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11 PEGGY HALL, CHILDREN'S
12 HEALTH DEFENSE-CALIFORNIA CHAPTER

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

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

20 Petitioners,

21 vs.

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

24 Respondents.

Case No.: 20-2021-01220678-CU-WM-CJC

PETITIONERS' NOTICE OF EX PARTE APPLICATION FOR (1) DETERMINATION RE: THE VALIDITY OF RESPONDENTS' NOTICE OF RELATED CASES; (2) ORDER GRANTING PETITIONERS LEAVE TO FILE A MOTION FOR ATTORNEYS' FEES AND COSTS; AND (3) ADVANCEMENT OF ORDER TO SHOW CAUSE HEARING; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

[Declaration of Nicole C. Pearson in support; Request for Judicial Notice; and [Proposed] Order filed concurrently herewith]

Complaint Filed: September 14, 2021

Trial Date: None yet

Hearing: December 13, 2022

Time: 1:30 p.m.

Dept.: C23

25
26 **TO THIS HONORABLE COURT AND TO ALL PARTIES AND COUNSEL OF**
27 **RECORD:**
28

1 PLEASE TAKE NOTICE that on **Tuesday, December 13, 2022, at 1:30 p.m.** in Department
2 C23 of the above-referenced court, 700 Civic Center Drive, Santa Ana, California, Petitioners PEGGY
3 HALL and CHILDREN’S HEALTH DEFENSE-CALIFORNIA CHAPTER (hereinafter collectively
4 “Petitioners”) will move this court *ex parte* for (1) a Determination of the invalidity of the belated
5 Notice of Related Case of Respondents COUNTY OF ORANGE and ORANGE COUNTY BOARD OF
6 SUPERVISORS (hereinafter collectively “Respondents”); (2) an order granting Petitioners leave to file
7 a Motion for Attorneys’ fees and costs resulting from the improper, belated Notice; and (3) to Advance
8 the Order to Show Cause Hearing Date to the earliest date available or, in the alternative, maintain Judge
9 Hunt as the presiding judge for the January 20, 2023 hearing currently scheduled in this department
10 (hereinafter “Application”) on the following grounds:

11 1. On November 10, 2022, this case was assigned to Department C23, including an Order to Show
12 Cause (“OSC”) hearing on December 1, 2022, which had been issued against Respondents by Judge Lee
13 after the September 22, 2022 hearing on Petitioners’ Alternative Writ Petition and Respondents’
14 Demurrer;

15 2. The reason this case was assigned to Department C23 was due to an improper and belated Notice
16 of Related Case filed by Respondents on October 14, 2022 – over one year after this matter was initiated
17 on September 14, 2021 – (hereinafter “Notice”) which triggered Judge Lee to recuse himself in **this**, the
18 *Hall* matter, on the grounds that he had recused himself in the purportedly related case – *Orange County*
19 *Board of Education v. Newsom* matter (OCSC Case No. 30-2021-01233170) (“*Newsom*”) – in 2021.

20 3. Petitioners, as well as Governor Newsom, filed Oppositions to Respondents’ Notice on October
21 17 and October 19, 2022, respectively, on the grounds that *Hall* and *Newsom* are **not** in any way related;

22 4. As of the date of filing this Application, no ruling has been made on Respondents’ belated,
23 improper Notice;

24 5. On October 24 and November 14, respectively, Respondents filed their Answer to Petitioners’
25 Second Amended Verified Petition (“SAVP”) and their Opposition and Response to Judge Lee’s OSC,
26 with evidence in support (“Opposition”), in Department C23, and Petitioners filed their Rely to the
27 Opposition on November 21, also in this Department, pursuant to Judge Lee’s order;

28 6. On December 1, 2022, the OSC came on regularly for hearing with counsel for Petitioners and

1 Respondents appearing in person. Thereat, this Court (1) continued the OSC to January 20, 2023 due to
2 its absence since being assigned to this case on November 10, and its inability to review the moving
3 papers prior to the hearing, and (2) informed the parties that Honorable Judge Hunt would be retiring
4 and taking accrued vacation prior to or during the newly set January 20, 2023 hearing date;

5 7. Because of Respondents' severely belated and improper Notice, Petitioners' suit has, now, been
6 delayed and Petitioners, who represent tens of thousands – if not millions – of Orange County residents,
7 have been severely prejudiced, including but not limited to the following:

