
20 Mr. Williams telling the Daily Journal: “There were a lot of unknowns, but we could see what
21 was happening in Italy with hospitals overrun and we wanted to act fast to get ahead of it.” A
22 true and correct copy of Santa Clara County’s Shelter in Place Order is attached hereto as
23 **Exhibit “3.”**

24 37. On March 19, 2020, Governor Newsom ordered all Californians to stay inside
25 their homes indefinitely, only allowing them to leave to perform activities that were necessary
26 to maintain the “federal critical infrastructure.” A true and correct copy of the Governor’s “Stay
27 at Home Order” is attached hereto as **Exhibit “4.”**

1 38. The Governor said during a televised speech that he issued a stay-at-home order
2 because state officials had changed their assessment of the coronavirus and believed 56 percent
3 of Californians – nearly 25 million people – would be infected with the virus between mid-
4 March and mid-May 2020. The Governor also said during his March 19th speech that state
5 officials believed between 250,000 and 500,000 people would die from the virus by June 2020.

6 39. Upon information and belief, the ominous numbers the Governor cited in his “stay
7 at home” speech came from Bay Area officials, including Defendants Cody and Williams. In
8 fact, Mr. Williams publicly took credit for the issuance of the statewide stay-at-home-order.

9 40. The lockdown orders were unprecedented. They dictated what people could do,
10 designating certain activities as “essential” such as pet stores, marijuana stores, and liquor
11 stores, and allowed those to continue operating, while others were deemed “non-essential” and
12 ordered to shut down. No American government had ever issued such an order in peacetime,
13 not even during the 1918-19 influenza pandemic that some have compared COVID-19 to.

14 41. There was no rhyme or reason to the distinctions the orders made between
15 essential and non-essential activities. For example, pet supply stores were deemed essential
16 because, according to government officials, pets provide comfort to people dealing with mental
17 health issues. Churches have a long record of providing similar comfort to people in need, but
18 they were deemed non-essential and subjected to some of the strictest rules imaginable, even
19 on holy days. The orders also made arbitrary distinctions between the numbers of people who
20 could participate in certain activities. At one point, one Bay Area health official, communicating
21 on a “Slack” message with others from the region, asked: “Do the numbers 100 and 35 have
22 any basis in anything?” The San Benito County health officer responded: “No basis as I can
23 see. The numbers are random.”

24 42. Equally unprecedented, the lockdown orders contained criminal penalties,
25 including fines, to ensure enforcement. Most California governments took a lax approach to
26 that. Even the Governor discouraged enforcement. He asked Californians to voluntarily comply
27 with the orders, saying, “This is not a permanent state; this is a moment in time.” The Governor
28

1 added: “This is a dynamic situation. I don’t expect this to be many, many months, but for the
2 time being, we are recognizing the next eight weeks [as the key period].”

3 43. Fortunately, the predicted facts did not occur. Twenty-five million Californians
4 did not become infected with the coronavirus between March and June 2020. Hospitals were
5 not overrun with millions of COVID-19 patients. Hundreds of thousands of Californians did
6 not die.

7 44. By May 2020, State and County Officials were also aware of antibody studies,
8 including studies conducted in Santa Clara County, revealing the coronavirus was spreading at
9 a faster rate and less deadly than they had predicted. The studies also revealed many
10 Californians already had antibodies to the virus, further undermining the justification for stay-
11 at-home orders.

12 45. Indeed, the Centers for Disease Control and Prevention (“CDC”) predicted that
13 the confirmed case fatality rate for COVID-19 would fall to between 0.26 percent and 0.65
14 percent, far lower than the two to four percent fatality rate some believed back in March 2020.
15 The CDC also reports that 94 percent of people who have died with COVID-19 had at least one
16 co-morbidity, such as diabetes, cancer, obesity, or heart disease.

17 46. By May 2020, Governor Newsom knew that California was flattening the curve
18 and protecting its health care system from being overwhelmed. Nonetheless, on May 4, 2020,
19 he announced that he would continue the State’s Stay at Home Order indefinitely, without
20 considering whether there were less restrictive ways of controlling COVID-19. Santa Clara
21 County followed suit. A true and correct copy of the Governor’s May 4 executive order
22 extending the Stay at Home Order is attached hereto as **Exhibit “5.”**

23 47. In his May 4 executive order, the Governor gave the State Public Health Officer
24 (at the time Dr. Angell and now Dr. Aragon) discretion to add exceptions to the activities
25 permitted under the order based on individual counties’ success in testing, controlling the virus,
26 and having adequate resources to treat COVID-19 patients. However, this first reopening plan
27 continued to discriminate against religious activities. Despite the constitutional protection for
28 religious activities, the State’s first reopening plan treated churches less favorably than similarly

1 situated secular activities like dine-in restaurants, offices, schools, malls, and retail stores. There
2 was no basis for this discrimination. The State did not have any evidence that the coronavirus
3 was spreading at a greater rate inside churches as compared to these indoor settings.

