TENTATIVE RULINGS

DEPT W15

JUDGE RICHARD Y. LEE

Date September 22, 2022

Civil Court Reporters: The Court does not provide court reporters for law and motion hearings. Please see the Court's website for rules and procedures for court reporters obtained by the Parties.

Tentative Rulings: The Court will endeavor to post tentative rulings on the Court's website by 5 p.m. on Wednesday. Do NOT call the Department for a tentative ruling if none is posted. **The Court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

Submitting on the Tentative Ruling: If ALL counsel intend to submit on the tentative ruling and do not wish oral argument, please advise the Court's clerk or courtroom attendant by calling (657) 622-5915. If all sides submit on the tentative ruling and so advise the Court, the tentative ruling shall become the Court's final ruling and the prevailing party shall give Notice of Ruling and prepare an Order for the Court's signature if appropriate under CRC 3.1312. **Please do not call the Department unless ALL parties submit on the tentative ruling.**

Non-Appearances: If no one appears for the hearing and the Court has not been notified that all parties submit on the tentative ruling, the Court shall determine whether the matter is taken off calendar or whether the tentative ruling shall become the final ruling.

Remote Appearances: Department W15 generally conducts non-evidentiary proceedings, including law and motion, *remotely, by Zoom videoconference*: (1) All counsel and self-represented parties appearing for such hearings **must,** prior to 1:30 p.m. on Thursday, check-in online via the Court's civil video appearance website at https://www.occourts.org/media-relations/civil.html. (2) Participants will then be prompted to join the courtroom's Zoom hearing session. (3) The calendar will be displayed and participants will then be instructed to rename their Zoom name to include their hearing's calendar number. Check-in instructions and an instructional video are available on the court's website. All remote video participants shall comply with the Court's "Guidelines for Remote Appearances" posted online. In compliance with Local Rule 375, parties preferring to be heard in-person, instead of remotely, **shall** provide *notice of in-person appearance* to the court and all other parties five (5) days in advance of the hearing. (See the appropriate Local Form available at https://www.occourts.org/forms/formslocal.html).

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50	I.S. Investments LLC vs. Zamucen & Associates Case No. 30-2022-01242035	DISCOVERY MOTIONS Defendant, Eric Zamucen ("Defendant") has filed four discovery motions seeking the following: • An order compelling Plaintiff, I.S. Investments, LLC ("Plaintiff") to provide verified answers to Defendant's First Set of Special and

Form Interrogatories, and awarding monetary sanctions against Plaintiff in the sum of $1,108.50.
- An order compelling Plaintiff to provide verified responses and production of documents in response to Defendant's First Set of Inspection Demands, and awarding monetary sanctions against Plaintiff in the amount of $1,108.50.
- An order deeming the truth of all matters specified in Request for Admissions, Set One, served on Plaintiff, admitted, and awarding monetary sanctions against Plaintiff in the amount of $1,108.50.

Subsequent to the filing of the discovery motions, Plaintiff served responses to Defendant's First Set of Form and Special Interrogatories; Inspection Demands; and Requests for Admission on April 4, 2022. (Declaration of Phillip B Greer ("Greer Decl."), 1:8-14; Exs. A to D.)

The following facts are not in dispute:
- On February 9, 2022, Defendant, Eric Zamucen served his First Set of Form and Special Interrogatories; Inspection Demands; and Requests for Admission on February 9, 2022, by mail. (Declarations of Anthony Ditty, ¶ 2; Ex. A.)
- Responses to this discovery were due on March 16, 2022. No extensions were requested or granted. To date, no responses have been provided. No documents have been produced. (Declarations of Anthony Ditty, ¶ 3.)
- The instant discovery motions were filed on March 28, 2022.
- Responses to the discovery were served on April 4, 2022. (Declaration of Phillip B. Greer ("Greer Decl."), at 1:8-14; 2:6; Exs. A through D.)
- In addition, on May 24, 2022, during the deposition of Ian Waddell, Plaintiff's counsel served Defendant's counsel with a "third binder containing several hundred additional pages of documents which were . . . . responsive to the initial discovery requests." (Greer Decl. at 1:15-19.)

Form and Special Interrogatories
Responses to interrogatories must be signed under oath by the party to whom the interrogatories are directed. (CCP § 2030.250(a).) An unverified response is ineffective and is equivalent to no response at all. (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636; *Zorro Inv. Co. v. Great*

Pacific Securities Corp. (1977) 69 Cal.App.3d 907, 914.)

The trial court retains the authority to hear the motion even if a party provides an untimely response that does not contain objections and that sets forth legally valid responses to each interrogatory. (*Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 408-409.)

Here, as noted above, responses to Defendant's First Set of Form Interrogatories and Special Interrogatories were served on April 4, 2022. To the extent that Defendant claims that the responses to the Form Interrogatories are evasive or not code-compliant, and the verification is defective, these are issues for a motion to compel further responses. There is no indication that Defendant attempted to meet and confer as to the claimed deficiencies. Thus, the Court DENIES as MOOT the motion to compel answers to Defendant's First Set of Form Interrogatories.

However, as Defendant notes, there is no verification to the responses to Special Interrogatories. (See Ex. C to Greer Decl.) Thus, the Court GRANTS the motion to compel answers to the First Set of Special Interrogatories. Plaintiff is to provide a verification within 10 days of the notice of ruling.

Inspection Demands
As set forth above, Plaintiff's responses to Defendant's First Set of Inspection Demands was served on April 4, 2022.

Plaintiff's arguments that the responses are not code-complaint, that the verification is inadequate; that the response or production is deficient; that Plaintiff's withholding of documents on the basis of attorney-client privilege is improper as Plaintiff waived the privilege due the failure to timely serve responses; and that good cause exists for the production of documents sought are matters for a meet and confer for deficient responses and a motion to compel further responses.

Thus, the Court DENIES as MOOT the motion to compel responses to Defendant's First Set of Inspection Demands.

Requests for Admission

As noted above, Plaintiff served responses to Defendant's First Set of Requests for Admission on April 4, 2022.

That the responses are not code-compliant, or that the verification is inadequate, is a matter for a motion to compel further responses.

Code of Civil Procedure section 2033.280 provides that if a party to whom requests for admission are directed fails to serve a timely response, the party waives any objection to the requests. The requesting party may also move for an order that the genuineness of documents and the truth of any matters specified in the requests be deemed admitted. (CCP § 2033.280(a)-(b).) The court shall deem the matters admitted "unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. (CCP § 2033.280(c).)

Here, Plaintiff's responses are in substantial compliance with CCP § 2033.220. They consist solely of denials. (Ex. A to Greer Decl.) Thus, the Court DENIES as MOOT the motion to deem Defendant's First Set of Requests for Admission Admitted.

Defendant's Requests for Sanctions
Defendant correctly argues in reply that the motion is not moot as to sanctions.

"The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed." (California Rules of Court, Rule 3.1348(a).)

"[T]he court shall impose a monetary sanction . . . against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories [or a demand for inspection], unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc. §§ 2030.290(c) [interrogatories]; 2031.300(c) [inspection demands].) For a motion

			to deem requests for admission admitted, it is mandatory for the court to impose a monetary sanction on the party or attorney, or both, who failed to serve timely responses to the requests for admission, and thus necessitated the motion. (Code Civ. Proc. § 2033.280(c).) Here, there is no showing that Plaintiff acted with substantial justification in failing to provide timely responses, or that other circumstances make the imposition of the sanction unjust. In addition, Plaintiff's failure to timely serve responses to the requests for admission necessitated this motion such that monetary sanctions are mandatory for that motion. Defendant's counsel provides that he has expended approximately 7 hours in preparing all of the motions and that he has allocated that time between the motions equally. (Declaration of Anthony T. Ditty ISO Motion to Compel Answers to FROG and SPROG, ¶ 20; Declaration of Anthony T. Ditty ISO Motion to Compel Responses to Inspection Demands, ¶ 18; Declaration of Anthony T. Ditty ISO Motion to Deem RFAs Admitted, ¶ 19.) He also provides that his hourly rate is $450 per hour, and that there is a filing fee of $60 for each motion. (Declaration of Anthony T. Ditty ISO Motion to Compel Answers to FROG and SPROG, ¶ 21; Declaration of Anthony T. Ditty ISO Motion to Compel Responses to Inspection Demands, ¶ 19; Declaration of Anthony T. Ditty ISO Motion to Deem RFAs Admitted, ¶ 20.) In the reply, Defendant seeks additional attorney's fees and costs for the reply and to appear at the hearing. Specifically, Defendant's counsel provides that he has expended approximately 4.5 hours preparing the reply for the motion to compel answers to form and special interrogatories, and requests $37.50 for the costs of filing and service by way of One Legal. (Reply Ditty Decl. ISO Motion to Compel Answers to FROG and SPROG, ¶¶ 11-12.) Defendant's counsel also provides that he expended approximately 4 hours reviewing the opposition and drafting the reply for the motion to compel responses to inspection demands, as well as incurred $36.50 in filing and service fees for the motion and reply through One Legal. (Reply Ditty Decl. ISO Motion to Compel Responses to Inspection Demands, ¶ 9.)

Further, Defendant's counsel provides that he spent 1 hour reviewing the opposition and drafting the reply to the motion to deem requests for admission admitted. (Reply Ditty Decl. ISO Motion to Deem RFAs Admitted attached to Reply, 3:13-17.)

These are straightforward motions which are largely duplicative. The Court finds the following reasonable: 2 hours for each of the three filed motions, including drafting moving and reply papers and reviewing the opposition, at an hourly rate of $450 ($2,700), plus costs including $60 filing fees for 3 motions ($180). While it is unclear what portion of the costs in the amounts of $37.50 and $36.50 are made up of filing fees and what portion is made up of service fees, the Court will also allow those costs.

Thus, the Court AWARDS Defendant monetary sanctions in the amount of $2,954 against Plaintiff, to be paid within 30 days of the notice of ruling.

Defendant's Objections to the Declaration of Phillip B Greer
The Court SUSTAINS all objections, Objection Nos. 1 through 4 to the Declaration of Phillip B Greer.

Defendant to give notice.

MOTION FOR JUDGMENT ON THE PLEADINGS
Defendants, Eric Zamucen and Sheila Zamucen ("Defendants") move for an order granting judgment on pleadings as to First, Second, Third, Fourth, and Fifth Causes of Action, as to each cause of action individually and, alternatively, as to all causes of action, collectively, pursuant to Code of Civil Procedure section 438 as well as the common law non statutory basis for motions for judgment on the pleadings. (See Notice of Motion, 2:2-4.)

