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 THE PEOPLE OF THE STATE OF
 12 CALIFORNIA, COUNTY OF SANTA CLARA,
 AND SARA H. CODY, M.D., IN HER OFFICIAL
 13 CAPACITY AS HEALTH OFFICER FOR THE
 COUNTY OF SANTA CLARA

**Exempt from Filing Fees Pursuant
 to Govt. Code § 6103**

14
 15 SUPERIOR COURT OF CALIFORNIA

16 COUNTY OF SANTA CLARA

17
 18 THE PEOPLE OF THE STATE OF
 CALIFORNIA, COUNTY OF SANTA
 19 CLARA, and SARA H. CODY, M.D., in her
 official capacity as Health Officer for the
 20 County of Santa Clara,

21 Plaintiffs,

22 v.

23 CALVARY CHAPEL SAN JOSE; MIKE
 24 MCCLURE, and DOES 1-50,

25 Defendants.
 26
 27
 28

No. 20CV372285

**MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT OF
 PLAINTIFFS' MOTION FOR SUMMARY
 ADJUDICATION**

Date: TBD
 Time: TBD
 Dept: 7
 Judge: Hon. Christopher G. Rudy

Complaint filed: October 27, 2020

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I. INTRODUCTION

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2 In the first year of the COVID-19 pandemic—before widespread vaccines, easily accessible
3 testing, and lifesaving treatments were available as they are today—COVID-19 wreaked havoc in
4 communities across this nation. Santa Clara County recorded some of the earliest cases and deaths
5 of COVID-19 in the United States in January and February of 2020. (Cody Decl. ¶ 21.) Over the
6 winter of 2020, the county, like much of the nation, experienced a devastating surge in infections
7 and a terrible, associated surge in deaths and serious illnesses. (*Id.* ¶ 23.) Absent vaccinations and
8 with very limited therapeutic options, County health officials issued a series of Public Health Orders
9 to control the spread of COVID-19 grounded in the best available scientific evidence at the time.
10 (*Id.* ¶¶ 20–38.) Among the most basic of these precautions was the requirement that everyone wear
11 face coverings. The Public Health Orders also required all entities in the county to submit a Social
12 Distancing Protocol (SDP)—a COVID-19 safety plan that included following all applicable Public
13 Health Orders, training personnel about COVID-19, and reporting cases to the County to allow for
14 contact tracing and containment of outbreaks.

15 Businesses throughout the county rallied together and made difficult sacrifices to keep the
16 community safe by requiring face coverings, submitting SDPs, and training their employees how to
17 comply with the law and report positive cases. But not Defendant Calvary Chapel San Jose
18 (“Calvary Chapel”). Alone among businesses in the county, Calvary Chapel and its senior pastor,
19 Defendant Mike McClure, steadfastly refused to comply with even the most basic, common-sense
20 measures—even after they were warned and fined. Starting in May 2020, they held regular indoor
21 events attracting hundreds of people without requiring that personnel or attendees wear face
22 coverings. (SSUMF Nos. 18–19, 37; Benkato Decl. Ex. 179 (McClure Dep. Tr.) at 102:18–21,
23 103:7–104:17, Ex. 182 (Adams Dep. Tr.) 33:7–11.) They also refused to submit an SDP agreeing
24 to the training protocols and other safety precautions required of all businesses open to the public in
25 the county. (SSUMF Nos. 29, 37.) Even as COVID-19 cases in the county grew, hospitalizations
26 increased, and the death toll climbed, Defendants continued to host massive gatherings without any
27 basic COVID-19 mitigation measures in place—despite being aware of COVID-19 cases among
28 attendees at Calvary Chapel events and a major COVID-19 outbreak among students and staff at

1 their on-site school.

2 In response to community complaints, the County first issued Defendants a warning, and
3 then, after continuing to observe violations, issued notices of violation and related fines. Undaunted,
4 Defendants still refused to submit an SDP or enforce even the most basic safety measures such as
5 face covering rules. In October 2020, the People of the State of California (People), the County, and
6 Dr. Sara Cody in her capacity as Health Officer (collectively, Plaintiffs) initiated this action to hold
7 Defendants accountable. Under the operative First Amended Complaint (FAC), Plaintiffs seek, *inter*
8 *alia*, to hold Defendants liable for violating the Public Health Orders (Claim 3) and creating a public
9 nuisance *per se* (Claim 1), and to collect the resulting fines that Defendants incurred under the
10 County’s Urgency Ordinance (Claim 4) and Government Code section 25132 (Claim 5).¹

11 While Plaintiffs have alleged, and the evidence shows, that Defendants violated myriad
12 Public Health Order requirements, this motion is focused on only two violations: Defendants’ refusal
13 to require personnel or attendees to wear face coverings and their refusal to submit an SDP. These
14 two violations are undisputed: Defendants admit they never required face coverings and that they
15 refused to submit a complete SDP, and the County’s enforcement officers repeatedly confirmed this
16 lack of compliance. Defendants therefore violated the County’s Public Health Orders, and Plaintiffs
17 are entitled to summary adjudication on Claim 3 with respect to the face covering and SDP
18 violations. Because the County’s Board of Supervisors, in enacting the County’s Urgency
19 Ordinance, expressly declared violations of the Public Health Orders to be a nuisance, Defendants’
20 undisputed violations constitute a nuisance *per se* under black-letter California law, and Plaintiffs are
21 also entitled to summary adjudication on Claim 1. Similarly, because the Public Health Orders are
22 incorporated as county law under the Urgency Ordinance, Defendants’ conduct violates the Urgency
23 Ordinance (Claim 4) and Government Code section 25132 (Claim 5), which authorizes county
24 authorities to prosecute violations of county ordinances. Finally, there is no dispute as to the
25 calculation of the fines Defendants incurred as a result of their violations of the face covering and
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28 ¹ The FAC also includes a cause of action for public nuisance under Civil Code sections 3479 and 3480 (Claim 2). Plaintiffs do not move for summary adjudication on that cause of action.

1 SDP requirements.² Defendants have not paid these fines, and, under the Urgency Ordinance and
 2 Government Code section 25132, Plaintiffs are entitled to the fines and a late penalty of 10 percent.³

3 Defendants will likely raise various constitutional affirmative defenses to avoid
 4 accountability for putting the community’s health at risk during the darkest days of the pandemic.
 5 But these same arguments have twice been rejected—by this Court and by the court considering an
 6 earlier administrative appeal of Defendants’ violations. They fare no better on a third attempt.
 7 Defendants cannot carry their burden of showing that the two violations at issue here disfavored
 8 religious conduct or that the fines were disproportionate to Defendants’ flagrant misconduct.

