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11 CALIFORNIA CHAPTER

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF ORANGE**

14 **PEGGY HALL**, an individual;  
15 **CHILDREN’S HEALTH DEFENSE-**  
16 **CALIFORNIA CHAPTER**, a California  
17 501(c)(3) non-profit corporation, on its own  
18 and on behalf of its members

19 Petitioners,

20 vs.

21 **COUNTY OF ORANGE; ORANGE**  
22 **COUNTY BOARD OF SUPERVISORS,**

23 Respondents.

Case No.: 30-2021-01220678-CU-WM-CJC

**THIRD AMENDED VERIFIED PETITION  
FOR WRITS OF TRADITIONAL AND  
ADMINISTRATIVE MANDATE AND  
COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Code of Civil Proc., §§ 1085, 1094.5

Complaint Filed: September 14, 2021  
Trial Date: None Set

24 **INTRODUCTION**

25 1. This action seeks to restore the checks and balances on which American democracy  
26 and representative government depend. Over two years ago, Governor Newsom eliminated these  
27 necessary checks and balances at the state level by declaring a state of emergency related to a “novel”  
28 Coronavirus, COVID-19, while various California counties and boards of supervisors, including  
Respondents COUNTY OF ORANGE (the “County”) and ORANGE COUNTY BOARD OF  
SUPERVISORS (the “Board”) (hereinafter collectively “Respondents”), also declared local states of  
emergencies or local health emergencies in their counties, presumably because local conditions in  
their respective counties regarding COVID-19 also warranted such local declarations of emergency.

2. Over two years later, Governor Newsom has made it clear that although the conditions

1 that first warranted his declaration of the state of emergency in March of 2020 have ended,<sup>1</sup> he intends  
2 to keep California in a perpetual state-wide state of emergency for “flexibility” and “convenience.”<sup>2</sup>

3 3. On June 22, 2021, Respondent Board, as the governing body for the County, illegally  
4 voted to abdicate all of its legal responsibilities and duties under California law to assess whether local  
5 conditions continue to justify an ongoing declared local state of emergency and local health  
6 emergency. The Board improperly delegated this specific local statutory duty and authority entirely  
7 to the Governor, illegally tying the termination of any local state of emergency or local health  
8 emergency in Orange County to the Governor’s termination of the state-wide state of emergency. (*See*  
9 Board of Supervisor’s June 22, 2021, Status Report, attached hereto and incorporated herein as  
10 “**Exhibit A**”).

11 4. As a consequence of Respondents’ improper delegation of authority to the Governor,  
12 and in light of the Governor’s intent to hold onto his emergency powers indefinitely, the local state of  
13 emergency and local health emergency in the County are also being extended indefinitely, in violation  
14 of Respondents’ clear, legal, statutory duties to (1) review the conditions warranting continuing any  
15 local states of emergency and (2) terminate any such emergencies at the “earliest possible date.” (Gov.  
16 Code § 8630; Health & Safety Code §101080).

17 5. There is no statutory or Constitutional authority that permits any local board of  
18 supervisors – let alone this Board – to completely abdicate its duties to review and assess whether the  
19 local conditions within its respective county justify the continuance of a local state of emergency or  
20 local health emergency or to delegate these duties to the Governor or anyone else. Indeed, a primary  
21 reason to have local county boards of supervisors in the first place is to put decision-making authority  
22 in the hands of local governing bodies, which are far more familiar with the unique local conditions  
23

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24 <sup>1</sup> Indeed, Governor Newsom himself must not actually believe that conditions continue to exist to justify a statewide state  
25 of emergency in California. Over the last two years, Governor Newsom has enjoyed mask-less dinners at The French  
26 Laundry, two-family vacations abroad, a national book tour for his children’s book, and maskless cheering at various major  
27 football events held at Sofi Stadium in Los Angeles, including the Los Angeles-hosted Superbowl. Unfortunately, during  
28 these various times under the Governor’s own declared state of emergency, millions of ordinary Californians were forced to  
remain masked to enter businesses or attend school, coerced to take unwanted COVID-19 “vaccines” to remain employed in  
California, asked to show their ‘vaccine passports’ in various California cities simply to participate in ordinary life, and often  
subjected to weekly genetic testing in order to work or attend school, despite having no signs of any infectious disease.

<sup>2</sup> *See e.g.*, Governor Newsom’s Executive Order N-04-22 (Feb. 25, 2022) (retaining a large number of executive orders  
issued under his 2020 declared state of emergency for the vague purpose of “continued readiness, awareness, and flexibility”).

1 affecting the citizens within these respective counties, presumably thus enabling them to properly  
2 make these determinations as contemplated by the Legislature and the plain language of the applicable  
3 statutes. Delegating this quasi-legislative authority to the Governor violates the clear Separation of  
4 Powers expressly set-forth in the California Constitution. It also violates long-standing principles of  
5 non-delegation under California law.

6         6. No statutory or Constitutional authority permits its Respondents to keep the County in  
7 a perpetual state of emergency or state of a health emergency for convenience, “readiness,”  
8 “awareness,” or “flexibility,” or to continue to receive federal COVID-19 relief funding, where local  
9 conditions no longer warrant it. In fact, Respondents have a clear, present, ministerial, and affirmative  
10 duty to terminate local emergencies and local health emergencies (hereinafter collectively  
11 “Emergencies”) “at the earliest possible date that conditions warrant the termination” under both  
12 California Health & Safety Code, section 101080, and Government Code, section 8630.

13         7. Just as there is always a potential for an earthquake, a fire, natural disaster, or hazardous  
14 waste spill, there is always a potential for a local health emergency. However, California’s robust  
15 emergency statutory scheme prohibits Respondents from continuing any emergency with restrictive  
16 measures based on a *perceived, potential, or possible future* threat. California’s emergency laws also  
17 prohibit Respondents from indefinitely forgoing their duty to review the conditions that might warrant  
18 the declaration of an emergency and to vote to extend or terminate it or to delegate such authority to  
19 anyone else.

20         8. Petitioners PEGGY HALL (“Ms. Hall”) and CHILDREN’S HEALTH DEFENSE –  
21 CALIFORNIA CHAPTER (“CHD-CA”) (hereinafter collectively “Petitioners”), on behalf of thousands  
22 of Orange County residents, including Ms. Hall, individually, are property and business owners whose  
23 businesses have been shut down and impacted by “local health orders” mandating closures, masking,  
24 testing, distancing, implementation of personal protective equipment (“PPE”), and – at one point – proof  
25 of vaccination, and parents, students, and children who are members of CHD-CA and have been  
26 subjected to Orange County school closures, remote learning, masking, testing, quarantining, distancing,  
27 and proposed vaccination requirements arising out of and announced under Respondents’ declarations  
28 of Emergencies. Petitioners have been patient with Respondents and their handling of COVID-19;

1 however, Petitioners can no longer sit idly by while Respondents continue to shirk their legal obligations  
2 to review the current data concerning COVID-19, which clearly does not support any determination that  
3 “conditions of disaster or extreme peril to the safety of persons or property” currently exist in Orange  
4 County.

5 9. Orange County residents are entitled to the return of a normally functioning local  
6 government and representative democracy, rather than living under a perpetual state of emergency for  
7 years on end, where every aspect of their lives is controlled by unelected bureaucrats such as local health  
8 officials, and the rule of law is suspended indefinitely in deference to this unelected and overreaching  
9 bureaucracy.

10 10. As of the date of filing this Third Amended Verified Petition for Writ of Mandate and  
11 Complaint for Declaratory and Injunctive Relief (“Third Amended Verified Petition”), “conditions of  
12 disaster or extreme peril to the safety of persons or property [in Orange County] caused by conditions  
13 such as [an] epidemic,” which conditions are, or are likely to be, “beyond the control of the services,  
14 personnel, equipment, and facilities of this county, requiring the combined forces of other political  
15 subdivisions to combat” do **not** exist to maintain a “local health emergency” under Health and Safety  
16 Code, section 101080, or a “local emergency” under Government Code, section 8558(c). Such  
17 conditions have not existed for quite some time, if ever.