Code of Civil Procedure section 439(a) provides that "[b]efore filing a motion for judgment on the pleadings pursuant to this chapter, the moving party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion for judgment on the pleadings for the purpose of determining if an agreement can be reached that resolves the claims to be raised in the motion for judgment on the pleadings." (CCP § 439(a).)

		Further, the moving party shall file a declaration with the motion stating either "(A) The means by which the moving party met and conferred with the party who filed the pleading subject to the motion for judgment on the pleadings, and that the parties did not reach an agreement resolving the claims raised by the motion for judgment on the pleadings. (B) That the party who filed the pleading subject to the motion for judgment on the pleadings failed to respond to the meet and confer request of the moving party or otherwise failed to meet and confer in good faith." (CCP § 439(a)(3).) Here, Defendants have not filed a declaration as required by Code of Civil Procedure section 439(a)(3), and it does not appear to the Court that Defendants met and conferred as required by Code of Civil Procedure section 439(a). The Court ORDERS the parties to meet and confer in person, by zoom or video remote technology, or over the telephone concerning the issues raised in the motion for judgment on the pleadings as required by Code of Civil Procedure section 439(a). Defendants' counsel to file and serve a declaration no later than nine (9) court days before the hearing date describing the parties' meet and confer efforts, and specifying what issues have been resolved, or remain for the Court to resolve. If no declaration is timely filed, the Court will construe this to mean that the issues have been resolved and will take the motion for judgment on the pleadings off-calendar. Defendants' motion for judgment on the pleadings is CONTINUED to October 13, 2022 at 1:30 p.m.. *Defendants to give notice.*
51	Morris vs. SBF Development, LLC Case No. 30-2021-01197544	Defendants SBF Development, LLC ("SBF Development"); EBF Holding, LLC ("EBF Holding"); Universal Pacific, LLC ("Universal Pacific") ; and Ryan Fisher ("Fisher") (collectively, "Defendants") move for an order sustaining their demurrer to the Second Amended Complaint ("SAC") and the First through Fourth Causes of Action on the grounds that they fail to state facts sufficient to constitute causes of action and are uncertain.

The Court finds that the parties adequately met and conferred by telephone regarding Defendants' Demurrer, as required by Code of Civil Procedure section 430.41(a). (See Declaration of Wyatt Butler, ¶¶ 7-8.)

Uncertainty
Defendants demur to the SAC on the ground that it is uncertain. However, the Memorandum of Points and Authorities cites no legal authority and contains no argument in support of this contention. Thus, the Demurrer to the SAC on the basis of uncertainty is OVERRULED.

First Cause of Action for Breach of Contract and Second Cause of Action for Breach of Implied Covenant of Good Faith and Fair Dealing
Defendants contend that these causes of action as alleged in the SAC fail for the same reasons they failed in the FAC: the SAC and exhibits show that the subject agreement is between Plaintiff Plumbing Supply Distributor, LLC, and non-party Plumbing Supply Distribution, LLC and none of the Defendants are a party to that agreement and, therefore, there is no privity of contract. Defendants further contend that Plaintiffs' allegations that Defendants are the alter egos of each other are conclusory and insufficient to justify alter ego liability.

Plaintiffs argue that Defendants' Demurrer ignores the allegations that Fisher entered into the subject agreement on behalf of Plumbing Supply Distribution, LLC and the alleged facts show Fisher is using these alter ego Defendants to avoid the obligations under the agreement. Plaintiffs contend that alter ego liability is adequately pleaded to support all four causes of action. Plaintiffs further argue that a claim for breach of the implied covenant of good faith and fair dealing can be brought against a non-party of the contract.

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

The allegations which assert a breach of the implied covenant of good faith and fair dealing

"must show that the conduct of the defendant, whether or not it also constitutes a breach of a consensual contract term, demonstrates a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement." (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395.)

"A complaint must set forth the facts with sufficient precision to put the defendant on notice about what the plaintiff is complaining and what remedies are being sought. [Citation.] To recover on an alter ego theory, a plaintiff need not use the words 'alter ego,' but must allege sufficient facts to show a unity of interest and ownership, and an unjust result if the corporation is treated as the sole actor. [Citation.] An allegation that a person owns all of the corporate stock and makes all of the management decisions is insufficient to cause the court to disregard the corporate entity. [Citation.]" (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 415.) " 'The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests. [Citation.] In certain circumstances the court will disregard the corporate entity and will hold the individual shareholders liable for the actions of the corporation: "As the separate personality of the corporation is a statutory privilege, it must be used for legitimate business purposes and must not be perverted. When it is abused it will be disregarded and the corporation looked at as a collection or association of individuals, so that ... the [individuals will be] liable for acts done in the name of the corporation." [Citation.]' " (*Ming-Hsiang Kao v. Holiday* (2020) 58 Cal.App.5th 199, 205.) Factors a court may consider when deciding the issue of a claim of alter ego theory include "the use of the corporate entity to procure labor, services or merchandise for another person or entity." (*Id*., at p. 206.)

As with the FAC, the SAC is filed by Plaintiffs against Defendants SBF Development, EBF Holding, Universal Pacific, and Fisher. The SAC alleges that "Plaintiff, Plumbing Supply

Distributor, LLC and Plumbing Supply Distribution, LLC, a newly formed entity with Ryan Fisher as the sole owner, president and managing member," entered into a 2017 Purchase and Sale of Assets Agreement on November 18, 2017 (the "Agreement"), wherein Plaintiff agreed to sell and Fisher, representing Plumbing Supply Distribution, LLC, agreed to purchase substantially all of the assets related to and/or necessary for the operation of Plaintiff's business for a purchase price of $4,525,000, but that one month prior to when the first interest payment was due to Plaintiffs, Fisher told Plaintiff that Plumbing Supply Distribution, had defaulted and that it was forced to liquidate the business, and that Fisher has breached the Agreement by failing to make the full purchase price to Plaintiffs, and instead defrauded Plaintiffs to avoid Plumbing Supply Distribution's obligations. (SAC, ¶¶ 1-3, 20-22, 37-39.) The SAC alleges, on information and belief, that after Fisher liquidated Plumbing Supply Distributor, LLC, he created SBF Development, "which is also in the business of selling plumbing and hardware supplies." (SAC, ¶¶ 5, 26-27.) The SAC contends that Fisher serves as the chief executive officer of SBF Development, and that EBF Holding, LLC is the managing member. (SAC, ¶¶ 10-11.) The SAC also contends that Fisher is listed as the managing member of Universal Pacific. (SAC, ¶ 12.)

The SAC includes the following new allegations:

"Based on information and belief, Defendant Ryan Fisher moved the existing inventory that he purchased from Plaintiff for sale and use in his new entity, SBF Development, LLC, for marketing and sales. Plaintiff had an expectation that Defendant Ryan Fisher would at least return the inventory to Plaintiff in either full or partial satisfaction of the defaulted loan." (SAC, ¶ 5.) "Plaintiffs assert claims against Defendants Ryan Fisher, SBF Development, LLC, EBF Holding, LLC, and Universal Pacific, LLC as alter egos of Plumbing Supply Distribution for breach of contract, breach of implied covenant of good faith and fair dealing unjust enrichment, and declaratory relief due to Defendants' unity of interest, and each of them, in selling and marketing the plumbing supply inventory purchased from Plaintiffs and continue to do so. Allowing Defendants to continue to market and sell through their plumbing supply entities the

inventory that they have failed to fully purchase would result in inequities to Plaintiffs and unjustly enrich all Defendants." (SAC, ¶ 7.)

"Defendant Ryan Fisher used the new entities SBF Development, EBF Holding, and Universal Pacific as alter egos for the purpose of defrauding Plaintiffs. Defendant Ryan Fisher has been conducting, managing, and controlling the affairs of the Defendant entities since incorporation, using these entities for individual personal benefit as to avoid legal obligations under the Agreement with Plaintiffs from the dissolved corporation, Plumbing Supply Distribution." (SAC, ¶ 40.) "At all times relevant to this Complaint, Defendants, and each of them, were acting as the agents, employees, and/or representatives of each other, and were acting within the course and scope of their agency and employment with the full knowledge, consent, permission, authorization, and ratification, either express or implied, of each of the other Defendants in performing the acts alleged in this Complaint." (SAC, ¶¶ 41, 49.) Further, the SAC alleges that "[e]ach Defendant entity acted in alignment with the other Defendants with full knowledge of their respective wrongful conduct. As such, all of the Defendants conspired together, building upon each other's wrongdoing, in order to accomplish the acts outlined in this Complaint." (SAC, ¶ 27.)

The allegations in the SAC still indicate that the subject agreement was entered into between Plaintiffs and non-party Plumbing Supply Distribution, LLC and none of the Defendants are a party to that agreement. Thus, whether these causes of action are sufficiently pleaded depends upon whether there are sufficient factual allegations to show agency, service, employment, partnership, conspiracy, joint venture, ratification, or alter ego liability. In this regard, the SAC sufficiently alleges a basis for liability against Fisher under the alter ego theory. Plaintiffs have alleged a unity of interest and ownership between Fisher and Plumbing Supply Distribution, LLC by alleging that Fisher was the entity's sole owner, president and managing member. The SAC also adequately alleges that there will be an unjust result if Plumbing Supply Distribution, LLC is treated as the sole actor because Fisher, as the sole owner, moved the inventory purchased from Plaintiffs into SBF Development to avoid Plumbing Supply Distribution, LLC's contractual duties and dissolved Plumbing Supply Distribution, LLC in an

attempt to avoid the contractual obligations to Plaintiffs.

The SAC fails to allege a basis for liability upon the entity Defendants. Plaintiffs' alter ego liability allegations as to them remain conclusory. There are no facts alleged showing any of the entity Defendants are the alter ego of Plumbing Supply Distribution, LLC. Thus, the Court OVERRULES the Demurrer to the First and Second Causes of Action as against Fisher. The Court SUSTAINS the Demurrer to the First and Second Causes of Action as against SBF Development, EBF Holding, and Universal Pacific.

Third Cause of Action for Unjust Enrichment
Defendants contend that the Third Cause of Action for Unjust Enrichment is not a viable cause of action, but a general principle and this cause of action fails because Plaintiffs have failed to plead the existence of a contract or grounds for liability against Defendants, who were not parties to the agreement.

Plaintiffs contend that a cause of action for unjust enrichment has been construed as a quasi-contract claim seeking restitution. Plaintiff further contends that a claim for breach of the implied covenant of good faith and fair dealing can be brought against Defendants who were not named in the agreement because the breach involves something beyond breach of the contractual duty itself.