9 II. FACTUAL BACKGROUND

10 COVID-19 is a highly contagious disease. (SSUMF No. 1; Cody Decl. ¶ 12; see also
 11 Benkato Decl. Ex. 179 (McClure Dep. Tr.) 74:2–6 [agreeing COVID-19 spreads through aerosols],
 12 Ex. 182 (Adams Dep. Tr.) 87:6–15 [describing COVID-19 spreading “aggressively” at school
 13 associated with Calvary Chapel].) COVID-19 spreads rapidly even among people who may be
 14 asymptomatic. (Cody Decl. ¶ 14.) The disease can cause severe illness and death and it can cause
 15 lingering long-term chronic health conditions. (*Id.* ¶ 11; see also Benkato Decl. Ex. 179 (McClure
 16 Dep. Tr.) 75:4–10 [acknowledging that some people with COVID-19 may experience serious
 17 symptoms, including death].) By June 2021, over 100,000 Santa Clara County residents had
 18 contracted COVID-19, and more than 1,700 had died. (Cody Decl. ¶ 22.) At times the disease
 19 spread in Santa Clara County at such an alarming rate that it threatened to overwhelm the health
 20 system. For example, in Fall 2020, the average number of new cases per week and the number of
 21 people hospitalized with COVID-19 tripled over the span of a month. (*Id.* ¶ 23.)

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26 ² These fines amount to \$3.9 million, but Plaintiffs, in an exercise of prosecutorial discretion, are
 27 seeking only \$2.8 million through this action.

28 ³ The Urgency Ordinance also authorizes Plaintiffs to seek attorney’s fees and costs. Should
 Plaintiffs prevail in this matter, they will seek attorney’s fees and costs upon entry of judgment.

1 **A. The County Adopted Public Health Orders to Control the Spread of COVID-19.**

2 In response to the global COVID-19 pandemic, the County, state, and federal governments
3 declared a state of emergency. (SSUMF Nos. 2–4.) Beginning in July 2020, the County Health
4 Officer issued a series of Public Health Orders⁴ to curtail COVID-19 and protect the public health.
5 (SSUMF Nos. 5–13; Cody Decl. ¶¶ 29–38; RJN, Ex. 153–158.) As relevant here, on July 2, 2020,
6 the County Health Officer issued a Risk Reduction Order applicable to all individuals and businesses
7 in the county, including non-profit organizations and religious institutions. (SSUMF Nos. 6–7.)
8 Among other requirements, this Order required that all individuals wear face coverings when
9 entering business facilities or using public transportation. (RJN, Ex. 153 at § 10.) The Risk
10 Reduction Order also required businesses in the county to submit an SDP attesting to steps taken to
11 protect health and safety. (*Id.* at § 12(c).) The SDP required each business to certify that it was
12 taking protective measures including (1) training personnel about COVID-19, (2) instituting a
13 process for reporting positive COVID-19 cases to the County, and (3) agreeing to follow any
14 applicable Public Health Orders, guidance, or directives. (RJN, Ex. 164; Cody Decl. ¶ 32.)

15 On October 5, 2020, the County Health Officer issued a Revised Risk Reduction Order.
16 (SSUMF Nos. 8–9; RJN, Ex. 154.) This Order required compliance with the California Department
17 of Public Health’s (CDPH) mandatory guidance on face coverings, which required the use of face
18 coverings in indoor public spaces with limited exceptions such as for those with medical conditions
19 or disabilities, and while actively eating or drinking. (RJN, Ex. 154 at § 10, Exs. 160–161; see also
20 SSUMF Nos. 15–16.) The October 5, 2020 Order still required all businesses to submit an SDP.
21 (RJN, Ex. 154 at § 12(c), Ex. 155 at pp. 46–55, Ex. 165.)

22 On May 18, 2021, in light of increased vaccinations and falling COVID-19 case numbers, the
23 County Health Officer issued an order instituting more focused safety measures (the “Safety
24 Measures Order”). (SSUMF Nos. 10–11; RJN, Ex. 156.) Under this Order, businesses were no
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27 ⁴ Throughout this memorandum, “Public Health Orders” refers to the July 2, 2020 Risk Reduction
28 Order, October 5, 2020 Revised Risk Reduction Order, May 18, 2021 Safety Measures Order, June
21, 2021 Phase Out Order, May 18, 2021 Mandatory Directive on Face Coverings, and any
applicable directives and guidance referenced within these documents. (See RJN, Exs. 153–162.)

1 longer required to submit SDPs. However, individuals and businesses were required to follow the
2 County’s May 18, 2021 Mandatory Directive on Face Coverings, which in turn required compliance
3 with the May 3, 2021 CDPH mandatory guidance regarding face coverings. (RJN, Ex. 156 at § 8,
4 Ex. 158, Ex. 162; see also SSUMF No. 12.) The County Health Officer subsequently issued a June
5 21, 2021 order that rescinded the provisions of the May 18, 2021 Order relevant to this case.
6 (SSUMF No. 13; RJN, Ex. 157.)

7 In order to create a comprehensive program to civilly enforce these various Public Health
8 Orders, the County Board of Supervisors adopted Urgency Ordinance No. NS-9.921 (the “Urgency
9 Ordinance”) on August 11, 2020. (SSUMF No. 14; RJN, Ex. 159.) As relevant here, the Urgency
10 Ordinance did two key things. First, it declared that violations of the State and County public health
11 orders constitute an imminent threat and menace to public health and are therefore a public nuisance.
12 (RJN, Ex. 159 at § 3.) Second, the Urgency Ordinance set a range of fines for violations of public
13 health orders. (*Id.* at § 6(b).) For commercial activities, the minimum fine authorized by the
14 Urgency Ordinance was \$250 and the maximum fine was \$5,000. (*Id.* at § 6(b)(2).) Where fines
15 were imposed for each day of a violation, the fine doubled up to a \$5,000 maximum, and then
16 accrued daily at \$5,000 until the violation was corrected. (*Ibid.*) The Ordinance specifically
17 authorized fines up to the maximum amount for multiple violations by a single party. (See *id.*
18 §6(b)(3) [“Multiple violations by a single Responsible Party shall each warrant fines up to the
19 maximums set forth in this Section 6(b) and shall be cumulative”].) Under the Ordinance,
20 commercial activities included activities conducted by any business, which was defined to include
21 any “for-profit, non-profit, or educational entity, whether a corporate entity, organization,
22 partnership, or sole proprietorship, and regardless of the nature of the service, the function it
23 performs, or its corporate or entity structure.” (*Id.* at §§ 2(b), 6(b)(2).)

24 **B. Defendants Violated the Public Health Orders on an Ongoing Basis.**

25 Defendant Calvary Chpel San Jose operates a church in Santa Clara County, and Defendant
26 McClure is the senior pastor of the church. (SSUMF Nos. 16–17.) Unlike most businesses and
27 religious institutions in the county, which complied with the Public Health Orders, Defendants
28 decided that the Orders were “recommendations” (Benkato Decl. Ex. 179 (McClure Dep. Tr.)

