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

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

19 Petitioners,

20 vs.

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

23 Respondents.

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

Judge: Hon. Judge Richard Lee  
Dept.: W15

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PETITIONERS’ APPLICATION FOR  
ALTERNATIVE WRIT OF MANDATE**

**Code of Civil Proc., §§ 1085, 1094.5, 1087,  
1107**

*[Notice and Declaration of Nicole C. Pearson in  
Support and [Proposed] Order filed concurrently  
herewith]*

Complaint Filed: September 14, 2021  
Second Amended Petition Filed: May 4, 2022  
Trial Date: None Set

**RESERVATION NO: 73768158**  
**Hearing Date: August 18, 2022**  
**Hearing Time: 1:30 p.m.**

***NOTICE OF PETITIONERS’ COUNSELS’  
INTENT TO APPEAR IN PERSON***

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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 Petitioners respectfully ask this Court to issue an alternative writ of mandate commanding  
4 Respondents to either (a) satisfy their clear, affirmative ministerial duties and statutory obligations as  
5 the governing body of Orange County to review local conditions within the County and determine  
6 whether such conditions justify ongoing declarations of local emergency and local health emergencies  
7 – both declared on February 26, 2020 – (hereinafter collectively “Emergencies”) and terminate them  
8 if conditions warrant; or (b) show cause why they are not obligated to do so under applicable law  
9 (hereinafter “Application”). Respondents have kept Orange County residents, including Petitioners,  
10 under unlawful declarations of emergency for over two years despite having a clear statutory  
11 obligation to terminate them “at the earliest possible date” conditions warrant. (*See* Gov. Code § 8630  
12 (d); Health & Safety Code §101080). Respondents’ obligation is not a discretionary matter. The  
13 California Emergency Services Act (“CESA”) states that the governing body of a locality “**shall**  
14 proclaim the termination of the local emergency at the earliest possible date that conditions warrant.”  
15 (Gov. Code §8630(d) [emphasis added]). Despite this, for the first sixteen months, Respondents failed  
16 to conduct any meaningful review of local conditions, or to terminate the Emergencies despite clear  
17 evidence that no conditions existed in the County to satisfy the definitions of a local emergency or  
18 health emergency under applicable law. (*See* Gov. Code § 8558(c)). Even more alarming, on June 22,  
19 2021, Respondents abdicated all responsibility to review conditions in the County and/or vote to  
20 terminate the Emergencies when they voted to terminate the Emergencies only when Governor  
21 Newsom terminates his state-wide emergency. (*See* **Exhibit “A”** (hereinafter “Abdication Vote”).  
22 Because of Respondents’ Abdication Vote, the Emergencies continue to this day, despite there being  
23 no recent review of the conditions warranting an emergency of any kind, and no conditions warranting  
24 the already-declared Emergencies, because the Governor has not terminated his.

25 Respondents have a clear, present, ministerial, and mandatory duty to terminate the Emergencies  
26 “at the earliest possible date that conditions warrant the termination” under both California Health &  
27 Safety Code, section 101080, and Government Code section 8630(d). Although Governor Newsom, in  
28 his initial March 4, 2020 proclamation of a state-wide state of emergency (the “Proclamation”),

1 temporarily suspended the 30 and 60 day intervals in which local governing bodies must review local  
2 conditions of emergency, this Proclamation did not – and could not – remove a local governing body’s  
3 affirmative, mandatory duty to review local conditions and/or terminate the Emergencies at the earliest  
4 possible dates. In fact, the Proclamation itself indicates that the local governing body retains this duty  
5 to determine when to terminate its respective local emergency (**Exhibit “B”**, ¶¶ 7-8).

6 Respondents’ delegation to the Governor of their quasi-legislative authority to review local  
7 conditions and terminate local emergencies when conditions warrant also violates the California  
8 Constitution’s Separation of Powers, and conflicts with long-standing principles of non-delegation.  
9 (Cal. Const., art III § 3; *Carson Mobilehome Park Owners’ Assn v. City of Carson* (1983) 35 Cal.3d  
10 184, 190). Determining whether conditions warrant continuing a local emergency is a fundamental  
11 local policy decision that cannot be delegated to any other branch of government. Furthermore,  
12 Respondents’ delegation to the Governor, here, is even more egregious because the Governor has  
13 made it clear that he intends to violate his own legal duty to terminate the state-wide emergency under  
14 CESA and continue it indefinitely for “convenience” and “flexibility.” (**Exhibit “C”**).

15 Even if Respondents had discretionary authority to determine when to end the Emergencies –  
16 which they do not – Respondents have engaged in arbitrary and capricious decision-making by, first,  
17 declaring these Emergencies when no conditions existed justifying it, and then continuing them for  
18 reasons not permitted under the applicable statutory provisions, such as to continue to receive substantial  
19 COVID-19 relief funds.