4 48. During the early stages of the pandemic (from March to May 2020), many courts
5 opted to stay out of COVID-19-related disputes, likely believing the government would lift the
6 lockdown orders quickly, as Governor Newsom promised to do. Four justices on the United
7 States Supreme Court warned against this, writing on May 29, 2020, that “California’s
8 discrimination against religious worship services contravenes the Constitution.” The orders
9 were not lifted, though, and the government continued to discriminate against religious
10 activities.

11 49. State and County Officials said that churches were dangerous because people
12 gathered close together for extended periods of time and sang together, thus increasing the risk
13 of COVID-19 infection. That was pure speculation, though, unsupported by evidence and based
14 on stereotypes of people who attend churches like CCSJ. More importantly, by June 2020,
15 government officials knew where COVID-19 was spreading. It was spreading in areas that had
16 never been shut down, like transportation and construction, things the government had decided
17 were too important to shut down.

18 50. The government’s purported justification for shuttering churches took a further
19 hit during the summer of 2020 as public officials allowed—and explicitly encouraged—people
20 to engage in mass protests in response to the death of George Floyd. The government defended
21 its actions as promoting “free speech”, all the while trampling upon the right to religious free
22 exercise protected by the very same First Amendment.

23 51. Throughout the month of June 2020, Governor Newsom actively encouraged
24 protestors by tweeting posts like “protestors have the right to protest peacefully.”

25 52. On or around July 2, 2020, when asked to explain the extent to which protestors
26 should heed the COVID-19 orders, Governor Newsom explained “we have a Constitution, we
27 have a right to free speech”, and “we are dealing with a moment in our nation’s history that is
28 profound and pronounced...Do what you think is best...”

1 53. On or around June 26, 2020, at a news conference, former State Health Officer
2 Dr. Angell admitted that people who attend large protests have been affected by COVID: “We
3 do not have the exact numbers, but we do know from speaking to our counties that it is a
4 contributor.”

5 54. On or around this same time, COVID-19 cases surged across California, including
6 in Santa Clara County.

7 55. Dr. Cody was also aware that protests were likely contributing to the spread of
8 COVID-19. Nevertheless, Santa Clara County acknowledged that protestors had a fundamental
9 right that was critical to the health of democracy. A true and correct copy of a Facebook post
10 by Santa Clara County is attached hereto as **Exhibit “6.”** The County did not acknowledge the
11 fundamental right to attend worship services.

12 56. Many of the protestors walking the streets in the summer of 2020 were not
13 wearing masks or practicing social distancing. State and County Officials knew that although
14 the protestors’ activities posed a significant risk of COVID-19 transmission, their activity was
15 protected speech. Thus, they did not punish them for violating COVID-19 orders. Needless to
16 say, State and County Officials did not show that same deference to churches and religious
17 adherents.

18 57. By June 1, 2020, the County and State Officials knew, or should have known, that
19 their lockdown of churches violated the First Amendment. In fact, on May 19, 2020, the U.S.
20 Department of Justice sent Governor Newsom a letter that said exactly that. A true and correct
21 copy of this letter is attached hereto as **Exhibit “7.”** Similarly, on May 22, 2020, President
22 Trump announced that the CDC would classify houses of worship as “essential,” and he called
23 on all governors to allow houses of worship to immediately reopen.

24 58. On May 25, 2020, Governor Newsom announced the reopening of churches in
25 California. This announcement was somewhat true, as churches were limited to 25% building
26 capacity or 100 attendees, whichever is lower. Other secular locations where people gather like
27 schools, airports, train stations, and bus stations, however, did not have building occupancy
28 limits.

1 59. County Officials did not even try to heed the federal government’s warning. Led
2 by Dr. Cody and Williams, the County continued to ban indoor religious services after May 25,
3 2020. The County consistently imposed harsher restrictions on churches than similarly situated
4 secular activities without any scientific basis or compelling justification for the disparate
5 treatment.

6 60. On or around the end of May 2020, Dr. Cody was concerned about the State’s
7 partial compliance with the federal government’s warning and stated: “Gatherings are of course
8 profoundly and personally important to all of us, but our ability to contain the virus from
9 spreading if there’s one COVID-positive individual at such a large event is quite limited....And
10 it would rapidly exceed even our current ambitious and unprecedented effort to establish a large
11 case investigation and contact tracing workforce here and elsewhere throughout the state.”
12 Despite her concern of large gatherings, as of June 5, 2021, the County allowed certain
13 businesses where people can gather, such as retail, shopping centers, television, radio, and other
14 media services, grocery stores, airports, summer camps, and summer schools, to re-open.

15 61. The County also required the hosts of “Small Outdoor Ceremonies and Religious
16 Gatherings” to “maintain a list with the names and contact information of all participants.” Yet,
17 no such requirement was asked of shopping centers, summer camps, or summer schools.