8 1. Petitioners filed their straightforward Writ Petition over one year ago after **Respondents**
9 **voted on June 22, 2021 not to exercise their statutory obligations** under the *Health*
10 *and Safety Code* and *Government Code* or *Health* to publicly review local COVID-19
11 conditions and vote to extend or terminate the local emergency or local health emergency
12 arising out of and relating thereto (hereinafter collectively “Emergencies”) and **have not**
13 **held one public meeting regarding the conditions purportedly justifying the ongoing**
14 **declarations of the Emergencies for over a year-and-a-half**. As a result, Petitioners
15 have – and continue to be – subject to unsubstantiated COVID-19 “health and safety
16 measures” without any Due Process or other constitutional or statutory protections;

17 2. **On November 29, 2022, Respondents:**

18 a. Voted to extend the newly-declared “RSV and other respiratory illnesses” local
19 emergency and local health emergency and, again, **expressly delegated the**
20 **authority to terminate said emergencies – a power granted explicitly to local**
21 **boards of supervisors or “local governing boards” of California counties**
22 **under *Government Code*, section 8630, and *Health and Safety Code*, section**
23 **101080 – to the County Health Officer.**

24 b. **Without public comment or discussion, awarded a \$78,240,000 contract** to
25 Canadian company PCL Construction Services, Inc. to design and build a new
26 Orange County Health Care Agency Campus at the El Toro Marine Base,
27 including the following facilities:

28 1. Public Health Lab with Biosafety Lab Component – 25,000 SF;

2. Communicable Disease Control Services – 22,000 SF;
3. Emergency Management Center – 12,000 SF;
4. Agency Operations Center – 9,000 SF;
5. Parking and security fencing – N/A; and

c. Proposed to vote upon – **then continued without notice** – a vote to **approve a \$3,446,400 increase in Orange County’s “disease control and preventative health technology enabled solution,” or “vaccine passport” software.**

In other words, as this OSC is continued again and again and the determination whether Respondents are satisfying their statutorily and court-mandated duties to conduct public review hearings of local COVID-19 conditions and to vote to terminate the Emergencies at the earliest date said conditions warrant, Respondents **continue** to flagrantly abdicate, delegate, and violate their statutory and constitutional obligations; and hold Petitioners – and over 3 million Orange County residents – in illegal, unconstitutional, unscientific, unsubstantiated “health emergencies” subject to arbitrary health orders without due process of law; and to defraud the state and federal government of hundreds of millions of dollars, currently **in excess of \$616.8 million**. Failure to grant Petitioners’ request for relief on an *ex parte* basis will (i) cause Petitioners and thousands of Orange County residents significant prejudice and irreparable harm; (ii) permit Respondents to unlawfully judge shop over one (1) year into this litigation and days before the OSC that was going to force them to demonstrate whether or not violated the law; (iii) waste judicial resources ; and (iv) unduly delay the hearing on the OSC.

No party has made any prior application for the relief sought by this *ex parte* application. (*See* CRC 3.1202(b); Declaration of Nicole C. Pearson (“Pearson Decl.”), ¶3).

Proper notice of this *ex parte* application was given to Respondents as required by *California Rule of Court*, rules 3.1203 and 3.1204 before 10:00 a.m. December 12, 2022. (Pearson Decl., ¶¶4-6), and these papers properly and timely filed and provided to this Court. (*Ibid.*).

This Application is made pursuant to *California Rules of Court*, rules 3.1150, 3.1200 *et seq.*, and is based upon this Notice and Memorandum of Points of Authorities, the Declarations of Nicole C. Pearson filed in support; Request for Judicial Notice; and [Proposed] Order filed concurrently herewith;

1 as well as the complete files and record of this action, and such other oral or documentary evidence as
2 may be presented at the hearing on this Application.