20 A state of emergency, by definition, cannot last forever, and the dangers to **Petitioners and**  
21 **other County residents** of keeping the County under the Emergencies cannot be overstated. Over the  
22 last two years, the state and local declarations of emergency have been used to impose unprecedented  
23 restrictions on individual autonomy and deprive residents of fundamental, Constitutional protections,  
24 many without any rational, scientific basis, or needed risk/benefit assessment. These restrictions have  
25 devastated millions of Californians, including residents of Orange County, physically, psychologically,  
26 cognitively, and financially. Failing or refusing to terminate these Emergencies as required by law will  
27 allow Respondents – and now Governor Newsom – to use emergencies to re-institute onerous  
28 “guidance,” mandates, and restrictions at-will, without any conditions warranting them or due process

1 protections, significantly impacting the lives of Petitioners and other County residents *again*.

2 For these reasons, among others, Petitioners ask this Court to grant this Application.

3 **II. PROCEDURAL POSTURE**

4 On September 14, 2021, Petitioner Hall filed against Respondents a Petition for Writs of  
5 Traditional and Administrative Mandate and Complaint for Declaratory and Injunctive Relief to compel  
6 Respondents to review local conditions in the County and terminate the Emergencies if local conditions  
7 warranted (“Petition”). After meeting and conferring with Respondents’ counsel, Petitioner Hall and  
8 Petitioner CHD-CA filed a First Amended Petition on December 13, 2021. On February 24, 2022, the  
9 Court granted Petitioners leave to file a Second Amended Petition for Writs of Traditional and  
10 Administrative Mandate and Complaint for Declaratory and Injunctive Relief (“Second Amended  
11 Petition”), which Petitioners filed May 4, 2022. The grounds for relief stated in the Second Amended  
12 Petition are that Respondents (1) have a clear, present, mandatory and ministerial duty to review the  
13 local conditions in the County and to terminate the Emergencies if conditions warrant; (2) delegated  
14 their quasi-legislative authority to Governor Newsom to terminate the Emergencies in violation of the  
15 California Constitution’s Separation of Powers, and well-established principles of non-delegation; and  
16 (3) engaged in arbitrary and capricious decision-making when they declared and continued the  
17 Emergencies when conditions did and do not warrant them, refused to review local conditions, and  
18 delegated their quasi-legislative authority to the Governor, and must be enjoined.

19 **III. STATEMENT OF FACTS**

20 **A. Governor Newsom Declares a State-Wide COVID-19 Emergency.**

21 On March 4, 2020, Governor Newsom proclaimed a state of emergency related to concerns over  
22 a “novel Coronavirus,” COVID-19 (**Exhibit B**). Unlike any other previously-declared state of  
23 emergency, the COVID-19 state of emergency led to unprecedented restrictions on basic freedoms,  
24 including the first ever state-wide “lockdown” of all citizens, and the closure of schools and businesses  
25 deemed “unessential” by public health officials. By way of this Proclamation and subsequent executive  
26 orders issuing therefrom, Governor Newsom completely disrupted, reordered and/or suspended many  
27 ordinary aspects of democratic governance and the proper checks on executive power, including proper  
28 agency rule-making requirements typically required under the California Administrative Procedure Act.

1 Included in this Proclamation was the Governor’s temporary suspension of the automatic  
2 periods normally required of local governing authorities to review, renew, or terminate local states of  
3 emergency. Specifically, at paragraphs 7 and 8 of the Proclamation, the Governor indicated that, “for  
4 the duration of [the] statewide emergency,” he was suspending the operation of the automatic “30-day  
5 review period” in Health & Safety Code, section 101080 (local health emergency), and the “60-day  
6 review period” in Government Code, section 8630 (local emergency). Instead, any such local  
7 emergency or local health emergency would “remain in effect until each local governing authority  
8 terminates its respective local health emergency.” (**Exhibit B**, ¶¶7, 8). The Proclamation did *not*  
9 suspend the local governing authorities’ mandatory duties to (i) review the local conditions under which  
10 a local and/or local health emergency declaration could be continued, or (ii) terminate either emergency  
11 at the earliest date conditions warranted. (Ibid.)

12 Following his Proclamation, Governor Newsom subsequently issued hundreds of far-reaching  
13 executive orders, while he and his public health agency, the California Department of Public Health  
14 (“CDPH”), issued, halted, and then re-issued numerous “public health” mandates, “guidance” and  
15 “recommendations,” including requirements on indoor/outdoor masking, testing, quarantining, and job-  
16 for-job vaccination requirements, that affected every man, woman, and child in the state. Although the  
17 Governor and health officials assured residents that these unprecedented measures would be in place  
18 for mere weeks to help “flatten the curve,” in reality, these orders have remained in place for **years**.

