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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

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

Petitioner,

vs.

COUNTY OF ORANGE; ORANGE COUNTY BOARD OF SUPERVISORS,

Respondents.

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

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

Code of Civil Proc., §§ 1085, 1094.5

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

INTRODUCTION

1. There is no statutory authority that permits Respondents COUNTY OF ORANGE (the "County") and ORANGE COUNTY BOARD OF SUPERVISORS (the "Board") (hereinafter collectively "Respondents") to keep Orange County in a perpetual state of emergency. In fact, Respondents have a clear, present, ministerial, and affirmative duty to terminate local and local health emergencies (hereinafter collectively "Emergencies") "at the earliest possible date that conditions warrant the termination" under California *Code of Civil Procedure*, section 101080, and *Government Code*, section 8630.

2. Just as there is always a **potential** for an earthquake, a fire, natural disaster or hazardous waste spill, there is a **potential** for a local health emergency. However, California's robust

emergency statutory scheme prohibits Respondents from continuing any emergency with restrictive measures that are unnecessary, excessive, not supported by the facts or data, or based on a ***perceived potential*** threat, or from indefinitely forgoing their duty to review the conditions that might warrant the declaration of an emergency – or terminate it – or to delegate such authority to the State or its Governor

3. Despite Respondents' clear statutory obligations, they have continued to vote to extend and maintain Orange County's Emergencies and, ultimately, on June 23, 2021, completely abdicated their statutory duty to review conditions giving rise to the declarations of emergencies and terminate these "at the earliest time conditions warrant" to the Governor of California.

4. Petitioners PEGGY HALL ("Ms. Hall") and CHILDREN'S HEALTH DEFENSE – CALIFORNIA CHAPTER ("CHD-CA") (hereinafter collectively "Petitioners"), on behalf of thousands of Orange County residents, including Ms. Hall, individually, business owners whose businesses have been shut down and impacted by "local health orders" mandating closures, masking, testing, distancing, implementation of personal protective equipment ("PPE"), and – at one point – proof of vaccination, and parents and children who are members of CHD-CA and have been subjected to school closures, remote learning, masking, testing, quarantining, distancing, and proposed vaccination requirements arising out of and announced under Respondents' declarations of emergency, have been patient with Respondents and their handling of COVID-19; however, Petitioners can no longer sit idly by while Respondents fail to review the current data undermining a finding that "conditions of disaster or of extreme peril to the safety of persons or property" currently exist in Orange County to support a vote to continue or extend the Emergencies.

5. Because of Respondents' dereliction of duty, Petitioners have been flocking to Board of Supervisors meetings, which are open to the public, since 2020, to provide scientific and medical data, personal stories, opinions, and law to demonstrate that ***no*** authority or conditions in Orange County justify the continued declarations of emergency, and to request that Respondents terminate both Emergencies as soon as conditions warranted.

6. Despite these efforts, and **despite dozens of Orange County cities voting to end their local and health emergencies**, Respondents have continued to vote to extend the Emergencies without

any statutorily-required independent review of the conditions warranting such extensions.

7. To be sure, as of the date of filing this Second Amended Verified Petition, **"conditions of disaster or of extreme peril to the safety of persons or property [in Orange County] caused by conditions such as . . . epidemic, which conditions are, or are likely to be, beyond the control of the services, personnel, equipment, and facilities of this county, requiring the combined forces of other political subdivisions to combat" do *not* exist in Orange County** to maintain a "local health emergency" under *Health and Safety Code*, section 101080, or a "local emergency" under *Government Code*, section 8558. (*See also,* Code of Ordinances (Supp. No. 146), Div. 1, Art. 1, § 3-1-2(c)):

a. As of March 22, 2022, 125 out of the 3.2 million Orange County residents are hospitalized with COVID-19, with only 25 of those 125 in the intensive care unit;[1]

b. Orange County's average daily case rate is 8.8 residents per 100,000; and

c. Orange County's testing positivity rate is 1.8%%.[2]

8. In addition to these very low figures, per the Board's own repeated admissions, there has been **zero** coordination of emergency services, personnel, equipment, or facilities in and between counties since the inception of the "pandemic."

9. Additionally, **Respondents have *admitted* that they have maintained residents in the perpetual, unfounded Emergencies to avail themselves of Federal monies** available under the Coronavirus State Fiscal Recovery Fund and the Coronavirus Local Fiscal Recovery Fund ("Coronavirus Recovery Fund"), as established under the American Rescue Plan Act ("ARPA"), and the Coronavirus Relief Fund ("CRF"), as established under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). These federal monies are intended to assist individuals, businesses, states, counties, cities, and other local governments recover from the pandemic. Unfortunately, on information and belief, Respondents failed to distribute these funds equitably throughout the County, or to assist businesses, cities and other local governments in their recovery and have, instead, implemented dozens of unnecessary "mental health," "homelessness," "vaccination," digital proof of

[1] COVID-19 Case Counts and Testing Figures, https://occovid19.ochealthinfo.com/coronavirus-in-oc [as of March 22, 2022].