18 11. Specifically, per the Board’s own repeated admissions, there has been **zero**  
19 coordination of emergency services, personnel, equipment, or facilities in and between counties since  
20 the inception of the “pandemic.” Since at least June of 2021, Respondents have not:

- 21 a. Combined forces with other political subdivisions to combat conditions of extreme  
22 peril or great danger posed by COVID-19 in Orange County;
- 23 b. Entered into “Mutual Aid” agreements with other counties or states to assist Orange  
24 County with its response to COVID -19;
- 25 c. Discussed with the public, or evaluated, the financial, physical, and/or psychological  
26 impact of the Emergencies on the residents of Orange County, including and  
27 especially children;
- 28 d. Discussed with the public, or determined, that the continuation of the Emergencies

1 was actually benefitting Orange County residents;

2 e. Discussed with the public, or determined, that the benefit of the continuation of the  
3 Emergencies justifies or outweighs the burdens and harms to the businesses, financial,  
4 psychological, and physical well-being of Orange County residents, including and  
5 especially children; and/or

6 f. Discussed with the public, reviewed local data, or determined that the conditions in  
7 Orange County are so perilous that ending the local declarations of emergency under  
8 either the Government Code or the Health and Safety Code is not warranted.

9 12. In sum, none of the statutorily-provided reasons to keep a declaration of local or local  
10 health emergency exist in this County and Respondents have failed in their duty to review conditions  
11 creating the declared emergency so that they may end it at the earliest date the conditions warrant.

12 13. To add insult to injury, Respondents have repeatedly and publicly admitted that they  
13 have kept Orange County residents in the perpetual, unfounded Emergencies to avail themselves of  
14 Federal monies available under the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local  
15 Fiscal Recovery Fund (“Coronavirus Recovery Fund”), as established under the American Rescue Plan  
16 Act (“ARPA”), and the Coronavirus Relief Fund (“CRF”), as established under the Coronavirus Aid,  
17 Relief, and Economic Security Act (“CARES Act”).

18 14. Respondents may have believed in early 2020 that conditions of extreme disaster and/or  
19 peril to the safety of persons in Orange County were going to exist in the County, but that time has long  
20 passed. Respondents themselves have admitted as much in public statements, directly triggering their  
21 legal duty to review the conditions as requested herein.

22 15. Accordingly, Petitioners file this Third Amended Verified Petition and ask this Court to:

23 a. Issue a traditional writ of mandate under Code of Civil Procedure, section 1085,  
24 ordering Respondents to (i) rescind their June 22, 2021 vote abdicating or delegating  
25 their legal duties as the local governing body of Orange County to review the  
26 County’s conditions under Government Code, section 8630 and Health & Safety  
27 Code, section 101080, and make a determination as to whether or not said conditions  
28 warrant continued declarations of local and local health emergencies (ii) comply with

1 their ministerial duties to conduct the necessary, reasoned, and public review of local  
2 conditions and make a determination and finding that said conditions justify the  
3 continued declarations of Emergencies under Government Code, section 8630 *et seq.*,  
4 and Health & Safety Code, section 101080 *et seq.* and (iii) vote to end the  
5 Emergencies if local conditions no longer warrant them; and/or

- 6 b. Issue an administrative writ of mandate under Code of Civil Procedure, section  
7 1094.5, to determine whether Respondents acted in excess of their jurisdiction, acted  
8 arbitrarily and capriciously, deprived Petitioners of a fair hearing, and/or committed  
9 prejudicial abuse of discretion in (i) abdicating or delegating their legal duties as the  
10 local governing body of the County to review local conditions and make a  
11 determination as to whether or not said conditions warrant continued declarations of  
12 local and local health emergencies under Government Code, section 8630 and Health  
13 & Safety Code, section 101080, and/or (ii) making the determination that continuance  
14 of the Emergencies was necessary, reasoned, and proper under the conditions; and/or
- 15 c. Grant an alternative writ, stay implementation of the Emergencies, and order  
16 Respondents to show cause why their review of local conditions justifying the  
17 ongoing Emergencies should not be performed as part of their duties as the governing  
18 body of the County, and/or

- 19 d. Issue a preliminary and/or permanent injunction enjoining Respondents' further or  
20 continued implementation and enforcement of the Emergencies without statutorily  
21 required reviews; and/or

- 22 e. Issue a preliminary and/or permanent injunction enjoining Respondents' from  
23 continuing to seek, request, receive, use, and/or distribute or disperse state and/or  
24 federal emergency COVID monies in the absence of conditions that warrant the  
25 Emergencies.

26 **PARTIES AND STANDING**

27 16. Petitioner PEGGY HALL is a proud Orange County resident for over 50 years. She is  
28 the founder of The Healthy American, which exists to educate, empower and inform individuals of

1 their rights, the laws that protect those rights, and how to apply those laws to defend their rights. Ms.  
2 Hall is also a business owner and taxpayer in Orange County who suffered various physical,  
3 psychological, and financial harms, including loss of employment, as well as losses to her liberty,  
4 speech, and associational rights under the federal and California Constitutions when the County  
5 instituted various public health mandates at the County-level, and she continues to be under constant  
6 threat of harm that the County may reinstitute any of these measures as long as the local health and  
7 local emergency declarations are not terminated. (*See e.g., Roman Catholic Diocese v. Cuomo* (2020)  
8 592 U.S. \_\_\_, \_\_\_, 141 S.Ct. 63, 68 [holding that the lifting of restrictions did not moot the application  
9 because “the applicants remain under a constant threat that those restrictions may be reinstated.”]. Ms.  
10 Hall has a present, beneficial interest in the Orange County Board of Supervisors following the laws  
11 and constitutions of the Country, County, and State, including, but not limited to, those laws pertaining  
12 to the declarations of emergency and extensions of declarations of emergency. Ms. Hall also has a  
13 present, beneficial interest as a taxpayer under California Code of Civil Procedure section 526a in  
14 assuring that her tax dollars are properly accounted for and spent appropriately and not illegally by her  
15 local government. (*See e.g. Taschner v. City Council* (1973) 31 Cal. App. 3d 48, 55 [“Insofar as  
16 standing is concerned, the allegation that Petitioner was an elector, taxpayer, and owner of real property  
17 in the city was sufficient to give him standing to challenge the validity of the ordinance”].

18       17.     Petitioner CHILDREN’S HEALTH DEFENSE, CALIFORNIA CHAPTER is a  
19 California 501(c)(3) nonprofit corporation incorporated under the laws of the State of California, and  
20 headquartered in Ross, California. CHD-CA was founded in 2020 as the California branch of  
21 Children’s Health Defense, a national non-profit organization headquartered in Peachtree City,  
22 Georgia. CHD-CA has over 7,000 members throughout California, consisting predominately of parents  
23 whose children have been negatively affected by environmental and chemical exposures and damaging  
24 emergency measures including unsafe emergency vaccines, unsafe emergency lockdowns, illegal  
25 contact tracing, damaging quarantine and isolation policies, and damaging emergency masking  
26 policies, among other things. CHD-CA represents the interests of thousands of children and families  
27 across California, and approximately 2,000 CHD-CA members residing in Orange County, with  
28 children attending school in Orange County, and who are property and business owners paying taxes

1 to Orange County. CHD-CA’s members residing in Orange County have present, beneficial interests  
2 in Respondents’ following the laws and constitutions of the Country, State, and County, including those  
3 pertaining to the declarations of local and local health emergencies, and voting to terminate them at the  
4 earliest date conditions warrant, otherwise, they and their children may be forced into unreasonable and  
5 harmful lockdowns, school closures, forced masking, testing, vaccination, distancing and other  
6 “emergency” measures should Respondents decide to unilaterally and arbitrarily re-implement them  
7 under the emergency powers that still exist during a local declaration of emergency, exacerbating and  
8 continuing Petitioners’ harms, which are easily capable of repetition so long as a declaration of local  
9 or local health emergency is in place. (*See Roman Catholic Diocese*, 141 S.Ct. at 68). The interests  
10 that CHD-CA seeks to protect in this action are also germane to its fundamental purpose and CHD-CA  
11 has members residing in Orange County who have been and will continue to be negatively impacted  
12 by Respondents’ failure to review local conditions within Orange County as required by law and to  
13 terminate the local emergency and/or local health emergency at the earliest time conditions warrant and  
14 therefore CHD-CA further meets all associational standing requirements for prosecuting this action.

15 18. Respondent ORANGE COUNTY is a county in Southern California comprising more  
16 than 3 million residents.<sup>3</sup>

17 19. Respondent ORANGE COUNTY BOARD OF SUPERVISORS is an elected body  
18 governing the five Supervisorial Districts of Orange County. The current Board members are  
19 Supervisor and Chair Andrew Do (1st District), Supervisor Katrina Foley (2nd District), Supervisor  
20 Donald Wagner (3d District), Supervisor Doug Chafee (4th District), and Supervisor Lisa Bartlett (5th  
21 District). The Board is charged with overseeing the management of the County government, which  
22 includes setting County policy, appointing or hiring local “health experts” and others to which they  
23 delegate some of their authority in supervising activities of the county, approving an annual budget and  
24 contracts, conducting public hearings on land-use and other matters, and making appointments to  
25 boards, committees, and commissions.