3 Dated: December 12, 2022

LAW OFFICES OF NICOLE C. PEARSON

4
5
6 By: 

Nicole C. Pearson

Jessica Barsotti

Rita Barnett-Rose

Attorney for Petitioners

PEGGY HALL and CHILDREN'S HEALTH

DEFENSE – CALIFORNIA CHAPTER

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 On October 6, 2022 – over one year into this litigation, and days after a substantive ruling against
4 them on September 22 – Respondents claim to have “suddenly” discovered that this case, *Peggy Hall, et*
5 *al. v. County of Orange, et al.* (Case No. 30-2021-01220678-CU-WM-CJC) filed on September 14, 2021
6 (“*Hall*”) “was related to” *Orange County Board of Education v. Newsom* (Case No. 30-2021-01233170-
7 CU-CR-CJC), filed on November 23, 2021 (“*Newsom*”). Despite this, Respondents waited over a week to
8 file a belated and improper Notice of Related cases on October 14, 2022 (“*Notice*”), claiming that because
9 **one of eight** parties is the same in both matters *Hall* and *Newsom* are related and merit reassigning of both
10 to the same judge in order to “promote judicial efficiency.” This is despite the fact there are *no* common
11 counsel, claims, underlying facts, or requests for relief. Because their claims were factually inaccurate,
12 statutorily insufficient, and more than one year too late, Petitioners, **as well as Governor Newsom**,
13 immediately filed objections to the Notice. Petitioners asked Judge Lee – the judge on the earlier-filed
14 case who would have ordinarily been tasked with making determination of relation under California *Rule*
15 *of Court*, rule 3.300(h) – to reject their belated and improper Notice as impermissible “judge shopping”
16 over one year into litigation; a violation of the principles of fairness, judicial economy underlying rule
17 3.300; and violation of the parties’ rights to an impartial and expeditious ruling on the merits. (*See C.C.P.*
18 *§§ 170.1 et seq.*; CRC 3.300). *Newsom* echoed these concerns. Despite this – and seemingly without
19 considering the Oppositions – Judge Lee issued a Minute Order on October 21, 2022 stating that he could
20 not decide the issue of relation under *Code of Civil Procedure*, section 170.3(a) (1), due to his
21 disqualification and recusal in *Newsom* in November 2021. While this limited recusal on the determination
22 of relatedness might have been warranted, he then inexplicably recused himself **in this matter** pursuant to
23 *Code of Civil Procedure*, sections 170.1(a)(6)(A) (i), (iii) and 170.3(a)(1), and referred the matter to
24 Department C1 for re-assignment. Because Judge Lee’s Minute Order appeared to violate *Rule of Court*,
25 rule 3.300(j), which requires the **original** judge assigned to a case to **resume presiding** over a matter if it
26 is not deemed related to another case, Petitioners immediately prepared a Request for Clarification of the
27 Minute Order, but by the time Petitioners’ papers were ready for filing, *Hall* had already been reassigned.

28 As of the date of this Application, **two months** have passed since Respondents filed their belated

1 and improper Notice, yet no determination has been made. Additionally, this litigation has been thrown
2 into chaos and uncertainty, while Respondents **continue** to flout the law, harm millions of Orange County
3 residents, and defraud the state and federal government, regarding purported local health emergencies.
4 Accordingly, Petitioners respectfully ask this Court to (1) rule on the invalidity of Respondents’ Notice of
5 Related Cases; (2) grant Petitioners leave to file a Motion for Fees and Costs relating to the Notice; and
6 (3) advance the January 20 OSC to the earliest date possible or, in the alternative, maintain Judge Hunt to
7 hear this matter on January 20, 2023, as scheduled, to prevent further prejudice to Petitioners..

8 **II. PROCEDURAL POSTURE**

9 Petitioners filed the underlying action on September 14, 2021 after Respondents voted on June 22,
10 2021 to “**APPROVE IMMEDIATE TERMINATION OF THE LOCAL HEALTH EMERGENCY**
11 **AND LOCAL EMERGENCY RELATED TO NOVEL CORONAVIRUS COVID-19 UPON THE**
12 **GOVERNOR’S TERMINATION OF THE STATE OF EMERGENCY AND WITHOUT FURTHER**
13 **ACTION OF THE BOARD**” and thereafter not holding **one** public meeting to review local COVID-19
14 conditions, or vote whether to terminate the local emergency or local health emergency. (Register of Actions
15 (“ROA”), No. 1; Request for Judicial Notice (“RJN”), ¶3, Exhibit A [emphasis in original]).

