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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

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

Petitioner,

vs.

COUNTY OF ORANGE; ORANGE COUNTY BOARD OF SUPERVISORS,

Respondents.

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

REPLY TO OPPOSITION TO PETITIONERS' APPLICATION FOR ALTERNATIVE WRIT OF MANDATE

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

Complaint Filed: September 14, 2021
Trial Date: None Set
Hearing Date: August 18, 2022
Hearing Time: 1:30 p.m.

Cases

Statutes

I. INTRODUCTION

Petitioners' Application (hereinafter "Application"). presents two straightforward legal questions that fall squarely within this honorable Court's statutory and constitutional discretion and authority to decide at this juncture:

(1) Does the Orange County Board of Supervisors currently have a ministerial duty to review local conditions – at all, at whatever time intervals – to determine whether these conditions warrant a continued declaration of the local emergency or the local health emergency?

(2) Does the Orange County Board of Supervisors have an affirmative duty to immediately terminate the local or local health emergency if said conditions warrant upon such review?

If the answer is "yes" to either question, Respondents violated their duty(ies) when, on June 22, 2021, they voted to "APPROVE IMMEDIATE TERMINATION OF THE LOCAL HEALTH EMERGENCY AND LOCAL EMERGENCY RELATED TO NOVEL CORONAVIRUS COVID-19 **UPON THE GOVERNOR'S TERMINATION OF THE STATE OF EMERGENCY** ***AND WITHOUT FURTHER ACTION OF THE BOARD***." (SAP, Ex. A, p. 6, Item 41 [emphasis added]). There is absolutely zero indication of any intention to perform these mandatory duties in the straightforward language of the Board's action quoted above (SAP, Ex. A), nor did they state at any time during the June 22 hearing, or any time since, any intention to do so. Petitioners are not asking this honorable Court to review, reanalyze, or set aside Respondents' decisions that the Emergencies existed in Orange County, or to "violate separation of powers" and substitute its own opinion for that of the Board's. In fact, Petitioners are asking this Court to uphold these roles, duties, and powers by affirming Respondents' statutory, constitutional, affirmative ministerial duties to review local Orange County conditions **at whatever time interval is reasonably appropriate during an actual emergency** and to determine whether these conditions warrant ongoing declarations of emergency. For this reason, Petitioners' Application is proper, and their request for an order directing Respondents to review the conditions in the county that potentially warrant a declaration of emergency and to subsequently terminate the emergency if the conditions so warrant (or affirm the emergency if conditions so warrant) or to show cause why they should not be so directed, should be granted.

II. ARGUMENT

A. Respondents' "Opposition" Is a Procedurally and Substantively Improper Attempt to Have Their Demurrer Heard before September 22.

On July 5, 2022, Respondents filed a demurrer to the SAP. Respondents delayed filing their demurrer and, apparently, the first available date for the hearing was September 22. Rather than spend the effort to move up the hearing date, Respondents did nothing and now, attempt to have the arguments of their demurrer decided as part of the ruling on Petitioners' Alternative Writ. Respondents' efforts are improper and must be ignored. Mandamus is a remedial writ used to correct those acts and decisions of agencies that are in violation of the law and no other adequate remedy is provided and may be used to compel action refused in violation of the law. (*Code Civ. Proc*. §§ 1085, 1086, 1094.5; *Wilson v. Los Angeles County Civil Service Cmm'n* (1951) 103 Cal. App. 2d 426, 430). An alternative writ commands the party to whom it is directed to perform ministerial duties specified in the writ or to show cause before the issuing court why that party should *not* be directed to perform the ministerial duties specified in the writ. The time and place to appear and show cause may be specified in the writ, or subsequent court order. (*Code Civ. Proc*., § 1104). Here the ministerial duty Petitioners are asking to be performed in this Application is the review of local conditions and subsequent termination of local emergency if such conditions warrant it. The Respondents' demurrer to Petition for Writ of Mandamus is not before the court at this time.

The SAP is a pleading separate and distinct from this Application, which consists of a Notice, Memorandum of Points and Authorities, Declarations with Exhibits, and Proposed Order in support. The question in the Application is whether **these moving papers** identify the applicable legal authorities and facts to support a finding that the Court must issue a writ compelling – in this case – Respondents to act in accordance with law or show cause why they do not need to act and review conditions that purportedly create emergencies in the county. (*See Calif. Rules of Court,* rules 3.1110 *et seq.*). Respondents' attempts to conflate and resolve issues raised on demurrer, here, is improper and designed to delay Petitioners' otherwise direct right to an expedited hearing on their Alternative Writ and Request for Order to Show Cause. Any references to portions of the demurrer are not authorized by law and must be struck from the Opposition and disregarded by the Court. (*See e.g.* Oppo., p. ii, 1 [re: failure to state a claim for writ of mandate], 6 [re: beneficial standing]; 7, fn. 7 [regarding taxpayer standing]).