"The doctrine [of unjust enrichment] applies where plaintiffs, while having no enforceable contract, nonetheless have conferred a benefit on defendant which defendant has knowingly accepted under circumstances that make it inequitable for the defendant to retain the benefit without paying for its value. The defendant in an unjust enrichment claim must pay the amounts necessary to place the plaintiff in as good a position as he or she would have been had no contract been made…the measure of damages for unjust enrichment is synonymous with restitution." (*Hernandez v. Lopez* (2009) 180 Cal.App.4th 932, 938-939.)

Common law principles of restitution require a party to return a benefit when the retention of such benefit would unjustly enrich the recipient; a typical cause of action involving such remedy is

'quasi-contract.'' (*Munoz v. MacMillan* (2011) 195 Cal.App.4th 648, 661.)

"[A]n action based on an implied-in-fact or quasi-contract cannot lie where there exists between the parties a valid express contract covering the same subject matter.' [Citation] However, restitution may be awarded in lieu of breach of contract damages when the parties had an express contract, but it was procured by fraud or is unenforceable or ineffective for some reason. [Citation.] Thus, a party to an express contract can assert a claim for restitution based on unjust enrichment by alleg[ing in that cause of action] that the express contract is void or was rescinded. [Citation.] A claim for restitution is permitted even if the party inconsistently pleads a breach of contract claim that alleges the existence of an enforceable agreement. [Citation.]" (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 231, internal quotations omitted.)

Here, the SAC alleges that Fisher promised, through an entity he owned and controlled, to purchase substantially all of the assets related to and/or necessary for the operation of Plaintiffs' business; that Plaintiffs delivered the business and provided the services as promised; that Fisher "failed to perform the obligations pursuant to the Agreement, whereby he has been unjustly enriched and it will be otherwise inequitable if he is permitted to retain the benefit of the business without paying Plaintiffs for the value;" that "[u]pon information and belief, Defendant made false representations to Plaintiff regarding his intent to perform under the Agreement;" that Plaintiffs reasonably believed the false representations were true; and that Fisher had no intentions of paying the full amount of the purchase price and instead dissolved the contracting entity and created a new entity that continued the business of the defaulting entity with the same supplies, inventory, and employees. (FAC, ¶¶ 51-55.)

As the SAC sufficiently pleads the existence of Fisher's contractual liability to Plaintiffs, under an alter ego theory of liability, the cause of action for Unjust Enrichment against Fisher is also adequately pleaded. The SAC fails to allege that Plaintiffs have conferred a benefit on any of the entity Defendants which the entity Defendants have knowingly accepted under circumstances

that make it inequitable for them to retain the benefit without paying for its value. Because the SAC also does not sufficiently allege the existence of contractual liability as to the entity Defendants, the cause of action for Unjust Enrichment against those entity Defendants is insufficiently pleaded. Thus, the Court OVERRULES the Demurrer to the Third Cause of Action as against Fisher. The Court SUSTAINS the Demurrer to the Third Cause of Action as against SBF Development, EBF Holding, and Universal Pacific.

Fourth Cause of Action for Declaratory Relief
Defendants contend that a claim for declaratory relief requires the existence of an actual controversy relating to the legal rights and duties of the respective parties, and that since all of the claims are premised on the Agreement to which Defendants are not a party, Plaintiffs have no such rights.

Plaintiffs contend that this claim is properly brought as they are aggrieved parties and have sufficiently alleged alter ego liability against Defendants.

"Declaratory relief operates prospectively to declare future rights, rather than to redress past wrongs. . . . Where, . . . , a party has a fully matured cause of action for money, the party must seek the remedy of damages, and not pursue a declaratory relief claim." (*Canova v. Trustees of Imperial Irr. Dist. Employee Pension Plan* (2007) 150 Cal.App.4th 1487, 1497.) "To qualify for declaratory relief under section 1060, plaintiffs were required to show their action (as refined on appeal) presented two essential elements: '(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party.'. . . 'The 'actual controversy' language in . . . section 1060 encompasses a probable future controversy relating to the legal rights and duties of the parties.' . . . It does not embrace controversies that are 'conjectural, anticipated to occur in the future, or an attempt to obtain an advisory opinion from the court.' " (*Lee v. Silveira* (2016) 6 Cal.App.5th 527, 546.)

Here, the Fourth Cause of Action alleges that there is an actual controversy between the parties regarding their rights, duties, and liabilities for which a judicial determination and declaration of

		rights and duties are sought as Plaintiffs contend that Defendants, as alter egos of Plumbing Supply Distribution, have breached the Agreement, and Defendants contend the contrary. (FAC, ¶¶ 57-58.) As shown above, the SAC adequately alleges liability against Fisher under an alter ego theory of liability. This cause of action is therefore adequately pleaded as against Fisher. However, as to the entity Defendants, because this cause of action is premised upon the subject agreement and Plaintiffs fail to adequately allege a basis for liability against them, the Fourth Cause of Action is inadequately pleaded. Thus, the Court OVERRULES the Demurrer to the Fourth Cause of Action as against Fisher. The Court SUSTAINS the Demurrer to the Fourth Cause of Action as against SBF Development, EBF Holding, and Universal Pacific. Plaintiffs request leave to amend should any portion of the Demurrer be sustained. However, Plaintiffs have failed to demonstrate any reasonable possibility that the defects of the SAC can be cured by amendment. It is Plaintiffs' burden to state how a valid cause of action can be pled. (*See Hendy v. Losse* (1991) 54 Cal.3d 723, 742.) Thus, the Court finds that there is no reasonable possibility that the lack of standing can be cured by amendment. Therefore, leave to amend is DENIED. (*Jones v. Aetna Casualty & Surety Co*. (1994) 26 Cal.App.4th 1717, 1725.) Fisher to file an answer to the SAC within 10 days. *Fisher to give notice*.
52	Hall vs. County of Orange Case No. 30-2021-01220678	<u>DEMURRER</u> Respondents/Defendants County of Orange (the "County") and Orange County Board of Supervisors (the "Board") (collectively "Respondents") move for order sustaining their demurrer to the "Second Amended Verified Petition for Writ of Traditional and Administrative Mandate and Complaint for Declaratory and Injunctive Relief" ("SAVP") filed by Petitioners Peggy Hall ("Hall") and Children's Health Defense, California Chapter (collectively "Petitioners") on May 4, 2022. As a threshold matter, the Court notes that the initial Complaint in this matter was filed on 9/14/21 by Plaintiff/Petitioner, Hall against

Respondents. (ROA 1.) Thereafter, on 11/5/21, Petitioner Hall filed an amended pleading entitled "Verified Petition for Writs of Traditional and Administrative Mandate and Request for Immediate Stay." (ROA 20.) Then, on 12/13/21, Petitioner filed an amended petition entitled, "First Amended Verified Petition for Writs of Traditional and Administrative Mandate; Temporary Restraining Order; Injunctive Relief; Damages." (ROA 26.) After a demurrer was sustained with leave to amend, on May 4, 2022, Petitioner Hall, along with Petitioner/Plaintiff Children's Health Defense, California Chapter, filed the instant SAVP which is the subject of the Respondents' current demurrer.

Despite any incongruence with the actual number of times Petitioners' pleading has been amended, the Court will refer to the operative pleading as the SAVP based upon its designation as such.

Petitioners' Opposition
The instant demurrer was filed on July 5, 2022, and set for hearing on September 22, 2022. The Court issued its Minute Order dated August 16, 2022, specially setting a briefing schedule on Respondents' instant demurrer, ordering that the opposition brief be filed and served no later than August 26, 2022, and that any reply brief be filed and served no later than September 2, 2022. (ROA 127.)

On August 26, 2022, Petitioners filed four declarations (ROA 136-139), providing that they were not e-served with a copy of the Court's Minute Order dated August 16, 2022, and only received a hard copy of said minute order by mail on August 26, 2022. Petitioners indicate that they will file an opposition brief on August 29, 2022. Upon review of the Clerk's Certificate of Mailing/Electronic Service, it appears that Petitioners' counsel was served with the Court's Minute Order dated August 16, 2022, by mail, but that said minute order was electronically transmitted to Respondents' counsel. (ROA 128.) In light of declarations and this variance, the Court will consider Petitioners' opposition.

Meet and Confer
Prior to filing a demurrer, "the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer . . . ." (Code Civ. Proc. § 430.41(a).)

Respondents' counsel provides that on June 2, 2022, counsel for the parties held a telephonic meeting discussing their intention to file a demurrer to the SAVP, but the parties could not reach an agreement, thereby establishing compliance with the meet and confer requirements of Code of Civil Procedure section 430.41(a).

Respondents' Request for Judicial Notice
Respondents request that the Court judicially notice two documents: (1) The County's February 26, 2020, Declaration of Local Health Emergency, a true and correct copy of which is attached as Exhibit 1; and (2) The County's February 26, 2020, Proclamation of a Local of Emergency and Request for Governor to Declare a State of Emergency, a true and correct copy of which is attached as Exhibit 2, pursuant to pursuant to Evidence Code sections 452(b), (c) and (h).

Under Evidence Code section 452(b), judicial notice may be taken of "[r]egulations and legislative amendments issued by or under the authority of the United States or any public entity in the United States." Under Evidence Code section 452(c), judicial notice may be taken of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." "Official acts include records, reports and orders of administrative agencies." (*Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518; *see also Hogen v. Valley Hospital* (1983) 147 Cal.App,3d 119, 125 ["records and files of an administrative board are properly the subject of judicial notice"]; *accord Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750; *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1225 fn. 6 [staff report, hearing transcript, draft minutes, and notice of determination from the California Coastal Commission subject to judicial notice].) Under Evidence Code section 452(h), judicial notice may be taken of "[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."

The Court GRANTS Respondents' Request for Judicial Notice as to the two documents pursuant to Evidence Code sections 452(b), (c) and (h), but declines to take notice of hearsay statements

contained therein. (*Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1564; *Herrera v. Deutsche Bank Nat'l Trust Co*. (2011) 196 Cal.App.4th 1366, 1375.)