[2] COVIDActNow, https://covidactnow.org/us/california-ca/county/orange_county/?s=25081423 [as of March 22, 2022]

verification, and other programs and projects, ***many of which have not been activated;*** lined the pockets of contractors and other persons with special interests, or with whom Respondents have financial or personal connection, via improper, expedited, and clandestine "bidding processes;" and/or retained these funds for themselves, resulting in a waste and misuse of these funds.

10. Respondents have also acted arbitrarily and capriciously in, *intra alia,* declaring the Emergencies *ab initio*; refusing to review the conditions **in Orange County** purportedly justifying the declaration of the Emergencies; punting their statutory duties under *Government Code,* section 8630, *et seq.,* and *Health & Safety Code,* section 101080, *et seq.* to the Governor; maintaining the Emergencies **for over two years**; and failing to terminate the Emergencies at the earliest opportunity conditions warranted which, by definition, cannot be accomplished if the conditions are never reviewed.

11. While, arguably, Respondents may have believed in early 2020 that conditions of extreme disaster and/or peril to the safety of persons in Orange County were going to exist in the County, **that time has long passed,** and we now know those conditions *never* existed in Orange County, nor do they now. Respondents themselves have admitted as much in public statements.

12. Nevertheless, since June 2021, Respondents have refused to review the conditions in Orange County to enable them to make the important determination that conditions of disaster or extreme peril exist to warrant a declaration of local or local health emergency, and have failed to comply with this important duty of a county board of supervisors. In fact, they have completely disposed of their duty to do so by improperly assigning it to the Governor without any legal authority in support.

13. To be clear, since early 2021, Respondents have not:

a. Combined forces with other political subdivisions to combat conditions of extreme peril or great danger posed by COVID-19 in Orange County;

b. Entered into "Mutual Aid" agreements with other counties or states to assist Orange Counties with its response to COVID -19;

c. Discussed with the public, or evaluated, the financial, physical, and/or psychological impact of the Emergencies on the residents of Orange County, including and especially children;

d. Discussed with the public, or determined, that the continuation of the Emergencies was actually benefitting Orange County residents;

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

f. Failed to properly distribute CARES and FEMA monies to their intended recipients: cities, individuals and businesses in Orange County.

14. Respondents have and did not engage in **any** legitimate risk/benefit decision-making process or fact-finding related to voting to implement or extend the Emergencies, much less the reasoned decision-making process that agencies must follow when exercising quasi-legislative authority. Instead, Respondents have imposed – and continue to impose – their unlawful Emergencies for financial, rather than legitimate health and safety, reasons.

15. Specifically, on information and belief, Respondents have declared and maintained the Emergencies to receive the significant cash-for-compliance funding given to counties through CARES and ARP, which condition receipt of billions of dollars in "COVID relief funding" upon compliance with masking, genetic testing, quarantine, contact tracing, vaccination protocols, and other terms and conditions, particularly for school aged children, but in many cases county wide.

16. Petitioners now file this Second Amended Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Second Amended Verified Petition") and ask that this Court immediately order Respondents to review Orange County's current conditions and make a public determination of whether these conditions justify the continued declarations of local emergency under *Government Code,* section 8630 *et seq.*, or local health emergency under *Health & Safety Code,* section 101080 *et seq.*: issue a writ of mandate pursuant to *Code of Civil Procedure,* sections 1085 and/or 1094.5; grant an alternative writ and order to show cause why such review should not be performed, and/or grant Petitioner a Preliminary Injunction, finding that the Emergencies are not currently justified in Orange County.

17. Petitioners further request that this Court issue declaratory and permanent injunctive relief finding that Respondents' failure to review conditions violates Petitioners' and their members' rights under state law, as well as the California and United States Constitutions, and directing Respondents to act in accordance with such laws by reviewing the conditions in Orange County prior to voting to extend or continue the local or local health emergency.

PARTIES

17. Petitioner PEGGY HALL is a proud Orange County resident for over 50 years. She 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, and 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. Ms. Hall also has a present, beneficial interest in assuring that her tax dollars are properly accounted for and spent appropriately by her local government.

18. Petitioner CHILDREN'S HEALTH DEFENSE CALIFORNIA CHAPTER is a California 501(c)(3) nonprofit corporation incorporated under the laws of the State of California, and headquartered in Ross, California. CHD-CA was founded in 2020 as the California branch of Children's Health Defense, a national non-profit organization headquartered in Peachtree, 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 have present, beneficial interests in Respondents' reviewing 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 Respondents decide to implement under the emergency powers that exist during a local declaration of emergency, exacerbating and continuing Petitioners' harms, which are easily capable of repetition so long as a declaration of emergency is in place.