18 62. On July 2, 2020, Dr. Cody issued a Risk Reduction Order, requiring risk reduction
19 measures to be in place across all business sectors and activities. A true and correct copy of the
20 Risk Reduction Order is attached hereto as **Exhibit “8.”** The Order prohibited indoor
21 gatherings, unless the gathering involved no more than 20 people or 1 person per 200 square
22 feet, whichever is fewer. It also prohibited outdoor gatherings unless the gathering involved no
23 more than 60 people. Santa Clara County describes a gathering as an “event, assembly, meeting,
24 or convening that brings people from separate households in a single space, indoors or outdoors,
25 at the same time and in a coordinated fashion.” A “gathering”, by the County’s definition, does
26 not include normal operations in childcare settings, school settings, areas where people may
27 transit, hospitals, offices, stores, and restaurants.

28

1 63. Dr. Cody issued the Risk Reduction Order despite no evidence (i.e., contract
2 tracing studies) showing that entities, locations, or events falling within her definition of a
3 “gathering” were or are more likely to cause the spread of COVID-19 than gathering at malls,
4 restaurants, public transit areas, stores, day camps, and childcare facilities.

5 64. On or around July 6, 2020, Plaintiffs became subject to State guidance ordering
6 them to not engage in singing or chanting at indoor religious services.

7 65. On August 3, 2020, the CDPH issued guidance for schools, a true and correct
8 copy of which is attached hereto as **Exhibit “9.”** The guidance cautioned that “activities that
9 involve singing must only take place outdoors.” The CDPH softened this language in January
10 2021 to permit band practice “provided that precautions such as physical distancing and mask
11 wearing are implemented to the maximum extent possible.”

12 66. The CDPH did not ban singing and chanting in day camps or childcare centers.

13 67. On August 28, 2020, the CDPH issued the Blueprint for a Safer Economy
14 (“Blueprint”) that established a procedure for assigning counties to one of four tiers based on
15 the severity of the COVID-19 outbreak in each locality. A true and correct copy of the Blueprint
16 Activity and Business Tiers is attached hereto as **Exhibit “10.”** The Blueprint discriminated
17 against houses of worship.

18 68. On October 5, 2020, Dr. Cody issued a Revised Risk Reduction Order, a copy of
19 which is attached hereto as **Exhibit “11.”** The Revised Order allowed more businesses and
20 activities to resume operations provided they followed precautions like wearing masks and
21 social distancing, but still banned indoor gatherings. The Order also expressly exempted
22 government entities and their contractors “to the extent that such requirements would impede
23 or interfere with an essential governmental function.” On information and belief, such activities
24 included construction, first responders, court personnel, and law enforcement.

25 69. On or around October 13, 2020, Dr. Cody issued a Revised Mandatory Gatherings
26 Directive which was more restrictive than the State’s Blueprint. The Directive only allowed
27 religious gatherings of up to 25% the facility’s capacity or 100 people, whichever was fewer, in
28 Tier 3 of the Blueprint.

1 70. On November 16, 2020, the CDPH issued an updated Guidance for the Use of
2 Face Coverings (“Face Covering Guidance”). A true and correct copy of the Face Covering
3 Guidance is attached hereto as **Exhibit “12.”**

4 71. The Face Covering Guidance required everyone to wear a mask and maintain 6
5 feet of distance from one another, with exceptions made for dining in restaurants.

6 72. The following categories of persons were exempted from the Guidance: persons
7 younger than two years old; persons with a medical condition or disability; persons who are
8 hearing impaired; and persons for whom wearing a face covering would create a risk to the
9 person related to their work, such as persons competing in sports.

10 73. Television, film, and recording studios (i.e., Hollywood) have been encouraged -
11 but not required - to follow COVID-19 face-covering and singing guidelines and restrictions.

12 74. Other industries also did not have to fully adhere to the Face Covering Guidance
13 at all times. For instance, barbershops and hair salons could remain within six feet of distance
14 when “providing haircutting and other close contact services.” A true and correct copy of the
15 Guidance for Barbershops and Hair Salons is attached hereto as **Exhibit “13.”**

16 75. Public transit carriers were recommended to “reduce maximum occupancy
17 onboard transit and rail services”, and the State advised that “seats within six feet of the operator
18 should be blocked off and unavailable if it does not impact the requirements for handicapped-
19 accessible seating.” A true and correct copy of the Guidance for Public Transit/Passenger
20 Carrier Services is attached hereto as **Exhibit “14.”** Similarly, passenger carrier services were
21 advised, but not required, to encourage riders to sit in the back seat to maximize distance
22 between the passenger and the driver.