19 On August 28, 2020, the Governor and CDPH issued the Blueprint for a Safer Economy that  
20 established a procedure for assigning counties to one of four tiers based on the severity of the COVID-  
21 19 outbreak in each county (hereinafter “Blueprint”). Under the Blueprint, counties were sorted into  
22 color-coded tiers – red, purple, orange, or yellow – from the most serious COVID-19 scenario, to the  
23 least, **indicating the state’s awareness that each county would have unique local conditions**. This  
24 Blueprint was rescinded in June of 2021, along with the initial stay-at-home order. Nevertheless, many  
25 restrictions and/or mandates continued thereafter.

26 On February 17, 2022, after nearly two years of rule under the Proclamation and subsequent  
27 executive orders, Governor Newsom and the CDPH announced their “SMARTER PLAN: The Next  
28 Phase of California’s COVID-19 Response” (hereinafter “SMARTER Plan”). The SMARTER Plan

1 indicates Governor Newsom’s intent to retain his emergency powers indefinitely, and to reinstitute  
2 mandatory masking, testing, quarantining, and other measures as he and/or CDPH deem fit.<sup>1</sup>

3 One week later, on February 25, 2022, Governor Newsom issued Executive Order N-04-22,  
4 which extended the state-wide emergency, rather than allow it to expire on March 31, 2022 as promised,  
5 and kept many of his executive orders in place indefinitely for “flexibility.” (**Exhibit B**). Executive  
6 Order N-04-22 also did not rescind the alleged “temporary waiver” of the 30 and 60-day periods for  
7 local governing bodies to review local emergencies and local health emergencies. (*Ibid*).

8 **B. Respondents Declare Local COVID-19 Emergencies.**

9 On February 26, 2020, then Orange County Health Officer, Dr. Nichole Quick, declared a local  
10 health emergency pursuant to Health & Safety Code, section 101080. Under section 101080, and prior  
11 to the Governor’s Proclamation, Respondents were obligated to review this declared local health  
12 emergency every 30 days. That same day, the Orange County Director of Emergency Services  
13 requested that the Chair of the Emergency Management Council, Michelle Steel, also proclaim a local  
14 emergency pursuant to Government Code, section 8630. The Director based the request for a local  
15 emergency declaration under section 8630 on the following alleged facts, among others: (i) the County  
16 Health Officer had determined that the County was preparing for an “imminent and proximate threat to  
17 public health from the virus”; (ii) Orange County communities were going to need to take “significant  
18 response actions to any developing contagion, and to any other risks that may arise from introduction  
19 and possible spread of the virus”; (iii) these events created “a condition of extreme peril” to Orange  
20 County residents; and (iv) conditions would “likely be beyond the control of the services, personnel,  
21 equipment and facilities of the County of Orange, and require combined forces of other political  
22 subdivisions to combat.” Ms. Steel then granted the Director’s request and declared a local emergency  
23 pursuant to Government Code, section 8630, which was later ratified by Respondent Board. Prior to  
24 the Proclamation, Respondents were obligated to review this declared local emergency every 60 days.  
25 Respondents were also obligated to terminate either or both of the Emergencies at the earliest possible  
26 date conditions warranted. (Gov. Code §8630(d); Health & Safety Code §101080). Respondents are  
27 still so obligated. This duty has not been suspended.

28 \_\_\_\_\_  
<sup>1</sup> See SMARTER Plan, available at: <https://covid19.ca.gov/smarter/>.



1 However, even at the time these Emergencies were declared, none of the statutory conditions  
2 defining a “local emergency” or a “local health emergency” existed. Specifically, under Government  
3 Code section 8558(c), a “local emergency” is defined as follows:

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

16 Specifically, at the time of Respondents’ declarations of the Emergencies, there had been **one**  
17 **(1)** positive SARS-COV-2 test subject in Orange County, who had been treated and released without  
18 any further symptoms.<sup>2</sup> In a press release and news conference announcing the declarations of  
19 Emergencies, Respondents **admitted** that the declarations were done for “**preparation**” purposes, **and**  
20 **to receive COVID-19 relief funding.**<sup>3</sup> Accordingly, at the time of Respondents’ declarations of the  
21 Emergencies, the conditions within the County did not meet the definition of a local emergency under  
22 Government Code section 8558(c) and have never met this statutory definition since.

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

24 Since February 2020, over a two-year period, 546,880 Orange County residents have tested  
25 positive for SARS-COV-2 and 6,880 reportedly died with – but not necessarily from – COVID 19.<sup>4</sup>  
26 Of these decedents, 1,314 lived in Skilled Nursing Facilities, 697 lived in Assisted Living Facilities, 2  
27 were Orange County jail inmates, and 21 were homeless.<sup>5</sup> Currently, the CDC predicts the case fatality  
28 rate for COVID-19 is between 0.26 percent and 0.65 percent, and that ninety-four percent (94%) of

<sup>2</sup> See e.g., “County of Orange Declares Emergency in Response to COVID-19,”  
<https://ocCOVID19.ocaliforniahealthinfo.com/sites/virus/files/2020-03/2.%2002.26.20%20COVID-19%20Emergency%20Press%20Release%20and%20Declarations.pdf>; see also <https://www.foxla.com/news/orange-county-officials-declare-local-health-emergency-over-coronavirus> [as of May 22, 2022]

<sup>3</sup> *Ibid.*

<sup>4</sup> COVID-19 Case Counts and Testing Figures, <https://ocCOVID19.ocaliforniahealthinfo.com/coronavirus-in-oc> [as of March 22, 2022]. The CDC and other public health officials have now admitted that PCR tests are deeply flawed, were largely cycled at thresholds that produced very high rates of false positives, and cannot distinguish between COVID-19 and the ordinary flu.

