

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

**Civil Division**

Central District, Stanley Mosk Courthouse, Department 86

**20STCV30695**

**COUNTY OF LOS ANGELES, et al. vs GRACE COMMUNITY  
CHURCH OF THE VALLEY, et al.**

August 25, 2020

10:00 AM

Judge: Honorable Mitchell L. Beckloff

Judicial Assistant: F. Becerra

Courtroom Assistant: None

CSR: None

ERM: None

Deputy Sheriff: None

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**APPEARANCES:**

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

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**NATURE OF PROCEEDINGS:** Ruling on Submitted Matter-Hearing on Plaintiff's Renewed Ex Parte Application For A Temporary Restraining Order

The Court, having taken the matter under submission on 08/24/2020, now rules as follows:

The Court issues its ruling in accordance with the "RULING ON SUBMITTED MATTER(RENEWED APPLICATION FOR TRO)" consisting of 5 pages, filed this date and incorporated herein by reference to the Court file.

Summary of the Court's ruling: Plaintiff's renewed application for a temporary restraining order is denied.

A courtesy copy of this minute order and order is electronically mailed to counsel this date.

Certificate of Mailing is attached.

<b>SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES</b>	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012	<b>FILED</b> Superior Court of California County of Los Angeles <b>08/25/2020</b>
PLAINTIFF/PETITIONER: County of Los Angeles et al	Sherri R. Carter, Executive Officer / Clerk of Court By <u>          F. Becerra          </u> Deputy
DEFENDANT/RESPONDENT: Grace Community Church of the Valley et al	
<b>CERTIFICATE OF MAILING</b>	CASE NUMBER: 20STCV30695

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Ruling on Submitted Matter-Hearing on Plaintiff's Renewed Ex ...) of 08/25/2020, **RULING ON SUBMITTED MATTER(RENEWED APPLICATION FOR TRO)** upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

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Sherri R. Carter, Executive Officer / Clerk of Court

Dated: 08/25/2020

By:           F. Becerra            
Deputy Clerk

**CERTIFICATE OF MAILING**

AUG 25 2020

Sherril R. Carter, Executive Officer/Clerk  
By Fernando Becerra, Jr., Deputy

**RULING ON SUBMITTED MATTER  
(Renewed Application for TRO)**

Relying on Code of Civil Procedure section 1008, subdivision (b), Plaintiffs are back before the court renewing their application for a restraining order. Plaintiffs seek an order “enjoining Defendants from conducting indoor worship services in violation of the State and County public health orders.” (Application 2:12-13.) Plaintiffs base their request on their application, memorandum of points and authorities, the papers filed in connection with Plaintiffs’ previous request for a temporary restraining order (TRO), Plaintiffs’ ex parte application for an order to show cause re contempt, their complaint “and such other and further evidence as may be presented to the Court at the time of hearing.” (Application 2:16-19.)

Prior Proceedings:

On August 14, 2020, Plaintiffs appeared before this court (Hon. James C. Chalfant) seeking a TRO to preclude Defendants from conducting indoor worship services. The court denied Plaintiffs’ request and issued an order allowing indoor worship but requiring those in attendance to wear face coverings and practice social distancing.<sup>1</sup>

Later that day, Plaintiffs filed a petition for a writ of mandate with the Court of Appeal. In their writ petition, Plaintiffs sought the following specific relief:

“Accordingly, the County requests the Court to issue an emergency TRO as prayed for by the County, or an injunction or other appropriate relief barring the Church from holding indoor services and requiring compliance with State and County health orders pending further order of the Court.”

The prayer for relief in their petition for a writ of mandate similarly requested:

“That the Court issue an emergency order directing [Grace Community Church of the Valley and John MacArthur] to fully comply with the State and County Health Orders and barring real parties from holding indoor services in violation of those orders pending further order by this court;

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<sup>1</sup> More precisely, the court’s order provided Defendants were “enjoined in and prohibited from 1. Conducting, participating in, or attending any indoor worship services at 13248 Roscoe Blvd., Sun Valley, CA 91352 (the ‘Church’) unless, at all times during the services, they comply with mandates of the Health Orders to wear face coverings and practice physical distancing.”