1 141:5–142:5), and not “law[s] that had to be particularly kept” (*id.* Ex. 182 (Adams Dep. Tr.) 35:10–
2 15).⁵ Beginning in May 2020, Defendants hosted regular large indoor events at which Defendants’
3 personnel and attendees were not required to wear face coverings. (SSUMF Nos. 18–19, 37;
4 Benkato Decl. Ex. 179 (McClure Dep. Tr.) 102:18–21, 103:7–104:17, Ex. 182 (Adams Dep. Tr.)
5 33:7–11.) Once the SDP requirement was enacted, Defendants refused to submit it. (SSUMF No.
6 29.) After receiving a complaint, the County initiated enforcement. Between August 2020 and May
7 2021, County enforcement officers regularly inspected Calvary Chapel, verified violations of the
8 County’s Public Health Orders, and issued numerous notices of violation (NOVs) to Defendants for,
9 *inter alia*, failing to require face coverings, failing to require social distancing, permitting singing
10 without face coverings, and refusing to submit an SDP. (SSUMF No. 46.) This motion is based on
11 two of these notices of violation.

12 First, on August 23, 2020, after issuing a warning and receiving no response, the County
13 issued an NOV to Defendants for, *inter alia*, failure to submit an SDP. (SSUMF No. 30; see also
14 Gonzalez Decl. Ex. 192 (Aug. 23, 2020 NOV).) The NOV charged Defendants \$250—the minimum
15 available fine—for failure to submit an SDP. (SSUMF No. 31; Gonzalez Decl. Ex. 192; RJN, Ex.
16 159 at § 6(b)(2).) After a 24-hour grace period, the \$250 fine doubled every day up to a maximum
17 of \$5,000, and then continued to accrue daily at \$5,000 for every day Defendants failed to submit an
18 SDP. (SSUMF No. 32; Gonzalez Decl. Ex. 192; see also RJN, Ex. 159 at § 6(b)(2).)

19 Second, on November 9, 2020, the County issued an NOV to Defendants with separate
20 \$1,000 fines for (1) failing to require visitors to wear face coverings, and (2) failing to require
21 personnel (including employees and volunteers) to wear face coverings, as required by the October
22 5, 2020 Revised Risk Reduction Order. (SSUMF Nos. 20–21; Gonzalez Decl. Ex. 193 (Nov. 9,
23 2020 NOV).) As with the August 23 SDP fine, each \$1,000 fine doubled every day up to a
24 maximum of \$5,000, and then continued to accrue daily at \$5,000 for every day that Defendants did
25 not correct the violations. (SSUMF No. 22; Gonzalez Decl. Ex. 193.) To correct the face covering
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28 ⁵ See also, e.g., Benkato Decl. Ex. 184 (Perez Dep. Tr.) at 64:20–65:23 (State and County orders are
“suggestions,” “not a law,” and Defendant McClure communicated that “from the pulpit”).

1 violations, Defendants were required to (but did not) submit a sworn compliance statement
2 confirming correction, which the County could then verify. (SSUMF Nos. 23–34; Gonzalez Decl.
3 Ex. 193.)

4 The Notices of Violation did not result in compliance. (SSUMF Nos. 18–19, 29, 37.) To the
5 contrary, Defendants’ violations were open and notorious. Defendant McClure and other Calvary
6 personnel advertised the violations from stage on a weekly basis. (Mackey Decl. ¶¶ 4–24, 26–79,
7 Exs. 1–41, 43–149.) They hosted and broadcast weekly events where personnel, guest speakers, and
8 hundreds of attendees failed to wear face coverings, as well as smaller events throughout the week
9 where personnel and attendees were similarly unmasked. (*Id.*; Gonzalez Decl. ¶¶ 11–46; Sircar
10 Decl. ¶¶ 30–86; Nguyen Decl. ¶¶ 9–22.) They announced their refusal to comply online. (Mackey
11 Decl. ¶ 25.) They refused to comply despite knowing that attendees at Calvary Chapel services had
12 contracted COVID-19 (SSUMF Nos. 47–48) and at least one died with COVID-19 (Benkato Decl.
13 Ex. 179 (McClure Dep. Tr.) 221:9–225:1, Ex. 184 (Perez Dep. Tr.) 53:4–10), and despite an
14 outbreak of COVID-19 at a school run by Calvary Chapel in December 2020 and January 2021 that
15 spread “aggressively” among students and teachers, many of whose families attended church at
16 Calvary Chapel (SSUMF Nos. 49–51; see also Benkato Decl. Ex. 179 (McClure Dep. Tr.) at 205:6–
17 15 [“I knew there was an outbreak”], Ex. 182 (Adams Dep. Tr.) at 87:6–15 [COVID-19 was
18 spreading “aggressively” in the school]; see also *id.* Ex. 187 (Allen Dep. Tr.) at 71:10–72:4 [decision
19 was made to close the school for two weeks because “[w]e believe that [COVID-19] is a real
20 disease, that it is contagious”]).⁶ Indeed, Defendant McClure and other Calvary personnel have
21 admitted under oath that Defendants never followed the Public Health Orders, including refusing to
22 wear face coverings themselves or to require attendees to wear face coverings, and refusing to
23 submit an SDP. (E.g., Benkato Decl. Ex. 179 (McClure Dep. Tr.) at 38:16–39:20, 86:15–87:6,
24 114:9–13, 119:21–121:7, 141:24–142:5, 147:17–22, 258:5–259:1, Ex. 182 (Adams Dep. Tr.) at
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27 ⁶ Mr. Allen was the principal of Calvary Christian Academy during the relevant time period.
28 (Benkato Decl. Ex. 187 (Allen Dep. Tr.) at 10:22–11:11.) Mr. Adams served as a worship leader at
Calvary Chapel and as a music teacher at Calvary Christian Academy. (Benkato Decl. Ex. 182
(Adams Dep. Tr.) at 22:3–23:5.)

1 33:7–35:15, 37:5–12, Ex. 186 (Munguia Dep. Tr.) at 93:3–10, Ex. 187 (Allen Dep. Tr.) at 79:9–25;
2 RJN, Ex. 174 at 40:4–46:20, 49:10–25, 97:3–25.) Defendants never submitted a compliance
3 statement addressing their face covering violations. (SSUMF No. 24.) And they never submitted
4 the required SDP. (SSUMF No. 29.)

5 By May 18, 2021, when the SDP requirement was lifted, Defendants had accrued \$1,327,750
6 in unpaid fines for failing to submit an SDP. (SSUMF Nos. 33–34.) By June 21, 2021, when the
7 Phase Out Order went into effect, Defendants had accrued \$2,234,000 in unpaid fines for failing to
8 follow face covering requirements. (SSUMF Nos. 25–26.) In addition, under the Urgency
9 Ordinance, Defendants owed a late fee of 10 percent, amounting to \$356,175. (See SSUMF Nos.
10 44–45; RJN, Ex. 159 at § 6(i).) In total, Defendants owe \$3,917,925 in fines for the face covering
11 and SDP violations. (Benkato Decl. Ex. 191.) This does not include fines levied for other
12 violations, which Plaintiffs are not seeking through this motion. In an exercise of prosecutorial
13 discretion, in this action Plaintiffs are seeking a reduced amount of \$2.8 million.