<sup>5</sup> *Ibid.*

1 people who have died with COVID-19 had at least one co-morbidity, such as diabetes, cancer, obesity,  
2 or heart disease, and an average of 2.6 co-morbidities.<sup>6</sup>

3 Orange County was moved to the yellow tier of the Governor’s Blueprint Plan – the most lenient  
4 of California’s color-coded reopening tiers – on May 18, 2021. Since that time, Orange County’s case  
5 rate has continued to drop. Currently, the ICUs in the county have more than 30% excess capacity and  
6 no hospital in the county has been shown to be overrun throughout the entire “pandemic.”<sup>7</sup> As of  
7 March 22, 2022, 125 out of the 3.2 million Orange County residents are hospitalized “with” – and not  
8 necessarily “from” – COVID-19,<sup>8</sup> with only 25 of those 125 in the intensive care unit (meaning the patient  
9 tested positive for SARS COV 2 with an admittedly flawed PCR test but is not necessarily sick in the  
10 ICU from or infected with the COVID-19 disease allegedly caused by SARS COV 2).<sup>9</sup>

11 In January of 2022, California hosted the Superbowl, removed indoor and even K-12 mask  
12 mandates, and generally returned to almost a fully “normal” society in most parts of the state. In most  
13 counties, including Orange County, stores and restaurants are packed, hospitals are not overwhelmed  
14 with COVID-19 patients, and many cities and some counties within California have already terminated  
15 their states of emergency. It is clear that the existence of conditions of disaster or of extreme peril to  
16 the safety of persons and property within Orange County due to COVID-19 do not exist as required by  
17 Government Code section 8558. Nevertheless, Respondents have refused to review the local conditions  
18 in Orange County justifying the ongoing Emergencies or terminating the Emergencies.

19 The reason for Respondents’ failure to proceed in a manner required by law appears clear: by  
20 indefinitely continuing the declared Emergencies, Respondents have unlocked access to and received  
21 over \$1 billion in federal “COVID-19 relief” funds, including receipt of over \$554 million in CARES  
22 money, and over \$600 million in ARPA funds.<sup>10</sup> Furthermore, Respondents maintain the power to re-  
23 instate restrictive mandates, guidance, recommendations and other measures that impermissibly restrict  
24 Petitioners’ and other Orange County residents’ ability to work, learn, receive medical treatment, travel,  
25

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26 <sup>6</sup> COVID-19 Death Data and Resources, <https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm> [as of November, 2021].

27 <sup>7</sup> COVIDActNow, [https://covidactnow.org/us/california-ca/county/orange\\_county/?s=25081423](https://covidactnow.org/us/california-ca/county/orange_county/?s=25081423) [as of March 22, 2022]

28 <sup>8</sup> See <https://cormandrosthenreview.com/report/>.

<sup>9</sup> COVID-19 Case Counts and Testing Figures, <https://occovid19.ochealthinfo.com/coronavirus-in-oc> [as of March 22, 2022]; cite re PCR test false positives, etc.

<sup>10</sup> <https://cfo.ocgov.com/resources/arpacares-act-reports>.

1 play or even live.

2 **D. Respondents Illegally Delegate Their Duties to Review Local Conditions.**

3 Although the Proclamation relieved Respondents from conducting periodic reviews of the local  
4 conditions at 30 or 60-day intervals, it did **not** eliminate Respondents' obligation to do so, at all – even  
5 in *more frequent* intervals, as might be required where *actual* emergencies exist, or perhaps every 40  
6 or 75 days, but certainly not zero – **and Respondents initially purportedly conducted these periodic**  
7 **reviews.** For sixteen months after the Emergencies were declared, Respondents would place the matter  
8 on the Board's agenda for public meeting. It was largely Kabuki theatre because each time the vote on  
9 whether or not to extend the Emergencies was placed on the Board's agenda, Petitioners – and hundreds  
10 of other Orange County residents – would attend the meeting to voice their desire that all Emergencies  
11 end, providing meaningful data demonstrating that neither emergency existed. In response,  
12 Respondents often engaged in hostile and unprofessional tactics to prevent Petitioners and other  
13 members of the public from speaking on the subject matter, such as by reordering agenda items at the  
14 last minute, limiting the public's speaking time to 30 seconds, leaving the meeting, speaking  
15 dismissively to speakers, and generally making it clear to Petitioners and other County residents that  
16 Respondents had little interest in what its constituents thought about maintaining the Emergencies, the  
17 data showing they did not exist, and the serious, irreversible harms they were causing to children and  
18 adults throughout the County. At the conclusion of these meetings, Respondent Board would rubber-  
19 stamp its decision to renew the Emergencies. Ironically, based on this same available information,  
20 which Orange County residents presented at city council meetings throughout the County, the city  
21 councils of Brea, Tustin, Villa Park, Laguna Niguel, Yorba Linda, Newport Beach, Huntington Beach,  
22 San Juan Capistrano, Aliso Viejo, and Fullerton all voted to end their local emergencies, pursuant to  
23 their statutory and legal obligations and duties to do so.<sup>11</sup>