19. Respondent ORANGE COUNTY is a county in Southern California comprising more than 3 million residents.[3]

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

21. 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.,* which were **not** suspended by any of the State's emergency or executive orders. These harms include, but are not limited to, losing employment and business opportunities and 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 a free public school education; being forced into a remote learning, independent study program, in violation of the *Education Code;* and being forced to comply with harmful, ineffective "COVD-19 safety measures," such as masking, testing, vaccination, quarantining, sheltering at home, and distancing. As a result, Petitioners are entitled to the relief prayed for herein.

[3] United States Census Bureau, https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml [as of September 13, 2021]

22. There is also a substantial public interest in ensuring that Respondents comply with the laws of the state, including California and U.S. Constitutions, California *Government* and *Health & Safety Codes*, and Orange County's Code of Ordinances.

23. Petitioners bring this suit to redress these constitutional and statutory harms, and seek declaratory and injunctive relief, finding that Respondents have violated Petitioners' rights under state law, as well as the California and United States Constitutions, and directing Respondents to act in accordance with such laws.

JURISDICTION AND VENUE

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

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

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

27. 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.

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

FACTUAL ALLEGATIONS

Declaration of a "State of Emergency" in California

29. In December 2019, the World Health Organization ("WHO") reported a novel coronavirus had been detected in Wuhan, China: SARS-CoV-2, which they named "COVID-19".

30. On January 26, 2020, California public health officials announced the first COVID-19 positive case in California.

31. On February 25, 2020, the Centers for Disease Control and Prevention ("CDC") announced that community spread of COVID-19 was "likely to occur" in the United States.

32. Prior to that, beginning January 26, 2020 and continuing until March 4, 2020, California state health officials repeatedly stated that "the risk to the general public" from the coronavirus was "low." In fact, on February 26, 2020, the California Department of Public Health ("CDPH") released a statement that "[w]hile COVID-19 has a high transmission rate, it has a low mortality rate." The CDPH also noted that "of those who have tested positive for COVID-19, approximately 80 percent do not exhibit symptoms that would require hospitalization."[4]

33. Despite these statements, Governor Newsom declared a state of emergency related to COVID-19 on March 4, 2020 (hereinafter "Proclamation").[5]

34. In the Proclamation, the Governor also suspended, "for the duration of [the] statewide emergency," the 30-day review period required under *Health & Safety Code*, section 101080, and the 60-day review period required under *Government Code*, section 8630, within which a local governing authority is statutorily required to review and vote to extend or terminate a local and/or local health emergency. **Nowhere in the Proclamation did the Governor suspend the duty of counties or their respective boards of supervisors to oversee the activities and conditions of their counties, and to proceed in accordance with the law in maintaining any declaration of any emergency**. (*Ibid.*)

35. As of the date of filing this Second Amended Verified Petition, the Governor did, and has **not –** via any other "proclamation," Executive Order, press conference, press release, public health "order," "guidance," "recommendation," "guideline," or "mandate"– suspended obligation and duty of local boards of supervisors, as elected officials, to (1) oversee and review the operations and conditions in their respective counties, including, but not limited to, determining the existence of conditions that may or may not justify a declaration of a local and/or local health emergency, and/or (2) terminate any such emergency as soon as conditions do not warrant. (*Ibid.; Health & Safety Code*, section 101080; *Government Code*, section 8558; Cal. Code of Ordinances (Supp. No. 146), Div. 1, Art. 1, § 3-1-2).

36. On or about March 11, 2020, California state health officials issued their first guidelines

[4] *CDC Confirms Possible First Instance of COVID-19 Community Transmission in California,* published February 26, 2020 [https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-006.aspx?TSPD_101_R0=087ed344cfab2000f538569a888fce6daca4fe2d0abd79d0adb34dba1415aa4e85632cdf8b02fb8c088ee755981448000d44358457cb6f7d0dd37198a5be461da4cd60c7b2793e6da2ed9cdbea9afc17013a554648a6111abf74580b08929ff2d35ccbf8ee006332edf8ec20a601164eaac2b89a0ee7a777 (as of September 13, 2021)].

[5] "Proclamation of a State of Emergency," https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf

for "social distancing" and suggested measures people could voluntarily undertake to slow the spread of the coronavirus.

37. On March 12, 2020, the Governor issued an Executive Order that reflected the new guidelines, including the "need to secure numerous facilities to accommodate quarantine, isolation, or medical treatment of individuals testing positive for or exposed to COVID-19[.]".

38. On March 19, 2020, the Governor ordered all Californians to stay inside their homes indefinitely, unless leaving to perform activities that were necessary to maintain the "federal critical infrastructure."

39. On May 4, 2020, the Governor announced that he would continue the Stay-at-Home Order indefinitely, without considering whether there were less restrictive ways of controlling COVID-19.

40. On August 28, 2020, the CDPH issued the Blueprint for a Safer Economy that established a procedure for assigning counties to one of four tiers based on the severity of the COVID-19 outbreak in each locality (hereinafter "Blueprint").