26 ///

27  
28 <sup>3</sup> United States Census Bureau, [https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml) [as of September 13, 2021]



1           20.     Petitioners have and will suffer significant, direct, irreparable harm if the Emergencies  
2 are not reviewed and/or terminated by Respondents, in accordance with their statutory obligations to  
3 do so under Government Code, 8630 *et seq.*, and Health & Safety Code, section 101080 *et seq.*, legal  
4 duties which were **not** suspended by any of the State’s emergency or executive orders, including but  
5 not limited to the Governor’s initial Proclamation of Emergency on March 4, 2020. The failure to  
6 follow the law and review the local conditions and end the local emergencies at the earliest date possible  
7 harms Petitioners because such failure creates conditions within the County wherein Petitioners and  
8 their members may at any time be subject to losing employment, businesses, business opportunities,  
9 and goodwill; being denied medical services, treatment, and care; being prevented from accessing  
10 necessary services and places of public accommodation; being denied their constitutional right to free  
11 public school education; being forced into remote learning, independent study programs, in violation  
12 of the Education Code; and being forced to comply with harmful and ineffective “COVID-19 safety  
13 measures,” such as masking, testing, vaccination, quarantining, sheltering at home, and distancing  
14 without due process of law, so long as local authorities improperly retain emergency police powers as  
15 herein alleged. (*See Roman Catholic Diocese*, 141 S.Ct. at 68). As a result, Petitioners are entitled to  
16 the relief prayed for herein.

17           21.     There is also substantial public interest in ensuring that Respondents comply with the  
18 laws of the state, including the California and United States Constitutions, California Government and  
19 Health & Safety Codes, California Education Code, and Orange County’s Code of Ordinances, and  
20 Petitioners assert standing on this basis as well. Public interest standing applies where the question is  
21 one of public right and the object of the action is to enforce a public duty, in which case, it is sufficient  
22 that the plaintiff be interested as a citizen in having the laws executed and the public duty enforced.  
23 (*See Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal. App. 4<sup>th</sup> 899, 914).

24           22.     Petitioners bring this suit to redress these constitutional and statutory harms, and seek a  
25 writ of mandamus and declaratory and injunctive relief, finding that Respondents have violated  
26 Petitioners’ rights under state law, as well as the California and United States Constitutions, and  
27 directing Respondents to act in accordance with such laws.  
28

**JURISDICTION AND VENUE**

23. This Court has jurisdiction to issue writs of mandate pursuant to the California Code of Civil Procedure, sections 1085 and 1094.5.

24. This Court has personal jurisdiction over Respondents because Respondents are governmental actors that conduct business in and maintain operations in Orange County.

25. Venue is proper in the Superior Court of Orange County under the California Code of Civil Procedure, sections 393(b), 394, and 395 because Respondents are Orange County and its Board of Supervisors, a local agency, and all of the acts and omissions occurred in Orange County.

26. Petitioners, and their members, have a clear, present, and beneficial interest in the proper performance of the law by Respondents and have no plain, speedy, and adequate remedy at law.

27. Petitioners, and their members, have taxpayer standing and an interest in ensuring the proper use of county funds under the California Code of Civil Procedure, section 526a.

**LEGAL BASIS**

28. Local boards of supervisors are the governing bodies of California counties and serve as both the legislative and executive authority of an individual county.<sup>4</sup> Board of supervisors’ decision-making can be, at various times, quasi-legislative, quasi-adjudicative, or even quasi-judicial in nature.<sup>5</sup> (Gov. Code, §§ 25000 *et seq.*)

29. An official act of a Board of Supervisors can only be performed in a regularly or specially convened meeting. (*See* Gov. Code § 54952.2 *et seq.*) The individual members have no power to act for the county merely because they are members of the Board of Supervisors; rather, meetings of the Board of Supervisors are subject to the restrictions of the Ralph M. Brown Act. (*Ibid.*)

With limited exceptions, the Brown Act requires all Board of Supervisors meetings to be open and public and all discussion items properly agendized and publicly noticed for hearing. (*See* Gov. Code, §§ 54953.3, 54954, *et seq.*) The county clerk, whose duty it is to record all proceedings of the Board of Supervisors, is the *ex officio* clerk of the Board unless the Board appoints its own separate clerk. The Board must keep record of its decisions and the proceedings of all regular and special meetings. (*Ibid.*)

<sup>4</sup> *See* California State Association of Counties, <https://www.counties.org/post/board-supervisors> [last visited April 26, 2022]

<sup>5</sup> *Id.*

1           30.     A county board of supervisors is the governing body charged with reviewing whether  
2 local conditions exist to justify the declaration or continuance of a local state of an emergency or local  
3 health emergency at the county level in California. (*See* Gov. Code, § 8630; Health & Safety Code §  
4 101080).

5           31.     For a county-level, local state of emergency under Government Code, section 8630:

- 6           a.     the emergency may be proclaimed only by the governing body of a city, county, or
- 7                     city and county, or by an official designated by ordinance adopted by the governing
- 8                     body;
- 9           b.     the local emergency **shall not remain in effect for a period in excess of seven**
- 10                    **days unless ratified by the governing body;**
- 11           c.     the governing body **shall review** the need for continuing the local emergency at
- 12                    least once every sixty (60) days until the governing body terminates the local
- 13                    emergency; and
- 14           d.     the governing body **shall proclaim the termination of the local emergency at the**
- 15                    **earliest possible date that conditions warrant.** [Emphasis added].

16           32.     Under Government Code, section 8558, a “local emergency” is defined as follows:

17           (c) “Local emergency” means the duly proclaimed existence of conditions of  
18 disaster or of extreme peril to the safety of persons and property within the  
19 territorial limits of a county, city, and county, or city, caused by conditions such  
20 as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden  
21 and severe energy shortage, plant or animal infestation or disease, the Governor’s  
22 warning of an earthquake or volcanic prediction, or an earthquake, or other  
23 conditions, other than conditions resulting from a labor controversy, which are or  
24 are likely to be beyond the control of the services, personnel, equipment, and  
25 facilities of that political subdivision and require the combined forces of other  
26 political subdivisions to combat, or with respect to regulated energy utilities, a  
27 sudden and severe energy shortage requires extraordinary measures beyond the  
28 authority vested in the California Public Utilities Commission.

29           33.     For a county-level, local health emergency under Health & Safety Code section 101080:

30           “[w]henver there is an imminent and proximate threat of the introduction of any  
31 contagious, infectious, or communicable disease, chemical agent,  
32 noncommunicable biologic agent, toxin, or radioactive agent, the director may  
33 declare a health emergency and the local health officer may declare a local health  
34 emergency in the jurisdiction or any area thereof affected by the threat to the

1 public health. Whenever a local health emergency is declared by a local health  
2 officer pursuant to this section, the local health emergency shall not remain in  
3 effect for a period in excess of seven days unless it has been ratified by the board  
4 of supervisors, or city council, whichever is applicable to the jurisdiction. The  
5 board of supervisors, or city council, if applicable, **shall review**, at least every 30  
6 days until the local health emergency is terminated, the need for continuing the  
7 local health emergency **and shall proclaim the termination** of the local health  
8 emergency **at the earliest possible date that conditions warrant the**  
9 **termination.**” [Emphasis added].

10 34. With respect to any state-wide declared emergency under the California Emergency  
11 Services Act (“CESA”), under Government Code section 8629, “the Governor **shall proclaim the**  
12 **termination of a state of emergency at the earliest possible date that conditions warrant.** All of the  
13 powers granted the Governor by this chapter with respect to a state of emergency shall terminate when  
14 the state of emergency has been terminated by proclamation of the Governor or by concurrent resolution  
15 of the Legislature declaring it at an end.” [Emphasis added].

16 35. Under Article III, Section 3 of the California Constitution, “The powers of state  
17 government are legislative, executive, and judicial. Persons charged with the exercise of one power may  
18 not exercise either of the others except as permitted by this Constitution.”

## 19 FACTUAL ALLEGATIONS

### 20 Declaration of a “State of Emergency” in California

21 36. In early 2020, California public health officials became aware that a novel respiratory  
22 virus, SARS-COV-2, which was alleged to cause the disease named COVID-19, was spreading.

23 37. On January 26, 2020, California public health officials announced the first positive PCR  
24 test for SARS-COV-2 in California. However, between January 26, 2020, and March 4, 2020, California  
25 state health officials repeatedly assured the public that “the risk to the general public” from COVID-19  
26 was “low.”