24 Perhaps tiring of simply rubber-stamping renewals of the Emergencies, on June 22, 2021,  
25 Respondent Board voted to abdicate all of their duties under applicable emergency law, delegate their  
26 quasi-legislative authority to the Governor, forego any further review of local conditions, and tie the  
27

28 <sup>11</sup> See e.g., <https://www.ocregister.com/2021/06/24/cities-must-end-their-states-of-emergency/>;  
<https://www.latimes.com/socal/daily-pilot/news/story/2021-07-07/huntington-beach-to-lift-covid-19-local-emergency>.

1 termination of the Emergencies to the Governor’s termination of the state-wide state of emergency  
2 without any further action of the Board. (*See Exhibit “A”*). Since this Abdication Vote – for almost  
3 one year – Respondents have not engaged in *any* review of the local conditions in the County, and have  
4 not terminated the Emergencies. Meanwhile, Governor Newsom continues to insist that California  
5 remains in a state-wide state of emergency, despite all evidence to the contrary – including Newsom’s  
6 own unmasked attendance at the January 30 National Football Conference Championship game, along  
7 with over 70,000 other unmasked and boisterous attendees, and corroborated two weeks later at the  
8 Super Bowl the Governor hosted on February 13 – and certainly without his considering local  
9 conditions in Orange County.

10 **IV. LEGAL ARGUMENT**

11 Mandamus is a remedial writ used to correct those acts and decisions of agencies that are in  
12 violation of the law and no other adequate remedy is provided, and may be used not only to compel  
13 action which was refused in violation of the law but also to annul or restrain action taken which is in  
14 violation of the law. (*Wilson v. Los Angeles County Civil Service Cmm’n* (1951) 103 Cal. App. 2d 426,  
15 430; Code Civ. Proc. §§ 1085, 1086, 1094.5). Generally, a writ of mandate must issue where there is  
16 not other plain, speedy, and adequate remedy and where the petitioner has a clear and beneficial right  
17 to performance. Where a petition alleges a purely legal question, the Court exercises its independent  
18 judgment as to the legal question presented. (*McIntosh v. Aubry* (1993) 14 Cal.App.4th 1576, 1584).

19 A writ should issue here. Respondents have clear, affirmative, ministerial duties under both the  
20 Health & Safety and Government Codes to review local conditions to determine whether the conditions  
21 warrant declarations of a local or local health emergency – and to terminate any local emergencies at  
22 the earliest possible date that conditions warrant. (Gov. Code § 8630(d); Health & Safety § 101080).  
23 Petitioners and Petitioners’ members are taxpayers and residents of the County and have been directly  
24 impacted by Respondents’ failure to satisfy their duties and obligations under these laws. They are also  
25 under constant threat of repeated harms due to the unprecedented restrictions mandated and enabled  
26 under the Emergencies, that are capable of repetition at any time until the Emergencies are terminated,  
27 and Respondents’ legal duties clarified. (*See Roman Catholic Diocese v. Cuomo* (2020) 141 S.Ct. 63,  
28 68 [holding that the lifting of restrictions did not moot the application because “the applicants remain

1 under a constant threat that those restrictions may be reinstated”]). Each of these Petitioners and their  
2 members have a clear, present and beneficial right to have Respondents’ unlawful actions restrained  
3 and the law followed, and do not have any other plain, speedy, and adequate remedy.

4 **A. Respondents Have a Mandatory Duty to Review Local Conditions and to Terminate the**  
5 **Emergencies if Conditions Warrant.**