14 III. PROCEDURAL HISTORY

15 Defendants appealed the August 23, 2020 NOV, and other NOVs issued by the County
16 between that date and October 18, 2020, to the Office of the County Hearing Officer. (SSUMF Nos.
17 35–36.) The Hearing Officer sustained the violations and fines in the amount of \$327,500 (the
18 amount accrued as of October 21, 2020, including for failing to submit an SDP). (SSUMF No. 38;
19 RJN, Ex. 166.) Defendants then sought review by the Superior Court, challenging the Hearing
20 Officer’s decision on, *inter alia*, First Amendment, Eighth Amendment, and other constitutional
21 grounds. (SSUMF No. 39–40; RJN, Ex. 168.) On April 8, 2021, the Superior Court upheld the
22 Hearing Officer’s decision in its entirety, rejecting Defendants’ constitutional arguments. (SSUMF
23 No. 41; RJN, Ex. 170 at 6–8.) Defendants filed a notice of appeal on May 7, 2021 (SSUMF No. 42;
24 RJN, Ex. 171), but then subsequently voluntarily abandoned their appeal on June 24, 2021 (SSUMF
25 No. 43; RJN, Ex. 172). The Superior Court’s decision upholding the Hearing Officer’s order is now
26 final. (See *Cty. of Humboldt v. Appellate Div. of Superior Court* (2020) 46 Cal.App.5th 298, 309–
27 311 [concluding that an appeal of administrative penalties over \$25,000 is an unlimited civil action
28 and “a superior court order that conclusively resolves the merits of a de novo appeal under section

1 53069.4 in an unlimited civil matter is a final judgment”].)

2 Plaintiffs filed this action in October 2020 to compel Defendants to comply with the Public
3 Health Orders. (Oct. 27, 2020 Complaint, Case No. 20CV372285.) This Court then granted two
4 Temporary Restraining Orders and a Preliminary Injunction, all ordering Defendants to comply with
5 the Public Health Orders, including the SDP and face covering requirements. (Nov. 2, 2020 TRO;
6 Nov. 24, 2020 TRO; Dec. 4, 2020 Preliminary Injunction.)⁷ Plaintiffs filed the operative FAC on
7 July 29, 2021. Defendants demurred on August 31, 2021, and this Court overruled the demurrer in
8 its entirety on February 22, 2022. Defendants answered on March 4, 2022.

9 IV. LEGAL STANDARD

10 “A party may move for summary adjudication as to one or more causes of action within an
11 action ... if the party contends that the cause of action has no merit” (Code Civ. Proc. § 437c,
12 subd. (f)(1).)⁸ A motion for summary adjudication must be granted if the evidence submitted
13 “show[s] that there is no triable issue as to any material fact and that the moving party is entitled to a
14 judgment as a matter of law.” (*Id.* § 437c, subd. (c).) “There is a triable issue of material fact if, and
15 only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the

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19 ⁷ Defendants disobeyed this Court’s orders, and this Court therefore twice held Defendants in
20 contempt. (Dec. 17, 2020 Order; Feb. 16, 2021 Order). The Sixth District Court of Appeal recently
21 annulled the contempt orders and related fines because they rested in part on the Public Health
22 Order’s restrictions on indoor gatherings, which the Court determined were unconstitutional under
23 the U.S. Supreme Court’s recent decisions in *South Bay United Pentacostal Church v. Newsom*
(2021) 592 U.S. —, 141 S. Ct. 716 and other related cases addressing COVID-19 restrictions on
indoor gatherings for religious institutions. (See *People v. Calvary Chapel San Jose* (Aug. 15, 2022)
—Cal.Rptr.3d —, 2022 WL 3355808.) The Court of Appeal expressly did not address the
constitutionality of the face covering or SDP requirements. (*Id.* at *12, *14, *17.)

24 ⁸ Plaintiffs’ motion is limited to Defendants’ face covering and SDP violations. Plaintiffs do not
25 move for summary adjudication as to Defendants’ other violations. Code of Civil Procedure section
26 437c(f) “provide[s] for the determination on the merits of summary adjudication motions involving
27 separate and distinct wrongful acts which are combined in the same cause of action. To rule
28 otherwise would defeat the time and cost saving purposes of the amendment and allow a cause of
action in its entirety to proceed to trial even where, as here, a separate and distinct alleged obligation
or claim may be summarily defeated by summary adjudication.” (*Lilienthal & Fowler v. Superior
Court* (1993) 12 Cal.App.4th 1848, 1854.)

1 party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar v. Atl.*
2 *Richfield Co.* (2001) 25 Cal.4th 826, 850, as modified (July 11, 2001).)

3 V. ARGUMENT

4 A. There is No Triable Issue That Defendants Violated the County Public Health 5 Orders and Created a Public Nuisance Per Se (First & Third Causes of Action).

6 1. Defendants Violated the Public Health Orders’ Face Covering and SDP 7 Requirements (Third Cause of Action).

8 Defendants’ violations of the Public Health Orders’ face covering and SDP requirements are
9 undisputed. (SSUMF Nos. 18–19, 29, 37.) Under the County’s Public Health Orders, Defendants’
10 personnel were required to wear face coverings and Defendants were obligated to require members
11 of the public entering their facilities to wear face coverings. (RJN, Ex. 154 at § 10, Ex. 156 at § 8,
12 Exs. 158, 160–162.) Defendants did not follow this most basic of public health measures. (SSUMF
13 Nos. 18–19, 37.) Defendants have openly admitted under oath that they refused to require or enforce
14 the wearing of face coverings during the period that face coverings were required by the Public
15 Health Orders. (See, e.g., Benkato Decl. Ex. 179 (McClure Dep. Tr.) at 38:16–39:20 [confirming
16 that “we’re not enforcing wearing masks”], 121:2–7 [confirming that he has never asked anyone to
17 put a mask on inside the church], 141:24–142:5 [stating to congregants that the face covering
18 requirement was a “recommendation”], 258:17–259:1 [confirming Defendants “didn’t want to agree
19 to require . . . face coverings”], Ex. 182 (Adams Dep. Tr.) 33:16–35:15, 37:5–12 [Defendants “didn’t
20 take very many” COVID-19 precautions and “did not require face coverings for any of the
21 performers or participants” during services]; Ex. 186 (Munguia Dep. Tr.) at 93:3–10 [Defendants
22 had “not required attendees to wear masks”].) They publicly broadcasted large events where face
23 coverings were not worn. (Mackey Decl. ¶¶ 4–24, 26–79.) And County enforcement officers,
24 through regular inspections, confirmed that personnel and attendees were not being required to wear
25 face coverings. (Gonzalez Decl. ¶¶ 21–46; Sircar Decl. ¶¶ 30–86; Nguyen Decl. ¶¶ 9–22.)

