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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF ORANGE**

10 **PEGGY HALL,**

11 Plaintiff,

12 vs.

13 **COUNTY OF ORANGE; ORANGE**
14 **COUNTY BOARD OF SUPERVISORS,**

15 Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
PETITION FOR WRIT OF MANDATE**

16
17 **INTRODUCTION**

18 1. Since March 2020, Plaintiff PEGGY HALL (“Plaintiff” or “Ms. Hall”), on behalf
19 of herself and thousands of other Orange County residents, has been patient with Orange County
20 and its Board of Supervisors and its handling of the COVID-19 pandemic.

21 2. Despite Ms. Hall’s, and others residents’, consistent, informed, and sincere efforts
22 to explain to the Board that no conditions in Orange County justified the declaration of any local
23 or local health emergency, as well as their desire that all emergencies end, the Board has continued
24 to vote to extend the current local and local health emergencies (hereinafter collectively
25 “Emergencies”) and, ultimately, on June 23, 2021, completely abdicated its statutory duty to
26 review the conditions justifying the Emergencies to the Governor of California.

27 3. Despite various Orange County cities voting to end their respective local health
28 emergencies, the Board has continued to vote to extend the Emergencies.

1 4. Currently “conditions of disaster or of extreme peril to the safety of persons or
2 property [within Orange County] caused by epidemic, which conditions are, or are likely to be,
3 beyond the control of the services, personnel, equipment, and facilities of this county, requiring
4 the combined forces of other political subdivisions to combat”¹ do not exist in Orange County to
5 warrant declarations of either a local and local health emergency, and many Orange County
6 residents, including but not limited to Ms. Hall, desire that the Emergencies end.

7 5. Specifically, as of the date of filing this Complaint, 406 people out of 3.2 million
8 Orange County residents are hospitalized with COVID-19, with only 119 are in the intensive care
9 unit.² Similarly, the County’s average daily case rate per 100,000 residents dropped from 18.6 on
10 August 31, 2021, to 16 on September 7, 2021, while the testing positivity rate fell from 6.8% to
11 5.4%, and the county’s Health Equity Quartile rate, which measures the impact of the pandemic
12 on disadvantaged communities, dropped from 7.3% to 5.8%.³

13 6. In addition to these *declining* figures, there have never existed “conditions of
14 disaster or of extreme peril to the safety of persons or property [within Orange County] caused
15 by epidemic, which conditions are, or are likely to be, beyond the control of the services,
16 personnel, equipment, and facilities of this county, requiring the combined forces of other
17 political subdivisions to combat.” In fact, per the Board’s own admission, there has been zero
18 coordination of emergency services, personnel, equipment, or facilities in Orange County and
19 the Board has, admittedly, been extending the Emergencies to avail itself of federal Coronavirus
20 Aid, Relief, and Economic Security (“CARES”) Act and Federal Emergency Management
21 Agency (“FEMA”) monies, intended to assist individuals and businesses affected by the
22 COVID-19 pandemic and economic downturn.

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25 ¹ *Code of Ordinances* (Supp. No. 146), Div. 1, Art. 1, § 3-1-2(c)

26 ² COVID-19 Case Counts and Testing Figures,
27 <https://occovid19.ochealthinfo.com/coronavirus-in-oc> [as of September 13, 2021].

28 ³ Orange County’s COVID-19 Metrics Show Marked Decline, <https://mynewsla.com/orange-county/2021/09/07/orange-countys-covid-19-metrics-show-marked-decline-2/> [as of September 7, 2021]

1 7. Ms. Hall is a resident of Orange County and has been directly and significantly
2 impacted by the Emergencies. As a result, Ms. Hall is beneficially interested in Defendants'
3 compliance with constitutional and statutory law.

4 8. There is also a substantial public interest in ensuring that Defendants comply with
5 the California and U.S. Constitutions, California *Government* and *Health and Safety Codes*, and
6 Orange County's *Code of Ordinances*.

7 9. Ms. Hall brings this suit to redress these constitutional and statutory harms, and
8 seeks declaratory and injunctive relief and damages.

9 **PARTIES**

10 10. Ms. Hall is a proud Orange County resident for over 50 years. She is the founder
11 of The Healthy American, which exists to educate, empower and inform individuals of their rights,
12 the laws that protect those rights, and how to apply those laws to defend their rights.

13 11. Defendant COUNTY OF ORANGE (the "County") is a county in Southern
14 California comprising more than 3 million residents.⁴

15 12. Defendant ORANGE COUNTY BOARD OF SUPERVISORS (the "Board") is an
16 elected body governing the five Supervisorial Districts of Orange County. The current Board
17 members are Supervisor and Chair Andrew Do (1st District), Supervisor Katrina Foley (2nd
18 District), Supervisor Donald Wagner (3d District), Supervisor Doug Chafee (4th District), and
19 Supervisor Lisa Bartlett (5th District). The Board is charged with overseeing the management of
20 the County government, which includes setting County policy, approving an annual budget and
21 contracts, conducting public hearings on land-use and other matters, and making appointments to
22 boards, committees, and commissions.