16 After several demurrers and amendments to the Petition, on May 23, 2022, Petitioners filed an
17 Application for Alternative Writ, asking the Court – then, Judge Lee – to issue an alternative writ of
18 mandate commanding Respondents to (a) satisfy their clear, affirmative ministerial duties and statutory
19 obligations as the governing body / Board of Supervisors of Orange County to review local COVID-19
20 conditions and determine whether said conditions justified ongoing declarations of the Emergencies, and
21 to terminate the Emergencies if the conditions warranted; or (b) show cause why they are not obligated to
22 do so under applicable law (hereinafter “Writ Application”). (ROA No. 70).¹

23 In Judge Lee’s September 21 tentative ruling, he **overruled** Respondents’ Demurrer, issued
24 Petitioners’ alternative writ, and Ordered Respondents to file a Verified Answer to the SAVP. (ROA Nos.
25 155, 160). In granting the writ, Judge Lee ordered:

26
27 ¹ On August 18, the Court, *sua sponte*, continued the hearing on the Writ Application to September 22,
28 2022, to be heard the same day as Respondents’ Demurrer to Petitioners’ Second Amended Verified
Petition (“SVAP”). (ROA Nos. 111, 112, 143).

1 IT IS ORDERED that an Alternative Writ of Mandate issue commanding Respondents
2 to review local conditions to determine whether there remains the need for continuing
3 the local health emergency and/or local emergency as required by Health & Safety Code
4 section 101080 and Government Code section 8630(c), and to proclaim the termination
5 of the local health emergency and/or local emergency should conditions warrant as
6 required by Health & Safety Code section 101080 and Government Code section
7 8630(d), or in the alternative, to show cause why Respondents have not done so on the
8 date and time set forth below. The Order to Show Cause is set for 12/1/2022 at 1:30 p.m.
9 No later than 5 court days before that hearing, Petitioners and Respondents may file a
10 status report, not to exceed five pages, detailing whether the Code mandated review
11 hearings have occurred, the outcome of such hearings, and when the next hearings are
12 scheduled, if any.

13 At the September 22 hearing, Judge Lee indicated he would adopt his tentative ruling. (Pearson
14 Decl., ¶7). Upon hearing this – and after vigorously insisting **for over one year** that Respondents had no
15 duty of any kind to review local COVID-19 conditions, let alone conduct public meetings to do so and/or
16 to vote to terminate the Emergencies – Respondents did a complete 180 and argued for the first time that
17 they **had**, in fact, been conducting the statutorily-required review hearings all along, and asked for an
18 opportunity to show this to the Court. (*Ibid.*). As a result, and in response to the same, Judge Lee added
19 the following paragraph to his final ruling via separate Minute Order:

20 The tentative ruling becomes the following order with the following exception. ... The
21 following paragraph is added at the end of the tentative ruling. ... In the alternative,
22 **Respondents are ordered to show cause whether the Board of Supervisors is**
23 **complying with their obligations under the law and conducting the *statutorily***
24 ***mandated review hearings***. Respondents may submit a brief in support of their position,
25 not to exceed 15 pages and may submit evidence by way of declarations. Any such briefs
26 and evidence shall be filed and served no later than November 14, 2022. Petitioners may
27 submit a reply brief, not to exceed 15 pages. The reply brief, if any, shall be filed and served
28 no later than November 21, 2022.

(ROA No. 160 [emphasis added]). Immediately thereafter, and **over one year after** both the *Hall* and
Newsom lawsuits began, Respondents filed the belated and improper Notice of Related Cases on October
14, 2022, claiming that *Hall* was related to *Newsom* – a case from which Respondents **knew** Judge Lee
had already recused himself. (ROA No. 173). Petitioners, as well as Governor Newsom, the defendant in
the *Newsom* matter, filed Oppositions into the Notice on October 17 and 19, respectively given that the
cases were **not** related and that the Notice was both substantively and procedurally improper and
impermissible. (*Id.*, No. 171; RJN ¶4, Exhibit B). Despite this, the instant case was assigned to

1 Department C23 on October 24, 2022. (Id. No. 180).

2 After not receiving a determination on the belated, improper Notice for several weeks or knowing
3 in which courtroom they would ultimately be assigned, but after Judge Lee recused himself and refused to
4 clarify his recusal prior to a determination of relatedness, on November 3, Petitioners filed an *ex parte*
5 application seeking a determination on Respondents' Notice. (ROA Nos. 200-205). Judge Nathan Vu
6 denied Petitioners' request on the grounds that the ruling would not change matters for Petitioners, and that
7 the Notice could remain undecided for the remainder of this litigation without issue. (Id. No. 210).

8 On November 10, 2022, this matter was then transferred back to Department C23. (Id. No. 211).

9 On November 14, 2022, Respondents filed their Opposition and Response to the OSC with 209
10 pages of "evidence" in support in Department C23. (Id. Nos. 218, 220, 222).