6 Local boards of supervisors are the governing bodies of California counties.<sup>12</sup> A board of  
7 supervisors’ decision-making can be, at various times, quasi-legislative, quasi-adjudicative, or even  
8 quasi-judicial in nature.<sup>13</sup> (Gov. Code, §§ 25000 *et seq.*) A local state of emergency declared under  
9 Government Code, section 8630, (1) may be proclaimed only by the governing body of a city, county,  
10 or city and county, or by an official designated by ordinance adopted by the governing body; (2) shall  
11 not remain in effect for a period in excess of seven days unless ratified by the governing body; (3) shall  
12 be reviewed by the local governing body at least once every 60 days until terminated to determine the  
13 need for continuing the local emergency; and (3) **shall** be terminated by the local governing body at  
14 the earliest possible date that conditions warrant. [Emphasis added]. A local health emergency declared  
15 under Health & Safety Code section 101080 can be declared “[w]henver there is an imminent and  
16 proximate threat of the introduction of any contagious, infectious, or communicable disease,” but a  
17 local board of supervisors “shall” review the need for continuing such local health emergency every 30  
18 days and “**shall** proclaim the termination of the local health emergency at the earliest possible date that  
19 conditions warrant the termination.” (Health & Safety Code §101080 [emphasis added]). A “local  
20 emergency” exists where conditions “are or are likely to be beyond the control of the services,  
21 personnel, equipment, and facilities of that political subdivision **and** require the combined forces of  
22 other political subdivisions to combat.” (Gov. Code § 8558(c) [emphasis added]).

23 Respondents have failed to satisfy their statutory obligations and ministerial duties as governing  
24 authority under these applicable sections in the County in several ways. First, Respondents have refused  
25 to review local conditions, at all, since their June 2021 Abdication Vote. Although the Governor’s  
26 Proclamation temporarily suspended the automatic 30 and 60-day review periods, the Proclamation  
27

28 <sup>12</sup> See California State Association of Counties, <https://www.counties.org/post/board-supervisors> [last visited April 26, 2022].

<sup>13</sup> *Id.*

1 explicitly states that it is the local governing authority that retains the legal obligation to terminate its  
2 respective local emergency. (**Exhibit “A”**, ¶¶ 7-8). Clearly, a governing body cannot exercise its  
3 authority to terminate a local emergency without first reviewing the local conditions to determine  
4 whether such conditions warrant the termination.

5         Second, Respondents have failed to terminate the Emergencies at the “earliest date” that  
6 conditions have warranted. (Gov. Code § 8630(d); Health & Safety § 101080). Conditions in the County  
7 warranting a local state of emergency or local health emergency have not existed for a very long time  
8 (if ever). There has been **zero** coordination of emergency services, personnel, equipment, or facilities  
9 in and between counties since the inception of the “pandemic.” Respondents have not combined forces  
10 with other political subdivisions to combat conditions of extreme peril or great danger posed by COVID-  
11 19 in Orange County, or entered into “Mutual Aid” agreements with other counties or states to assist  
12 Orange County with its response to COVID-19. Accordingly, a “local emergency” does not, objectively,  
13 exist in the County under the CESA’s own definition. (Gov. Code § 8558(c)). Similarly, as Orange  
14 County residents trudge past 800 days into the COVID-19 “crisis,” it can hardly be said that there is still  
15 an “imminent and proximate threat of the introduction” of an infectious or contagious disease in the  
16 County, as required by Health & Safety Code section 101080.

17         An “emergency” cannot last forever without losing the very meaning of the term. Indeed, when  
18 a “statute speaks of an emergency affecting the public health or safety, the vital element is not official  
19 prescience or its lack but rather **the acuteness of the threat** to the public interest.” (*Malibu W. Swimming*  
20 *Club v. Flournoy* (1976) 60 Cal.App.3d 161, 166) [emphasis added]. An “emergency,” therefore, implies  
21 that a “sudden or unexpected necessity requires speedy action.” (*Los Angeles Dredging Co. v. Long*  
22 *Beach* (1930) 210 Cal. 348, 356). We are now more than **two years** past the initial declaration of the  
23 Emergencies, with schools and businesses fully operational and County hospitals not overwhelmed with  
24 COVID-19 patients. We are far past the “acuteness” stage of any “emergency” due to COVID-19. Once  
25 local conditions, such as the ones described, above, no longer warrant continuing the Emergencies, the  
26 applicable law compels Respondents – and similarly-situated county boards of supervisors – to terminate  
27 them. (Gov. Code § 8630(d); Health & Safety §101080). **This is not discretionary.** The Codes state  
28 that the board “shall” terminate the Emergencies at the “earliest date” conditions warrant, and the

1 Government Code itself indicates that “shall” means mandatory and not discretionary. (Gov. Code §  
2 8630; Health & Safety § 101080; Gov. Code §14; *see also e.g., Lazon v. County of Riverside* (2006) 140  
3 Cal.App.4th 453, 460 [explaining that the word “shall” indicates a mandatory or ministerial duty]).  
4 While the Legislature may have granted certain specified powers under CESA to local governing bodies  
5 to act in times of acute crisis, this cannot be interpreted to justify the unlawful prolonging of declared  
6 local states of emergency so that governing bodies can bypass the protections guaranteed by a  
7 representative government.

8 Respondents have an affirmative legal obligation to review conditions and terminate the  
9 Emergencies at the earliest possible date conditions warrant, and these conditions have existed for  
10 months – if not years – and in any event, certainly exist now. Petitioners’ writ must issue.