41. Under the Blueprint, counties were sorted into one of four color-coded tiers – red, purple, orange, yellow, from most serious COVID-19 scenario, to least – based on three metrics: their rates of new coronavirus cases, adjusted based on the number of tests performed; the rate at which conducted tests come back positive; and a health-equity metric applied to ensure that the positive test rate in poorer communities is not significantly higher than the county's overall figure.

Declaration of Emergencies in Orange County

42. On February 26, 2020, then-County Health Officer, Dr. Nichole Quick, declared a local health emergency based upon the CDC's February 25, 2020 statement pursuant to *Health & Safety Code*, section 101080, which provides in pertinent part as follows:

> . . . whenever there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, . . ., 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.

Section 101080 further requires that, "**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**. [Emphasis added]. Of note, while the governor in his Emergency Orders suspended the required review of the local emergency every 30 days, the remaining duty of the local boards of supervisors under this Health and Safety Section remains intact, namely, the Board "*shall* proclaim" the end of "the local health emergency at the earliest possible date that conditions warrant", which is a separate and distinct duty under the law from the 30- and 60-day reviews.

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

a. The County Health Officer had determined that the County was preparing for an "imminent and proximate threat to public health from the virus;"

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

c. These events created "a condition of extreme peril" to Orange County residents;

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

Ms. Steel granted the Director's request and declared a local emergency pursuant to *Government Code,* section 8630, which provides, in pertinent part, as follows:

> (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**. [Emphasis added]

44. Pursuant to *Government Code,* section 8558, a "local emergency" is defined as follows:

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

45. Ms. Steel further requested that (1) the Governor declare a state of emergency in California; and the President of the United States (2) declare a state of national emergency in and for Orange County; and (3) make all relevant funds available to Orange County and all eligible community members and businesses.[6]

46. In a press release announcing its declarations and requests, the County explained that "the declaration of a local emergency and local health emergency "**assists the County of Orange to better leverage resources in order to prepare to our staffing needs and greater agency coordination all while allowing for future reimbursement for County activities by state and federal governments in the event of an COVID-19 outbreak in Orange County**."[7] [Emphasis added].

[6] "County of Orange, State of California, Proclamation of Local Emergency, and Request for Governor to Declare State of Emergency," https://www.ocgov.com/sites/default/files/import/data/files/118217.pdf

[7] "County of Orange Declares Emergency in Response to COVID-19," https://occovid19.ochealthinfo.com/sites/virus/files/2020-03/2.%2002.26.20%20COVID-19%20Emergency%20Press%20Release%20and%20Declarations.pdf

47. During a news conference following the declarations and requests, Supervisors Do and Steel explained, "Our declaration of local emergency today signed by Dr. Quick **is about preparedness**. It does not indicate a greater risk of harm, there are no current incidents reported in the county of Orange."[8] [Emphasis added].

48. Upon information and belief, at the time of their announcement, there had been one (1) positive COVID-19 case in Orange County who had been treated and released without any further symptoms.[9]

There Is No Local Health or Other Emergency in Orange County

49. Since February 2020, 546,880 Orange County residents have tested positive for COVID-19 and 6,880 died with COVID-19.[10] Of these decedents, 1,314 lived in Skilled Nursing Facilities, 697 lived in Assisted Living Facilities, 2 were Orange County jail inmates, and 21 were homeless.[11]

50. Currently, the CDC predict the case fatality rate for COVID-19 is between 0.26 percent and 0.65 percent, and that ninety-four percent (94%) of people who have died with COVID-19 had at least one co-morbidity, such as diabetes, cancer, obesity, or heart disease.[12]

51. According to Governor Newson on October 6, 2021, California leads the nation with the lowest COVID case and death rate.[13] In fact, on or about May 18, 2021, Orange County moved to the yellow tier of the Blueprint plan, the most lenient of California's color-coded reopening tiers, meaning that for the previous two weeks, Orange County had achieved an "adjusted daily rate" of fewer than two (2) new cases per 100,000 people; overall test positivity of less than two percent (2%); and a "health-equity positivity" of less than two percent (2%).

52. Orange County's case rate has continued to drop and its positivity rating is now only one point eight percent (1.8%). Currently the ICUs in the county have more than 30% excess capacity

[8] https://www.foxla.com/news/orange-county-officials-declare-local-health-emergency-over-coronavirus

[9] *Ibid.*

[10] COVID-19 Case Counts and Testing Figures, https://occovid19.ochealthinfo.com/coronavirus-in-oc [as of March 22, 2022]

[11] *Ibid.*

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

[13] *California Becomes First State in Nation to Announce COVID-19 Vaccine Will Be Added to List of Required School Vaccinations*, October 1, 2021, https://www.gov.ca.gov/wp-content/uploads/2021/10/California-Becomes-First-State-in-Nation-to-Announce-COVID-19-Vaccine-to-List-of-Required-School-Vaccinations.pdf

and no county hospital has even been shown to be overrun throughout the "pandemic".[14]

53. Orange County has not moved up from the yellow tier since May 2021.

54. Despite these data and statistics, the County has refused to end its Emergencies.

Respondents Are Holding Orange County in a Perpetual State of Emergency Despite Health, Safety and Science and Their Constituents' Wishes because of Money.