27 38. Despite these statements, Governor Newsom declared a state of emergency related to  
28 COVID-19 on March 4, 2020 (hereinafter “Proclamation”).<sup>6</sup>

39. In the Proclamation, Governor Newsom completely disrupted, reordered and/or  
suspended many ordinary aspects of democratic governance and the proper checks and balances on

<sup>6</sup> “Proclamation of a State of Emergency,” <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf> [last visited April 26, 2022].

1 executive power, including proper agency rule-making requirements typically required under the  
2 California Administrative Procedure Act (“APA”). This suspension of normal governance allowed  
3 agencies such as the California Department of Public Health (“CDPH”) and other unelected officials  
4 to unilaterally impose unprecedented restrictions on California citizens under the guise of an  
5 “emergency” response to COVID-19, without going through any notice and comment rulemaking  
6 requirements or having to consider any public input on such unprecedented restrictions and  
7 requirements whatsoever.

8 40. Included in this supposedly temporary disruption to normal democratic governance was  
9 the Governor’s temporary suspension of the 30 or 60-day time periods normally required of local  
10 governing authorities to review, renew, or terminate local states of emergency.

11 41. Specifically, at paragraphs 7 and 8, the Governor indicated that “for the duration of [the]  
12 statewide emergency,” he was suspending the operation of the “30-day review period” in Health &  
13 Safety Code, section 101080 (local health emergency), and the “60-day review period” in Government  
14 Code, section 8630 (local emergency), the time periods within which a local governing authority would  
15 normally be required to review – and then renew or terminate -- a declared local and/or local health  
16 emergency. Under the Proclamation, any such local emergency or local health emergency would  
17 “remain in effect until each local governing authority terminates its respective local health emergency.”  
18 (See Proclamation, **Exhibit B**).

19 42. Although this Proclamation gave local governing authorities a presumably temporary  
20 waiver of the requisite 30 and 60 day review periods, giving them more flexibility with respect to the  
21 timing of these, the Proclamation did *not* suspend the local governing authorities’ legal duties to review  
22 the conditions under which a local and/or local health emergency declaration could be renewed. It also  
23 did not relieve a governing body of its specific legal duty to terminate the local or local health  
24 emergency at the earliest opportunity conditions allowed. (Gov. Code § 8630(d); Health & Safety  
25 Code §101080).

26 43. As of the date of filing this Third Verified Amended Petition, the Governor has **not** –  
27 via any other “proclamation,” Executive Order, press conference, press release, public health “order,”  
28 “guidance,” “recommendation,” “guideline,” or “mandate”– suspended the duties of local boards of

1 supervisors, as elected officials, to oversee and review the operations and conditions in their respective  
2 counties, including, but not limited to, determining the existence of conditions that may or may not  
3 justify a declaration of a local and/or local health emergency.

4 44. Following his initial Proclamation on March 4, 2020, Governor Newsom subsequently  
5 issued hundreds of far-reaching executive orders, while he and his public health agency, CDPH, issued,  
6 removed, and then reissued numerous “public health” mandates, including requirements on masking,  
7 testing, quarantining, and jab-for-job vaccination requirements that negatively affected every man,  
8 woman, and child in the state, transforming California in less than two years from a democratic state to  
9 one ruled almost exclusively by executive fiat and CDPH “Guidance.” For example:

- 10 a. On March 19, 2020, the Governor ordered all Californians to stay inside their homes  
11 indefinitely, unless leaving to perform activities that were necessary to maintain the  
12 “federal critical infrastructure.” (Executive Order N-33-20).
- 13 b. On May 4, 2020, despite initially promising that the Stay-at-Home order would only be  
14 for two weeks to help “flatten the curve” and prevent hospitals from becoming  
15 overwhelmed, the Governor announced that he would continue the Stay-at-Home Order  
16 indefinitely, without considering whether there were less restrictive ways of controlling  
17 COVID-19.
- 18 c. On August 28, 2020, the CDPH issued the Blueprint for a Safer Economy that  
19 established a procedure for assigning counties to one of four tiers based on the severity  
20 of the COVID-19 outbreak in each locality (hereinafter “Blueprint”). Under the  
21 Blueprint, counties were sorted into one of four color-coded tiers: red, purple, orange,  
22 or yellow, from the most serious COVID-19 scenario, to the least. These color-coded  
23 tiers were based on three metrics: (1) the county’s rates of new coronavirus “cases” (e.g.  
24 positive PCR tests), adjusted based on the number of tests performed per 100,000  
25 population; (2) the rate at which conducted tests came back positive (the percent  
26 positivity rate); and (3) a “health-equity” metric applied to ensure that the positive test  
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1 rate in poorer communities is not significantly higher than the county’s overall figure.<sup>7</sup>

2 45. After nearly two years of rule by executive order and CDPH mandatory “guidance” –  
3 none of which has been adopted as formal notice and comment rulemaking as required under the APA  
4 – and perhaps in response to growing public frustration with obvious hypocrisy by leaders imposing  
5 rules on others but not following them themselves, Governor Newsom and CDPH announced their  
6 “SMARTER PLAN: The Next Phase of California’s COVID-19 Response” (“SMARTER Plan”) on  
7 February 17, 2022. The SMARTER Plan clearly indicates Governor Newsom’s intent to retain his  
8 emergency powers indefinitely, and to reinstitute mandatory masking, testing, quarantining, and other  
9 draconian measures as he and/or CDPH deem fit, irrespective of any actual public health emergency in  
10 the State of California.

11 46. One week later, rather than allowing the state-wide state of emergency to naturally  
12 expire as promised on March 31, 2022, Governor Newsom issued Executive Order N-04-22 on  
13 February 25, 2022. This order also indicates the Governor’s intent to keep many of his executive orders  
14 in place indefinitely, including the wholly unlawful “temporary” waiver of the 30 and 60 day time  
15 periods for local governing bodies to review local emergencies and local health emergencies as  
16 contained in his initial Proclamation two years prior.

17 **Declaration of Emergencies in Orange County**

18 47. On February 26, 2020, then Orange County Health Officer, Dr. Nichole Quick, declared  
19 a local health emergency pursuant to Health & Safety Code, section 101080. Under this statutory  
20 provision, and prior to the Governor’s Proclamation, Respondents were obligated to review this  
21 declared local health emergency every 30 days.

22 48. That same day, since the Board of Supervisors was not in session, the Orange County  
23 Director of Emergency Services requested that the Chair of the Emergency Management Council,  
24 Michelle Steel, proclaim a local emergency pursuant to *Government Code*, section 8630. The Director  
25 based this request on the following facts, among others:

- 26 a. The County Health Officer had determined that the County was preparing  
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28 <sup>7</sup> It is unclear how this “health equity” metric is legal, Constitutional, or in any way related to the concerns of a legitimate infectious disease “emergency.”

1 for an “imminent and proximate threat to public health from the virus;”

2 b. Orange County communities were going to need to take “significant  
3 response actions to any developing contagion, and to any other risks that may  
4 arise from the introduction and possible spread of the virus”;

5 c. These events created “a condition of extreme peril” to Orange County  
6 residents;

7 d. Conditions would “likely [ ] be beyond the control of the services, personnel,  
8 equipment, and facilities of the County of Orange, and require combined  
9 forces of other political subdivisions to combat.

10 49. Ms. Steel, as Chair of the Emergency Management Council, granted the Director’s  
11 request and declared a local emergency pursuant to *Government Code*, section 8630. Under this  
12 statutory provision, Respondent Board had a legal duty to ratify Ms. Steel’s declaration of a local  
13 emergency within seven (7) days and, as with the local health emergency, and prior to the Governor’s  
14 Proclamation, review a declared local emergency every 60 days. Respondent Board was also obligated  
15 to terminate the local emergency at the earliest possible date that conditions warrant.

16 50. Ms. Steel then further requested that (1) the Governor declare a state of emergency in  
17 California; (2) the President of the United States declare a state of national emergency in and for Orange  
18 County; and (3) make all relevant funds available to Orange County and all eligible community  
19 members and businesses.<sup>8</sup>

20 51. However, none of the statutory conditions defining a “local emergency” existed at the  
21 time of the declarations.

22 52. Specifically, under *Government Code* section 8558, a “local emergency” is defined as  
23 follows:

24 (c) “Local emergency” means the **duly proclaimed existence of conditions of**  
25 **disaster or of extreme peril to the safety of persons and property within the**  
26 **territorial limits of a county, city, and county, or city, caused by** conditions  
27 such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism,  
28 sudden and severe energy shortage, plant or animal infestation or **disease**, the  
Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or  
other conditions, other than conditions resulting from a labor controversy, **which**  
**are or are likely to be beyond the control of the services, personnel,**  
**equipment, and facilities of that political subdivision and require the**

<sup>8</sup> “County of Orange, State of California, Proclamation of Local Emergency, and Request for Governor to Declare State of Emergency,” <https://www.ocgov.com/sites/default/files/import/data/files/118217.pdf>



1           **combined forces of other political subdivisions to combat**, or with respect to  
 2 regulated energy utilities, a sudden and severe energy shortage requires  
 3 extraordinary measures beyond the authority vested in the California Public  
 4 Utilities Commission. [Emphasis added].