11 **B. Respondents’ Delegation of Their Legal Duties to the Governor Violates Separation of**  
12 **Powers and the Non-Delegation Doctrine.**

13 Respondents have also exceeded their authority and/or abused their discretion as a local  
14 governing authority with quasi-legislative powers by improperly delegating these powers to Governor  
15 Newsom. Under Article III, Section 3 of the California Constitution, “The powers of state government  
16 are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise  
17 either of the others except as permitted by this Constitution.” Governor Newsom, as the head of the  
18 state’s executive branch, may not exercise powers given expressly to Respondent Board as the quasi-  
19 legislative authority of the County by statute. Nor may Respondent Board delegate them. When the  
20 state Legislature has spoken on a particular issue, local governments are not at liberty to take a  
21 conflicting course of action. (*Costa Mesa City Employees Assn. v. City of Costa Mesa* (2002) 209  
22 Cal.App.4th 298, 310). Here, the Legislature has imposed the duty to review any local emergencies on  
23 counties, such as Respondents, in both the Health and Safety and Government Code. Therefore, these  
24 duties cannot be delegated to another branch of government, including, but not limited to, the Governor  
25 or his executive offices, and any steps taken that conflict with or undermine the Legislature’s action are  
26 unlawful and invalid.

27 Indeed, the non-delegation doctrine provides that “an unconstitutional delegation of legislative  
28 power occurs when the Legislature confers upon an administrative agency unrestricted authority to

1 make fundamental policy decisions.” (*People ex rel. Lockyer v. Sun Pacific Farming Co.* (2000) 77  
2 Cal.App.4th 619). Although the non-delegation doctrine is typically applied to challenge decisions  
3 made by an administrative agency, it can also apply to situations where the legislative branch delegates  
4 authority to the Governor. (*See e.g., Bush v. Schiavo* (Fl. 2004) 885 So.2d 321, 332-35 [holding that a  
5 law authorizing Florida governor to issue a one-time stay to prevent withholding of food and water to  
6 comatose patient violated non-delegation doctrine]). An unconstitutional delegation of legislative  
7 authority occurs when a legislative body: (a) leaves the resolution of fundamental policy issues to  
8 others, or (b) fails to provide adequate direction for the implementation of that policy. (*See Carson*  
9 *Mobilehome Park Owners’ Ass’n v. City of Carson* (1983) 35 Cal. 3d 184, 190). Underlying this  
10 doctrine is the belief that the legislative branch is the most representative organ of government and  
11 should, therefore, settle controverted issues of policy. (*Clean Air Constituency v. State Air Resources*  
12 *Bd.* (1974) 11 Cal.3d 801, 817). Indeed, courts have long recognized that “truly fundamental issues  
13 should be resolved by the Legislature” and not by the executive or judicial branches. (*Wilke v.*  
14 *Holzheise, Inc. v. Dep’t of Alcoholic Beverage Control* (1966) 65 Cal.2d 349, 366).

15 In its June 2021 Abdication Vote, Respondents delegated all of their quasi-legislative authority  
16 to review and terminate the Emergencies to Governor Newsom. Determining whether local conditions  
17 in a particular county warrant the continuation of declared local states of emergency is a fundamental  
18 policy decision statutorily reserved for the local governing body of the relevant county. A primary  
19 reason to have local county boards of supervisors is to put decision-making authority in the hands of  
20 local governing bodies, which are far more familiar with the unique local conditions affecting the  
21 citizens within these respective counties. Respondents’ Abdication Vote unlawfully delegated all of  
22 this authority, allowing the Governor to be the sole decision-maker regarding this fundamental policy  
23 decision that will uniquely affect County residents. Further, Respondents delegated their authority to  
24 the Governor without any – let alone adequate – directions. Therefore, the Respondents’ actions violate  
25 the non-delegation doctrine.

26 C. **Respondents’ Failure to Properly Review Local Conditions & Terminate the Emergencies**  
27 **to Continue Getting Relief Funds Was Arbitrary and Capricious Decision-Making.**