55. As a result of maintaining the Emergencies, Respondents have unlocked access to and received over $1 billion in federal funds "intended to support communities in their recovery from the COVID-19 pandemic, address economic fallout and lay the foundation for a strong recovery" and to "respond to the COVID-19 pandemic; replace lost revenue to strengthen support for vital public services and help retain jobs; support immediate economic stabilization for households and businesses; and address public health and other economic challenges."[15] This includes over $554 million CARES money, and over $600 million in ARPA funds. Upon information and belief, these amounts do **not** include money sent from the District of Columbia to Sacramento to Orange County. Respondents continue to receive these federal funds, while failing to follow the parameters of the laws of this state, science, medicine, or the will of a majority of Orange County residents.

56. On information and belief, the majority of the federal monies Respondents has received have **not** been made available to resident business owners or individuals impacted by the pandemic or economic downturn, but have, instead, been used by Respondents to implement dozens of unnecessary "mental health," "homelessness," "vaccination," digital proof of verification, and other programs and projects, ***many of which have not been activated,*** and/or line the pockets of contractors and other persons with special interests, or with whom Respondents have financial or personal connection, via improper, expedited, and clandestine "bidding processes," and/or otherwise retained by Respondents for their personal use, resulting in waste and misuse of these funds.

57. Each time the vote on whether or not to extend the Emergencies has been on the agenda for a public meeting, Petitioner Hall, CHD CA members – and hundreds of other Orange County

[14] COVIDActNow, https://covidactnow.org/us/california-ca/county/orange_county/?s=25081423 [as of March 22, 2022]

[15] https://cfo.ocgov.com/resources/arpacares-act-reports]

residents – have attended the meeting to voice their desire that all Emergencies end, and to provide the Board with data to support a finding that no local emergency exists.

58. In fact, based upon these statements and information, which were presented at city council meetings throughout ORANGE COUNTY, the city councils of Brea, Tustin, Villa Park, Laguna Niguel, Yorba Linda, Newport Beach, Huntington Beach, San Juan Capistrano, Aliso Viejo, and Fullerton voted to end their local emergencies, pursuant to their statutory and legal obligations and duties to do so. Based upon their review of Petitioners', and others', data and information, these cities' councils all determined that no conditions existed in their respective cities warranting any so-called local or local health emergency.

59. Despite Hall's, CHD-CA's members', other Orange County residents' requests that Respondents vote to end the Emergencies, neighboring cities' councils' decisions to end their respective emergencies, and the fact that no conditions exist in Orange County that "are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat," Respondents have refused to (1) review the conditions warranting the Emergencies, or (2) end the Emergencies.

60. Not only have Respondents failed and refused to review the County's conditions and/or terminate the Emergencies as required by *Government Code,* section 8630 and *Health & Safety Code,* section 101080, but they have completely – and unlawfully, without any authority permitting as much – abdicated these statutory obligations.

61. On June 23, 2021, the 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."** [Emphasis in original].

The Board's vote delegated to the Governor all of Respondents' authority, obligations, and duties as a local board of supervisors to (1) review the County's conditions, and (2) terminate their

declarations of Emergencies at the "earliest moment conditions warrant." This is a clear and present dereliction of duty that this honorable Court must remedy on behalf of Petitioners and the people of Orange County.

This is especially true whereas, here, Respondents have failed to provide any response to demands from Orange County residents for an explanation why the Board has not voted to terminate the state of emergency despite its low case numbers and deaths; no conditions beyond the control of the services, personnel, equipment, and facilities of Orange County requiring the combined forces of other political subdivisions exist or have ever occurred; and Respondents have **admited time and time and again <u>that they are only maintaining the Emergencies to unlock additional federal funding</u>.**

62. As of the date of filing this Second Amended Verified Petition, the Board has not terminated the Emergencies and does not intend to review or end either of the Emergencies, unless and until the Governor does so in their stead.

63. Declaratory and injunctive relief is proper here because Respondents have denied that they have violated *Health & Safety Code*, section 1010180 *et seq.* and/or *Government Code*, section 8630 *et seq.*, and others, and will continue to refuse to review Orange County's conditions ad/or vote whether or not to extend the Emergencies. Petitioners and their members have no adequate remedy at law, and will suffer irreparable harm, including but not limited to loss of employment, business opportunities, and good will; denial of medical services, treatment, and care; denial of access to necessary services and places of public accommodation; denial of an education; and forced compliance with ineffective "COVD-19 safety measures detrimental to the emotional, psychological, and physical well-being of Petitioners, its members, and their children, up to and including death by suicide, if the Court does not mandate conformance to law by these Respondents.