Merits
Respondents contend that this is Petitioners' fifth attempt to file an adequate pleading; that the SAVP is barred because Petitioner lacks beneficial interest standing, taxpayer standing, and public interest standing; and that the case is not ripe. Respondents also contend that the SAVP does not state facts sufficient to constitute a cause of action as the writ of mandate claim under Code of Civil Procedure section 1085 fails because there are no facts to support a finding that the Board had a ministerial duty to act or abused any discretion and the relief sought by Petitioners would violate the separate of powers doctrine because the Board is vested with the statutory discretion to determine when the Emergencies should cease. Respondents additionally argue that Petitioners' claim for writ of administrative mandamus pursuant to Code of Civil Procedure section 1094.5 fails as Petitioners fail to establish that the Board's actions were the result of an evidentiary hearing and Petitioners do not allege that any decision regarding the Emergencies is "final." Respondents also assert that Petitioners' equitable claims are barred as Petitioners have an adequate remedy at law as if Petitioners were in fact harmed by the actions of the Board, and can sue for money damages. Respondents further argue that the SAVP is uncertain as Petitioners confusingly allege that Respondents, two public entitles, are making decisions for their "personal" benefit, and that Petitioners' request for a "stay preventing further implementation of the Emergencies" is confusing, uncertain, and ambiguous. Finally, Respondents argue that after five attempts to draft an adequate pleading, Petitioners still are unable to demonstrate that they have standing to bring this lawsuit, that the Board was ministerially required to act, or that the Board failed to comply with any legal duty to act such that the demurrer should be sustained, and Petitioners denied a sixth opportunity to file a petition.

Petitioners contend that they sufficiently allege four types of standing: (1) public interest, (2) taxpayer, (3) associational, and (4) beneficial interest. Petitioners also argue that as long as the Emergencies are in place, an active case and

			controversy ripe of adjudication exists, and that Respondents ignore the paragraphs in the SAVP describing harms Petitioners have already suffered, and that the SAVP alleges that they are living under the constant threat of future harms capable of repetition. Petitioners additionally argue that they sufficiently allege claims under Code of Civil Procedure section 1085 for failing to perform mandatory duties under Government Code section 8630 and Health and Safety Code section 101080 which identify two mandatory, ministerial duties that Respondents must exercise without discretion or judgment: (1) review of local conditions and (2) termination of local and/or local health emergency if conditions warrant. Petitioners argue that the Governor's Proclamation did not suspend either statutory obligation, nor could it, and that an ongoing duty to terminate also contemplates an ongoing duty to review the conditions. Petitioners also argue that they sufficiently allege claims for arbitrary and capricious decision-making in violation of Code of Civil Procedure sections 1085 and 1094.5, when Respondents voted to ignore their mandatory duties since June 22, 2021, and that Respondents, not Petitioners, have violated the separation of powers doctrine by delegating duties specifically imposed upon them by the legislature under Government Code section 8630 and Health and Safety Code section 101080. Petitioners argue that the desire to financially benefit from the Emergencies is not permissible, and that Petitioners are not asking the Court to order Respondents to make a specific finding or to exercise their discretion in a specific manner, e.g., to terminate the Emergencies, but are asking the Court to issue a writ compelling Respondents to do what they are already obligated to do under existing law, whatever the outcome may be. Further, Petitioners argue that they sufficiently plead an alternative to a traditional writ of mandate under Code of Civil Procedure section 1085, by pleading a claim for relief for administrative mandate under Code of Civil Procedure section 1094.5; that Respondents' Abdication Vote on June 22, 2021 is the abuse of discretion at issue; and that the fact that Respondents have refused to review conditions since June 2021 establishes the finality of this Abdication Vote. Petitioners also assert that they do not have any remedy at law for the harms alleged, and that the SAVP is not ambiguous or uncertain. Lastly, Petitioners request leave to

amend if the Court finds the SAVP insufficiently pled.

In response to a Petition, a respondent may file a demurrer, a verified answer, or both. (Asimow, et al. (The Rutter Group November 2021 Update) *Cal. Prac. Guide: Administrative Law*, at ¶ 18:290.) "Rules governing demurrers to civil complaints apply to mandamus actions. (Code Civ. Proc., § 1109.)" (*Pinto Lak MHP LLC v. County of Santa Cruz* (2020) 56 Cal.App.5th 1006, 1012.) A demurrer can be used only to challenge defects that appear within the "four corners" of the pleading – which includes the pleading, any exhibits attached, and matters of which the court is permitted to take judicial notice. (*Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318; *Donabedian v. Mercury Ins. Co*. (2004) 116 Cal. App. 4th 968, 994.) Limited to the "four corners" as such, a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. (*Leek v. Cooper* (2011) 194 Cal. App. 4th 399, 413.)

On demurrer, a complaint must be liberally construed. (Code Civ. Proc. § 452; *Stevens v. Superior Court (*1999) 75 Cal. App. 4th 594, 601.) All material facts properly pleaded, and reasonable inferences, must be accepted as true. (*Aubry v. Tri-City Hospital Dist*. (1992) 2 Cal. 4th 962, 966-67.) "A demurrer tests only the sufficiency of the allegations. It does not test their truth, the plaintiff[']s] ability to prove them or the possible difficulty in making such proof." (*Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 840.)

Statutes at Issue
Health and Safety Code section 101080 states, in pertinent part:
"[W]henever there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent, the director may declare a health emergency and the local health officer may declare a local health emergency in the jurisdiction or any area thereof affected by the threat to the public health. Whenever a local health emergency is declared by a local health officer pursuant to this section, the local health

emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the board of supervisors, or city council, whichever is applicable to the jurisdiction. The board of supervisors, or city council, if applicable, shall review, at least every 30 days until the local health emergency is terminated, the need for continuing the local health emergency and shall proclaim the termination of the local health emergency at the earliest possible date that conditions warrant the termination."

Government Code section 8630 states:
"(a) A local emergency may be proclaimed only by the governing body of a city, county, or city and county, or by an official designated by ordinance adopted by that governing body.
"(b) Whenever a local emergency is proclaimed by an official designated by ordinance, the local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the governing body.
"(c) The governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency.
"(d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant."

Standing
Beneficial Interest Standing
If a pleading reveals that the petitioner lacks the right or standing to sue, then the pleading is subject to demurrer on the ground it fails to state a cause of action. (*Carsten v. Psychology Examining Com*. (1980) 27 Cal.3d 793, 796.)

As discussed in the Court's ruling on Petitioners' Application for Alternative Writ of Mandate, the allegations are not sufficient to demonstrate that Petitioners have beneficial standing.

Public Interest Standing
"A petitioner who is not beneficially interested in a writ may nevertheless have 'citizen standing' or 'public interest standing' to bring the writ petition under the 'public interest exception' to the beneficial interest requirement.' [Citation.]" (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 913-914.)

"[W]here the question is one of public right and the object of the mandamus is to procure the

enforcement of a public duty, the [petitioner] need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced. [Citation.]" (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, internal quotations omitted.) "This public right/public duty exception to the requirement of beneficial interest for a writ of mandate promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right. [Citations]" (*Ibid*., internal quotations omitted.) This is referred to as "public interest standing." (*Ibid*.)

"[T]he policy underlying the exception may be outweighed in a proper case by competing considerations of a more urgent nature." (*Green v. Obledo* (1981) 29 Cal.3d 126, 145.)

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

The SAVP alleges that "Governor Newsom declared a state of emergency related to COVID-19 on March 4, 2020 (hereinafter 'Proclamation')," and that included was "the Governor's temporary suspension of the 30 or 60-day time periods normally required of local governing authorities to review, renew, or terminate local states of emergency." (SAVP, ¶¶ 38, 40.) The SAVP also alleges, "Specifically, at paragraphs 7 and 8, the Governor indicated that 'for the duration of [the] statewide emergency,' he was suspending the operation of the '30-day review period' in Health & Safety Code, section 101080 (local health emergency), and the '60-day review period' in Government Code, section 8630 (local

emergency), the time periods within which a local governing authority would normally be required to review – and then renew or terminate -- a declared local and/or local health emergency." (SAVP, ¶ 41; Ex. B.)

The SAVP alleges that Respondents have mandatory duties under Health & Safety Code section 101080 and Government Code section 8630 to review local conditions to determine whether or not a local health emergency and/or local emergency is still warranted, and to terminate the local health emergency and/or local emergency at the earliest possible date that conditions warrant, but have violated said duties by failing to comply with these duties, and by voting to delegate their duties under Health & Safety Code section 101080 and Government Code Section 8630 to the Governor, and by failing to properly terminate the local emergency in exchange for financial, professional, and other gains. (SAVP, ¶¶ 81, 93.) More specifically, the SAVP alleges that Respondents have failed in their duty to review conditions creating the emergencies so that they may end at the earliest date the conditions warrant, and that Respondents have admitted that they have kept these emergencies in place "to avail themselves of Federal monies available under the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund [], as established under the American Rescue Plan Act [], and the Coronavirus Relief Fund [], as established under the Coronavirus Aid, Relief, and Economic Security Act []." (SAVP, ¶¶ 11-13.) The SAVP alleges that as of the date of the filing of the SAVP, the Board has not terminated the emergencies and "does not intend to review local conditions in Orange County or end either of the Emergencies, unless and until the Governor terminates the state-wide emergency." (SAVP, ¶¶ 76.)

Here, attempting to ensure that Respondents comply with their duties as it relates to local health emergencies and/or local emergencies, and seeking to procure proper enforcement of statutes espousing duties to review the need for continuing a local health emergency and/or local emergency, as well as to proclaim the termination of the local health emergency and/or local emergency at the earliest possible date that conditions warrant the termination would implicate a matter of public right. Thus, it appears

that Petitioners have sufficiently alleged standing under the public interest exception. In turn, the Court OVERRULES the demurrer to the SAVP based on standing.

As Petitioners adequately allege public interest standing, the Court need not, and declines to address, the other grounds upon which standing is asserted. Although in passing, the Court notes that at first blush it does not appear that Petitioners would be able to establish either taxpayer or associational standing.

Ripeness
Based on the Court's discussion concerning Petitioners' Application for a Writ of Mandate as to this issue, the Court finds that the matter is ripe. Thus, the Court OVERRULES the demurrer to the SAVP on this ground.

Failure to State a Cause of Action
The Court notes that the SAVP consists of five (5) causes of action: (1) the First Cause of Action for Writ of Mandate; Violation of Cal. Health & Safety Code § 1010180, Code of Civ. Proc. §§ 1085, 1094.5; (2) the Second Cause of Action for Writ of Mandate; Violation of Cal. Gov. Code § 8630; Code of Civ. Proc. §§ 1085, 1094.5; (3) the Third Cause of Action for Writ of Mandate, Arbitrary and Capricious Agency Action, Abuse of Discretion, and Failure to Justify the Decision, Cal. Code Civ. Proc., § 1085; (4) the Fourth Cause of Action for Declaratory Relief, Code Civ. Proc., § 1060; and (5) the Fifth Cause of Action for Injunctive Relief, Code Civ. Proc., § 527. (ROA 63.)

"Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint . . ., or to specified causes or action . . . ." (California Rules of Court, rule 3.1320.)

Here, Respondents do not comply with California Rules of Court, rule 3.1320, as the demurrer provides as one ground that the SAVP does not state facts sufficient to constitute a cause of action but does not identify any particular cause of action that is vulnerable to demurrer. The Memorandum of Points and Authorities does not separately discuss the Fourth and Fifth Causes of Action such that although it is unclear from the demurrer, it appears that Respondents are attacking the SAVP in its entirety on certain

grounds, and the first three causes of action on additional grounds.

First through Third Causes of Action – Writ of Mandate under Code of Civil Procedure section 1085
Here, based on the Court's discussion of Petitioners' claim for writ of mandate under Code of Civil Procedure section 1085 in Petitioners' Application for a Writ of Mandate, the SAVP adequately alleges facts supporting the first three causes of action and mandatory, ministerial duties exist for Respondents (1) to review the need for continuing a local health emergency and/or local emergency, as well as (2) to proclaim the termination of the local health emergency and/or local emergency at the earliest possible date that conditions warrant the termination pursuant to Health & Safety Code section 101080 and Government Code sections 8630(c)-(d). In addition, " . . . 'a party seeking review under traditional mandamus must show the public official or agency invested with discretion acted arbitrarily, capriciously, fraudulently, or without due regard for his rights, and that the action prejudiced him.' [Citations.]" (*Schwartz v. Poizner* (2010) 187 Cal.App.4th 592, 598.)

"Although mandate will not lie to control a public agency's discretion, that is to say, force the exercise of discretion in a particular manner, it will lie to correct abuses of discretion. [Citation.] In determining whether an agency has abused its discretion, the court may not substitute its judgment for that of the agency, and if reasonable minds may disagree as to the wisdom of the agency's action, its determination must be upheld. [Citation.]' [Citation.] 'The trial court's inquiry in a traditional mandamus proceeding is limited to whether the local agency's action was arbitrary, capricious, or entirely without evidentiary support, and whether it failed to conform to procedures required by law.' [Citation.]" (*Galbiso v. Orosi Pub. Util. Dist*. (2010) 182 Cal.App.4th 652, 673.)

Here, the SAVP alleges that Respondents violated the requirements of Health & Safety Code section 101080 and Government Code section 8630, "acted arbitrarily and capriciously, and abused their discretion by engaging in the actions alleged above, including but not limited to (1) failing to cite or reference any local medical or scientific authority, studies or data to justify their

declarations of Emergencies; (2) failing to take into consideration, ab initio, the fiscal, physical, psychological, and financial impact of the declarations of Emergencies; (3) failing to take into consideration the fiscal, physical, psychological, and financial impact of the declarations of either emergency since the time of the initial declarations twenty-five (25) months ago and in any review of the Emergencies; (4) failing to do any meaningful review any of local conditions that warrant declaring a local emergency or local health emergency; and/or (5) failing to consider alternative, lesser-restrictive, and actually effective means for responding to COVID-19." (SAVP, ¶ 105.) The SAVP also alleges that this was a "prejudicial abuse of discretion," and that Petitioners have been harmed. (SAVP, ¶¶ 15(b), 16, 17, 20, 84, 86, 88, 96, 98, 100, 108, 110.)

Although Health & Safety Code section 101080 and Government Code section 8630, do not specify what a review of conditions must entail or that a review of conditions must include the items numbered (1) through (3), and (5) of Paragraph 105 of the SAVP, the SAVP sufficiently alleges that Respondents have arbitrarily decided not to conduct any review of local conditions since June 22, 2021, despite the mandatory duties to review local conditions and to proclaim the termination of the local health emergency and/or local emergency at the earliest possible date that conditions warrant the termination, by voting that the local health emergency and/or local emergency would be immediately terminated "upon the Governor's termination of the state of emergency and without further action of the Board." (SAVP, ¶¶ 3, 72-74; Ex. A, Board of Supervisor's June 22, 2021 Status Report.) The SAVP also sufficiently alleges that Respondents acted arbitrarily to the prejudice of Petitioners to support a writ of mandate under Code of Civil Procedure section 1085.

Respondents also argue that the relief sought by Petitioners would violate the separate of powers doctrine because the Board is vested with the statutory discretion to determine when the local health emergency and/or local emergency should cease.

"[W]hen the state Legislature has spoken on a particular issue, local governments are not at liberty to take a conflicting course of action.

[Citation.]" (*Costa Mesa City Employees' Assn. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 310.)

Here, as noted above, the SAVP alleges mandatory duties to review the local conditions and to proclaim the termination of the local health emergency and/or local emergency at the earliest possible date that conditions warrant the termination, which are alleged not have occurred, notwithstanding the suspension of the time intervals such reviews are to take place. As these duties are mandatory and ministerial, it does not appear to implicate the separation of powers doctrine.

The Court notes that Petitioners allege that Respondents have violated the separation of powers by the June 2021 vote. The SAVP alleges that Respondents have "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 Separate 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." (SAVP, ¶¶ 82, 94.) The language from the June 22, 2021 Status Report and the allegations of the SAVP taken as true sufficiently allege that Respondents have delegated their duties to the Governor. (See SAVP, ¶¶ 72-74, 81(c), 93(c).)

Respondents additionally argue that Petitioners' equitable claims for writ of mandate are barred as Petitioners have an adequate remedy at law as if Petitioners were in fact harmed by the actions of the Board, they can sue for money damages.

As discussed in the Court's ruling on the Petition for Alternative Writ of Mandate, Petitioners' claim for mandamus relief is not precluded as Petitioners do not seek money damages for the harms they allege to have experienced, and money damages do not provide a remedy for the relief sought.

Based on the foregoing, the Court OVERRULES the demurrer to the first three causes of action.

Writ of Administrative Mandate Under Code of Civil Procedure section 1094.5

To the extent that Respondents attack the sufficiency of allegations for a claim under Code of Civil Procedure section 1094.5, these first three causes of action allege a claim for writ of mandate under both Code of Civil Procedure sections 1085 and 1094.5. As stated above, these causes of action sufficiently plead a claim for writ of mandate under Code of Civil Procedure section 1085.

A demurrer to a complaint may be taken to the whole complaint or to any of the causes of action. (Code Civ. Proc.§ 430.50(a).) A party may not demur to a portion of a cause of action, and a demurrer must dispose of an entire cause of action to be sustained. (*Fremont Indem. Co. v Fremont Gen. Corp*. (2007) 148 Cal.App.4th 97, 119; *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1681.) "[I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory." (*Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1358.)

In light of the above, even assuming that the causes of action were insufficiently pleaded as to one part of the causes of action, namely, as to a claim under Code of Civil Procedure section 1094.5, it would not resolve the entire First or Second Cause of Action, and a demurrer cannot be sustained as to only a portion of a cause of action.

In reply, Respondents raise an additional argument that even if Petitioners could make out of claim for mandamus relief, the Court should abstain. The Court declines to consider all new points, arguments, and evidence presented for the first time on reply. (*See Balboa Ins. Co. v. Aguirre* (1983) 149 Cal.App.3d 1002, 1010; *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.)

Uncertainty
Code of Civil Procedure section 430.10(f) provides that a defendant may demur on the ground that the pleading is uncertain. "As used in this subdivision, 'uncertain' includes ambiguous and unintelligible." "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Khoury v. Maly's of California, Inc*. (1993) 14 Cal App.4th 612, 616.) Demurrers for uncertainty

"are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (*Lickiss v. Fin. Indus. Regulatory Auth*. (2012) 208 Cal.App.4th 1125, 1135.)

Here, Respondents cite to paragraphs 66, 67, and 74(d) as being uncertain as to who is obtaining a "personal benefit" and the "stay" requested. However, the SAVP as to these two issues are not so incomprehensible that Respondents cannot reasonably respond. Thus, the Court OVERRULES the demurrer based on uncertainty.

In sum, the Court OVERRULES the demurrer to the SAVP in its entirety.

Petitioners to give notice.

APPLICATION FOR ALTERNATIVE WRIT
Petitioners/Plaintiffs, Peggy Hall ("Hall") and Children's Health Defense – California Chapter ("CHD-CA") (collectively, "Petitioners") apply, pursuant to Code of Civil Procedure, sections 1087 and 1107, for an alternative writ of traditional mandate and administrative mandate directing Respondents/Defendants, County of Orange (the "County") and Orange County Board of Supervisors (the "Board") (collectively, "Respondents") to: 1. Rescind their Abdication Vote of June 22, 2021 and reclaim their statutory duties under Government Code, section 8630, and/or Health & Safety Code, section 101080, to review local, County conditions to determine whether such conditions warrant terminating the local state of emergency and/or local health emergency (hereinafter collectively "Emergencies") declared by Respondents on February 26, 2020, and to terminate the local state of emergency and/or local health emergency if such conditions warrant; or 2. To show cause in this Court why Respondents have refused to satisfy their legal duties as the governing authority of the County to both review the local conditions and/or terminate the local emergency and/or local health emergency "at the earliest possible date" conditions warrant.

Petitioners contend that Respondents have a clear, present, ministerial, and mandatory duty to terminate the Emergencies under Government Code sections 8630(d) and Health and Safety Code section 101080, and that Respondents' obligation is not discretionary. Specifically,

			Petitioners contend that Respondents improperly delegated their quasi-legislative authority and statutory duties and failed to satisfy their statutory obligations and ministerial duties by refusing to review local conditions since June 22, 2021, when Respondent Board, as the governing body for Respondent County, voted to abdicate all of its legal duties to assess local conditions and determine whether these justify ongoing declarations of a local emergency and/or local health emergency based on Governor Newsom's March 4, 2020 proclamation of a state-wide emergency which temporarily suspended the 30 and 60 day intervals in which local governing bodies must review local conditions of emergency (the "Proclamation"). Petitioners argue that the Proclamation did not, and could not remove a local governing body's affirmative, mandatory duty to review local conditions and/or terminate the Emergencies at the earliest possible dates, and that the Proclamation itself indicates that the local governing body retains this duty to determine when to terminate its respective local emergency. Petitioners additionally argue that Respondents failed to terminate the Emergencies at the "earliest date" that conditions have warranted, and that Respondents' delegation of their quasi-legislative authority to review and terminate the Emergencies to the Governor violates the California Constitution's Separation of Powers and non-delegation doctrine. Petitioners further contend that even if Respondents had discretionary authority to determine when to end the Emergencies, which they do not, Respondents have engaged in arbitrary and capricious decision-making, and abused their discretion, by declaring these Emergencies when no conditions existed justifying it, and then continuing them for reasons not permitted under the applicable statutory provisions. Respondents contend that this is actually Petitioners' fourth amended petition; that Petitioners have no right, as a matter of course, to the issuance of a writ ordering Respondents to comply with the relief Petitioners request or to show cause as to why the relief should not be granted; and that the Application should be denied because it is procedurally improper and Petitioners cannot establish that this case is appropriate for writ relief, as more fully briefed in Respondents' Demurrer.