23 76. Further, persons were not required to wear a mask while receiving a facial or
24 esthetic care, and workers performing esthetic and/or skin care could be within six feet of
25 distance of their client. A true and correct copy of the Guidance for Personal Care Services is
26 attached hereto as **Exhibit “15.”**

27 77. On or around November 16, 2020, the State announced that it was assigning Santa
28 Clara County to Tier 1 of the Blueprint. Around the same time, Dr. Cody issued a Mandatory

1 Directive on Capacity Limitations. The Directive completely banned indoor worship services
2 but allowed shopping centers, retail stores, grocery stores, public transit, and construction sites
3 to remain open at limited capacity.

4 78. On November 24, 2021, the State also issued guidance for restaurants, which
5 incorporated the Face Covering Guidance. A true and correct copy of the Guidance for
6 Restaurants/Wineries is attached hereto as **Exhibit “16.”** At this time, the State allowed
7 “singing, shouting, playing a wind instrument, or engaging in similar activities” in restaurants
8 and wineries.

9 79. On November 25, 2020, the Supreme Court ruled that New York’s COVID-19
10 restrictions on churches violated the First Amendment. It issued a similar ruling against
11 Governor Newsom’s orders on December 3, 2020.

12 80. Nonetheless, the State and County Officials repeatedly defied the Supreme
13 Court’s edicts.

14 81. On December 3, 2020, the CDPH announced a Regional Stay at Home Order
15 (“Regional Order”) which banned all indoor religious worship services while allowing only
16 essential businesses to remain open. A true and correct copy of the Regional Order is attached
17 hereto as **Exhibit “17.”**

18 82. On February 5, 2021, the U.S. Supreme Court intervened once again and enjoined
19 California’s ban on indoor worship services.

20 83. On February 12, 2021, in flagrant disregard of the Supreme Court’s rulings, the
21 County, at Mr. Williams’ direction, reinstated the County’s ban on indoor worship services. Mr.
22 Williams justified the ban by saying the County’s COVID-19 orders were “even-handed” and
23 therefore “fundamentally different from the State rules....” The Supreme Court disagreed and,
24 on February 26, 2021, enjoined enforcement of the ban.¹ Despite the Supreme Court’s
25

26 ¹ All COVID-19 orders, guidelines, and directives issued by Santa Clara County during the
27 pendency of this lawsuit are hereinafter referred to as “County Orders.” The County Orders also
28 encompass the Urgency Ordinance adopted by the Santa Clara County Board of Supervisors
which authorized the fines. Thus, a challenge to the ordinance is a challenge to the fines. All
COVID-19 orders, directives, and guidelines issued by the State of California during the

1 admonitions, upon information and belief, the State and County Officials still believe that they
2 have the power to ban indoor religious activities if they decide it is necessary to protect public
3 health. There is a real risk of this happening, with a new COVID-19 variant (the “Delta” variant)
4 spreading across the globe and the Governor refusing to lift the COVID-related state of
5 emergency. Thus, this action is not moot.

6 84. Moreover, County Officials are trying to collect more than \$2.8 million in fines
7 they have imposed on Plaintiffs for violating restrictions on indoor gathering, face-covering
8 mandates, and the singing ban and failing to sign the County’s Social Distancing Protocol. The
9 fines were not issued until August 2020, when County Officials knew that COVID-19 was not
10 spreading *en masse* in churches and thus that indoor worshipping was not a menace to public
11 health. The fines were authorized by an ordinance adopted by the County Supervisors on August
12 11, 2020, a true and correct copy of which is attached hereto as **Exhibit “18.”**

13 85. These fines are, on their face, grossly disproportional to the harm allegedly done
14 by Plaintiffs’ refusal to obey the unlawful orders, as no COVID-19 case has been traced to
15 Plaintiffs’ church gatherings. County officials, led by Mr. Williams, have taken extreme
16 measures to collect the fines and to deter CCSJ and Pastor McClure from continuing to fight
17 the orders in court. For example, in December 2020, Assistant County Counsel Tony Lopresti,
18 as ratified by Mr. Williams, sent a letter to CCSJ’s lender, Cass Commercial Bank (“Cass
19 Bank”), telling it that CCSJ had been held in contempt and fined over \$1 million for violating
20 COVID-19 orders. A true and correct copy of the letter is attached hereto as **Exhibit “19.”** On
21 January 4, 2021, Mr. Lopresti, as ratified by Mr. Williams, sent another, similar letter to Cass
22 Bank. A true and correct copy of that letter is attached hereto as **Exhibit “20.”**

23 86. There was no legitimate reason for the County officials to send these letters. Upon
24 information and belief, the County has not sent such letters to any other person or entity who
25 has defied its COVID orders. The County Officials sent the letters to retaliate against Plaintiffs

26 _____
27 pendency of this lawsuit are hereinafter referred to as “State Orders.” The State and County
28 Orders encompass future orders intended to combat COVID-19 or any variant of COVID-19.

1 for pushing back against the unlawful mandates, and to deter them from pursuing further
2 litigation. At this point, Pastor McClure and CCSJ were defending themselves in contempt
3 proceedings a second time. Mr. Williams was aware that their letters would put pressure on
4 Cass Bank to drop CCSJ and, in turn, force CCSJ and McClure to pay the fines, comply with
5 the County Orders, and drop their legal challenges in order to not have their church building
6 foreclosed on.

