

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ABIDING PLACE MINISTRIES,

Plaintiff,

v.

GAVIN NEWSOM, in his official
capacity as the Governor of
California, *et al.*,

Defendants.

Case No. 20-cv-683-BAS-AHG
**ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

[ECF No. 24]

20 Plaintiff Abiding Place Ministries challenges the stay-at-home and other
21 orders issued by California Governor Gavin Newsom, and the corresponding orders
22 issued by the County of San Diego. The stay-at-home orders were issued in an
23 attempt to slow the spread of the novel coronavirus, also known as COVID-19.

24 Plaintiff filed a complaint against the County of San Diego and Public Health
25 Officer of San Diego County Wilma J. Wooten, seeking a temporary restraining
26 order and declaratory relief. (ECF No. 1.) Plaintiff also filed a motion for temporary
27 restraining order on April 9, 2020, asking the Court to enjoin the county order so the
28 church could assemble for Easter service on April 12, 2020. The Court held a

1 telephonic hearing and denied the motion. (ECF Nos. 2, 10.)

2 Plaintiff filed an amended complaint against Defendants Gavin Newsom,
3 Xavier Becerra, Sonia Y. Angell, and the County of San Diego. (First Amended
4 Complaint, “FAC,” ECF No. 22.) Plaintiff then filed a motion for preliminary
5 injunction. (“Mot.,” ECF No. 24.) The County filed a response in opposition to the
6 Motion (ECF No. 42), as did the State Defendants (ECF No. 46). Plaintiff filed a
7 reply, and the State Defendants filed a sur-reply. (ECF Nos. 48, 55.) The Court held
8 a telephonic hearing on the Motion on June 3, 2020. For the reasons stated below,
9 the Court **DENIES** the Motion.

10 **I. FACTUAL BACKGROUND**

11 San Diego County, like most if not all other counties in the United States, has
12 been impacted by the COVID-19 pandemic. COVID-19 is the disease caused by the
13 coronavirus, which was first detected in China in December 2019 and has since
14 spread worldwide. The CDC determined that COVID-19 is spread primarily through
15 in-person interactions, either “[b]etween people who are in close contact with one
16 another” or “[t]hrough respiratory droplets produced when an infected person
17 coughs, sneezes or talks.” *See* CDC, How COVID-19 Spreads (last updated June 1,
18 2020), <https://www.cdc.gov/corona-virus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>. It can even be spread by those who are not showing symptoms
19 and do not know they are infected with the virus. *Id.* Thus, the CDC currently
20 recommends that everyone practice social distancing. Social distancing requires
21 staying at least six feet away from other people and “avoid[ing] large and small
22 gatherings.” *See* CDC, What is Social Distancing? (last updated May 6, 2020),
23 [https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html)
24 [distancing.html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html).

25
26 As of the date of this Order, there is no vaccine for the coronavirus. Although
27 scientists and researchers are hopeful about potential vaccines that are currently
28 being tested, as of now, everyone is at risk. The numbers of those infected by the

1 virus continues to grow. *See* COVID-19 Statewide Update, <https://update.covid19.ca.gov/> (last updated June 3, 2020).

2
3 Given the above, on March 4, 2020, Defendant Gavin Newsom, the Governor
4 of California, declared a State of Emergency due to the pandemic. On March 13,
5 2020, President Donald Trump declared a national emergency. On March 19, 2020,
6 Governor Newsom issued Executive Order N-33-20, which directed all residents to
7 “immediately heed the current State public health directives” including the March
8 19, 2020 Order of the State Public Health Officer. (Exhibit A to FAC, ECF No. 22-
9 1.) The State Public Health Officer ordered “all individuals living in the State of
10 California to stay home or at their place of residence except as needed to maintain
11 continuity of operations of the federal critical infrastructure sectors.” (*Id.*)
12 Californians could leave their homes “to obtain or perform [certain] functions . . . , or
13 to otherwise facilitate authorized necessary activities.” The Public Health Officer
14 was permitted to “designate additional sectors as critical in order to protect the health
15 and well-being of all Californians.” (*Id.*) On March 22, 2020, the State published a
16 list of “‘Essential Critical Infrastructure Workers’ to help state, local, tribal and
17 industry partners as they work to protect communities.” (Exhibit D to FAC, ECF
18 No. 22-4.)