On May 4, 2022, a Second Amended Verified Petition for Writs of Traditional and Administrative Mandate and Complaint for Declaratory and Injunctive Relief ("SAVP") was filed, adding CHD-CA as a plaintiff/petitioner and adding causes of action. (ROA 63.) The instant Application for Alternative Writ of Mandate ("Application") was filed on May 23, 2022. (ROA 71.)

Procedural Requirements
In their opposition, Respondents contend that based on the proof of service, the Application was only electronically served on counsel and service was never made upon the presiding officer of the board, the secretary of the Board, or on any of the members thereof, as required by Code of Civil Procedure section 1107, and that the Memorandum of Points and Authorities is devoid of citation to admissible evidence and relies on unverified allegations in violation of Code of Civil Procedure section 1086 and California Rules of Court, rule 3.1113(b).

Code of Civil procedure section 1087 states, "[t]he writ may be either alternative or peremptory. The alternative writ must command the party to whom it is directed immediately after the receipt of the writ, or at some other specified time, to do the act required to be performed, or to show cause before the court at a time and place then or thereafter specified by court order why he has not done so. The peremptory writ must be in a similar form, except that the words requiring the party to show cause why he has not done as commanded must be omitted." (Code Civ. Proc. § 1087.)

"When the application to the court is made without notice to the adverse party, and the writ is allowed, the alternative must be first issued; but if the application is upon due notice and the writ is allowed, the peremptory may be issued in the first instance. With the alternative writ and also with any notice of an intention to apply for the writ, there must be served on each person against whom the writ is sought a copy of the petition. The notice of the application, when given, must be at least ten days. The writ cannot be granted by default. The case must be heard by the court, whether the adverse party appears or not." (Code Civ. Proc. § 1088.)

"When an application is filed for the issuance of any prerogative writ, the application shall be accompanied by proof of service of a copy thereof upon the respondent and the real party in interest named in such application. The provisions of Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 shall apply to the service of the application . . . Where the real party in respondent's interest is a board or commission, the service shall be made upon the presiding officer, or upon the secretary, or upon a majority of the members, of the board or commission. Within five days after service and filing of the application, the real party in interest or the respondent or both may serve upon the applicant and file with the court points and authorities in opposition to the granting of the writ." (Code Civ. Proc. § 1107.)

"Code of Civil Procedure section 1107 specifically governs service of writ petitions. (*Board of Supervisors v. Superior Court* (1994) 23 Cal.App.4th 830, 839.) "Section 1010 et seq. governs service of motions, and expressly permits simple service by mail as an alternative to personal service. [Citation.] Thus, such service would presumably be sufficient if an alternative writ were sought." (*Ibid*.) "[A]lthough notice-service of the application is sufficient under Code of Civil Procedure section 1107 to obtain the alternative writ, personal service of an alternative writ is necessary before a trial or hearing can be had." (*Id*. at p. 840.) "At one stage or another, personal service of either the alternative writ or the petition must be made." (*Ibid*.)

A petitioner who seeks to initiate the judicial review process by obtaining an alternative writ of mandamus begins by serving on the respondent and real parties in interest (if any) by mail, fax or email, and then filing with the court: (1) the verified petition, which includes a prayer for issuance of both alternative and peremptory writs; (2); an application for an alternative writ; (3) a memorandum in support of the application; (4) declaration of counsel re: notice; and (5) a proposed alternative writ with blanks for the date and time of the OSC hearing. (Asimow, et al. (The Rutter Group November 2021 update) *Cal. Prac. Guide: Administrative Law*, at ¶ 18:110.)

Here, the proofs of service to the Notice of Petitioners' Application for Alternative Writ of Mandate indicate that the Application and

memorandum in support of the application were served via electronic transmission on Kayla N. Watson and Leon J. Page of the Office of the County Counsel, counsel for the County and the Board. (See ROA 68, 70.) There is no argument against the manner of service, i.e., electronic service, and the reply provides that the parties agreed to electronic service. The Court notes the opposing papers were also electronically served. Moreover, the application for an alternative writ may be issued without notice to the adverse party. Based on the foregoing, it appears that the Application was properly served on Respondents' counsel.

Respondents argue that the Memorandum of Points and Authorities is devoid of citation to admissible evidence and relies on unverified allegations in violation of Code of Civil Procedure section 1086 and California Rules of Court, rule 3.1113(b).

"Alternative writs are issued by the court at an ex parte hearing on petitioner's application. The alternative writ does not address the merits of the petition but merely sets the date for the briefing and hearing of the merits, when the court will either grant or deny the peremptory writ." (Asimow, et al. (The Rutter Group November 2021 update) *Cal. Prac. Guide: Administrative Law*, at ¶ 18:262.) "The alternative writ is a court order, and the application for an alternative writ is petitioner's motion for such an order." (Asimow, et al. (The Rutter Group November 2021 update) *Cal. Prac. Guide: Administrative Law*, at ¶ 18:269.)

Here, the SAVP is verified and the Memorandum of Points and Authorities is sufficient. (SAVP at pp. 34-35.)

Merits
Respondents assert that even if the Application was procedurally proper, the alternative writ should be denied because Petitioners' SAVP is deficient as Petitioners do not state a claim for writ of mandate relief, as fully addressed in Respondents' pending Demurrer. Specifically, Respondents argue that Petitioners have no standing because they are not injured or beneficially interested in the relief sought, and that to the extent Petitioners attempt to assert taxpayer standing, that argument fails for reasons stated in Respondents' demurrer. Respondents

			also argue that Petitioners' allegations are speculative such that the case is not ripe and non-justiciable. Respondents additionally contend that Petitioners have not stated a claim for a writ under Code of Civil Procedure section 1085 as they cannot identify any ministerial, statutory duty, or policy that can serve as the basis for a writ of mandate; have conceded that no law currently requires the Board to hold any official review or vote on whether to renew or terminate the Emergencies while the state-wide emergency is in effect; and the actions Petitioners seek of the Board is within the Board's broad discretion. Respondents also contend that Petitioners misapply the arbitrary and capricious standard of review as that standard of review only applies when made in the execution of a mandatory, ministerial duty, not a discretionary duty, as here, and that even when mandamus relief is sought to address an alleged abuse of discretion, the standard of review is deferential to the government official or agency, and the separation of powers doctrine precludes the Court from deciding how the Board chooses to manage the COVID-10 pandemic and protect its constituents. Respondents further assert that Petitioners have not identified conduct by Respondents that conflicts with state law because, as they admit, the state law has been explicitly waived by the Governor's Proclamation, and to the extent that Petitioners object to the Governor's waiver of state law, they have not sued the appropriate party. Further, Respondents assert that administrative mandate under Code of Civil Procedure section 1094.5 is not available as Petitioners fail to establish that the Board's actions were the result of an evidentiary hearing, and neither the Health and Safety Code nor the Government Code sections on which Petitioners rely requires an evidentiary hearing. Finally, Respondents argue that Petitioners' claims for mandamus relief are barred as Petitioners have a plain, speedy, and adequate remedy at law by a simple action for money damages. A petitioner has "no right, as a matter of course, to the issuance of [an] alternative writ of mandate." [Citations.]" (*Wine v. Council of City of Los Angeles* (1960) 177 Cal.App.2d 157, 164, *disapproved on other grounds in The Pines v. City of Santa Monica* (1981) 29 Cal.3d 656, 660, 664.) Where upon the filing of a petition and notice to all respondents of the intention to apply for issuance of an alternative writ of mandate,

respondents are authorized to submit points and authorities in opposition to the application and the trial court is authorized to deny the application summarily without a hearing on the merits. (*Ibid*.) A trial court may properly deny the issuance of a writ where a petitioner does not have standing or the petition fails to show a sufficient basis for the issuance of the requested writ. (*Ibid*.) An alternative writ or order to show cause is not required to be issued "in every instance in which a timely, procedurally sufficient, but apparently meritless writ petition is filed." (*Landau v. Superior Court* (1998) 81 Cal.App.4th 191, 206.) If the petition states a cause of action, the court must issue the alternative writ and set a hearing for consideration of whether the peremptory writ should issue. (Asimow, et al. (The Rutter Group November 2021 update) *Cal. Prac. Guide: Administrative Law*, at ¶ 18:117.)

Beneficial Standing
A proceeding for a writ of mandate is initiated by filing a verified petition of the party beneficially interested, and the writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in the ordinary course of law. (Code Civ. Proc. § 1086.)

"The requirement that a petitioner be 'beneficially interested' has been generally interpreted to mean that one may obtain the writ only if the person has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large." (*Carsten v. Psychology Examining Com*. (1980) 27 Cal.3d 793, 796 ("Carsten").) "The beneficial interest must be direct and substantial." (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165 ("*Save the Plastic Bag*").) "Thus, 'the writ must be denied if the petitioner will gain no direct benefit from its issuance and suffer no direct detriment if it is denied.' [Citation.] The beneficial interest requirement applies to ordinary as well as administrative mandate proceedings . . . . [Citation.]" (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 913.)

Here, as it relates to Ms. Hall, the SAVP alleges the following, in relevant part:
"[Ms. Hall] is the founder of The Healthy American, which exists to educate, empower and inform individuals of their rights, the laws that

protect those rights, and how to apply those laws to defend their rights. Ms. Hall is also a business owner and taxpayer in Orange County who suffered various physical, psychological, and financial harms, including loss of employment, as well as losses to her liberty, speech, and associational rights under the federal and California Consitutions [sic] when the County instituted various public health mandates at the County-level, and she continues to be under constant threat of harm that the County may reinstitute any of these measures as long as the local health and local emergency declarations are not terminated . . . . Ms. Hall has a present, beneficial interest in the Orange County Board of Supervisors following the laws and constitutions of the Country, County, and State, including, but not limited to, those laws pertaining to the declarations of emergency and extensions of declarations of emergency." (SAVP, ¶ 16.)