23 **JURISDICTION AND VENUE**

24 13. Ms. Hall's claims arise under state and federal law. This Court has authority under
25 California *Code of Civil Procedure* Sections 525-526 and 1085-1086, and California *Government*
26 *Code* Section 54960.

27 _____
28 ⁴ United States Census Bureau,
https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml [as of September 13,
2021]

1 14. Venue is proper in the Superior Court of Orange County under California Code of
2 *Civil Procedure* Sections 393(b), 394, and 395 because Defendants are the County of Orange and
3 its Board of Supervisors, a local agency, and all of the acts and omissions occurred in Orange
4 County.

5 **FACTUAL ALLEGATIONS**

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

8 16. On January 26, 2020, California public health officials announced the first COVID-
9 19 positive case in California.

10 **Declaration of a “State of Emergency” in California**

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

13 18. Prior to that, beginning January 26, 2020 and continuing until March 4, 2020,
14 California state health officials repeatedly stated that “the risk to the general public” from the
15 coronavirus was “low.” In fact, on February 26, 2020, the California Department of Public Health
16 (“CDPH”) released a statement that “[w]hile COVID-19 has a high transmission rate, it has a low
17 mortality rate.” The CDPH also noted that “of those who have tested positive for COVID-19,
18 approximately 80 percent do not exhibit symptoms that would require hospitalization.”⁵

19 19. Despite these statements, Governor Newsom declared a state of emergency related
20 to COVID-19 on March 4, 2020 (hereinafter “Proclamation”). The Governor also suspended “for
21 the duration of [the] statewide emergency” the 30-day review period required by *Health & Safety*
22 *Code*, Section 101080, and the 60-day review period required by *Government Code*, Section 8630,
23 within which a local governing authority was statutorily required to review and vote to extend or
24 terminate a local and/or local health emergency.

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26 ⁵ *CDC Confirms Possible First Instance of COVID-19 Community Transmission in*
27 *California*, published February 26, 2020 [https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-006.aspx?TSPD_101_R0=087ed344cfab2000f538569a888fce6daca4fe2d0abd79d0adb34dba1415aa4e85632cdf8b02fb8c088ee755981448000d44358457cb6f7d0dd37198a5be461da4cd60c7b2793e6da2ed9cdbea9afc17013a554648a6111abf74580b08929ff2d35ccb8ee006332edf8ec20a601164eaac2b89a0ee7a777 (as of September 13, 2021)].

1 20 On or about March 11, 2020, California health officials issued their first guidelines
2 for “social distancing” and suggested measures people could voluntarily undertake to slow the
3 spread of the coronavirus.

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

7 22. On March 19, 2020, the Governor ordered all Californians to stay inside their
8 homes indefinitely, unless leaving to perform activities that were necessary to maintain the
9 “federal critical infrastructure.”

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

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

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

21 **Declaration of Emergencies in Orange County**

22 26. On February 26, 2020, then-County Health Officer, Dr. Nichole Quick, declared a
23 local health emergency pursuant to *Health & Safety Code*, Section 101080 based upon the CDC’s
24 February 25, 2020 statement.

25 27. That same day, the Orange County Director of Emergency Services requested that
26 the Chair of the Emergency Management Counsel, Michelle Steel, proclaim a local emergency
27 pursuant to *Government Code*, Section 8630 since the Board of Supervisors was not in session.

28 28. 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.

29. Ms. Steel, then-Chairwoman for the Board of Supervisors acting as the Chair of the Emergency Management Council County of Orange, granted the Director’s request and requested that the Governor (1) declare a state of emergency in California; (2) request the President of the United States to 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.

30. In a press release announcing these measures, 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.”** [Emphasis added].

31. During a news conference following the declarations, 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.” [Emphasis added].

32. 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.

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

2 33. Since February 2020, 291,381 Orange County residents tested positive for COVID-
3 19 and 5,309 died *with* COVID-19.⁶ Of these decedents, 1,151 lived in Skilled Nursing Facilities,
4 617 lived in Assisted Living Facilities, 2 were Orange County jail inmates, and 15 were homeless.⁷

5 34. Currently, the CDC predict the case fatality rate for COVID-19 is between 0.26
6 percent and 0.65 percent, and that ninety-four percent (94%) of people who have died with
7 COVID-19 had at least one co-morbidity, such as diabetes, cancer, obesity, or heart disease.⁸

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

13 36. Thereafter, Orange County’s case rate dropped to 1.5 per day per 100,000 and its
14 positivity rating was less than one percent (1%).