5           53. Yet, in a press release announcing its declarations of Emergencies and requests for  
 6 assistance, the County explained that its own declarations of the local emergency and local health  
 7 emergency “**assists the County of Orange to better leverage resources in order to prepare to our**  
 8 **staffing needs and greater agency coordination all while allowing for future reimbursement for**  
 9 **County activities by state and federal governments in the event of an COVID-19 outbreak in**  
 10 **Orange County.**”<sup>9</sup> [Emphasis added].

11           54. In addition, during a news conference following the declarations of Emergencies and  
 12 requests, Respondent Supervisors Do and Steel explained, “Our declaration of local emergency today  
 13 signed by Dr. Quick is about preparedness. **It does not indicate a greater risk of harm, there are no**  
 14 **current incidents reported in the county of Orange.**”<sup>10</sup> [Emphasis added].

15           55. Upon information and belief, at the time of their announcement of the Emergencies,  
 16 there had been one (1) positive SARS-COV-2 test subject in Orange County who had been treated and  
 17 released without any further symptoms.<sup>11</sup>

18           56. Put starkly, at the time of Respondents’ announcement declaring the Emergencies, the  
 19 local conditions justifying them under Government Code section 8558 simply did not exist, nor have  
 20 they ever existed in this County. Millions of lives within the County were needlessly disrupted,  
 21 destroyed, and devastated – due to the Respondents’ premature and/or fraudulent declarations of a local  
 22 emergency and local health emergency.

23           **There Is No Local Health or Other Emergency in Orange County**

24           57. Since February 2020, over a two-year period, 546,880 Orange County residents have  
 25 tested positive for SARS-COV-2 and 6,880 reportedly died with (but not necessarily from) COVID  
 26 19.<sup>12</sup> Of these decedents, 1,314 lived in Skilled Nursing Facilities, 697 lived in Assisted Living

27           <sup>9</sup> “County of Orange Declares Emergency in Response to COVID-19,”  
 28 <https://ocCOVID19.ochealthinfo.com/sites/virus/files/2020-03/2.%2002.26.20%20COVID-19%20Emergency%20Press%20Release%20and%20Declarations.pdf>

<sup>10</sup> <https://www.foxla.com/news/orange-county-officials-declare-local-health-emergency-over-coronavirus>

<sup>11</sup> *Ibid.*

<sup>12</sup> COVID-19 Case Counts and Testing Figures, <https://ocCOVID19.ochealthinfo.com/coronavirus-in-oc> [as of March 22, 2022]

1 Facilities, 2 were Orange County jail inmates, and 21 were homeless.<sup>13</sup>

2 58. Currently, the CDC predicts the case fatality rate for COVID-19 is between 0.26 percent  
3 and 0.65 percent, and that ninety-four percent (94%) of people who have died with COVID-19 had at  
4 least one co-morbidity, such as diabetes, cancer, obesity, or heart disease, and an average of 2.6 co-  
5 morbidities.<sup>14</sup>

6 59. According to Governor Newsom on October 6, 2021, California leads the nation with  
7 the lowest COVID case and death rate.<sup>15</sup>

8 60. As of May 18, 2021, Orange County was moved to the yellow tier of the Blueprint plan,  
9 the most lenient of California's color-coded reopening tiers, meaning that for the previous two weeks,  
10 Orange County had achieved an "adjusted daily rate" of fewer than two (2) new cases per 100,000  
11 people; overall test positivity of less than two percent (2%); and a "health-equity positivity" of less than  
12 two percent (2%).

13 61. Since that time, Orange County's case rate has continued to drop and its positivity rating  
14 is now only one point eight percent (1.8%). Currently, the ICUs in the county have more than 30%  
15 excess capacity and no hospital in the county has been shown to be overrun throughout the entire  
16 "pandemic".<sup>16</sup>

17 62. Orange County has remained in the yellow tier since May of 2021. It cannot move up  
18 any further, as Governor Newsom opted not to include a "green tier."

19 63. As of March 22, 2022, 125 out of the 3.2 million Orange County residents are hospitalized  
20 "with"—and not necessarily "from"—COVID-19,<sup>17</sup> with only 25 of those 125 in the intensive care unit  
21 (meaning the patient tested positive for SARS COV 2 with a PCR test but is not necessarily sick from or  
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23 <sup>13</sup> *Ibid.*

24 <sup>14</sup> COVID-19 Death Data and Resources, [<https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm> (as of November,  
25 2021)].

26 <sup>15</sup> *California Becomes First State in Nation to Announce COVID-19 Vaccine Will Be Added to List of Required School  
27 Vaccinations*, October 1, 2021, [https://www.gov.ca.gov/wp-content/uploads/2021/10/California-Becomes-First-State-in-  
28 Nation-to-Announce-COVID-19-Vaccine-to-List-of-Required-School-Vaccinations.pdf](https://www.gov.ca.gov/wp-content/uploads/2021/10/California-Becomes-First-State-in-Nation-to-Announce-COVID-19-Vaccine-to-List-of-Required-School-Vaccinations.pdf)

<sup>16</sup> COVIDActNow, [https://covidactnow.org/us/california-ca/county/orange\\_county/?s=25081423](https://covidactnow.org/us/california-ca/county/orange_county/?s=25081423) [as of March 22,  
2022]

<sup>17</sup> See <https://cormandrostenreview.com/report/>

CORMAN-DROSTEN REVIEW REPORT, CURATED BY AN INTERNATIONAL CONSORTIUM OF SCIENTISTS  
IN LIFE SCIENCES (ICSLS) [NOV 2020 - JAN 2021] Review report Corman-Drosten et al. Eurosurveillance 2020  
Nov. 27, 2020.

1 infected with the COVID-19 disease allegedly caused by SARS COV 2).<sup>18</sup>

2 64. State-wide, since January of 2022, California has hosted the Superbowl, removed indoor  
3 and even K-12 mask mandates, and has generally returned to almost a fully “normal” society in most  
4 parts of the state. In most counties, including Orange County, retail stores and restaurants are packed,  
5 hospitals are not overwhelmed, and many cities and some counties within California have already  
6 terminated their states of emergencies. It is clear that the existence of conditions of disaster or of  
7 extreme peril to the safety of persons and property within Orange County do not exist.

8 65. Yet despite these clear data, statistics, and observed daily reality, Respondents have  
9 refused to: (1) engage in any meaningful review, regardless of the intervals, of local conditions in  
10 Orange County justifying the ongoing Emergencies, and (2) end its Emergencies.

11 **Respondents Are Holding Orange County in a Perpetual State of Emergency Despite**  
12 **Health, Safety, and Science and Their Constituents’ Wishes for One Reason: Money.**

13 66. The reason for Respondents’ failure to proceed in a manner required by law is clear: by  
14 indefinitely continuing the declared Emergencies, Respondents have unlocked access to and received  
15 over \$1 billion in federal “COVID-19 relief” funds.<sup>19</sup> These funds were “intended to support  
16 communities in their recovery from the COVID-19 pandemic, address economic fallout and lay the  
17 foundation for a strong recovery” and to “respond to the COVID-19 pandemic; replace lost revenue to  
18 strengthen support for vital public services and help retain jobs; support immediate economic  
19 stabilization for households and businesses, and address public health and other economic challenges,”  
20 and includes receipt of over \$554 million in CARES money, and over \$600 million in ARPA funds.<sup>20</sup>  
21 By continuing with the Emergencies despite having no local conditions to warrant them, Respondents  
22 continue to receive these federal funds, even – upon information and belief – benefitting personally  
23 therefrom, while failing to follow the parameters of the laws of this state, science, medicine, and the  
24 will of a majority of Orange County residents.

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27 <sup>18</sup> COVID-19 Case Counts and Testing Figures, <https://occcovid19.ocaliforniahealthinfo.com/coronavirus-in-oc> [as of March 22,  
2022]; cite re PCR test false positives, etc.

28 <sup>19</sup> <https://cfo.ocgov.com/resources/arpacares-act-reports>]

<sup>20</sup> *Ibid.*

1           67.     On information and belief, the majority of the federal monies Respondents have  
2 received has **not** been made available to resident business owners or individuals impacted by the  
3 pandemic or economic downturn, but have, instead, been used by Respondents to (1) implement dozens  
4 of unnecessary “mental health,” “homelessness,” “vaccination,” digital proof of verification, and other  
5 programs and projects, many of which have not been activated; (2) line the pockets of contractors and  
6 other persons with special interests, or with whom Respondents have a financial or personal connection,  
7 via improper, expedited, and clandestine “bidding processes;” and/or (3) be retained by Respondents  
8 for their own personal use, resulting in waste and misuse of these funds.