26 Similarly, the Public Health Orders required Defendants to submit a completed SDP through
27 the County’s online portal (RJN, Exs. 153 at § 12(c), 154 at § 12(c)), but Defendants freely admit
28 that they never did so. (SSUMF No. 29; see, e.g., Benkato Decl. Ex. 179 (McClure Dep. Tr.)
258:17–259:1 [Defendants did not submit an SDP because they “didn’t want to agree . . . to require

1 distancing and face coverings”], *id.* at 260:11–24 & Dep. Ex. 75 [Defendants “hadn’t been doing”
2 any of the personnel training requirements required under the SDP]; Ex. 185 (Grim Dep. Tr.) at
3 82:5–86:1 & Dep. Ex. 26, 87:2–18 [affirming Defendants were unwilling to agree to SDP].)

4 Moreover, Defendants are collaterally estopped from relitigating the existence of the SDP
5 violation (or the related fine) because that violation was necessarily and finally adjudicated in the
6 Superior Court’s April 8, 2021 order on Defendants’ appeal of the Hearing Officer’s decision
7 sustaining the August 23, 2020 NOV and the fines imposed therein. (See SSUMF Nos. 39–43; RJN,
8 Ex. 170; see also *Samara v. Matar* (2018) 5 Cal.5th 322, 327 [collateral estoppel bars relitigation of
9 an issue by a party when that issue was actually litigated and necessarily decided in a prior
10 proceeding involving that party].) Defendants abandoned their appeal of the Superior Court’s April
11 8, 2021 order upholding the Hearing Officer’s decision (SSUMF No. 43), and that order is now final.

12 Because there is simply no dispute that Defendants violated the Public Health Orders’ face
13 covering and SDP requirements (SSUMF Nos. 18–19, 29, 37), Plaintiffs are entitled to summary
14 adjudication on Claim 3 as to the face covering and SDP violations.

15 **2. Violations of the Public Health Orders are a Public Nuisance *Per Se* (First**
16 **Cause of Action).**

17 “A nuisance per se arises when a legislative body with appropriate jurisdiction, in the
18 exercise of the police power, expressly declares a particular ... activity, or circumstance, to be a
19 nuisance.” (*City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, 1163 (quotation marks and
20 citation omitted).) “Where the law expressly declares something to be a nuisance, then no inquiry
21 beyond its existence need be made.” (*Id.* (quotation marks and citations omitted).)

22 The County Board of Supervisors is a legislative body with appropriate jurisdiction. (Cal.
23 Const., art. XI, § 7 [“A county ... may make and enforce within its limits all local, police, sanitary,
24 and other ordinances and regulations not in conflict with general laws.”].) “The power to regulate or
25 prohibit conferred upon the Board of Supervisors not only includes nuisances, but extends to
26 everything expedient for the preservation of the public health and the prevention of contagious
27 diseases.” (*Ex parte Shrader* (1867) 33 Cal. 279, 284 (citation omitted); see also Gov’t Code
28 § 25845 (authority to abate nuisances), § 53069.4 (authority to create ordinance code violation

1 enforcement program).) The Board exercised its police power by enacting the Urgency Ordinance,
2 and in doing so expressly declared any violation to be a nuisance. (RJN, Ex. 159 §§ 1(a), 3.)

3 Defendants undisputedly repeatedly violated the Public Health Orders. (See Part V.A.1,
4 *supra*.) Because the Urgency Ordinance expressly declares such violations to be a nuisance, “no
5 inquiry beyond [the law’s] existence need be made.” (*City of Claremont, supra*, 177 Cal.App.4th at
6 p.1163.) Plaintiffs are therefore entitled to summary adjudication on their first cause of action as to
7 the face covering and SDP violations.

8 **B. No Triable Issue Exists As to the Collection of Fines Under the Urgency**
9 **Ordinance and Government Code § 25132 (Fourth and Fifth Causes of Action).**

10 The Urgency Ordinance makes violations of the Public Health Orders a violation of County
11 law. (RJN, Ex. 159 at § 3.) Because Defendants indisputably violated the Public Health Orders’
12 face covering and SDP requirements (see Part V.A.1, *supra*), they also violated the Urgency
13 Ordinance, and the County is therefore entitled to summary adjudication on the fourth cause of
14 action as to the face covering and SDP violations. Likewise, the People are entitled to summary
15 adjudication with respect to these violations on the fifth cause of action, which authorizes an action
16 by the People for violations of a County ordinance. (See Gov’t Code § 25132, subd.(a).)

17 Moreover, as explained below, there is also no factual dispute as to the \$3.9 million in fines
18 Defendants owe for these violations: \$1,327,750 for the SDP violation, \$2,234,000 for the face
19 covering violations, and a late fee of \$356,175—although, as noted above, Plaintiffs seek to recover
20 only \$2.8 million of the outstanding fines.

21 **1. Defendants are Liable for \$1,327,750 for Failing to Submit an SDP.**

22 The August 23, 2020 NOV imposed a fine of \$250—the minimum authorized—for
23 Defendants’ failure to submit an SDP as required by the Public Health Orders. (SSUMF No. 31;
24 Gonzalez Decl. Ex. 192 (Aug. 23, 2020 NOV); RJN, Ex. 159 at § 6(b)(2).) As explained on the face
25 of the NOV, Defendants could have stopped the fine from accruing at any time by submitting an
26 SDP. (Gonzalez Decl. Ex. 192.) There is no dispute that Defendants did not submit a complete SDP
27 through the County’s online portal at any time between August 23, 2020 and May 18, 2021, as
28 required by the Public Health Orders and in violation of the Urgency Ordinance. (See Part V.A.1,

1 *supra*; SSUMF Nos. 29, 37.)

2 As discussed above, the fines that accrued between August 23, 2020 and October 21, 2020—
3 including the SDP fine—were upheld in the Superior Court’s April 8, 2021 Order (SSUMF Nos. 41–
4 43; RJN, Ex. 170 (Apr. 8, 2021 Order) at 8), and Defendants are estopped from relitigating the
5 calculation of the fine.⁹ Even if Defendants were not so estopped, they would have no basis to
6 dispute the math: the August 23 SDP fine started at \$250 and doubled to \$500 on August 24, \$1,000
7 on August 25, \$2,000 on August 26, and \$4,000 on August 27, and then increased to \$5,000 (the
8 maximum) on August 28, 2020. (Benkato Decl. Ex. 191 Columns B, C.) The fine then accrued at
9 \$5,000 every day that Defendants failed to submit an SDP. (*Id.*) By May 18, 2021, Defendants’
10 SDP fine amounted to \$1,327,750 for failing to file an SDP. (*Id.*; SSUMF Nos. 31–34.)