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FIRST CAUSE OF ACTION

Writ of Mandate – Violation of Mandatory Duty, Proceeding Without or in Excess of Jurisdiction and Authority, Abuse of Discretion for Failure to Proceed in the Manner Required by Law; Cal. Health & Safety Code, § 101080; Code of Civ. Proc., §§ 1085, 1094.5

(By all Petitioners Against all Respondents)

64. Petitioners reallege and incorporate by reference the foregoing paragraphs of this Petition, as though fully set forth herein.

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

66. Specifically, Respondents have violated clear and mandatory duties under *Health & Safety Code*, section 101080 by failing to terminate the local health emergency at the earliest possible date that conditions warrant, including failing to review the conditions which warranted the declaration of emergency in the first place and by voting to delegate this duty to the California Governor in violation of the statutory duties of the county and local board to perform such review.

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

68. Petitioner Hall, and those CHD CA members similarly situated have been, are being, and will continue to be harmed by Respondents' actions of failing to terminate the emergency and potentially reinstating and requiring ongoing COVID-19 measures that, *inter alia,* restrict their ability to conduct business, to be healthy, and to exercise and enjoy other rights and privileges of being a healthy American resident of Orange County under these improper emergency powers.

69. Petitioner Hall and CHD CA members residing in Orange County will be irreparably harmed if this writ of mandamus and accompanying preliminary injunction of continued implementation of the Emergencies in order to return to the pre-COVID19 status quo is not issued and/or an order directing Respondents to perform a review of local conditions pursuant to the statute pending resolution of this dispute, and a peremptory writ is not issued at the conclusion of this litigation requiring Respondents to vacate and rescind the Emergencies.

70. Respondents have further violated clear and mandatory ministerial duties under *Health & Safety Code*, section 101080 by "punting" the obligations to terminate the local health emergency at the earliest possible date conditions warrant by voting to approve termination of the local health emergency "**UPON THE GOVERNOR'S TERMINATION OF THE STATE OF EMERGENCY WITHOUT FURTHER ACTION OF THE BOARD.**"

71. Respondents have a clear and present duty to follow the law by both reviewing the conditions warranting the declaration of local emergency and/or local health emergency and terminating it as soon as conditions warrant. Respondents cannot demonstrate that they are fulfilling their duties as described hereinabove if they never review the conditions warranting the "emergency" in order to make this determination and fulfill this duty.

72. Unless enjoined and mandated to act, Respondents will continue to violate these rights, and Petitioner and the general public will suffer irreparable harm.

73. A writ and/or injunction and/or alternative writ bringing Respondents' duties into conformance with the law will not prevent Respondents from exercising their duties in the future if and when conditions of disaster or of extreme peril to the safety of persons or property arise, which warrant a new declaration of emergency to be issued.

74. Wherefore Petitioners pray for the relief described below.

SECOND CAUSE OF ACTION

Writ of Mandate – Violation of Mandatory Duty, Proceeding Without or in Excess of Jurisdiction and Authority, Abuse of Discretion for Failure to Proceed in the Manner Required by Law; Violation of Cal. Gov. Code, § 8630; Code of Civ. Proc., §§ 1085, 1094.5

(By all Petitioners Against all Respondents)

75. Petitioners reallege and incorporate by reference the foregoing paragraphs of this Petition, as though fully set forth herein.

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

77. Specifically, Respondents have violated clear and mandatory duties under Government Code, Section 8630 by failing to terminate the local emergency at the earliest possible date that conditions warrant, including failing to review the conditions which warranted the declaration of emergency in order to make such determination pursuant to this duty.

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

79. Petitioner Hall and CHD CA members who reside in this county have been, are being, and will continue to be harmed by Respondents' actions of failing to terminate the emergency and requiring ongoing COVID-19 measures that, *inter alia,* restrict her ability to conduct business, to be healthy, and to exercise and enjoy other rights and privileges of being a healthy American resident of Orange County

80. Petitioner will be irreparably harmed if this writ of mandamus and accompanying preliminary injunction of continued implementation of the Emergencies in order to return to the pre-COVID19 status quo is not issued and/or injunctive order to review the local conditions warranting the Emergencies pending resolution of this dispute, and a peremptory writ is not issued at the conclusion of this litigation requiring Respondents to vacate and rescind the Emergencies.

81. Respondents have further violated clear and mandatory ministerial duties under Government Code, Section 8630 by "punting" their obligations to terminate the local health emergency at the earliest possible date conditions warrant by voting to approve termination of the local health emergency "**UPON THE GOVERNOR'S TERMINATION OF THE STATE OF EMERGENCY WITHOUT FURTHER ACTION OF THE BOARD.**"

82. Respondents have a clear and present duty to follow the law by both reviewing the conditions warranting the declaration of local emergency and/or local health emergency and terminating it as soon as conditions warrant. Respondents cannot demonstrate that they are fulfilling their duties as described hereinabove if they never review the conditions warranting the "emergency" in order to make this determination.