11 On November 21, 2022, Petitioners filed their Reply. (Id., Nos. 226, 228, 230, 231, 238).

12 On November 28, 2022, Petitioners filed a Motion to Strike Respondents' unverified answer to the
13 SAVP. (Id., No. 240). The hearing on the Motion is set for December 23, 2022 in this department.

14 On December 1, 2022, the OSC came on regularly for hearing and this Court (1) continued the OSC
15 to January 20, 2023, and (2) announced its retirement. (Id., No. 248; Pearson Decl., ¶8).

16 Unbeknownst to Petitioners, just days before the December 1, 2022 hearing, Respondents held a
17 public board meeting and voted to (1) extend a RSV and "other respiratory illness" local emergency and
18 local health emergency under *Government Code*, section 8630, and *Health and Safety Code*, section
19 101080, respectively, continuing for 30 days until terminated; (2) "delegate[ed] to County's Health Officer
20 authority to terminate the declaration at the earliest possible date"; (3) approved, without public comment,
21 an over \$78 million contract to design and build a 10-plus acre "health campus" at the El Toro marine base;
22 and (4) attempted to approve almost \$3.5 million to further develop Orange County's digital proof of
23 vaccination system, or "vaccine passport." (RJN, ¶5, Exhibit C).

24 **III. LEGAL ARGUMENT**

25 **A. Petitioners Gave Respondents Proper Notice and Timely Filed This Application.**

26 California *Rules of Court*, rule 3.1203 states that a party seeking an *ex parte* order "must notify all
27 parties no later than 10:00 a.m. the court day before the *ex parte* appearance, absent a showing of
28 exceptional circumstances that justify a shorter time for notice. (CRC 3.1203(a)). An *ex parte* application

1 must be accompanied by a declaration stating (a) the notice given, including the date, time, manner, and
2 name of the party informed, the relief sought, any response, and whether opposition is expected, and that,
3 within the applicable time under rule 3.1203, the applicant informed the opposing party where and when
4 the application would be made; (b) that the applicant, in good faith, attempted to inform the other party,
5 but was unable to do so, specifying the efforts made; or (c) for reasons specified, the applicant should not
6 be required to inform the opposing party. (CRC 3.1204(b)). In accordance with California *Rules of Court*,
7 rules 3.1200 *et seq.*, prior to 10:00 a.m. on November 12, counsel for Petitioners advised Respondents’
8 counsel and counsel for Newsom by phone of their intent to move Department C23 *ex parte* at 1:30 p.m.
9 on December 13, 2022 for (1) a ruling on the propriety of Respondents’ belated, improper Notice; (2) an
10 order granting Petitioners leave to file a Motion for Attorneys Fees and Costs associated therewith; and (3)
11 advancement of the January 20, 2023 OSC, and confirmed this notice in writing. (Pearson Decl., ¶¶4, 5).

12 Counsel for Respondents stated that intended to oppose Petitioners’ *ex parte* application and attend
13 the hearing. (Id., ¶4). As of the date of filing this Application, counsel for Newsom have confirmed receipt
14 of Petitioners’ notice, but not yet confirmed if they will attend and/or oppose the Application. (Id., ¶5).

15 Petitioners’ counsel timely and properly filed and served Petitioners’ *ex parte* papers before 12
16 p.m. and arranged for courtesy copies to be delivered to the Court by 2 p.m. (Id., ¶6).

17 **B. Hearing Petitioners’ Request *Ex Parte* Is Warranted to Prevent Further**
18 **Irreparable Harms to Petitioners and Millions of Orange County Residents.**

19 An applicant seeking *ex parte* relief typically must make an affirmative factual showing in a
20 declaration containing competent testimony based on personal knowledge of irreparable harm, immediate
21 danger, or any other statutory basis for granting relief *ex parte*. (CRC 3.1202(c)). Here, an expeditious
22 determination of the validity of Respondents’ Notice and OSC hearing are necessary to prevent further
23 irreparable harms to Petitioners, given that (1) two months have passed since it was filed and still no finding
24 of relation has been made; (2) solely due to Respondents’ untimely Notice Petitioners have already been
25 reassigned to **two** judges unfamiliar with these proceedings – and are set to be assigned to a **third**, which
26 will likely lead to the undue postponement of the evidentiary hearing on Judge Lee’s OSC; (3) the parties
27 are **over one year** into litigation without a final, substantive ruling on their Writ Petition; and (4)
28 Respondents **continue to violate their statutory duties**, the California and Federal Constitutions, and well-

1 settled principles of non-delegation and Separation of Powers, *despite* Judge Lee’s September 22 ruling and
2 this underlying action.