28 Even assuming Respondents have discretionary authority to determine when to end the



1 Emergencies – which they do not – Respondents were still obligated to follow a reasoned decision-  
2 making process that considered all relevant factors and evidence relating to their declarations and  
3 continuations of the Emergencies that was not arbitrary and capricious. Here, Respondents acted  
4 arbitrarily and capriciously and abused their discretion, by engaging in the actions alleged above,  
5 including but not limited to (1) failing to cite any local medical or scientific authority, studies or data  
6 to justify their declarations of Emergencies; (2) failing to take into consideration, *ab initio*, the fiscal,  
7 physical, psychological, or financial impact of the declarations of Emergencies on Orange County  
8 residents; (3) failing to take into consideration the evolving fiscal, physical, psychological, and  
9 financial impact of the continuations of Emergencies since the time of the initial declarations twenty-  
10 seven (27) months ago; (4) failing to review local conditions justifying continued declaration of the  
11 Emergencies after the Abdication Vote; and/or (5) failing to consider alternative, lesser-restrictive, and  
12 actually-effective means for responding to COVID-19 since declaration the Emergencies. Instead,  
13 Respondents decided in advance to declare the Emergencies in response to a potential threat without  
14 any local data or evidence in support, and then voted to make that happen. Furthermore, since that time,  
15 Respondents have – by their own admission<sup>14</sup> – maintained the declarations of the Emergencies simply  
16 to maintain access to federal COVID relief funds, and have failed to perform any review of local  
17 conditions in nearly a year in order to determine whether the continuance of the Emergencies remains  
18 warranted. The desire to financially benefit from the Emergencies – or to keep them in place for  
19 political power, flexibility, convenience, or even readiness for any future imagined variant outbreak –  
20 is not permissible pursuant to applicable legal authority. Respondents are legally **required** to terminate  
21 the Emergencies as soon as local conditions no longer warrant a declaration of such. There are no other  
22 reasons – no matter how, purportedly, forward-thinking, savvy, or altruistic – allowed.

23 Respondents have argued that continuing the Emergencies is harmless because County residents,  
24 including Petitioners, are not currently living under onerous masking, testing, business or school  
25 closures, or vaccination restrictions previously imposed during earlier stages of the Emergencies.

26 \_\_\_\_\_  
27 <sup>14</sup> Respondents have publicly admitted that they have kept County residents under unfounded Emergencies to avail  
28 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”).

1 However, by keeping the Emergencies in place despite local conditions no longer warranting them,  
2 Petitioners and other County residents are under constant threat that these restrictions may be reinstated  
3 at any time, completely upending their personal, professional, and everyday life. (See *Roman Catholic*  
4 *Diocese v. Cuomo* (2020) 141 S.Ct. 63, 68). Of even greater significance, while Respondents claim that  
5 all of the emergency-related restrictions were necessary early-on to combat conditions that might have  
6 led to the rise of local emergencies, the last two years have revealed that most restrictions were  
7 destructive and devoid of scientific justification or beneficial impact.

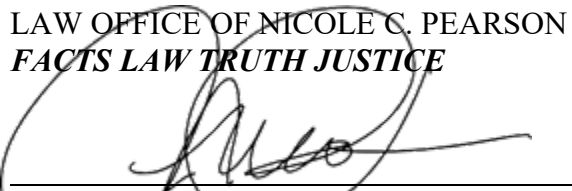
8 Granting Petitioners’ Application will not prevent Respondents from declaring emergencies in  
9 the future, should local conditions arise warranting the same. However, Government Code, section 8630,  
10 and Health & Safety Code, section 101080, both require termination of the existing Emergencies at the  
11 “earliest time” conditions no longer require them, and that time is **now**.

12 **V. CONCLUSION**

13 Respondents failed to proceed in a manner required by law by refusing to review local conditions  
14 in the County, and by refusing to terminate the Emergencies at the earliest date conditions warranted,  
15 and acted contrary to law by delegating their quasi-legislative authority on this fundamental policy issue  
16 to Governor Newsom. Petitioners respectfully request that this Court grant Petitioners’ Application and  
17 (1) rescind Respondents’ Abdication Vote and (2) require Respondents to satisfy their obligations under  
18 Government Code, section 8630, and Health & Safety Code, section 101080, to review local conditions  
19 and terminate the Emergencies if conditions warrant, or in the alternative, to order Respondents to show  
20 cause why they should not be commanded by this Court to do so.

21 Respectfully submitted,

22 Dated: May 23, 2022

23 LAW OFFICE OF NICOLE C. PEARSON  
24 **FACTS LAW TRUTH JUSTICE**  
25   
26 \_\_\_\_\_  
27 Nicole C. Pearson, Esq.  
28 Jessica R. Barsotti, Esq.  
Rita Barnett-Rose, Esq.  
Attorneys for Petitioners

**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 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PETITIONERS’ APPLICATION FOR ALTERNATIVE WRIT OF MANDATE** on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

<p>Kayla N. Watson  Office of the County Counsel  County of Orange  333. W, Santa Ana Blvd., Suite 407  Santa Ana, CA 92701-1379  <i>Deputy County Counsel</i></p>	<p><a href="mailto:Suzy.Shoai@coco.ocgov.com">Suzy.Shoai@coco.ocgov.com</a>  <a href="mailto:Kayla.Watson@coco.ocgov.com">Kayla.Watson@coco.ocgov.com</a>  <a href="mailto:Kevin.Dunn@coco.ocgov.com">Kevin.Dunn@coco.ocgov.com</a>  <a href="mailto:leon.page@coco.ocgov.com">leon.page@coco.ocgov.com</a></p>
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**/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.**

**MICHELLE CUSUMANO**

DATED: May 23, 2022