11 **2. Defendants are Liable for \$2,234,000 Their Face Covering Violations.**

12 The November 9, 2020 NOV imposed two \$1,000 fines—one for failing to require personnel
13 to wear face coverings and one for failing to require members of the public to wear face coverings.
14 (SSUMF Nos. 20–21; Gonzalez Decl. Ex. 193.) Both failures were violations of the Public Health
15 Orders and therefore violations of the Urgency Ordinance. (RJN, Ex. 154 at § 10, Ex. 156 at § 8,
16 Ex. 159 at § 3.) As explained on the face of the NOV, Defendants could have stopped the fines from
17 accruing at any time by submitting a compliance statement subject to County verification. (SSUMF
18 No. 23; Gonzalez Decl. Ex. 193.) Defendants did not do so, and instead continued to violate the face
19 covering requirements. (See Part V.A.1 *supra*; SSUMF Nos. 18–19, 24, 37.)

20 As a result, the November 9 fines started at \$1,000 each, doubled to \$2,000 on November 10,
21 doubled again to \$4,000 on November 11, and then increased to \$5,000 (the maximum) on
22 November 12, 2020—after which they accrued at \$5,000 for every day Defendants continued to
23 violate. (Benkato Decl. Ex. 191 Columns D–F.) By June 21, 2021, Defendants had accrued
24 \$2,234,000 in fines for failing to correct the two face covering violations. (SSUMF Nos. 25–26.)

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26
27
28 ⁹ Defendants’ SDP fine amounted to \$282,750 by October 21, 2020. (Benkato Decl. Ex. 191 (Fine
Calculation Chart) Cell C63.)

1 **3. Defendants are Liable for \$356,175 in Late Fees.**

2 Finally, the Urgency Ordinance authorizes a late fee of 10 percent of any fines not timely
3 paid. (RJN, Ex. 159 at § 6(i).) Fines are due within 30 days of service of an NOV or 30 days after
4 conclusion of any administrative appeal. (*Id.* at § 6(g).) Defendants filed an administrative appeal
5 of the August 23, 2020 NOV, including the SDP violation, and the Hearing Officer issued its
6 decision on November 2, 2020. (SSUMF Nos. 35–38; RJN, Ex. 166.) Defendants’ fine for the SDP
7 violation was therefore due 30 days after November 2. Defendants did not seek administrative
8 appeal of the November 9, 2020 NOV (SSUMF No. 27), and those fines were therefore due within
9 30 days of that NOV. To date, Defendants have failed to pay any administrative fines at all.
10 (SSUMF No. 44.) Therefore, a late fee of \$356,175 is warranted. (SSUMF No. 45.)

11 **C. Defendants’ Affirmative Defenses Cannot Defeat Summary Adjudication.**

12 Defendants will likely attempt to avoid liability for their blatant and undisputed violations of
13 the face covering and SDP requirements by appealing to the First Amendment’s Free Exercise clause
14 and the Eighth Amendment’s Excessive Fines clause. These defenses have already been rejected in
15 the Superior Court’s April 8, 2021 order upholding the County Hearing Officer’s decision and by
16 this Court in ruling on Defendants’ demurrer. They fare no better at this stage in the litigation.¹⁰

17 **1. The County’s Face Covering Requirement Does Not Violate the Free**
18 **Exercise Clause.**

19 Under the Free Exercise Clause, a law that is neutral and of general applicability need only
20 be supported by a rational basis “even if the law has the incidental effect of burdening a particular
21 religious practice.” (*Church of the Lukumi Babalu Aye, Inc. v. City of Haileah* (1993) 508 U.S. 520,
22 531.) However, where a law treats religious exercise less favorably than “comparable secular
23 activit[ies],” strict scrutiny applies. (*Tandon v. Newsom* (2021) 593 U.S.—, 141 S. Ct. 1294, 1296.)
24 Here, the face covering requirement is a neutral requirement of general applicability and is amply
25 supported by a legitimate governmental interest in controlling the spread of COVID-19—as this

26
27
28 ¹⁰ Plaintiffs address here defenses they anticipate that Defendants will raise. Plaintiffs reserve the right to address additional defenses raised in Defendants’ opposition in Plaintiffs’ reply brief.

1 Court and the Superior Court judge ruling on Defendants’ now-abandoned appeal of the County
2 Hearing Officer’s decision have already determined.¹¹

3 The face covering requirement was imposed by the County’s Public Health Orders, which
4 applied to “all individuals, businesses, and other entities in the County.” (RJN, Ex. 153 at § 2, Ex.
5 154 at § 2, Ex. 156 at § 2.) The Revised Risk Reduction Order—which formed the basis of the face
6 covering fines at issue here—also required that all individuals wear face coverings in indoor public
7 spaces, subject to limited context-specific exceptions for the very young, those with medical
8 conditions or disabilities, or while actively eating and drinking if socially distanced. (RJN, Ex. 154
9 at § 10, Ex. 156 at § 8, Ex. 160–162.) Far from disfavoring religious activities, the Orders impose
10 neutral, generally applicable requirements for all comparable, regulated entities in the county.

11 It is unsurprising, therefore, that in ruling on Defendants’ administrative appeal of the
12 County Hearing Officer’s decision, then-Superior Court Judge Lie rejected Defendants’ Free
13 Exercise defenses to the face covering requirement. (See RJN, Ex. 170 at 6–7.) Indeed, as Judge
14 Lie noted, even in the U.S. Supreme Court’s decisions in *Gateway City Church v. Newsom* (2021)
15 592 U.S.—, 141 S. Ct. 1460, *South Bay United Pentecostal Church v. Newsom* (2021) 592 U.S. —,
16 141 S. Ct. 716, and *Roman Catholic Diocese of Brooklyn v. Cuomo* (2020) 592 U.S.—, 141 S. Ct.
17 63, a majority of the Supreme Court recognized face coverings as a basic public health measure
18 consistent with being able to conduct indoor religious worship. (See RJN, Ex. 170 at 6–7; see also
19 *South Bay, supra*, 141 S. Ct. at pp.718–19 (statement of Gorsuch, J.) [determining that a ban on
20 indoor gatherings was unconstitutional in part where, “narrower options” such as “social distancing
21 requirements [and] masks,” were available and “are in routine use in religious services across the
22

23 ¹¹ In this litigation, Defendants have not challenged the SDP requirement on Free Exercise Clause
24 grounds. (See, e.g., Demurrer at 5–8 [challenging the face covering, social distancing, and singing
25 rules under the Free Exercise Clause, and only challenging the SDP requirement under the
26 unconstitutional conditions doctrine].) Defendants are estopped from making that argument because
27 the question of whether the SDP requirement burdened their right to worship was addressed in Judge
28 Lie’s April 8, 2021 Order, and Defendants abandoned their appeal of that order. (RJN, Ex. 170 at 7
[holding that Defendants had failed to support their contention that “the definition, submission and
publication of [an SDP] ... for protecting the safety of its members and the public would in any way
infringe on its worship services”]; *Samara, supra*, 5 Cal.5th at p.335; SSUMF Nos. 39–43.) In any
event, that argument fails because the requirement to submit an SDP was generally applicable to
“[a]ll businesses.” (RJN, Ex. 153 at § 12(c), Ex. 154 at § 12(c); see also *id.* Ex. 155 pp. 46–55.)