3 The entire *Hall* litigation is based upon requests for relief for harms that cannot be rectified with
4 money. Switching judges and continuing the OSC more than one year into litigation based on an sham
5 Notice of Related Cases that was filed over a year after relation could have been discovered, and only after
6 a substantive ruling was entered against Respondents, will cause even **more** significant, irreparable harms
7 to Petitioners and the millions of County residents they represent where (1) the OSC was continued **seven**
8 **weeks** to a time this matter will have a **new, third** judge who will receive this case the first week of the
9 New Year and likely continue the OSC, again; (2) as recently as last week **Respondents *continue to flout***
10 **their obligations and violate the state and federal constitutions and law** by delegating their express,
11 statutory duties to unelected health officers, approving multi-million dollar clandestine contracts and
12 appointments, and submitting fraudulent requests for emergency COVID relief funds in excess of **tens of**
13 **millions of dollars** to both the state and federal government; and (4) the parties have completed a
14 significant amount of litigation. Additionally, prematurely giving Respondents the relief of a new third
15 judge before any finding of relation, or any determination if the very filing of the Notice was proper to
16 begin with, violates *Rules of Court*, rule 3.300, which is intended to prevent “judge shopping.” This
17 improper reassignment has already resulted in rewarding Respondents for their serious abuses of process
18 by giving them a new judge where they had no authority or grounds for requesting or receiving one.

19 Therefore, Petitioners respectfully request that this Court make an immediate and expedited
20 determination on the (im)propriety of the filing of Respondents’ belated Notice.

21 **C. A Determination on Propriety of Respondents’ Belated and Improper Notice**
22 **is Required to Prevent Further Prejudice to Petitioners, Avoid Further**
23 **Abuse of Process, and to Comply with the Related Cases Rule.**

24 A determination regarding the impropriety of the Notice that was filed, as well as on Petitioners’
25 (and Governor Newsom’s) Oppositions to the belated, improper Notice is necessary to avoid further
26 prejudice to Petitioners, to prevent further abuse of process, and to satisfy California *Rules of Court*, rule
27 3.300 (the “Related Cases Rule.”). The purpose of the Related Cases Rule is to promote judicial efficiency
28 by reassigning cases involving substantially identical transactions, incidents, parties, counsel, and events

1 requiring determination of the same questions of law or fact to the same judge to avoid substantial
2 duplication of judicial resources. (CRC 3.300(a)). This section was not designed to allow delays or post-
3 decision judge shopping. Indeed, subsection (j) of the Related Cases Rule also requires that, if the cases
4 are found **unrelated**, the cases remain before the original court, judge, or department where they were
5 pending at the time the Notice of Related Cases was filed and served. Requiring cases to remain with the
6 initial judge assigned prior to the Notice being filed is designed to prevent the very harm that has already
7 occurred here: allowing a party to remove a judge after the opportunity to do so has been used or waived
8 under *Code of Civil Procedure*, section 170.6, and a very telling substantive ruling against them has been
9 made when no actual finding of relation, nor any determination of whether the very filing of the Notice
10 was itself an abuse of process.

11 Despite the protections granted in the Related Cases Rule, two months have now passed since the
12 belated, improper Notice, as well as Petitioners' and Newsom's Oppositions thereto, and no ruling has
13 been made. Moreover, Petitioners have been penalized – and Respondents rewarded – for their unlawful,
14 improper judge shopping, since Judge Lee recused himself from this entire action, rather than simply from
15 the determination of “relation,” and this matter has been transferred to not one but two other judges and
16 stands poised to be assigned to a **third** days before the continued OSC. (*See* CRC 3.300(h)). This unjust
17 outcome cannot possibly serve the interests of justice, judicial economy, or the intent behind the Related
18 Cases Rule and hasn't. Accordingly, Petitioners respectfully request that this Court engage in an expedited
19 substantive determination of the propriety of the filing of the belated Notice to immediately demonstrate
20 that *Hall* and *Newsom* are **not** related, and the Notice should have never been filed in the first place.