9           **Respondents’ Abdication of All Duties to Review Local Conditions**

10           68.     Prior to the time Respondents voted to indefinitely continue the Emergencies in Orange  
11 County (June 22, 2021), each time the vote on whether or not to extend the Emergencies was placed  
12 on the Board’s agenda for a public meeting, Petitioner Hall, Petitioner CHD-CA’s Orange County  
13 members – and hundreds of other Orange County residents – would attend the meeting to voice their  
14 desire that all Emergencies end, and to provide the Board with meaningful data to support a finding  
15 that no local emergency exists or ever existed.

16           69.     Rather than take any public input into account, Respondents often engaged in various  
17 hostile and unprofessional tactics to prevent Petitioners and other members of the public from speaking  
18 on the subject matter, such as by putting this critical item on the agenda at the very end of the day,  
19 limiting the public’s speaking times to sometimes no more than thirty seconds a person, conducting  
20 remote meetings rather than in person, and generally making it clear to Orange County citizens that the  
21 Respondent Board had little interest in what its constituents thought about maintaining an ongoing local  
22 state of emergency or health emergency. At the conclusion of these meetings, Respondent Board would  
23 simply rubber-stamp its pre-determined decision to renew the Emergencies, without conducting any  
24 fact-finding or reasoned decision making as required by law.

25           70.     Yet, based upon these same statements and information, which were presented by  
26 Petitioners at various city council meetings throughout Orange County, the city councils of Brea,  
27 Tustin, Villa Park, Laguna Niguel, Yorba Linda, Newport Beach, Huntington Beach, San Juan  
28 Capistrano, Aliso Viejo, and Fullerton all voted to end their local emergencies, pursuant to their

1 statutory and legal obligations and duties to do so. Based upon their review of Petitioners’, and others’,  
2 data and information, these cities’ councils all determined that no conditions existed in their respective  
3 cities warranting any so-called local or local health emergency.

4 71. Despite Petitioners’ and other Orange County residents’ requests that Respondents vote  
5 to end the Emergencies, neighboring cities’ councils’ decisions to end their respective emergencies,  
6 and the fact that no conditions exist in Orange County that “are or are likely to be beyond the control  
7 of the services, personnel, equipment, and facilities of that political subdivision and require the  
8 combined forces of other political subdivisions to combat,” Respondents have refused to (1) review the  
9 conditions warranting the Emergencies, or (2) end the Emergencies.

10 72. Perhaps recognizing the absurdity of simply rubber stamping a renewal of the  
11 Emergencies for fifteen months without engaging in any meaningful review of local conditions or  
12 evidence or conducting any of the reasoned decision-making required of a local governing body, on  
13 June 22, 2021, Respondent Board then voted as follows:

14 **“RECEIVED AND FILED A STATUS REPORT AND RECEIVED**  
15 **UPDATES FROM THE HEALTH CARE AGENCY CONCERNING**  
16 **EFFORTS TO ADDRESS AND MITIGATE THE PUBLIC HEALTH**  
17 **AND OTHER IMPACTS CAUSED BY THE NOVEL CORONAVIRUS**  
18 **(COVID-19) EMERGENCY; APPROVE IMMEDIATE TERMINATION**  
19 **OF THE LOCAL HEALTH EMERGENCY AND LOCAL**  
20 **EMERGENCY RELATED TO NOVEL CORONAVIRUS COVID-19**  
**UPON THE GOVERNOR’S TERMINATION OF THE STATE OF**  
**EMERGENCY AND WITHOUT FURTHER ACTION OF THE**  
**BOARD.”** [Emphasis in original].

21 73. In other words, on June 22, 2021, Respondent Board voted to delegate to the Governor  
22 all of the Respondents’ legal authority, obligations, and duties as a local board of supervisors to (1)  
23 review Orange County’s local conditions, and (2) terminate the Emergencies at the “earliest moment  
24 conditions warrant.”

25 74. Abdicating its own duties to review local conditions and simply tying the continuation  
26 and/or termination of a local state of emergency or local health emergency in Orange County to  
27 Governor Newsom’s termination of his state-wide state of emergency is legally and factually wrong in  
28 a number of ways:

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- a. Under both Health & Safety Code, section 101080 and Government Code, section 8630, Respondent Board, as the governing body for Orange County, has a legal and statutory duty to review the local conditions in Orange County and to terminate the local Emergencies if conditions no longer warrant the continuation of either or both Emergencies. Respondent Board cannot delegate the duties assigned to it by the California Legislature under these statutory provisions to Governor Newsom or any other person. In doing so, Respondent Board has abused its discretion, violated its own mandatory and ministerial duties, acted arbitrarily and capriciously, and failed to proceed in a manner provided by law.
- b. Delegating its own quasi-legislative duties and obligations to Governor Newsom also violates the Separation of Powers inherent in Article III section 3 of the California Consitution, as well as a violation of long-standing principles of non-delegation as recognized by California courts.
- c. Orange County’s local conditions do not align with the entire state. Indeed, Governor Newsom’s own Blueprint and other public health reopening plan materials all indicate that local conditions, including COVID-19 cases, hospitalizations, and deaths, as well as the resources to address these local conditions, vary widely among counties and must be assessed by each locality.
- d. Respondent Board delegated its authority and duty to review local conditions and to terminate the Emergencies to Governor Newsom and tied it to his termination of the state-wide state of emergency in order to benefit from the Governor’s stated intent to maintain a state of emergency indefinitely to personally and financially benefit from maintaining the ongoing Emergencies for as long as possible. This is especially true whereas, here, Respondents have failed to provide any response to demands from Petitioners and other Orange County residents over the last twenty-five months for an explanation why the Board has not voted to terminate the Emergencies despite its low case numbers and deaths; no conditions beyond the control of the services, personnel, equipment, and facilities of Orange County requiring the combined forces of other

1 political subdivisions exist or have ever occurred; and Respondents have admitted  
2 time and time and again that they are only maintaining the Emergencies to unlock their  
3 entitlement to additional “emergency” funding from federal and state sources.

4 75. As of the date of filing of this Third Amended and Verified Petition, Governor Newsom  
5 has not terminated the state-wide state of emergency and has plainly indicated that he does not intend  
6 to terminate the state-wide state of emergency and will continue to rule by executive fiat and the  
7 suspension of normal agency rule-making procedures for continued “convenience” and “flexibility.”  
8 (SMARTER Plan; Executive Order N-04-22).

9 76. As of the date of filing this Third Amended Verified Petition, the Board has not  
10 terminated the Emergencies and does not intend to review local conditions in Orange County or end  
11 either of the Emergencies, unless and until the Governor terminates the state-wide emergency.

12 77. Declaratory and injunctive relief is proper here because Respondents have denied that  
13 they have violated Health & Safety Code, section 1010180 et seq. and/or Government Code, section  
14 8630 et seq., the California Constitution, and other laws, and will continue to refuse to review Orange  
15 County’s conditions or to vote on whether or not to extend or terminate the Emergencies.

16 78. Until the Emergencies are fully terminated, and unless this Court orders Respondents to  
17 abide by their constitutional and statutory duties, Respondents and their officers and public health  
18 agents can decide at any time to reinvoke devastating, unconstitutional, and draconian “health”  
19 measures including, but not limited to, renewed “stay at home” orders, local mask mandates, an attempt  
20 to reintroduce “vaccine passports” to participate in ordinary society, the closure of local schools,  
21 businesses, and churches, denial of access to healthcare or education, and numerous other authoritarian  
22 and needless COVID-19 “health and safety” measures detrimental to the emotional, psychological,  
23 physical, and financial well-being of Petitioners, its members, and their children, and imposed again  
24 without substantive due process, any legitimate emergency, or scientific basis whatsoever, all to the  
25 detriment of Petitioners.

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**FIRST CAUSE OF ACTION**

**Writ of Mandate, Violation of Cal. Health & Safety Code,**

**§ 101080, Code of Civ. Proc., §§ 1085, 1094.5**

*(By all Petitioners Against all Respondents)*

79. Petitioners reallege and incorporate by reference all the preceding paragraphs of this Third Amended Verified Petition, as though fully set forth herein.

80. Respondents have acted in violation of their mandatory, ministerial statutory duties and wholly without, outside the scope of, and in excess of their lawful jurisdiction and authority; acted arbitrarily and capriciously; and have abused their discretion by failing to proceed in the manner required by law.