As to CHD-CA, the SAVP alleges, in relevant part: "CHD-CA was founded in 2020 as the California branch of Children's Health Defense, a national non-profit organization headquartered in Peachtree City, Georgia. CHD-CA has over 7,000 members throughout California, consisting predominately of parents whose children have been negatively affected by environmental and chemical exposures and damaging emergency measures including unsafe emergency vaccines, unsafe emergency lockdowns, illegal contact tracing, damaging quarantine and isolation policies, and damaging emergency masking policies, among other things. CHD-CA represents the interests of thousands of children and families across California, and approximately 2,000 CHD-CA members residing in Orange County, with children attending school in Orange County, and who are property and business owners paying taxes to Orange County. CHD-CA's members residing in Orange County have present, beneficial interests in Respondents' following the laws and constitutions of the Country, State, and County, including those pertaining to the declarations of local and local health emergencies, and voting to terminate them at the earliest date conditions warrant, otherwise, they and their children may be forced into unreasonable and harmful lockdowns, school closures, forced masking, testing, vaccination, distancing and other "emergency" measures should Respondents decide to unilaterally and arbitrarily re-implement them under the emergency powers that still exist

during a local declaration of emergency, exacerbating and continuing Petitioners' harms, which are easily capable of repetition so long as a declaration of local or local health emergency is in place. (See Roman Catholic Diocese, 141 S.Ct. at 68). The interests that CHD-CA seeks to protect in this action are also germane to its fundamental purpose and CHD-CA has members residing in Orange County who have been and will continue to be negatively impacted by Respondents' failure to review local conditions within Orange County as required by law and to terminate the local emergency and/or local health emergency at the earliest time conditions warrant and therefore CHD-CA further meets all associational standing requirements for prosecuting this action." (SAVP, ¶ 17.)

The SAVP additionally alleges, "Petitioners have and will suffer significant, direct, irreparable harm if the Emergencies are not reviewed and/or terminated by Respondents, in accordance with their statutory obligations to do so under Government Code, 8630 et seq., and Health & Safety Code, section 101080 et seq., legal duties which were not suspended by any of the State's emergency or executive orders, including but not limited to the Governor's initial Proclamation of Emergency on March 4, 2020. (SAVP, ¶ 20.) Moreover, the SAVP alleges, "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." (SAVP, ¶ 26.) The SAVP further alleges that "Petitioners have been, are being, and will continue to be harmed by Respondents' actions as described herein, above, and by Respondents potentially reinstating COVID-19 measures previously issued under the local health emergency and the accompanying police powers that, inter alia, restricted Petitioners' ability to conduct business, go to school, attend church, breathe freely, travel freely, associate with others freely, participate in society without having to "show papers," and to exercise and enjoy other rights and privileges of being a resident of Orange County and an American citizen, in general." (SAVP, ¶¶ 84, 96.)

Despite the foregoing, there are no factual allegations showing that Hall has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large

			that is direct and substantial. Thus, it does not appear that Hall has beneficial standing to assert a claim for writ of mandate. Similarly, there are insufficient factual allegations showing that CHD-CA has some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large that is direct and substantial. Thus, it does not appear that CHD-CA has beneficial standing. *Public Interest Standing* As discussed in the Court's ruling on Respondents' demurrer to the SAVP, the SAVP adequately alleges public interest standing. *Ripeness* "Generally, California courts decide only justiciable controversies and do not resolve lawsuits that are not based on an actual controversy. [Citation.]" (*Bichai v. Dignity Health* (2021) 61 Cal.App.5th 869, 879.) "Under the justiciability doctrine, unripeness and mootness describe situations where there is no justiciable controversy. [Citation.] Unripe cases are those in which an actual dispute or controversy has yet to come into existence. [Citation.]" (*Ibid*.) ' "The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion. It is in part designed to regulate the workload of courts by preventing judicial consideration of lawsuits that seek only to obtain general guidance, rather than to resolve specific legal disputes. However, the ripeness doctrine is primarily bottomed on the recognition that judicial decisionmaking is best conducted in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy.' [Citation.]" (Id. at pp. 879-880.) "As a general rule, a lawsuit commenced before a cause of action has accrued is premature and cannot be maintained. [Citation.]" (*Id*. at p. 880.) Here, the SAVP alleges that "an actual and present controversy exists with respect to the disputes between Petitioners and Respondents," as Petitioners seek a declaration from the Court that "Respondents must comply with their

			statutory obligations to (1) periodically review local County conditions to determine whether there is a continued need for a declaration of either a local or local health emergency, and (2) terminate the local and/or local health emergency at the earliest opportunity conditions warrant, regardless of the time intervals at which these reviews and declarations might occur." (SAVP, ¶ 116.) Based thereon, there is a current, actual dispute or controversy as to whether Respondents have a present, ministerial, and affirmative duty to review conditions creating the declared emergency and/or to terminate local emergencies and local health emergencies at the earliest possible date that conditions warrant under Health & Safety Code section 101080 and Government Code section 8630. (SAVP, ¶¶ 6, 7, 12, 14.) As set forth above, Petitioners also allege the harms they have that they have suffered. (See SAVP, ¶¶ 16-17.) The SAVP alleges that, "Petitioners have and will suffer significant, direct, irreparable harm if the Emergencies are not reviewed and/or terminated by Respondents," and that Petitioners are harmed by Respondents' failure to review as it "creates conditions within the County wherein Petitioners and their members may at any time be subject to losing employment, businesses, business opportunities, and good will; being denied good will; being denied medical services, treatment, and care; being prevented from accessing necessary services and places of public accommodation; being denied their constitutional right to free public school education; being forced into remote learning, independent study programs, in violation of the Education Code; and being forced to comply with harmful and ineffective "COVD-19 safety measures," such as masking, testing, vaccination, quarantining, sheltering at home, and distancing without due process of law, so long as local authorities improperly retain emergency police powers as herein alleged." (SAVP, ¶ 20.) Based on the foregoing, the allegations in the SAVP indicate that the issues are justiciable and ripe. *Claim for Alternative Writ of Mandate Under Code of Civil Procedure section 1085* "A writ of mandate will lie 'to compel the performance of an act which the law specially

enjoins, as a duty resulting from an office, trust, or station' (Code Civ. Proc., § 1085) in cases 'where there is not a plain, speedy, and adequate remedy, in the ordinary course of law' (Code Civ. Proc., § 1086). 'Two basic requirements are essential to the issuance of the writ: (1) A clear, present and usually ministerial duty upon the part of the respondent [citations]; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty [citation]. [Citation.]' (*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 491, 96 Cal.Rptr. 553, 487 P.2d 1193.)" (*Galbiso v. Orosi Pub. Util. Dist*. (2010) 182 Cal.App.4th 652, 673.) A petitioning party must establish both requirements to obtain a writ of mandate pursuant to either Code of Civil Procedure section 1085 or section 1094.5. (*Excelsior College v. Board of Registered Nursing* (2006) 136 Cal.App.4th 1218, 1237.) "Traditional mandate is used to review adjudicatory actions or decision when the agency is not required to hold an evidentiary hearing or when the duty is ministerial. [Citations.]" (*Id*. at p. 1238.)

" ' . . . . Mandamus will not lie to control an exercise of discretion, i.e., to compel an official to exercise discretion in a particular manner. Mandamus may issue, however, to compel an official both to exercise his discretion (if he is required by law to do so) and to exercise it under a proper interpretation of the applicable law. [Citations.]' [Citation.]"

Here, the SAVP requests that the Court issue a "traditional writ of mandate under Code of Civil Procedure, section 1085, ordering Respondents to (i) rescind their June 22, 2021 vote abdicating or delegating their legal duties as the local governing body of Orange County to review the County's conditions under Government Code, section 8630 and Health & Safety Code, section 101080, and make a determination as to whether or not said conditions warrant continued declarations of local and local health emergencies (ii) comply with their ministerial duties to conduct the necessary, reasoned, and public review of local conditions and make a determination and finding that said conditions justify the continued declarations of Emergencies under Government Code, section 8630 et seq., and Health & Safety Code, section 101080 et seq. and (iii) vote to end the Emergenices [sic] if local conditions no longer warrant them." (SAVP, ¶ 15(a).)

The SAVP alleges that "Respondents have a clear and present mandatory duty to follow the law and California Constitution to both (i) review local conditions and determine whether they warrant the declaration of local health emergency, and (ii) terminate the local health emergency as soon as conditions warrant." (SAVP, ¶¶ 87, 99.)

The SAVP alleges that Respondents violated ministerial, mandatory duties under Health & Safety Code section 101080 [and under Government Code section 8630], acted arbitrarily and capriciously, and have abused their discretion 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 [and under Government Code section 8630] 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." (SAVP, ¶¶ 80-81 [First Cause of Action], 92-93 [Second Cause of Action].)

" ' "A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists . . . ." [Citations.]' Thus, "[w]here a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion." ' [Citation.]" (*Schwartz v. Poizner* (2010) 187 Cal.App.4th 592, 596 ("Schwartz").)

All parties appear to agree the Governor's Proclamation temporarily and continues to suspend the 30 or 60-day time periods normally required of local governing authorities to review, renew, or terminate local states of emergency.

However, the issue is whether the Governor's Proclamation temporarily waived the statutory time intervals by which such review needs to be conducted, or suspended such review altogether.

The Governor's Proclamation ordered the following, in relevant part:
"7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
"8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency."
(SAVP, ¶¶ 38-41; Ex. B to SAVP, Governor's Proclamation at pp. .)

It appears from the language of the Governor's Proclamation that to the extent that Respondents may have had a mandatory, ministerial duty to review, renew, or terminate local states of emergency within statutory set time intervals, only the time interval is waived.

Health & Safety Code section 101080 provides that "[t]he board of supervisors, or city council, if applicable, *shall review*, at least every 30 days until the local health emergency is terminated, *the need for continuing the local health emergency and shall proclaim the termination of the local health emergency at the earliest possible date that conditions warrant the termination*." (Health & Safety Code § 101080, *emphasis added*.)

Similarly, Government Code section 8630 states, in relevant part:
"(c) The governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency.
"(d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant."
(Gov't Code § 8630(c)-(d).)

Thus, the plain language of Health & Safety Code section 101080 and Government Code section 8630 still mandate that the board of supervisors and/or the "local governing body" of a county (1)

review the need for continuing a local health emergency and/or local emergency, as well as (2) proclaim the termination of the local health emergency and/or local emergency at the earliest possible date that conditions warrant the termination.