83. Unless enjoined, and/or mandated to act, Respondents will continue to violate these rights, and Petitioners and the general public will suffer irreparable harm.

84. A writ and/or injunction and/or alternative writ bringing Respondents' duties into conformance with the law will not prevent Respondents from exercising their duties in the future if and when conditions of disaster or of extreme peril to the safety of persons or property arise, which warrant a new declaration of emergency to be issued.

85. Wherefore Petitioners pray for the relief described below

THIRD CAUSE OF ACTION

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

(By all Petitioners Against all Respondents)

86. Petitioners reallege and incorporate by reference the foregoing paragraphs of this Petition, as though fully set forth herein.

87. In declaring and subsequently maintaining the local and local health emergencies, Respondents were statutorily obligated to follow a reasoned decision-making process that considered all relevant factors and evidence associated with their declarations of emergency.

88. Respondents violated those requirements, 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 emergency; 2) failing to take into consideration, *ab initio,* the fiscal, physical, and psychological impact of the declarations of either emergency*;* 3) failing to take into consideration the fiscal, physical, and psychological impact of the declarations of either emergency since the time of the initial declarations twenty-five (25) months ago in any review of the declaration of emergency; 4) failing to do any review of the conditions that warrant declaring a local emergency; 5) and/or filing to consider alternative, lesser-restrictive, and actually effective means for responding to COVID-19.

89. Instead, Respondents decided to respond to a potential threat without any **local** data or evidence in support, voted to make it happen, and, since that time, have – admittedly – maintained these declarations to maintain access to federal emergency / relief monies and failed to perform any review of local conditions that warrant voting to continue the initially declared emergency.

90. Under *Code of Civil Procedure*, section 1085, this court has authority to set aside quasi-legislative agency action that is arbitrary and capricious.

91. Petitioner Hall and CHD CA members who reside in this county have been, are being, and will continue to be harmed by Respondents' arbitrary and capricious actions as herein described.

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

93. Unless enjoined, and/or mandated to act, Respondents will continue to violate the law, and Petitioners and the general public will suffer irreparable harm.

94. A writ and/or injunction and/or alternative writ bringing Respondents' duties into conformance with the law will not prevent Respondents from exercising their duties in the future if and when conditions of disaster or of extreme peril to the safety of persons or property arise, which warrant a new declaration of emergency to be issued.

95. This action is seeking to enforce an important right affecting the public interest. Therefore, Petitioners should recover their costs and legal fees under section 1021.5 of the Code of Civil Procedure.

96. Wherefore Petitioner pray for the relief described below.

FOURTH CAUSE OF ACTION

Declaratory Relief, Code Civ. Proc., § 1060

(By all Petitioners Against all Respondents)

97. Petitioner realleges and incorporates by reference the foregoing paragraphs of this Petition, as though fully set forth herein.

98. Respondents contend that they have the power to declare and maintain local and local health emergencies pursuant to *Government Code,* section 8630 and *Health & Safety Code,* section 101080, but that they do not have the obligation to review or terminate the Emergencies as provided by the statutes.

99. Petitioners contend that Respondents have an ongoing, active, and affirmative duty under *Health & Safety Code,* section 101080 and *Government Code,* section 8630 to review, *inter alia*,

local Orange County conditions to determine whether or not these justify a declaration of either a local or local health emergency.

100. Petitioner seek a declaration from this Court that Respondents maintain the statutory obligation to (1) review conditions within their County to determine the 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 (e.g. 15 days, 30 days, 45 days, 60 days, 100 days, etc.).

101. Declaratory relief is proper to seek interpretation of statutes governing an administrative agency, as opposed to review of specific agency decision, and an actual and present controversy exists with respect to the disputes between Petitioner and Respondents, as alleged above (Code Civ. Proc., § 1060).

102. Absent declaratory relief, Respondents' actions will continue to cause irreparable harm to Petitioner who are impacted by the continued declaration of the Emergencies.

103. This action is seeking to enforce an important right affecting the public interest. Therefore, Petitioners should recover their costs and legal fees under section 1021.5 of the Code of Civil Procedure.

104. Wherefore Petitioner pray for the relief described below.

FIFTH CAUSE OF ACTION

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

(By all Petitioners Against all Respondents)

105. Petitioners reallege and incorporate by reference the foregoing paragraphs of this Petition, as though fully set forth herein.

106. Respondents contend that they have the power to declare and maintain local and local health emergencies pursuant to *Government Code,* section 8630 and *Health & Safety Code,* section 101080, and that they do not have the obligation to review either emergency pursuant to the Governor's Proclamation, nor the obligation to terminate it at the earliest date conditions warrant.

107. As of the date of filing this Second Amended Petition, Respondents have not committed to review or terminate the Emergencies.

108. Respondents' actions have already caused and will continue to cause irreparable harm to Petitioner Hall and hundreds of thousands of Orange County residents impacted by the Emergencies, including members of CHD CA.