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

16 38. Despite this data and statistics, the County has refused to end its Emergencies.

17 **The Board’s Refusal to Abide by Local Emergency Law and Procedures to**
18 **Continue to “Unlock” Available CARES and FEMA Monies.**

19 39. Dr. Quick declared a local health emergency pursuant to California *Health & Safety*
20 *Code*, Section 101080.

21 40. Section 101080 provides, in pertinent part, as follows [emphasis added]:

22 . . . whenever there is an imminent and proximate threat of the
23 introduction of any contagious, infectious, or communicable disease,
24 chemical agent, noncommunicable biologic agent, toxin, or radioactive

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26 ⁶ COVID-19 Case Counts and Testing Figures,
<https://occovid19.ochealthinfo.com/coronavirus-in-oc> [as of September 13, 2021]

27 ⁷ *Ibid.*

28 ⁸ COVID-19 Death Data and Resources,
[<https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm> (as of September 13, 2021)].

1 agent, the director may declare a health emergency and the local health
2 officer may declare a local health emergency in the jurisdiction or any area
3 thereof affected by the threat to the public health. **Whenever a local health**
4 **emergency is declared by a local health officer pursuant to this section,**
5 **the local health emergency shall not remain in effect for a period in**
6 **excess of seven days unless it has been ratified by the board of**
7 **supervisors, or city council, whichever is applicable to the jurisdiction.**

8 41. Section 101080 further requires that, “**The board of supervisors, or city**
9 **council, if applicable, shall review, at least every 30 days until the local health emergency**
10 **is terminated, the need for continuing the local health emergency and shall proclaim the**
11 **termination of the local health emergency at the earliest possible date that conditions**
12 **warrant the termination.** [Emphasis added].

13 42. The County declared a local emergency pursuant to *Government Code*,
14 Section 8630 and – albeit not mentioned – Section 8558, which defines “local emergency”:

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

1 43. Section 8630 provides the procedural requirements that accompany the
2 declaration of a local emergency [emphasis added]:

3 (a) A local emergency may be proclaimed only by the governing body of a
4 city, county, or city and county, or by an official designated by ordinance
5 adopted by that governing body.

6 (b) Whenever a local emergency is proclaimed by an official designated by
7 ordinance, **the local emergency shall not remain in effect for a period in**
8 **excess of seven days unless it has been ratified by the governing body.**

9 (c) The governing body shall review the need for continuing the local
10 emergency at least once every 60 days until the governing body terminates
11 the local emergency.

12 (d) The governing body **shall proclaim the termination of the local**
13 **emergency at the earliest possible date that conditions warrant.**

14 44. Each time the vote whether or not to extend the Emergencies has been on the agenda
15 for a public meeting, Ms. Hall – and hundreds of other Orange County residents – have attended
16 the meeting to voice their desire that all Emergencies end, and to provide the Board with data to
17 support a finding that no local emergency exists.

18 45. In fact, based upon such statements and information, the cities of Brea, Tustin, Villa
19 Park, Laguna Niguel, Yorba Linda, Newport Beach, Huntington Beach, San Juan Capistrano,
20 Aliso Viejo, and Fullerton have voted to end their local emergencies.

21 46. Despite Ms. Hall’s and other Orange County residents’ requests that the Board vote
22 to end the Emergencies, neighboring cities’ decisions to terminate their local emergencies, and
23 Orange County’s less than 1% positivity rating and 1.5 cases per 100,000 residents per day, the
24 Orange County Board of Supervisors has refused to end either emergency.

25 47. Instead, on June 23, 2021, the Board “**RECEIVED AND FILED A STATUS**
26 **REPORT AND RECEIVED UPDATES FROM THE HEALTH CARE AGENCY**
27 **CONCERNING EFFORTS TO ADDRESS AND MITIGATE THE PUBLIC HEALTH**
28 **AND OTHER IMPACTS CAUSED BY THE NOVEL CORONAVIRUS (COVID-19)**

1 **EMERGENCY; APPROVE IMMEDIATE TERMINATION OF THE LOCAL HEALTH**
2 **EMERGENCY AND LOCAL EMERGENCY RELATED TO NOVEL CORONAVIRUS**
3 **COVID-19 UPON THE GOVERNOR’S TERMINATION OF THE STATE OF**
4 **EMERGENCY AND WITHOUT FURTHER ACTION OF THE BOARD**” (emphasis in

5 original), completely abdicating its statutory duties to review and vote upon whether or not to
6 extend the Emergencies.