81. Specifically, Respondents have violated their clear and mandatory duties under Health & Safety Code, section 101080 by (a) failing to review local conditions to determine whether or not a local health emergency was still warranted; (b) failing to terminate the local health emergency at the earliest possible date that conditions warrant; (c) voting to delegate their duties under Health & Safety Code section 101080 to the Governor; and (d) failing to properly terminate the local health emergency in exchange for financial, professional, and other gains, rather than the health and safety of County residents.

82. Respondents have also exceeded their authority and/or abused their discretion as a local governing authority with quasi-legislative powers by improperly abdicating and delegating these powers and duties to Governor Newsom and the Executive Branch, in violation of the Separation of Powers inherent in Section 3 of Article III of the California Constitution, in addition to long-standing principles of non-delegation under California law. (*See e.g., Carson Mobilehome Park Owners' Ass'n v. City of Carson* (1983) 35 Cal. 3d 184, 190 [an unconstitutional delegation of legislative authority occurs when a legislative body leaves the resolution of fundamental policy issues to others or fails to provide adequate direction for the implementation of that policy].).

83. A writ of traditional and/or administrative mandate and/or alternative writ is necessary in this case to bring Respondents' actions into conformance with the law.

84. Petitioners have been, are being, and will continue to be harmed by Respondents' actions



1 as described herein, above, and by Respondents potentially reinstating COVID-19 measures previously  
2 issued under the local health emergency and its accompanying police powers that, *inter alia*, restricted  
3 Petitioners' ability to conduct business, go to school, attend church, breathe freely, travel freely,  
4 associate with others freely, participate in society without having to "show papers," and to exercise and  
5 enjoy other rights and privileges of being a resident of Orange County and an American citizen, in  
6 general.

7 85. Petitioners, as taxpayers residing within the County, as well as general members of the  
8 public, have a right to have the laws of this State followed, and to have their local leaders comply with  
9 their duties under the law and the California Constitution.

10 86. Petitioners will be irreparably harmed if an injunction directing Respondents to perform  
11 their legal duties to review local conditions and vote to terminate the local health emergency if  
12 conditions warrant, and an accompanying stay preventing continued implementation of the  
13 Emergencies if conditions do not so warrant are not issued pending resolution of this case. Petitioners  
14 will also be irreparably harmed if this Court does not issue a peremptory writ at the conclusion of this  
15 litigation requiring Respondents to review local conditions and vacate and rescind the Emergencies if  
16 conditions do not warrant their continuance.

17 87. Respondents have a clear and present mandatory duty to follow the law and California  
18 Constitution to both (i) review local conditions and determine whether they warrant the declaration of  
19 local health emergency, and (ii) terminate the local health emergency as soon as conditions warrant.  
20 Respondents cannot demonstrate that they are fulfilling their duties as described hereinabove if they  
21 never review local conditions warranting the local "emergency" in order to make this determination.

22 88. Unless mandated to perform their duties as required by law and the Constitution,  
23 Respondents will continue to violate Petitioners' rights as organizations and individual taxpayers,  
24 citizens, and residents of Orange County, and Petitioners and the general public will continue to suffer  
25 irreparable harm.

26 89. An alternative and peremptory writ and/or preliminary and permanent injunction  
27 bringing Respondents' duties into conformance with the law will not prevent Respondents from  
28 exercising their duties in the future if and when conditions of disaster or of extreme peril to the safety

1 of persons or property arise in the County, as Respondents will be able to issue new declaration of a  
2 local health emergency as warranted to address that potential future emergency.

3 90. This action is seeking to enforce an important right affecting the public interest.  
4 Therefore, Petitioners are entitled to recover their costs and legal fees under Code of Civil Procedure,  
5 section 1021.5.

6 **SECOND CAUSE OF ACTION**

7 **Writ of Mandate, Violation of Cal. Gov. Code, § 8630; Code of Civ. Proc., §§ 1085, 1094.5**

8 *(By all Petitioners Against all Respondents)*

9 91. Petitioners reallege and incorporate by reference all the preceding paragraphs of this  
10 Third Amended Verified Petition, as though fully set forth herein.

11 92. Respondents have acted in violation of their mandatory, ministerial statutory duties and  
12 wholly without, outside the scope of, and in excess of their lawful jurisdiction and authority; acted  
13 arbitrarily and capriciously; and have abused their discretion by failing to proceed in the manner  
14 required by law.

15 93. Specifically, Respondents have violated their clear and mandatory duties under  
16 Government Code, section 8630 by (a) failing to review local conditions to determine whether or not a  
17 local emergency was still warranted; (b) failing to terminate the local emergency at the earliest possible  
18 date that conditions warrant; (c) voting to delegate their duties under section 8630 to the Governor; and  
19 (d) failing to properly terminate the local emergency in exchange for financial, professional, and other  
20 gains, rather than the health and safety of the County.

21 94. Respondents have also exceeded their authority and/or abused their discretion as a local  
22 governing authority with quasi-legislative powers by improperly abdicating and delegating these  
23 powers and duties to Governor Newsom and the Executive Branch, in violation of the Separation of  
24 Powers inherent in Section 3 of Article III of the California Constitution, in addition to long-standing  
25 principles of non-delegation under California law. (*See e.g., Carson Mobilehome Park Owners' Ass'n*  
26 *v. City of Carson* (1983) 35 Cal. 3d 184, 190 [an unconstitutional delegation of legislative authority  
27 occurs when a legislative body leaves the resolution of fundamental policy issues to others or fails to  
28 provide adequate direction for the implementation of that policy].).

1           95.     A writ of traditional and/or administrative mandate and/or alternative writ is necessary  
2 in this case to bring Respondents’ actions into conformance with the law.

3           96.     Petitioners have been, are being, and will continue to be harmed by Respondents’ actions  
4 as described herein, above, and by Respondents potentially reinstating COVID-19 measures previously  
5 issued under the local health emergency and the accompanying police powers that, *inter alia*, restricted  
6 Petitioners’ ability to conduct business, go to school, attend church, breathe freely, travel freely,  
7 associate with others freely, participate in society without having to “show papers,” and to exercise and  
8 enjoy other rights and privileges of being a resident of Orange County and an American citizen, in  
9 general.

10          97.     Petitioners, as taxpayers residing within the County, as well as general members of the  
11 public, have a right to have the laws of this State followed, and to have their local leaders comply with  
12 their duties under the law and the California Constitution.

13          98.     Petitioners will be irreparably harmed if an alternative writ directing Respondents to  
14 perform their legal duties to review local conditions and vote to terminate the local health emergency  
15 if conditions warrant, and an accompanying stay preventing continued implementation of the  
16 Emergencies if such conditions do not warrant them are not issued pending resolution of this case.  
17 Petitioners will also be irreparably harmed if this Court does not issue a peremptory writ at the  
18 conclusion of this litigation requiring Respondents to review local conditions and vacate and rescind  
19 the Emergencies if such conditions do not warrant their continuance.

20          99.     Respondents have a clear and present mandatory duty to follow the law and California  
21 Constitution to both (i) review local conditions and determine whether they warrant the declaration of  
22 local emergency, and (ii) terminate the local emergency as soon as conditions warrant. Respondents  
23 cannot demonstrate that they are fulfilling their duties as described herein, above, if they never review  
24 local conditions warranting the local “emergency” in order to make this determination.

25          100.    Unless mandated to perform their duties as required by law and the Constitution,  
26 Respondents will continue to violate Petitioners’ rights as organizations and individual taxpayers,  
27 citizens, and residents of Orange County, and Petitioners and the general public will continue to suffer  
28 irreparable harm.

1 101. An alternative and peremptory writ and/or preliminary and permanent injunction  
2 bringing Respondents’ duties into conformance with the law will not prevent Respondents from  
3 exercising their duties in the future if and when conditions of disaster or of extreme peril to the safety  
4 of persons or property arising in the County, as Respondents will be able to issue a new declaration  
5 of a local health emergency as warranted to address that potential future emergency.

6 102. This action is seeking to enforce an important right affecting the public interest.  
7 Therefore, Petitioners are entitled to recover their costs and legal fees under the Code of Civil  
8 Procedure, section 1021.5.

9 **THIRD CAUSE OF ACTION**

10 **Writ of Mandate, Arbitrary and Capricious Agency Action, Abuse of Discretion,**  
11 **and Failure to Justify the Decision, Cal. Code Civ. Proc., § 1085**

12 *(By all Petitioners Against all Respondents)*

13 103. Petitioners reallege and incorporate by reference all preceding paragraphs of this Third  
14 Amended Verified Petition, as though fully set forth herein.