21 **D. These Cases Are Not Related and This Court Should Advance the January 20,**
22 **2023 OSC to Prevent Further Delay and Prejudice to Petitioners.**

23 Because these cases are not related and the belated Notice was an abuse of process, Petitioners
24 respectfully request that Respondents not be **further** rewarded for – and Petitioners **further** harmed by –
25 their misconduct and subsequent delays, and that this Court advance the January 20, 2023 OSC to the next
26 date available prior to its retirement. This is the only way Petitioners can possibly obtain the expedited
27 relief they sought when they filed their Writ Petition and Application for Alternative Writ – which was
28 granted in **September** – and to avoid any further delays that will likely occur if this case is assigned to a

1 new judge in January 2023.

2 **1. The Court need only review Respondents’ Brief and Petitioners’ Reply and**
3 **Objections to Respondents’ Evidence in order to rule on the OSC.**

4 The OSC is a narrowly-focused evidentiary hearing, not trial on the final Writ Petition. (See ROA
5 Nos. 155, 160). Judge Lee ordered Respondents to (a) comply with their duties to conduct statutorily-
6 mandated public reviews and votes and to submit a 5-page status report providing the dates and outcomes
7 of these meetings, and the upcoming meeting schedule, **or** (b) submit a 15-page brief with supporting
8 evidence showing how they have been conducting the public reviews and votes since June 22, 2021 as
9 they, themselves, claimed during the September 22 hearing. (*Ibid.*) To that end, Respondents submitted a
10 15-page brief with 250 pages of “evidence,” and Petitioners submitted a 15-page Reply and objections to
11 said evidence. This is the only material needed to review to decide whether Respondents have satisfied
12 their statutorily and court-mandated duties or not pursuant to Judge Lee’s OSC. (ROA Nos. 218, 220, 222,
13 226, 228, 230, 231, 238). Not only are these the only papers the Court needs to review in preparation for
14 the OSC, but the OSC is the first time Respondents have presented arguments *or* evidence claiming
15 compliance with their statutory duties. This entire litigation that they had no affirmative, ministerial duty –
16 or any duty at all – to review local conditions or vote to terminate the Emergencies since June 20201.
17 Therefore, this limited universe of evidence is all the Court *has* to review in order to make its ruling.

18 Additionally, Petitioners filed a Motion to Strike Respondents’ unverified Answer to the SAVP,
19 which is set to be heard December 23, 2022 in this department. (ROA No. 240). This Court will need to
20 review the parties’ pleadings in preparation for December 23 hearing and, thus, be familiar with the case.

21 **2. The OSC must be advanced to avoid further prejudice to Petitioners.**

22 Respondents’ derailing of the OSC through the filing of its belated and improper Notice and the
23 prejudice it has inflicted upon Petitioners should not have been permitted, in the first place, and certainly
24 should not act to reward Respondents again and again. First, Respondents’ Notice has already severely
25 prejudiced Petitioners by resulting in the removal of a judge who ruled in their favor, something that is
26 soundly rejected by the Rules of Court, and now in the continuance of the OSC. Second, Respondents
27 should not be permitted to play “fast and loose” with the Court, or the millions of lives they represent.
28

1 (*See Wilson v. City of Laguna Beach* (1992) 6 Cal.App.4th 543). In *Wilson* the City of Laguna Beach
2 attempted to impose their own zoning laws related to “granny flats,” which conflicted with black-letter
3 state law on the same subject, and mislead the public with regards to their right to have a second unit on
4 the property. (Id., 548-551). It was not until the City was faced with a motion for preliminary injunction
5 that it argued that it actually “had not adopted the ordinance.” (Id., 552). The Court of Appeal was “*not*
6 amuse[d]” by the City’s 180 in position and – in reversing the trial court’s ruling and ordering it to *grant*
7 the writ petition – explained:

8 The issue here is not simply a question of the city taking a particular legal position and **then**
9 **discovering it was in error**. Rather, the issue goes to the city’s conduct . . . **The city’s**
10 **position, as the record shows, was consistently one of ‘agree to our [plan] or else.’** We
11 do not think the city should now be allowed to take a position diametrically opposed to the
12 one which prompted the litigation in the first place.