That the court issue in the first instance, a peremptory writ of mandate or other appropriate writ directing respondent trial court to grant [Plaintiffs'] request for a TRO; or

Issue an alternative writ of mandate directing respondent trial court to grant [Plaintiffs'] request for a TRO, or to show cause why it should not do so."

The following day, Saturday, August 15, 2020, Division Two of this District's Court of Appeal issued its order on Plaintiffs' petition for a writ of mandate. The Court of Appeal stayed the court's order of August 14: "For these reasons, we issue a stay of that portion of the trial court's order denying the County the right to enforce the Health Order's ban on 'indoor religious activity' pending our final resolution of the County's petition for a writ of mandate . . . ."

The Court of Appeal was silent about and did not issue a TRO or make any orders directing this court to conduct further proceedings on Plaintiffs' request for a TRO. Instead, the Court of Appeal directed this court to proceed with its "previously scheduled hearing for a preliminary injunction, set for September 4, 2020 . . . ."

Importantly when it stayed the court's August 14 order, the Court of Appeal did not engage in any merits-based review of it. That is, the Court of Appeal did not "[d]efinitively resolv[e]" the "difficult questions of law" raised by the parties. Instead, the Court of Appeal acknowledged, " 'Where, as here, difficult questions of law are involved and the fruits of a reversal would be irrevocably lost unless the status quo is mandated, justice requires an appellate court issue a stay order to preserve its own jurisdiction . . . while it prepares . . . to rule on th[e] merits' of those questions." (Citing *People ex rel. San Francisco Bay Conservation & Development Comm. v. Emeryville* (1968) 69 Cal.2d 533, 536-537.)

The Court of Appeal also—despite noting Plaintiffs had "demonstrated a likelihood that it will prevail on the merits of enforcing its July 18, 2020 Health Order" and Plaintiffs' express request the Court of Appeal issue a TRO—maintained the status quo which "is that the County is empowered to enforce the 'indoor religious services' provision of its Health Order." Thus, the Court of Appeal stayed the court's order allowing indoor religious activities and permitted Plaintiffs to enforce the July 18, 2020 Order of the Health Officer (County Health Order) pending the September 4 preliminary injunction hearing in this court.

The County Health Order provides any "violation of any provision of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment or both." (Order p. 16.) The County Health Order also requests "that the Sheriff and all chiefs of police in all cities located in the Los Angeles Public Health Jurisdiction ensure compliance with and enforcement of this Order." (Order p. 16.)<sup>2</sup>

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<sup>2</sup> The Health Officer cited Government Code sections 26602 and 41601 and Health and Safety Code section 101029 as authority for his request for law enforcement assistance.

Plaintiffs' Request:

Code of Civil Procedure "[s]ection 1008's purpose is ' "to conserve judicial resources by constraining litigants who would endlessly bring the same motions over and over, or move for reconsideration of every adverse order and then appeal the denial of the motion to reconsider." ' [Citation.] To state that purpose strongly, the Legislature made section 1008 expressly jurisdictional . . . ." (*Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830, 839-840.) A party who violates Code of Civil Procedure section 1008 may be punished by contempt and monetary sanctions. (Code Civ. Proc. § 1008, subd. (d).)

Code of Civil Procedure section 1008, subdivision (b) provides:

"A party who originally made an application for an order which was refused in whole or in part, or granted conditionally or on terms, may make a subsequent application for the same order *upon new or different facts, circumstances or law*, in which case it shall be shown by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances or law are claimed to be shown. For a failure to comply with this subdivision, any order made on subsequent application may be revoked or set aside on ex parte motion." [Emphasis added.]

Code of Civil Procedure section 1008, subdivision (e) provides in part:

"*No application* to reconsider any order or for the renewal of a previous motion *may be considered* by any judge or court unless made according to this section." [Emphasis added.]

As argued at the hearing on the application, Plaintiffs rely on (1) new law and (2) a different circumstance as the required statutory grounds to support the renewal of their application for a TRO. The new law, according to Plaintiffs, is the Court of Appeal order noting the County Health Order is presumptively constitutional, and at this stage of the proceedings, Plaintiffs have demonstrated a likelihood of success on the merits of enforcing the County Health Order. Alternatively, Plaintiffs assert the different circumstance is the Court of Appeal having "changed" the August 14 order—the "changed" order constitutes a new circumstance.