7 87. Cass Bank interpreted the letters as a threat that the County intended to take the
8 church property to satisfy the fines. On January 21, 2021, Cass Bank sent a Notice of Default
9 to CCSJ for noncompliance with governmental regulations and nonpayment of fines. Cass Bank
10 only withdrew the default notice after it learned that CCSJ was contesting the fines (information
11 Mr. Williams had intentionally omitted from the County's letters).

12 88. Nevertheless, as a result of the County's actions, CCSJ had to make several
13 accelerated payments, exceeding \$800,000. These payments exceeded CCSJ's routine monthly
14 loan payment and caused CCSJ to divert money that would have otherwise been invested into
15 the church community and ministries.

16 89. The County's actions also caused Pastor McClure great despair, anxiety, and
17 stress because he thought the bank was going to call the church's mortgage note and foreclose
18 on the property. Pastor McClure was especially worried about what would become of his church
19 family, who were already suffering from fear, depression, and anxiety to a degree far beyond
20 anything he had witnessed in his thirty years of pastoring.

21 90. The State and County Officials' actions have had a chilling effect on Plaintiffs.
22 CCSJ and Southridge serve hundreds of County residents. Plaintiffs have sincerely and deeply
23 held religious beliefs that it is essential for Christians to assemble and regularly gather in person
24 for the teaching of God's Word, prayer, worship, baptism, communion, and fellowship. This is
25 based on scriptures from the Bible, including Hebrews 2:12 and 10:25, Ephesians 5:19, Acts
26 2:40-47, and Acts 5:40-42. These activities are primarily fulfilled in the gathering of the Church
27 body for worship services at the same location on Sunday mornings. The Plaintiffs also believe
28

1 that the church is to approach God with unveiled faces, beholding the glory of the Lord, and
2 being transformed into the same image from one degree of glory to another. 2 Corinthians 3:18.

3 91. The State and County Orders have interfered with the Plaintiffs' religious
4 practice. It is difficult for many congregants who are elderly or who have health problems to
5 sing or sit for long periods while wearing a face mask. One-on-one prayer is another crucial
6 component of the Plaintiffs' religious practice. Social distancing rules hinder congregants'
7 ability to pray for one another, lay hands on one another, and partake of holy communion.

8 92. Several congregants have also expressed to Pastor McClure they felt intimidated
9 by the County enforcement officers' persistent surveillance of church services. Some
10 congregants even believed the County was going to order the police to arrest them for attending
11 church. They wore an extra set of clothes, so they were prepared in the event they were arrested.

12 93. Plaintiffs' congregations are multi-racial and represent a cross-section of society
13 and essential workers. Some of Plaintiffs' congregants do not have the technological ability or
14 equipment necessary to watch church services online. Many in CCSJ's congregation are
15 transplants from other states and countries who came to San Jose for economic opportunities,
16 leaving behind family and friends. The COVID orders interfered with church services at a time
17 when County residents desperately needed a church community with the United States suffering
18 the highest unemployment rate since the Great Depression and mental health problems soaring,
19 including suicide rates in Santa Clara County. Indeed, the State and County Officials often
20 recognized these problems and they allowed certain secular activities, like pet groomers and
21 marijuana shops, to continue operating because they opined those activities would help people
22 cope with mental health issues. Churches were not as highly regarded by these government
23 officials.

24 94. Presently, CCSJ holds two services each Sunday at 1175 Hillsdale Avenue, San
25 Jose, California. Around 400 congregants attend each service. CCSJ provides seating in the
26 congregation, in the gym next to the congregation, in the lobby, and in the cafe. CCSJ's building
27 is 18,000 square feet and the sanctuary capacity is around 1,800 people. CCSJ has 10-20% of
28 outside fresh air circulating into the building when the ventilation systems are operating. CCSJ

1 has posted signs at all entrances encouraging the congregation to socially distance and wear
2 masks. CCSJ also provides hand sanitizer and masks at the main church entrances. In other
3 words, CCSJ followed the same generally applicable “social distancing” guidelines that others
4 in California have been following since March 2020 such as entertainment studios.

5 95. Similarly, Southridge began holding Sunday services at CCSJ in July 2020.
6 Around 100 congregants attend Sunday services. Masks and hand sanitizer are also provided to
7 Southridge’s congregants. Like CCSJ, Southridge has followed the same generally applicable
8 “social distancing” guidelines that others in California have been following since March 2020.

9 96. Neither the State nor County Officials have been able to trace any outbreaks of
10 COVID-19 to CCSJ or Southridge. The County Officials have known that churches are not
11 sources of COVID-19 outbreaks since at least the Fall of 2020. Nevertheless, County Officials
12 have continued to punish and attack churches for disobeying their orders, while doing nothing
13 to penalize the industries identified by the County as hotbeds of COVID-19 infection such as
14 the construction industry and transportation.