12 (Id., 552 [emphasis added]). Here, too, Respondents have been adamant about their “zero ministerial duty”
13 to conduct any review hearings or votes on the COVID-19 Emergencies due to the Governor’s March 2022
14 Proclamation, and have approved contracts, appointed government officials, green-lighted projects, and
15 applied for – and received – hundreds of millions of dollars without any public knowledge, participation or
16 input, or on a “take it or leave it” basis. **For almost three years**, Petitioners, Petitioners’ counsel, and
17 thousands of California residents have advised Respondents that their unilateral imposition and maintenance
18 of the Emergencies, and refusal to conduct public reviews or votes regarding the same, violated state and
19 federal law. Despite this, and despite denying hundreds of thousands of citizens critical medical, academic,
20 social, financial and other needs to their extreme detriment, Respondents, now, claim – *after* their Demurrer
21 was completely overruled, Petitioners’ Alternative Writ Application granted, and Respondents ordered to
22 show cause – that they “never did that” and actually had been satisfying their statutory duties by
23 “monitoring” conditions behind the scenes (while simultaneously *still* refusing to hold a public meeting on
24 the COVID-19 Emergencies since that time!). This prohibited defensive pivot is highly suspicious, as one
25 cannot both comply with a duty and also proclaim there is no duty to comply with, however, it is precisely
26 what Respondents are attempting to do, here, and the Court cannot tolerate it. Additionally – and, perhaps,
27 most importantly – Respondents **continue** to flout their statutory duties, refusing to conduct public meetings
28

1 relating to the COVID-19 Emergencies; approving *more* contracts, appointments, and funding in connection
2 thereto without any public participation; declaring additional “local health emergencies” without support;
3 and delegating their affirmative, ministerial duty to review and terminate even these new emergencies to the
4 Health Officer, in violation of the law, as well as Judge Lee’s Orders.

5 **IV. CONCLUSION**

6 For the foregoing reasons, Petitioners respectfully request this Court grant (1) a determination on
7 the impropriety of filing the belated Notice; (2) grant Petitioners leave to file a motion for fees and costs
8 resulting from Respondents’ improper, belated Notice; and (3) advance the January 20, 2023 OSC to the
9 earliest date available or, in the alternative, maintain the OSC in this Department before Honorable Judge
10 Hunt on January 20, 2023 in order to avoid even further delay.

11 Dated: December 12, 2022

LAW OFFICES OF NICOLE C. PEARSON

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14 By: 

Nicole C. Pearson
Jessica Barsotti
Rita Barnett-Rose
Attorney for Petitioners
PEGGY HALL and CHILDREN’S HEALTH
DEFENSE – CALIFORNIA CHAPTER

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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 **PETITIONERS’ NOTICE OF EX PARTE APPLICATION FOR (1) DETERMINATION RE: THE VALIDITY OF RESPONDENTS’ NOTICE OF RELATED CASES; (2) ORDER FOR LEAVE TO FILE A MOTION FOR ATTORNEYS’ FEES AND COSTS; AND (3) ADVANCEMENT OF ORDER TO SHOW CAUSE HEARING; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

<p>Laura Knapp Kevin Dunn Suzy Shoai Kayla Watson Office of the County Counsel County of Orange 400 West Civic Center Drive, Suite 202 Santa Ana, CA 92701-1379 <i>Deputy County Counsel for Respondents COUNTY OF ORANGE and ORANGE COUNTY BOARD OF SUPERVISORS</i></p>	<p>Suzy.Shoai@coco.ocgov.com Kayla.Watson@coco.ocgov.com Kevin.Dunn@coco.ocgov.com leon.page@coco.ocgov.com Laura.Knapp@coco.ocgov.com Simon.Perng@coco.ocgov.com chloe.maksoudian@coco.ocgov.com</p>
<p>Mark Beckington Todd Grabarsky Jennifer Rosenberg Department of Justice Office of the Attorney General 300 South Spring Street, Suite 1702 Los Angeles, California 90013-1230 <i>Counsel for Gavin Newsom, specially appearing</i></p>	<p>Todd.Grabarsky@doj.ca.gov, Mark.Beckington@doj.ca.gov, jennifer.rosenberg@doj.ca.gov, beth.gratz@doj.ca.gov</p>

23 / 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.

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25 / / **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

1 invalid if postal cancellation date or postage meter date is more than one day after date of
2 deposit for mailing of affidavit.

3 / X / **By Personal Service.** I delivered such envelope by hand to the addressee on November
4 10, 2022.

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

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

9 Executed at **NEWPORT BEACH, California.**

10 DATED: December 11, 2022

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12 _____
13 **MICHELLE CUSUMANO**
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