19 As relevant here, one essential business category on that list is “Faith based
20 services that are provided through streaming or other technology.” (*Id.* at 11.) On
21 April 28, 2020, that category was changed to be: “Clergy for essential support and
22 faith-based services that are provided through streaming or other technologies that
23 support physical distancing and state public health guidelines.” (Exhibit E to FAC,
24 ECF No 22-5.) The Governor later clarified that this exemption from his stay-at-
25 home order allows not only online streaming of religious services (and the work of
26 individuals necessary to set up and run the streaming equipment), but also permits
27 drive-in style services “provided congregants do not leave their cars and refrain from
28 direct or indirect physical contact.” (ECF No. 46, at 4.) On May 25, 2020, Governor

1 Newsom announced new guidelines for places of worship that allow in-person
2 worship services to resume, subject to county approval and compliance with certain
3 public health requirements. The County of San Diego adopted the guidelines on May
4 26, 2020. The requirements limit attendance to 100 persons, or 25% of building
5 capacity, whichever is lower. (Exhibit A to Reply, ECF No. 48-1.)

6 Plaintiff's Motion was filed prior to the new guidelines and brings challenges
7 to the Governor's stay-at-home order for various reasons. Plaintiff brings claims for
8 violation of the Free Exercise Clause, the Establishment Clause, the Free Speech
9 Clause, the Freedom of Assembly Clause, the Due Process Clause of the Fourteenth
10 Amendment, the Equal Protection Clause, and various sections of the California
11 Constitution.¹ Plaintiff moves for a temporary restraining order and an order to show
12 cause why a preliminary injunction should not be issued, seeking the following order:
13 "Defendants, as well as their agents, employees, and successors in office, shall be
14 restrained and enjoined from enforcing, attempting to enforce, threatening to enforce,
15 or otherwise requiring compliance with any prohibition on Plaintiff's engagement in
16 religious services, practices, or activities at which the Center for Disease Control's
17 social distancing guidelines are followed." (Mot. at 23.)

18 **II. LEGAL STANDARD**

19 The standard for a temporary restraining order and preliminary injunction are
20 "substantially identical." *Stuhlberg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d
21 832, 839 n.7 (9th Cir. 2001). "A plaintiff seeking a preliminary injunction must
22 establish that he is likely to succeed on the merits, that he is likely to suffer
23 irreparable harm in the absence of preliminary relief, that the balance of equities tips
24

25 ¹ Although not relevant to the Court's rulings below, it is worth mentioning that on May 29, 2020,
26 the Supreme Court issued a decision on an application for injunctive relief in *South Bay United
27 Pentecostal Church v. Newsom*, a case appealed from this Court. The Supreme Court declined to
28 issue an injunction in favor of the church, finding California's guidelines that place restrictions on
places of worship are consistent with the Free Exercise Clause of the First Amendment. *S. Bay
United Pentecostal Church v. Newsom*, No. — S.Ct. —, 2020 WL 2813056 (May 29, 2020).

1 in his favor, and that an injunction is in the public interest.” *Am. Trucking Ass’ns*
2 *Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter v.*
3 *Nat. Res. Defense Council, Inc.*, 555 U.S. 7, 21 (2008)).

4 **III. ANALYSIS**

5 Considering the substantial changes to the State and County orders that have
6 occurred since Plaintiff filed its operative complaint and Motion, the Court first
7 addresses the issue of mootness.