15 97. The County has also misrepresented data regarding the spread of COVID-19 in
16 Santa Clara County. The County recently reduced its reported COVID-19 death toll by more
17 than 20 percent because it had previously included in its count people who actually died of other
18 causes but were reported to have COVID-19 in their system at the time of death. Of course, the
19 County Officials knew these numbers were inflated as early as last year because this practice
20 was widely reported, the counts nationally revised, and the error reported by the CDC, but the
21 County Officials continued reporting the inflated numbers. They did so presumably to scare
22 people and to justify the arbitrary and unlawful orders they imposed, especially on churches.

23 98. America is starting to recover from the COVID-19 pandemic. But the recovery
24 will not be complete until government officials have been held accountable for their flagrant
25 violations of the Constitution. As the Reverend Martin Luther King, Jr., said: “One has a moral
26 responsibility to disobey unjust laws.” This case echoes that message.

FIRST CAUSE OF ACTION

Deprivation of Civil Rights Under 42 U.S.C. § 1983 (First Amendment)

(By Plaintiffs against all Defendants)

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2
3
4 99. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 98 of
5 this Complaint as though set forth fully herein.

6 100. This cause of action is brought pursuant to 42 U.S.C. § 1983 and the First and
7 Fourteenth Amendments to the United State Constitution.

8 101. The Free Exercise Clause of the First Amendment to the United States
9 Constitution, as applied to the states by the Fourteenth Amendment, prohibits Defendants from
10 abridging Plaintiffs’ right to the free exercise of religion.

11 102. Plaintiffs have sincerely held religious beliefs that the Bible is the infallible,
12 inerrant word of God, and that they are to follow its teachings. They believe that followers of
13 Jesus Christ are not to forsake the assembling of themselves together.

14 103. The State and County Orders, on their face and as applied, are neither neutral nor
15 generally applicable, but rather specifically and discriminatorily target the religious beliefs,
16 speech, assembly, and viewpoint of Plaintiffs. *See Employment Div., Dept. of Human Resources*
17 *of Ore. v. Smith*, 494 U.S. 872 (1990). The County and State Defendants have prohibited certain
18 public and private gatherings including religious services, while exempting and/or treating a
19 laundry list of industries and activities more favorably.

20 104. In the alternative, the State and County Orders, on their face and as applied,
21 impose a substantial burden on Plaintiffs’ free exercise of religion. *See Sherbert v. Verner*, 374
22 U.S. 398 (1963). The Orders put substantial pressure on Plaintiffs to violate their sincerely held
23 religious beliefs by ignoring the fundamental teachings and tenets of their religious texts
24 including those tenets requiring assembly, worship with unveiled faces, one-on-one prayer,
25 singing, and communion.

26 105. In addition to relegating Plaintiffs to a third-class status, the State and County
27 Defendants have threatened criminal penalties for holding in-person church services. The
28

1 County Defendants have in fact levied bankruptcy-inducing fines on Plaintiffs for holding
2 church gatherings and have thus substantially burdened Plaintiffs' religious exercise.

3 106. Defendants did not have a compelling interest that justified their discrimination
4 against and/or imposition of substantial burden upon religious activities. Even if they did, the
5 Defendants did not employ the least restrictive means available to fulfill the interest.

6 107. In engaging in the actions alleged above, Defendants acted under color of law and
7 within the course and scope of their employment at the State and County.

8 108. As a result of these violations of their First Amendment rights, Plaintiffs have
9 suffered damages in an amount to be proven at trial. Plaintiffs are also entitled to recover their
10 costs and attorneys' fees under 42 U.S.C. § 1988 plus injunctive relief and a judicial declaration
11 that Defendants' actions were unconstitutional.

12 **SECOND CAUSE OF ACTION**

13 **Deprivation of Civil Rights under Article 1, Section 4 of the California Constitution**

14 **(By Plaintiffs against all Defendants)**

15 109. Plaintiffs incorporate by reference the allegations in the preceding paragraphs 1
16 through 108 as if fully set forth herein.

17 110. Article I, Section 4 of the Constitution of the State of California states, "Free
18 exercise and enjoyment of religion without discrimination or preference are guaranteed."

19 111. "[T]he religion clauses of the California Constitution are read more broadly than
20 their counterparts in the federal Constitution." *Carpenter v. City and County of San Francisco*,
21 93 F.3d 627, 629 (1996). Courts "therefore review [a] challenge...under the free exercise clause
22 of the California Constitution in the same way [they] might have reviewed a similar challenge
23 under the federal constitution after *Sherbert*, and before *Smith*. In other words, we apply strict
24 scrutiny." *Catholic Charities of Sacramento, Inc. v. Superior Court*, 32 Cal. 4th 527, 562 (2004)
25 (citations omitted).