7 48. In response to demands for answers from Orange County residents why the Board
8 has not voted to terminate the state of emergency despite its low case numbers and deaths, and no
9 conditions beyond the control of the services, personnel, equipment, and facilities of Orange
10 County requiring the combined forces of other political subdivisions, the Board has repeatedly
11 admitted that it has decided to maintain the Emergencies in order to continue to unlock and receive
12 CARES and FEMA money currently being made available by the federal government in order to
13 assist individuals and businesses impacted by the pandemic and economic downturn.

14 49. As a result of continuing the Emergencies, Orange County has unlocked access to
15 and received over \$614 million in FEMA monies.

16 50. On information and belief, most of the federal monies Orange County has received
17 “to respond to” COVID-19 pandemic and its impact has *not* been made available to Orange County
18 business owners or individuals impacted by the pandemic or economic downturn.

19 51. As of the date of filing this complaint, the Board has not voted to terminate Orange
20 County’s Emergencies.

21 52. Declaratory relief is proper here because Ms. Hall is informed and believes that
22 Defendants will deny that they have violated *Health & Safety Code*, Sections 1010180, and/or
23 *Government Code*, Section 8630, and will continue to refuse to review County conditions and
24 vote whether or not to extend the Emergencies.

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1 **FIRST CAUSE OF ACTION**

2 **(Writ of Mandamus; Violation of Cal. Health & Safety Code, § 1010180**
3 **against All Defendants)**

4 53. Ms. Hall realleges and incorporates by reference the foregoing paragraphs of this
5 Complaint as though fully set forth herein.

6 54. Defendants have violated clear and mandatory duties under *Health & Safety*
7 *Code*, Section 101080 by failing to terminate the local health emergency at the earliest possible
8 date that conditions warrant.

9 55. Defendants have further violated clear and mandatory duties under *Health &*
10 *Safety Code*, Section 101080 by “punting” its obligations to terminate the local health emergency
11 at the earliest possible date conditions warrant by, instead, voting to approve an immediately
12 termination of the local health emergency **“UPON THE GOVERNOR’S TERMINATION OF**
13 **THE STATE OF EMERGENCY WIHTOUT FURTHER ACTION OF THE BOARD.”**

14 56. Unless enjoined, Defendants will continue to violate these rights, and Ms. Hall
15 and the general public will suffer irreparable harm.

16 57. Declaratory relief is proper here because Ms. Hall is informed and believes that
17 Defendants will deny that they have violated *Health & Safety Code*, Section 101080, and will
18 continue to refuse to review County conditions and vote whether or not to extend the emergency.

19 **SECOND CAUSE OF ACTION**

20 **(Writ of Mandamus; Violation of Cal. Gov. Code § 8630 against All Defendants)**

21 58. Ms. Hall realleges and incorporates by reference the foregoing paragraphs of this
22 Complaint as though fully set forth herein.

23 59 Defendants have violated clear and mandatory duties under *Government Code*,
24 Section 8630 by failing to terminate the local emergency at the earliest possible date that
25 conditions warrant.

26 60. Defendants have further violated clear and mandatory duties under *Government*
27 *Code*, Section 101080 by “punting” its obligations to terminate the local emergency at the
28 earliest possible date conditions warrant by, instead, voting to approve an immediately

1 termination of the local health emergency “UPON THE GOVERNOR’S TERMINATION OF
2 THE STATE OF EMERGENCY WIHTOUT FURTHER ACTION OF THE BOARD.”

3 61. Unless enjoined, Defendants will continue to violate these rights, and Ms. Hall
4 and the general public will suffer irreparable harm.

5 62. Declaratory relief is proper here because Ms. Hall is informed and believes that
6 Defendants will deny that they have violated *Government Code*, Section 8630, and will continue
7 to refuse to review County conditions and vote whether or not to extend the emergency.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for relief as follows:

10 1. That the court issue a preliminarily and permanently injunction enjoining
11 Defendants from further violating *Health & Safety Code*, 101080;

12 2. That the court issue a peremptory writ of mandate ordering Defendants to comply
13 with *Health & Safety Code*, 101080, and terminate the local health emergency;

14 3. That the court issue a preliminarily and permanently injunction enjoining
15 Defendants from further violating *Government Code*, 8630;

16 4. That the court issue a peremptory writ of mandate ordering Defendants to comply
17 with *Government Code*, 8630 and terminate the local emergency;

18 5. That the court award Plaintiff Hall reasonable attorneys’ fees and costs of
19 litigation under *Code of Civil Procedure*, Section 1021.5, *Government Code*, Section 54960.5, 42
20 U.S.C. § 1988, and any other applicable provisions of law.

21 6. That the court order such other relief as the court may deem just and proper.

22
23 LAW OFFICE OF NICOLE C. PEARSON

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25 Dated: September 13, 2021

26 _____
Nicole C. Pearson, Esq.
Attorney for Plaintiff PEGGY HALL