Notably, the Governor's Proclamation did not suspend the mandate that the board of supervisors or local governing body review the need for the continuing local health emergency or local emergency, or proclaim the termination of a local health emergency or local emergency at the earliest possible date that conditions warrant the termination. Such a determination necessarily would require some manner of review of the conditions. The Proclamation on its face only waived the strict 30 and 60 day time periods within which such reviews must occur.

Indeed, in waiving the 30-day time period in Health & Safety Code section 101080 and the 60-day time period in Government Code section 8630 for the duration of the statewide emergency, the Governor's Proclamation also stated as to the former that "[a]ny such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency," and as to the latter that "[a]ny local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency." (Ex. B to SAVP, Governor's Proclamation, ¶¶ 7, 8.)

Such statements in the Governor's Proclamation are consistent with the Court's interpretation that only the time periods have been waived, not the reviews themselves. To adopt the Respondents' interpretation would require reading additional information in the Governor's Proclamation that is not present. Had the Governor intended to waive the review requirements in the Health & Safety Code and Government Code sections altogether, presumably, the Proclamation would have explicitly said so.

Based on the foregoing, it appears that the Board of Supervisors and/or "local governing body" has a mandatory and ministerial duty to (1) review the need for continuing a local health emergency or a local emergency; as well as (2) proclaim the termination of the local health emergency and local emergency at the earliest possible date that conditions warrant the termination. The SAVP also

alleges that Respondents have failed to comply with these mandatory duties.

The SAVP generally cites to the Board of Supervisor's June 22, 2021, Status Report attached as Exhibit A to the SAVP, and alleges that the Respondent Board voted as follows: "RECEIVED AND FILED A STATUS REPORT AND RECEIVED UPDATES FROM THE HEALTH CARE AGENCY CONCERNING EFFORTS TO ADDRESS AND MITIGATE THE PUBLIC HEALTH AND OTHER IMPACTS CAUSED BY THE NOVEL CORONAVIRUS (COVID-19) EMERGENCY; APPROVE IMMEDIATE TERMINATION OF THE LOCAL HEALTH EMERGENCY AND LOCAL EMERGENCY RELATED TO NOVEL CORONAVIRUS COVID-19 UPON THE GOVERNOR'S TERMINATION OF THE STATE OF EMERGENCY AND WITHOUT FURTHER ACTION OF THE BOARD."

(SAVP, ¶¶ 3, 72-74; Ex. A, Board of Supervisor's June 22, 2021 Status Report.)

The referenced language appears after paragraph 41 of the June 22, 2021 Status Report, and does not state that Respondent Board would be conducting any subsequent review of local conditions. It appears that the Board of Supervisors elected to defer the termination of the local health emergency and local emergency upon the Governor's termination of the state of emergency without further action of the Board, *i.e.*, without further review of local conditions, despite being required to proclaim the termination of the local health emergency and local emergency at the earliest possible date that conditions warrant. Consequently, it appears that Petitioners have alleged a mandatory or ministerial act that Respondents have failed to perform, and as a result, have stated a claim to support a writ of mandate under Code of Civil Procedure section 1085.

Respondents contend argue that Petitioners' claims for mandamus relief are barred as Petitioners have a plain, speedy, and adequate remedy at law by a simple action for money damages, if they were indeed harmed by the actions of the Board. However, Petitioners do not seek money damages for harm inflicted personally on them, but seek a peremptory writ of mandate, a preliminary and permanent injunction, a temporary stay, a temporary restraining order enjoining Respondents from

applying for and/or receiving state and/or federal monies for COVID-19, and reasonable attorneys' fees and costs of litigation under Code of Civil Procedure section 1021.5, and 42 U.S.C. § 1988. (See SAVP, Prayer for Relief, ¶¶ 16.) In addition, the SAVP alleges, "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." (SAVP, ¶ 26.)
Accordingly, Respondents' argument that this is a simple action for money damages is not meritorious.

To be clear, the Court is not suggesting that Respondents must reach a particular conclusion or result when it undertakes the statutory mandated review. Further, the Court is not suggesting that current conditions warrant the termination of the local health emergency or local emergency. Finally, the Court is not suggesting, mandating, or compelling a particular time frame or frequency upon which such reviews must occur. However, reviews as set forth in both the Health and Safety Code and Government Code must be scheduled and occur.

For the reasons set forth above, the Court GRANTS the Application for an Alternative Writ of Mandate.

IT IS ORDERED that an Alternative Writ of Mandate issue commanding Respondents to review local conditions to determine whether there remains the need for continuing the local health emergency and/or local emergency as required by Health & Safety Code section 101080 and Government Code section 8630(c), and to proclaim the termination of the local health emergency and/or local emergency should conditions warrant as required by Health & Safety Code section 101080 and Government Code section 8630(d), or in the alternative, to show cause why Respondents have not done so on the date and time set forth below.

The Order to Show Cause is set for 12/1/2022 at 1:30 p.m. No later than 5 court days before that hearing, Petitioners and Respondents may file a status report, not to exceed five pages, detailing whether the Code mandated review hearings have occurred, the outcome of such hearings, and when the next hearings are scheduled, if any.

		Petitioners to give notice.
53	Bui vs. Ky Case No. 30-2022-01257749	*Off-Calendar.*
54	Domelen vs. Burns Case No. 30-2020-01161064	*Off-Calendar.*
55	Urbina vs. General Motors LLC Case No. 30-2022-01261188	Defendant General Motors LLC ("GM") seeks an order grating GM's Motion for Judgment on the Pleadings as to Plaintiff's First, Second and Third Causes of Action in the Complaint. Pursuant to Code Civ. Proc. §1013b(b), proof of electronic service "shall" include: "(1) The electronic service address and the residence or business address of the person making the electronic service. "(2) The date of electronic service. "(3) The name and electronic service address of the person served. "(4) A statement that the document was served electronically." [Code Civ. Proc. § 1013b(b)(1)-(4).] Initially, in this instance, it is unclear whether the Motion for Judgment on the Pleading was served by mail or electronic service. The Proof of Service indicates the document was served by "placing" a "true copy thereof enclosed in a sealed envelope" and thereafter lists Plaintiff's counsel's address. However, Defendant has checked the box designating service by e-mail. To the extent the document was served by e-mail, Moving Party failed to include in the Proof of Service the electronic service address of the person making the electronic service, or the service address of the person served, in violation of Code Civ. Proc. §1013b(b)(1),(3) as set forth above. Additionally, before filing a statutory motion for judgment on the pleadings, moving party's counsel must meet and confer, in person or by telephone, with counsel for the party who filed the pleading subject to the judgment on the pleadings motion "for the purpose of determining if an agreement can be reached that resolves the

		claims to be raised in the motion for judgment on the pleadings." [Code Civ. Proc. §439(a).] Here, the Declaration of Attorney Valencia states, "Prior to filing GM's Motion for Judgment on the Pleadings, this office attempted to meet and confer with Plaintiff's counsel in an attempt to discuss the issues we had with Plaintiff's Complaint, but unfortunately, were unsuccessful in our attempts." [Declaration of Jesse Valencia ¶2.] However, as phrased, it is unclear whether an in person or telephonic meet and confer actually took place. Therefore, given the defect in the proof of service, the motion is DENIED without prejudice and counsel is reminded to fully comply with Code Civ. Proc. §439 prior to re-filing the motion. *Moving party to give notice.*
56	Burton vs. Hermes Case No. 30-2018-00990023	Petitioners/Plaintiffs Richard and Tina Burton ("Petitioners") seen an order confirming the final arbitration award issued on February 17, 2022 by the Hon. Francisco R. Firmat (Ret) which awarded them damages and costs in the amount of $44,804.91 plus arbitration fees of $5,953.75 — a total of $50,758.66 ("Final Arbitration Award"). Code Civ. Proc. section 1288 states: "A petition to confirm an award shall be served and filed not later than four years after the date of service of a signed copy of the award on the petitioner..." Here, on August 18, 2022, Petitioners seek to confirm the arbitration awarded them on February 17, 2022. Defendant/Respondent did not file an Opposition. Accordingly, the Court GRANTS the Petition and confirms the February 17, 2022 Final Arbitration Award. *Moving Party is to give notice.*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE Central Justice Center 700 W. Civic Center Drive Santa Ana, CA 92702	
SHORT TITLE: Hall vs. County of Orange	
CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE	CASE NUMBER: **30-2021-01220678-CU-WM-CJC**

I certify that I am not a party to this cause. I certify that a true copy of the above Minute Order dated 09/22/22 has been placed for collection and mailing so as to cause it to be mailed in a sealed envelope with postage fully prepaid pursuant to standard court practice and addressed as indicated below. This certification occurred at Santa Ana, California on 9/26/22. Following standard court practice the mailing will occur at Sacramento, California on 9/27/22.

LAW OFFICES OF NICOLE C. PEARSON
3421 VIA OPORTO 201
NEWPORT BEACH, CA 92663

Clerk of the Court, by: J Barrera , Deputy

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 09/22/22, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on September 26, 2022, at 10:58:40 AM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
WEST JUSTICE CENTER

MINUTE ORDER

DATE: 09/22/2022 TIME: 03:04:00 PM DEPT: W15

JUDICIAL OFFICER PRESIDING: Richard Lee
CLERK: J. Barrera
REPORTER/ERM: None
BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2021-01220678-CU-WM-CJC** CASE INIT.DATE: 09/14/2021
CASE TITLE: **Hall vs. County of Orange**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

APPEARANCES

There are no appearances by any party.

On 9/22/2022, the matters came on for hearing. After considering the arguments of counsel, the Court took the matters under the submission. After further consideration, the Court takes the matters out of submission and rules as follows:

The tentative ruling becomes the following order with the following exception.

The following paragraph is added at the end of the tentative ruling.

In the alternative, Respondents are ordered to show cause whether the Board of Supervisors is complying with their obligations under the law and conducting the statutorily mandated review hearings. Respondents may submit a brief in support of their position, not to exceed 15 pages and may submit evidence by way of declarations. Any such briefs and evidence shall be filed and served no later than November 14, 2022. Petitioners may submit a reply brief, not to exceed 15 pages. The reply brief, if any, shall be filed and served no later than November 21, 2022. The alternative order to show cause is scheduled for 12/1/2022 at 1:30 p.m.

The Case Management Conference is continued to 12/01/2022 at 01:30 PM.

Clerk to give notice.