8 The Constitution limits the federal judicial power to designated “cases” and
9 “controversies.” U.S. Const., Art. III, § 2. “The doctrine of mootness, which is
10 embedded in Article III’s case or controversy requirement, requires that an actual,
11 ongoing controversy exist at all stages of federal court proceedings.” *Pitts v. Terrible*
12 *Herbst, Inc.*, 653 F.3d 1081, 1086 (9th Cir. 2011). “[A]n actual controversy must be
13 extant at all stages of review, not merely at the time the complaint is filed.”
14 *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (citation omitted).
15 A federal court must dismiss a case for lack of jurisdiction if it becomes moot. *Pitts*,
16 653 F.3d at 1086–87.

17 Plaintiff seeks to “privately assemble away from the general public in the open
18 air on a large, private ranch.” (PI Mot. at 1.) Plaintiff has a “small congregation,
19 with less than 100 persons typically present at its Sunday meeting.” (FAC ¶ 25.)
20 Plaintiff “moves for a preliminary injunction to enjoin the County and all persons
21 acting at the County’s direction from applying the County’s Order of the Health
22 Officer and Emergency Regulations (Effective April 9, 2020) against Abiding Place
23 Ministries.” (*Id.* at 3.) In sum and as noted above, Plaintiff asks that: “Defendants,
24 as well as their agents, employees, and successors in office, shall be restrained and
25 enjoined from enforcing, attempting to enforce, threatening to enforce, or otherwise
26 requiring compliance with any prohibition on Plaintiff’s engagement in religious
27 services, practices, or activities at which the Center for Disease Control’s social
28 distancing guidelines are followed.” (*Id.* at 23.)

1 The State’s May 25 guidelines, which the County has adopted, allow
2 Plaintiff’s congregation (of less than 100 persons) to meet as long as certain CDC
3 guidelines are followed. These most recent guidelines supersede any prior orders.
4 While “repeal or amendment of an ordinance by a local government or agency does
5 not necessarily deprive a federal court of its power to determine the legality of the
6 practice’ at issue,” “[a] statutory change . . . is usually enough to render a case moot,
7 even if the legislature possesses the power to reenact the statute after the lawsuit is
8 dismissed.” *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014) (citations
9 omitted); *see also Twitter, Inc. v. Lynch*, 139 F. Supp. 3d 1075, 1081 (N.D. Cal.
10 2015) (“[W]hen subsequent legislation or rulemaking supersedes challenged
11 regulations or rules, the challenge is moot.”). Plaintiff challenges the prior State and
12 County orders, not the May 25 guidelines. The prior orders are no longer in effect.


13 Any further arguments made by Plaintiff at oral argument—e.g., Plaintiff
14 wants to hold a wedding at its church, its members do not wish to wear masks while
15 singing, the new guidelines are unclear, and the church should not be compelled to
16 tell members to stay home if they are sick—were not made in Plaintiff’s amended
17 complaint or its Motion. For a federal court to issue an injunction, there must be a
18 “sufficient nexus between the claims raised in a motion for injunctive relief and the
19 claims set forth in the underlying complaint itself. The relationship between the
20 preliminary injunction and the underlying complaint is sufficiently strong where the
21 preliminary injunction would grant relief of the same character as that which may be
22 granted finally. Absent that relationship or nexus, the district court lacks authority
23 to grant the relief requested.” *Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr.*,
24 810 F.3d 631, 636 (9th Cir. 2015).

25
26
27 ///
28

1 Because the amended complaint and the preliminary injunction Motion do not
2 challenge the May 25 guidelines, and because the May 25 guidelines superseded the
3 orders challenged in Plaintiff's papers, Plaintiff's Motion is moot. On this basis, the
4 Court **DENIES** Plaintiff's Motion for Preliminary Injunction.

5 **IT IS SO ORDERED.**

6 **DATED: June 4, 2020**


7 **Hon. Cynthia Bashant**
8 **United States District Judge**

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28