1 country today”]; *Roman Catholic Diocese, supra*, 141 S. Ct. at p.69 (conc. op. of Gorsuch, J.)
 2 [finding capacity restrictions to be unconstitutional where they failed to account for other
 3 precautions, including “wearing masks”].) While the face covering violations at issue before Judge
 4 Lie were issued under an earlier Public Health Order than the violations at issue here, the face
 5 covering requirements were substantially similar (compare RJN, Ex. 153 at § 10, with Ex. 154 at
 6 § 10), and Calvary can offer no persuasive justification to depart from Judge Lie’s reasoning.

7 Moreover, this Court has also rejected the same argument in ruling on Defendants’ demurrer
 8 to the First Amended Complaint. (Demurrer Ruling at 8–9 [“[T]he Court is not persuaded that
 9 anything cited by Defendants actually amounts to a Free Exercise violation.”].) In particular, the
 10 Court found that “it is not accurate to portray restaurant patrons as being permitted to maintain social
 11 experiences completely unfettered and without any restriction as compared to church congregants,”
 12 and that Defendants had failed to substantiate their claims that the County had exempted other
 13 comparable activities from the face covering and other Public Health Order requirements. (*Ibid.*)¹²

14 Defendants cannot carry their “heavy burden” to show that the orders are “unconstitutional in
 15 all or most cases”—as they must to succeed on their facial challenge to the Public Health Orders—
 16 and they “cannot prevail by suggesting that in some future hypothetical situation constitutional
 17 problems may possibly arise.” (*Coffman Specialties, Inc. v. Dep’t of Transportation* (2009) 176
 18 Cal.App.4th 1135, 1145 (citation omitted).) The County clearly has a legitimate interest in limiting
 19 the spread of contagious diseases, such as COVID-19, through such neutral policies. (SSUMF No.
 20 1; Cody Decl. ¶¶ 6–7, 11–24.) Defendants’ Free Exercise Clause defense therefore fails.

21 **2. The County’s Fines are Not Unconstitutionally Excessive.**

22 As described in Part V.B, *supra*, the County is entitled to \$3.9 million in fines—\$2,234,000
 23 for Defendants’ face covering violations, \$1,327,750 for Defendants’ failure to submit an SDP, and
 24 \$356,175 for late payment of these fines. However, as noted above, Plaintiffs have exercised their
 25

26
 27 ¹² To the extent Defendants point to the Court of Appeal’s decision annulling the contempt orders
 28 and fines to argue that the face covering and SDP violations are unconstitutional, that argument fails.
 The Court of Appeal expressly did not address the constitutionality of the face covering or SDP
 requirements. (*Calvary Chapel San Jose, supra*, 2022 WL 3355808 at pp.*12, *14, *17.)

1 discretion to reduce the fine being sought through this action to \$2.8 million dollars. None of these
2 fines is unconstitutionally excessive.

3 In determining the excessiveness of fines, the “touchstone ... is the principle of
4 proportionality,” which includes consideration of “(1) the defendant’s culpability; (2) the
5 relationship between the harm and the penalty; (3) the penalties imposed in similar statutes; and (4)
6 the defendant’s ability to pay.” (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2005) 37
7 Cal.4th 707, 728 [citing *United States v. Bajakajian* (1998) 524 U.S. 321, 337-38].) However, this
8 analysis “does not mandate the consideration of any rigid set of factors.” (*Pimiental v. City of Los*
9 *Angeles* (9th Cir. 2020) 974 F.3d 917, 921 (citation omitted).)

10 As an initial matter, Defendants are estopped from challenging the excessiveness of the SDP
11 fine. That fine was squarely before Judge Lie on Defendants’ appeal of the County Hearing
12 Officer’s decision, and she upheld its constitutionality. (SSUMF No. 41; RJN, Ex. 170.) As Judge
13 Lie found, Defendants’ “maximalist approach to violation of the public health orders warrants an
14 equally expansive approach to sanctions, including the \$5,000 for each day that [Defendants] refused
15 to produce” an SDP. (RJN, Ex. 170 at 8.) Defendants abandoned their appeal of that order (SSUMF
16 No. 43; RJN, Ex. 172), and cannot relitigate the SDP fine now. (*Samara, supra*, 5 Cal.5th at p.335.)

17 But even if Judge Lie’s order were not preclusive, its reasoning is sound and addresses both
18 the first and second factors of the Eighth Amendment analysis as to both the SDP and face covering
19 fines. As relevant here, Defendants blatantly violated the County’s Public Health Orders for many
20 months. (SSUMF Nos. 18–19, 29, 37.) By their actions, Defendants encouraged hundreds of
21 attendees to violate the Public Health Orders. Far from requiring compliance, they advertised their
22 violations and mocked the need for protective measures during a deadly public health emergency,
23 even as attendees contracted COVID-19. (E.g., Mackey Decl. ¶ 71; Benkato Decl. Ex. 179
24 (McClure Dep. Tr.) 141:5–142:5.)¹³ They refused to comply with the Public Health Orders despite
25 receiving numerous notices of violation from the County. (SSUMF No. 46.) They refused to
26 comply even though they knew about church attendees who had contracted COVID-19 or displayed

27 _____
28 ¹³ See also Mackey Decl. ¶¶ 6, 12, 14, 19, 22, 23, 24, 35, 36, 49, 51, 59, 78.

1 COVID-19 symptoms (SSUMF No. 47–48), were aware of at least one congregant who died of
2 COVID-19 (Benkato Decl. Ex. 179 (McClure Dep. Tr.) 221:9–225:1, Ex. 184 (Perez Dep. Tr.) 53:4–
3 10), and were forced to close the school associated with the church because of a major COVID-19
4 outbreak among students and teachers (SSUMF Nos. 49–51). The fine imposed is therefore
5 proportional to Defendants’ culpability and the risk of harm created by Defendants’ disregard for the
6 law. (See, e.g., *People v. Braum* (2020) 49 Cal.App.5th 342, 361 [upholding \$6 million fine where
7 defendant took “no action in response” to a notice of civil violation and continued to defy the law];
8 *City & Cty. of San Francisco v. Sainez* (2000) 77 Cal.App.4th 1302, 1322–23 [penalty was not
9 excessive where defendant engaged in “numerous instances of ignoring or disobeying orders to abate
10 or rectify” the violations].)