26 112. For the reasons stated in Plaintiffs' First Cause of Action, the State and County
27 Orders constitute a substantial burden on Plaintiffs' free exercise of religion under the California
28 Constitution because they have prohibited indoor gatherings, singing, communion, and one-on-

1 one prayer and have criminalized Plaintiffs for exercising their religion. This burdening cannot
2 satisfy strict scrutiny because California permits other industries and activities to proceed
3 unhindered or under less stringent conditions.

4 113. As a result of these violations, Plaintiffs have suffered damages in an amount to
5 be proven at trial. Plaintiffs are also entitled to recover their costs and attorneys' fees under
6 California Code of Civil Procedure Section 1021.5 plus injunctive relief and a judicial
7 declaration that Defendants' actions were unconstitutional.

8 **THIRD CAUSE OF ACTION**

9 **Deprivation of Civil Rights Under 42 U.S.C. § 1983 (First Amendment)**

10 **(By Plaintiffs against all Defendants)**

11 114. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 98 of
12 this Complaint as though set forth fully herein.

13 115. The First Amendment to the United States Constitution, as applied to the states
14 by the Fourteenth Amendment, prohibits the government from abridging the right of the people
15 to peaceable assembly.

16 116. "The right of free speech, the right to teach, and the right to assembly, are, of
17 course, fundamental rights." *Whitney v. California*, 274 U.S. 357, 373 (1927). When a
18 government practice restricts fundamental rights, it is subject to "strict scrutiny" and can be
19 justified only if it furthers a compelling government purpose and, even then, only if no less
20 restrictive alternative is available. *See, e.g., San Antonio Indep. Sc. Dist. v. Rodriguez*, 411 U.S.
21 1, 16-17 (1973); *Dunn v. Blumstein*, 405 U.S. 330 (1972).

22 117. By denying Plaintiffs the ability to conduct indoor church services, the State and
23 County Defendants have violated the Freedom of Assembly Clause to the United States
24 Constitution.

25 118. The State and County Orders, on their face and as applied, are unconstitutionally
26 vague and overbroad as they chill and abridge Plaintiffs' right to peaceably assemble.

27 119. The State and County Orders, on their face and as applied, constitute an
28 unconstitutional prior restraint on Plaintiffs' right to assemble.

1 for this disparate treatment, much less a compelling justification for it, and their orders were not
2 narrowly tailored to serve a compelling interest.

3 128. In engaging in the actions alleged above, Defendants acted under color of law and
4 within the course and scope of their employment at the State and County.

5 129. As a result of these violations of their Fourteenth Amendment rights, Plaintiffs
6 have suffered damages in an amount to be proven at trial. Plaintiffs are also entitled to recover
7 their costs and attorneys' fees under 42 U.S.C. § 1988 plus injunctive relief and a judicial
8 declaration that Defendants' actions were unconstitutional.

9 **FIFTH CAUSE OF ACTION**

10 **Deprivation of Civil Rights Under 42 U.S.C. § 1983 (Eighth Amendment)**

11 **(By Plaintiffs against the County Officials and Santa Clara County)**

12 130. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 98 of
13 this Complaint as though set forth fully herein.

14 131. This cause of action is brought pursuant to 42 U.S.C. § 1983 and the Eighth
15 Amendment to the United State Constitution.

16 132. The Eighth Amendment, as incorporated against the State and County through the
17 Fourteenth Amendment, prohibits the government from imposing excessive fines on
18 Americans.

19 133. The County Ordinance, on its face and as applied, violates the Eighth
20 Amendment.

21 134. The \$2.8 million in fines the County Officials have imposed on Plaintiffs are
22 grossly disproportionate to the harm allegedly done by Plaintiffs' refusal to follow all of the
23 County's COVID-19 orders since last fall. Thus, they violate the Eighth Amendment.

24 135. In engaging in the actions alleged above, the County Officials acted under color
25 of law and within the course and scope of their employment at the County.

26 136. Plaintiffs lack an adequate remedy at law and will be irreparably harmed if the
27 Court does not enjoin the County Officials from seeking to collect the \$2.8 million in unlawful
28 fines. Therefore, Plaintiffs seek declaratory relief and injunctive relief enjoining the County

1 Officials from enforcing the fines. Plaintiffs are also entitled to recover their costs and attorneys’
2 fees under 42 U.S.C. § 1988.

3 **SIXTH CAUSE OF ACTION**

4 **Deprivation of Civil Rights Under Article 1, Section 7 of the California Constitution**
5 **(By Plaintiffs against the County Officials and Santa Clara County)**

6 137. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 98 and
7 130 through 136 of this Complaint as though fully set forth herein.

8 138. Article 1, Section 7 of the California Constitution protects against cruel and
9 unusual punishment and excessive fines.

10 139. For the reasons stated in Plaintiffs’ Fifth Cause of Action, the County Ordinance
11 and excessive fines violates Article 1, Section 7 of the California Constitution.