15 104. In declaring and subsequently maintaining the local and local health emergencies under  
16 Government Code section 8630 and Health & Safety Code section 101080, Respondents were  
17 statutorily obligated to follow a reasoned decision-making process that considered all relevant factors  
18 and evidence associated with their declarations of emergency and that was not arbitrary and capricious.

19 105. Respondents violated those requirements, acted arbitrarily and capriciously, and abused  
20 their discretion by engaging in the actions alleged above, including but not limited to (1) failing to cite  
21 or reference any local medical or scientific authority, studies or data to justify their declarations of  
22 Emergencies; (2) failing to take into consideration, *ab initio*, the fiscal, physical, psychological, and  
23 financial impact of the declarations of Emergencies; (3) failing to take into consideration the fiscal,  
24 physical, psychological, and financial impact of the declarations of either emergency since the time of  
25 the initial declarations twenty-five (25) months ago and in any review of the Emergencies; (4) failing  
26 to do any meaningful review any of local conditions that warrant declaring a local emergency or local  
27 health emergency; and/or (5) failing to consider alternative, lesser-restrictive, and actually effective  
28 means for responding to COVID-19.



1 Amended Verified Petition, as though fully set forth herein.

2 114. Respondents contend that they have the power to declare and maintain local and local  
3 health emergencies pursuant to Government Code, section 8630 and Health & Safety Code, section  
4 101080, but that, on account of the Governor’s Proclamation, they do not have the duty to review their  
5 declarations of Emergencies, nor the duty to terminate them at the earliest date conditions warrant.

6 115. Petitioners contend that Respondents have ongoing, mandatory, and affirmative duties  
7 under Health & Safety Code, section 101080, Government Code, section 8630, and Constitution to  
8 review, *inter alia*, local County conditions, regardless of the time intervals, to determine whether or not  
9 the conditions justify continuing the Emergencies.

10 116. Petitioners seek a declaration from this Court that Respondents must comply with their  
11 statutory obligations to (1) periodically review local County conditions to determine whether there is a  
12 continued need for a declaration of either a local or local health emergency, and (2) terminate the local  
13 and/or local health emergency at the earliest opportunity conditions warrant, regardless of the time  
14 intervals at which these reviews and declarations might occur.

15 117. Declaratory relief is proper to seek interpretation of statutes governing an administrative  
16 agency’s duties, as opposed to a review of a specific agency decision, and an actual and present  
17 controversy exists with respect to the disputes between Petitioners and Respondents, as alleged herein.

18 118. Absent declaratory relief, Respondents will continue to violate Petitioners’ rights as  
19 organizations and individual taxpayers, citizens, and residents of Orange County, and Petitioners and  
20 the general public will continue to suffer irreparable harm.

21 119. This action is seeking to enforce an important right affecting the public interest.  
22 Therefore, Petitioners are entitled to recover their costs and legal fees under Code of Civil Procedure,  
23 section 1021.5.

24 **FIFTH CAUSE OF ACTION**

25 **Injunctive Relief, Code Civ. Proc., § 527**

26 ***(By all Petitioners Against all Respondents)***

27 120. Petitioners reallege and incorporate by reference all preceding paragraphs of this Third  
28 Amended Verified Petition, as though fully set forth herein.

1           121. Respondents contend that they have the power to declare and maintain local and local  
2 health emergencies pursuant to Government Code, section 8630 and Health & Safety Code, section  
3 101080, but that, on account of the Governor’s Proclamation, they do not have the duty to review their  
4 declarations of Emergencies, nor the duty to terminate them at the earliest date conditions warrant.

5           122. As of the date of filing this Third Amended Petition, Respondents have not committed  
6 to review local conditions or terminate the Emergencies.

7           123. Injunctions against public officials for actions purportedly for a public benefit are  
8 available when (a) the statute is unconstitutional and there is irreparable injury; (b) the statute is valid  
9 but enforced in an unconstitutional manner; and (c) the public official’s actions exceed his or her  
10 authority. (*See Alfaro v. Terhune* (2002) 98 Cal. App. 4<sup>th</sup> 492, 501; *see also* 6 Witkin, Cal. Procedure  
11 (4<sup>th</sup> ed. 1997)).

12           124. As further alleged hereinabove, Respondents have both exceeded their authority and  
13 have acted in an unconstitutional manner by failing to review local conditions and failing to terminate  
14 the Emergencies despite local conditions no longer warranting them.

15           125. Respondents’ actions have already caused and will continue to cause irreparable harm  
16 to Petitioners and hundreds of thousands of Orange County residents impacted by the Emergencies, as  
17 alleged further herein.

18           126. Petitioners have no administrative remedy or adequate remedy at law and will suffer  
19 irreparable harm if the Court does not declare unlawful the continued declarations of Emergencies  
20 without any review.

21           127. Petitioners seek preliminary and permanent injunctive relief enjoining Respondents  
22 from refusing to review local conditions to determine whether or not they justify continued declarations  
23 of the Emergencies, and refusing to terminate either the Emergencies at the earliest time conditions  
24 warrant.

25           128. This action is seeking to enforce an important right affecting the public interest.  
26 Therefore, Petitioners are entitled to recover their costs and legal fees under the Code of Civil  
27 Procedure, section 1021.5.  
28

**PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray for relief as follows:

1. That the Court issue a peremptory writ of mandate ordering Respondents to (i) comply with Health & Safety Code, section 101080 and Government Code section 8630, to review local conditions in the County and determine whether or not they warrant a continued declaration of local health emergency and local emergency, and to vote to end or continue the local health emergency and local emergency pursuant to these statutes; (ii) inform Orange County residents whether or not the local health emergency and/or local emergency have been terminated and the reasons therefor; and (iii) issue a return to this Court verifying that Respondents have completed the foregoing actions;

2. That the Court issue a preliminary and permanent injunction enjoining Respondents from further violating Health & Safety Code, section 101080 and Government Code section 8630, and compelling Respondents to review the conditions in the County and whether they warrant a continued declaration of local health emergency and local emergency and vote whether to end the local health emergency and local emergency pursuant to these statutes;

3. That the Court immediately issue, pending issuance of the peremptory writ prayed for above, a temporary stay preventing further implementation of the Emergencies absent a proper review of conditions, and/or alternative writ and order to show cause why Respondents’ review of local conditions warranting continued declaration of the current, ongoing Emergencies should not be performed as part of their duties as the governing body of the County;

4. That the Court issue a temporary restraining order enjoining Respondents from applying for and/or receiving state and/or federal monies to “address” the effects of COVID-19 in Orange County and from spending, allocating, or otherwise using or directing state or federal monies to “address” the effects of COVID-19 in Orange County pending entry of judgment herein;

5. That the Court award Petitioners reasonable attorneys’ fees and costs of litigation under Code of Civil Procedure, section 1021.5, 42 U.S.C. § 1988, and any other applicable provisions of law;

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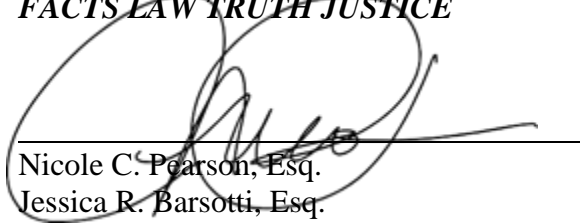


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6. That the Court grant any other relief the Court deems just and proper.

Dated: April 30, 2022

LAW OFFICE OF NICOLE C. PEARSON  
*FACTS LAW TRUTH JUSTICE*



Nicole C. Pearson, Esq.  
Jessica R. Barsotti, Esq.  
Rita Barnett-Rose, Esq.  
Attorney for Petitioners

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**VERIFICATION**

I, PEGGY HALL, am a resident of the County of Orange, State of California. I am over the age of 18 and have read the foregoing Verified Second Amended Petition for Writ of Traditional and Administrative Mandate and Request for Immediate Stay and Complaint for Declaratory and Injunctive Relief I have personal knowledge of the facts alleged herein, and I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this <sup>2</sup> day of May 2022, in ORANGE, California.

DocuSigned by:  
*Peggy Hall*  
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Petitioner PEGGY HALL

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**VERIFICATION**

I, Denise Young, am a resident of the County of Los Angeles, State of California. I am over the age of 18 and have read the foregoing Verified Second Amended Petition for Writ of Traditional and Administrative Mandate and Request for Immediate Stay and Complaint for Declaratory and Injunctive Relief. I have personal knowledge of the facts alleged herein, and I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_\_\_ day of May 2022, in \_\_\_\_\_, California.

\_\_\_\_\_  
Petitioner CHILDREN’S HEALTH DEFENSE  
CALIFORNIA CHAPTER  
By: Denise Young, Executive Director