11 This Court has already agreed. In overruling Defendants’ demurrer, this Court rejected
12 Defendants’ argument that the reduced \$2.8 million fine was excessive. As this Court found, the
13 relevant inquiry for purposes of proportionality is not whether Defendants’ actions actually caused
14 people to contract COVID-19, but rather whether their actions “created a severe and increased *risk*
15 of contagion.”¹⁴ (Demurrer Ruling at 15.) Now, as on demurrer, the record amply substantiates that
16 Defendants’ violations were “particularly egregious and put large numbers of people at imminent
17 risk” where: **(1)** Defendants “regularly hosted large indoor gatherings with hundreds of people
18 without adherence to any of the public health procedures” (Demurrer Ruling at 14; SSUMF Nos. 18–
19 19, 29, 37); **(2)** “[m]ultiple community members ... contracted COVID-19” and at least one died of
20 COVID-19 (Demurrer Ruling at 14; SSUMF Nos. 47–48; Benkato Decl. Ex. 179 (McClure Dep.
21 Tr.) 221:9–225:1, Ex. 184 (Perez Dep. Tr.) 53:4–10); **(3)** Defendants “fail[ed] to issue internal
22 protocols or guidance to church staff on how to handle or report positive cases” and “fail[ed] to
23 report any positive cases to the County” as required by the SDP (Demurrer Ruling at 14; SSUMF
24 No. 52; see, e.g., Benkato Decl. Ex. 179 (McClure Dep. Tr.) at 102:18–21, 259:15–260:24); **(4)**
25 Defendants’ face covering and SDP violations continued for many months, “including over the time
26 period when hospitalizations and deaths were at their peak prior to widespread vaccine availability”
27

28 ¹⁴ Even so, Plaintiffs have shown that attendees did contract COVID-19. (SSUMF No. 47.)

1 (Demurrer Ruling at 15; Gonzalez Decl. ¶¶ 11–46; Sircar Decl. ¶¶ 9–86; Cody Decl. ¶¶ 22–24; see
2 also Benkato Decl. Ex. 191); and (5) Defendants’ actions created a “severe and increased risk of
3 contagion” (Demurrer Ruling at 15; Cody Decl. ¶ 42).

4 Defendants cannot complain that the cumulative fine amount is excessive where they
5 knowingly decided to continue violating the Public Health Orders for months on end and accrued
6 daily fines as a result. (See *Sainez, supra*, 77 Cal.App.4th at pp.1315–16 [defendants “cannot
7 complain” about the “cumulative size of the penalty” “when they had control over [a] time period
8 yet allowed the penalties to accumulate”]; *Ojavan Investors, Inc. v. Cal. Coastal Comm’n* (1997) 54
9 Cal.App.4th 373, 398 [upholding \$9.5 million fine because the cumulative total “is large only
10 because [the defendants] violated the Coastal Act 73 times and refused to remedy the violations”].)
11 Indeed, California courts have regularly “rejected excessive fine challenges to civil penalties of
12 several million dollars imposed under statutes authorizing daily penalties” for continuing violations
13 like the daily fines imposed here. (*Lent v. Cal. Coastal Comm’n* (2021) 62 Cal.App.5th 812, 860;
14 see *Pacific Gas & Elec. Co. v. Public Util. Comm’n* (2015) 237 Cal.App.4th 812, 866–67; *Braum*,
15 *supra*, 49 Cal.App.5th at p.359.)

16 As to the third Eighth Amendment factor—the penalties imposed in similar statutes—the
17 fines imposed by the Urgency Ordinance are in line with similar COVID-19 ordinances enacted by
18 other counties and with fines imposed by other County and state laws. (See, e.g., RJN, Ex. 177 at
19 § 7.99.05(D), (F) [Marin County Urgency Ordinance authorizing fines up to \$10,000 for COVID-19
20 violations by commercial entities, including fines that double daily up to that maximum amount];
21 Ex. 178 at § VI(E) [Sonoma County Urgency Ordinance authorizing fines of \$1,000 for a first
22 violation, \$5,000 for a second violation, and \$10,000 for each additional violation for commercial
23 entities]; Ex. 176 at § 8.85.050(D)(2) [Napa County Urgency Ordinance authorizing fines of \$5,000
24 for commercial activities]; Ex. 175 at § 6 [San Mateo Emergency Ordinance fines of up to \$3,000
25 for each violation].) The Urgency Ordinance also aligns with other Santa Clara County Ordinance
26 Code provisions that impose similar fine amounts for a variety of violations. (See, e.g., Santa Clara
27 County Ordinance Code §§ A1-37, A1-42(b)(2) [authorizing daily fines up to \$5,000 for second and
28 subsequent violations of, *inter alia*, any code provision declaring a violation to be public nuisance],

1 B11-345 [authorizing daily fines of \$5,000 for violating hazardous materials storage requirements],
2 C16-17 [authorizing fines up to \$5,000 for each tree destroyed in violation of County’s tree
3 preservation ordinance]; see generally *Lent, supra*, 62 Cal.App.5th at pp.856–60 [comparing fines
4 imposed by various statutes passed by the same body (the California Legislature)].)

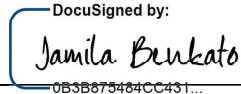
5 Finally, Defendants cannot carry their burden of proving their inability to pay (see *Lent*, 62
6 Cal.App.5th at 860), where, as here, Defendants’ revenues have increased during the pandemic,
7 Defendants have received donations towards paying down the fines, and Defendants have a way to
8 pay the fines.¹⁵ (SSUMF No. 53; Benkato Decl. Ex. 183 (Walker Dep. Tr.) at 122:15–123:8, Ex.
9 185 (Grim Dep. Tr.) at 128:16–129:9; compare Benkato Decl. Ex. 188 at CCSJ000874 [2019 net
10 assets of \$7,757,615 with tithes and offerings of \$973,443] with *id.* at CCSJ000876–877 [2020
11 increased net assets of \$8,712,171 with tithes and offerings increased to \$2,174,310], and *id.* Ex. 190
12 at CCSJ000975–1002 [2021 increased net assets of \$12,030,512.30 with tithes and offerings
13 increased to \$5.45 million (quarterly tithes and offerings of \$1.23 million (Q1), \$1.12 million (Q2),
14 \$1.23 million (Q3), and \$1.87 million (Q4))].)

15 **VI. CONCLUSION**

16 For the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs’
17 motion for summary adjudication on the first, third, fourth, and fifth causes of action in the First
18 Amended Complaint as to Defendants’ face covering and social distancing protocol violations.

19 Dated: August 26, 2022

Respectfully submitted,
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20
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28 Officer for the County of Santa Clara

26 2692648

15 Indeed, Defendants’ attorneys have repeatedly disclaimed that Defendants will argue inability to pay. (See Benkato Decl. Ex. 183 (Walker Dep. Tr.) 23:14–23:20, 34:18–20, 35:6–7.)