12 140. Plaintiffs seek declaratory relief and injunctive relief enjoining the County
13 Officials from enforcing the fines. Plaintiffs are also entitled to recover their costs and attorneys’
14 fees under California Code of Civil Procedure Section 1021.5.

15 **SEVENTH CAUSE OF ACTION**

16 **Deprivation of Civil Rights Under 42 U.S.C. § 1983 (First Amendment Retaliation)**
17 **(By Plaintiffs CCSJ and Pastor McClure against James Williams)**

18 141. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 98 of
19 this Complaint as though set forth fully herein.

20 142. This cause of action is brought pursuant to 42 U.S.C. § 1983 and the First and
21 Fourteenth Amendments to the United State Constitution.

22 143. Clearly established law bars the government from retaliating against Americans
23 for exercising their constitutional rights and from taking actions designed to deter people from
24 exercising their constitutional rights, including the right to petition the courts for a redress of
25 grievances.

26 144. During the fall of 2020, Plaintiffs challenged the County Officials’ efforts to
27 enforce arbitrary and unlawful public health orders against religious groups. As of December
28

1 2020, Plaintiffs CCSJ and Pastor McClure were involved in several legal actions against the
2 County, including this case.

3 145. During December 2020 and January 2021, County officials, instructed by Mr.
4 Williams, sent threatening letters to Cass bank, as alleged above. They hoped to pressure Cass
5 Bank to declare a default that would cost CCSJ hundreds of thousands of dollars. They did this
6 specifically to punish CCSJ and Pastor McClure for defying the COVID-19 orders and to
7 pressure them to drop their legal actions.

8 146. Mr. Williams' actions constitute unlawful retaliation that violates the First
9 Amendment. In engaging in these actions, Mr. Williams acted under color of law and within
10 the course and scope of his employment as the County Counsel for Santa Clara County.

11 147. As a result of Mr. Williams' actions, Plaintiffs CCSJ and Pastor McClure were
12 forced to make several accelerated payments to Cass bank. Plaintiffs are also entitled to recover
13 their costs and attorneys' fees under 42 U.S.C. § 1988 plus injunctive relief and a judicial
14 declaration that Mr. Williams' actions were unconstitutional.

15 148. Mr. Williams acted in knowing violation of Plaintiffs' legal and constitutional
16 rights, and without good faith, so punitive damages are warranted.

17 **EIGHTH CAUSE OF ACTION**

18 **Deprivation of Civil Rights Under 42 U.S.C. § 1983 (*Monell*)**

19 **(By Plaintiffs against the County Officials and Santa Clara County)**

20 149. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 148 of
21 this Complaint as though set forth fully herein.

22 150. This cause of action is brought pursuant to 42 U.S.C. § 1983 and the First, Eighth
23 and Fourteenth Amendments to the United State Constitution.

24 151. The unlawful actions carried out by County Officials, as alleged in the First
25 through Seventh Causes of Action, were carried out by individuals who sit at the top of their
26 departments within the County and who thus qualify as final policymakers under *Monell v.*
27 *Department of Social Services*. Furthermore, the County Officials' actions, alleged above, were
28 enabled and ratified by the COUNTY SUPERVISORS and thus constituted a municipal custom,

1 policy or practice. Therefore, the County is liable for any damages that may be awarded against
2 the County Officials for their unconstitutional actions.

3 152. Plaintiffs are also entitled to recover their costs and attorneys' fees under 42
4 U.S.C. § 1988.

5 **NINTH CAUSE OF ACTION**

6 **Violation of the Bane Act – Cal. Civil Code §52.1**

7 **(By Plaintiffs against all Defendants)**

8 153. Plaintiffs incorporate by reference the allegations in paragraphs 1 through 140 of
9 this Complaint as though set forth fully herein.

10 154. The Bane Act allows a person whose rights have been interfered with by means
11 of threats, intimidation, or coercion to sue for damages, injunctive, and other equitable relief.
12 Civ Code §52.1(b).

13 155. The State and County Defendants' draconian orders and threats of criminal penalty
14 interfered with the Plaintiffs' constitutional rights, as set forth in the United States and California
15 Constitutions, including the right to free exercise of religion and assembly and equal protection
16 of the law.

17 156. The County Defendants' persistent surveillance, crippling fines, and threatening
18 letters to CCSJ's bank also interfered with the Plaintiffs' constitutional rights, as set forth in the
19 United States and California Constitutions, including the right to free exercise of religion and
20 assembly, equal protection of the law, and right against cruel and unusual punishment.

21 157. As a proximate result of the conduct of Defendants, Plaintiffs are entitled to
22 injunctive relief, damages, and attorneys' fees, as provided by California Civil Code Sections
23 52 and 52.1.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs pray for relief as follows:

- 26 1. Nominal damages for violation of civil rights;
27 2. For damages in an amount to be proven at trial;