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

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

111. This action is seeking to enforce an important right affecting the public interest. Therefore, Petitioners should recover their costs and legal fees under section 1021.5 of the Code of Civil Procedure.

113. Wherefore Petitioners pray for the relief described below.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

1. That the court issue a preliminarily and permanent injunction enjoining Respondents from further violating *Health & Safety Code*, section 101080 *et seq.*, and compelling Respondents to review the conditions in the County and whether they warrant a continued declaration of local health emergency and vote whether to end the local health emergency pursuant to the statute;

2. That the court issue a peremptory writ of mandate ordering Respondents to comply with *Health & Safety Code*, section 101080 *et seq.*, to review the conditions in the County and whether they warrant a continued declaration of local health emergency, and to vote whether to end the local health emergency pursuant to the statute; to inform Orange County residents whether or not the local emergency has been terminated and the reasons therefor, and issue a return to this Court verifying that Respondents have completed these actions;

3. That the court issue a preliminarily and permanent injunction enjoining Respondents from further violating *Government Code*, section 8630 *et seq.*, and compelling Respondents to review

the declaration of a local emergency to determine if conditions warrant its termination;

4. That the court issue a peremptory writ of mandate ordering Respondents to comply with *Government Code*, section 8630 *et seq.*, to review the conditions in the County and whether they warrant a continued declaration of local emergency, and to vote whether to end the local emergency, to inform Orange County residents whether or not the local emergency has been terminated and the reasons therefore, and issue a return to this Court verifying that Respondents have completed these actions;

5. That the court award Petitioner reasonable attorneys' fees and costs of litigation under *Code of Civil Procedure*, section1021.5, 42 U.S.C. § 1988, and any other applicable provisions of law;

6. That the court immediately issue an alternative writ and order to show cause, and/or temporary stay preventing Respondents from voting to extend or maintain the Emergencies absent a proper review of conditions, pending issuance of a peremptory writ prayed for in paragraphs 69 and 80, above or showing cause why they should not be so ordered;

7. That the court issue a temporary restraining order enjoining Respondents from applying for and/or receiving state and/or federal monies to "address" the effects of COVID-19 in Orange County until the conclusion of this petition and a permanent injunction enjoining continued declaration of either emergency;

8. That the court issue a temporary restraining order enjoining Respondents from spending, allocating, or otherwise using or directing state or federal monies to "address" the effects of COVID-19 in Orange County until the conclusion of this petition.;

9. That the court grant any other relief the court deems just and proper.

LAW OFFICE OF NICOLE C. PEARSON
FACTS LAW TRUTH JUSTICE

Dated: March 30, 2022

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

DocuSign Envelope ID: C6E3E3F6-EAA2-4CB8-8D2C-CA19333583E0

VERIFICATION

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

Executed this 30th of March 2022, in San Diego, California.

DocuSigned by:

975B9FDC57F34CD...

Petitioner PEGGY HALL

VERIFICATION

I, Denise Young, am the Executive Director of Petitioner Children's Health Defense, California Chapter and I am a resident of the County of Los Angeles, State of California. I have read the foregoing Second Amended Verified Petition for Writ of Traditional and Administrative Mandate and Complaint for Declaratory and Injunctive Relief, I have personal knowledge of the facts alleged herein, and I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 30th day of March, 2022, in Santa Monica, California.

Denise Young, Executive Director of Children's Health Defense, California Chapter, Petitioner

PROOF OF SERVICE

I am over the age of 18 and not a party to the within action. My business address is **3421 Via Oporto, Suite 201, Newport Beach, Calif. 92263.**

On the date below, I served the following document(s) described as **AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Kayla N. Watson Office of the County Counsel County of Orange 333. W, Santa Ana Blvd., Suite 407 Santa Ana, CA 92701-1379 *Deputy County Counsel* Suzy.Shoai@coco.ocgov.com Kayla.Watson@coco.ocgov.com Kevin.Dunn@coco.ocgov.com Rebecca.Leeds@coco.ocgov.com	Leon J. Page Office of the County Counsel County of Orange 333. W, Santa Ana Blvd., Suite 407 Santa Ana, CA 92701-1379 *County Counsel* leon.page@coco.ocgov.com

/x / **Via Electronic Transmission.** By personally emailing the aforementioned document(s) in PDF format to the respective email address(es) listed above on pursuant to stipulation and agreement between counsel for the parties and/or Court order. I did not receive an electronic message indicating any errors in transmission.

/ / **By Mail.** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U. S. Postal Service on that same day with postage thereon fully prepaid at Irvine, CA in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing of affidavit.

/ / **By Personal Service.** I delivered such envelope by hand to the addressee on 09/14/2021.

/ X / **State.** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/ / **Federal.** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed at **NEWPORT BEACH, California**.

DATED: March 30, 2022

MICHELLE CUSUMANO