Defendants argue Plaintiffs have not complied with the requirements of Code of Civil Procedure section 1008, subdivision (b) in that they have failed "to submit an affidavit explaining 'what new or different facts, circumstances, or law are claimed to be shown.' " (Opposition 3:19-20.) Defendants are correct. The only declaration submitted to support Plaintiffs' renewed application is that of Attorney Jason H. Tokoro. That declaration speaks to ex parte notice only; it does not address the substance of Plaintiffs' renewed application.

Nonetheless, during the hearing, the court indicated its view Plaintiffs had substantially complied with the affidavit requirements of the statute governing renewed applications. The court explained Plaintiffs' position was clear—there is no question about the grounds on which Plaintiffs bring their renewed application. While the court recognizes *Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1048 supports Defendants' position, Plaintiffs' application provided the statutorily required information, albeit not by sworn statement. (See Application 2:20-3:20.)

Plaintiffs' renewed application, however, does not meet the other statutory requirements of Code of Civil Procedure section 1008.

First, the renewed application is not based on any new or different law. (See *Baldwin v. Home Sav. of America* (1997) 59 Cal.App.4th 1192, 1194-1201 [explaining trial court acted in excess of jurisdiction granting motion for reconsideration where party moving failed to present any new or different law that could not have been cited in the original motion].) The authorities cited by the Court of Appeal in its order were all available to Plaintiffs as well as to this court when this court made its August 14 order. That is, the legal landscape remained unchanged in the mere hours that passed before the Court of Appeal stepped in and issued its stay order—Plaintiffs do not suggest otherwise. The Court of Appeal's order does not present new law; rather, it *explains* existing law. Accordingly, the court finds Plaintiffs have not presented any new law or different law on this application justifying a renewed application for a TRO. (See Code Civ. Proc. § 1008, sub. (e).)

During the hearing on the application, Plaintiffs suggested even if they could not demonstrate any new law, a new circumstance supports their renewed application. Specifically, Plaintiffs contend the Court of Appeal "changed" this Court's August 14 order—the "changed" order, according to Plaintiffs, suggests the court can now issue a TRO.

The Court of Appeal, however, did not *change* this court's order of August 14—the Court of Appeal stayed enforcement of it. Plaintiffs have not suggested some material change in circumstances impacting the reasons related to the court's denial of Plaintiffs' TRO request on August 14.


The circumstances today are essentially as they were on August 14. Defendants, according to Plaintiffs, made it clear they no longer intend to comply the County Health Order regarding indoor worship services. Plaintiffs argue Defendants have violated the County Health Order every Sunday continuously since July 26, 2020. That the Defendants had services on August 16, after the Court of Appeal stayed this court's August 14 order, is not a new circumstance. It is consistent with Defendants' actions on the three prior Sundays—circumstances in existence at the time of the court's August 14 order. (*In re Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1468. ["[F]acts of which the party seeking reconsideration was aware at the time of the original ruling are not 'new or different.' "])

Moreover, from July 17, 2020 through today, the presumption the County Health Order's indoor religious services provision "is valid has yet to be rebutted." The status quo is that Plaintiffs are "empowered to enforce the 'indoor religious services' provision of" the County Health Order. That Plaintiffs have elected not to punish Defendants' alleged violation of the County Health Order "by fine, imprisonment or both," in an attempt to obtain compliance is also the status quo.<sup>3</sup>

As noted above, the provisions of Code of Civil Procedure section 1008 are jurisdictional and controlling: "*No application* to reconsider any order or for the renewal of a previous motion *may be considered* by any judge or court unless made according to this section." (Code Civ. Proc. § 1008, subd. (e). [Emphasis added.]) In the absence of new law or circumstances, Plaintiffs do not overcome the statutory prerequisites set forth for reconsideration of orders and renewal of motions. Thus, the court has no authority to take the action requested by Plaintiffs. On this basis, Plaintiffs' renewed application for a TRO is denied.

**IT IS SO ORDERED.**

Dated: August 25, 2020

  
Judge Mitchell L. Beckloff

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<sup>3</sup> Both parties' counsel advised the court during argument on the application, Plaintiffs have not made any efforts to enforce the County Health Order through the enforcement mechanism contained within the County Health Order. That is, Plaintiffs have not cited Defendants for any violations of the County Health Order.