B. <u>Petitioners Have Standing – as Taxpayers and Concerned Members of the Public, and Have a Clear Beneficial Interest in Asking Their Board of Supervisors to Follow the Law</u>.

Petitioners allege **three** types of standing: taxpayer, beneficial, and associational (CHD-CA, only). Respondents do not substantively attack Petitioners' taxpayer or associational standing because both are proper and, instead, only focus on Petitioners' beneficial interest standing in their Opposition.

As a preliminary matter, even if Petitioners do not have beneficial interest standing, they have taxpayer standing, which Respondents do not address in the Opposition and the Court should take as a concession to the point. (*See* Oppo., pp. iii, 6-7:11-8; *Ewald v. Nationstar Mortg., LLC* (2017) 13 Cal.App.5th 947, 948; *Dabney v. Dabney* (2002) 104 Cal.App.4th 379, 384 ["We need not consider an argument for which no authority is furnished"]; *People ex rel. 20th Century Ins. Co. v. Bldg. Permit Consultants, Inc.* (2000) 86 Cal. App.4th 280 [finding defendants' conclusory discussion failing to cite any authority "amounts to an abandonment of the issue"]. Taxpayer standing is automatically conferred on all taxpayers in the county**,** giving them an actual, beneficial interest in the local government properly and appropriately administering the law and using county funds. (*See Taschner v. City Council* (1973) 31 Cal.App.3d 48). As such, Petitioners can easily refute Respondents' claim that they lack general beneficial interest. To establish beneficial interest, a petitioner must show (1) the petitioner "will obtain some benefit from issuance of the writ or will suffer some detriment from its denial" and (2) the interest sought to be advanced is "within the zone of interests to be protected or regulated by the legal duty asserted." (*Waste Management of Alameda County v. County of Alameda* (2000) 79 Cal.App.4th 1223, 1233-34). The "beneficial interest standard is so broad, even citizen or taxpayer standing may be sufficient to obtain relief in mandamus." (*Doe v. Albany Unified Sch. Distr.* (2010) 190 Cal.App.4th 668, 685, *Mission Hosp. Regional Medical Center v. Shewry* (2008) 168 Cal.App.4th 460, 480). Because, as stated, above, Respondents concede that Petitioners have taxpayer standing, Petitioners also have beneficial standing. Furthermore, while a petitioner **ordinarily** must show that the requested writ "is necessary to enforce or protect a specific legal right that is clear, present, certain and substantial," where the question is one of a public – as opposed to a private – interest, and the petitioner seeks performance of a public duty, the requirements of petitioner's rights and respondent's duties are "**relaxed**." (*League of Women Voters v. Eu* (1992) 7 Cal.App.4th 649, 657 [emphasis added]). This "public interest exception" "promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right." (*Ibid*.; quoting *Save the Plastic Bag Coalition v. City of Manhattan*

Beach (2011) 52 Cal.4th 155, 165). It is well-settled that a writ "should not be denied when the issues presented are of great public importance and must be resolved promptly." (*Corbett v. Super. Ct.* (2002) 101 Cal. App. 4th 649, 657, quoting *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 845 [emphasis added]). Here, Petitioners are asking this Court to compel Respondents to perform their public duties as Supervisors for the County of Orange to review local conditions and make a determination whether or not these conditions warrant a continuation – or termination – of the Emergencies, pursuant to their legal duties set forth in *Government Code,* section 8630, and *Health & Safety Code*, section 101080, or to otherwise show cause why they are not required to do so. **These questions are of massive public importance, as Respondents' refusal to do so as required by law has left Petitioners – and tens of millions of other Orange County residents – in a perpetual state of emergency with suspended – if not completely voided – rights that would otherwise exist under regular, non-emergency law.** Petitioners have valid standing to bring the instant Application and SAP under taxpayer, beneficial, and associational standing, and, even if they did not, this proceeding should still properly proceed to immediately resolve these issues of great public significance.

C. <u>Petitioners Claims Are Ripe.</u>

Respondents claim that Petitioners' claims are not ripe in that they exclusively rely upon the threat of potential future mandates, lockdowns, and restrictions. In that false assertion, Respondents completely ignore numerous allegations describing the harms that have *already befallen Petitioners,* Ms. Hall, individually, and thousands of CHD-CA members. (*See e.g.* SAP, ¶¶ 84, 86, 96, 98, 108 [alleging, *inter alia,* that Respondents' Emergencies and resulting "health orders" have restricted Petitioners' ability "to conduct business, go to school, attend church, breathe freely, travel freely, associate with others freely, participate in society without having to "show papers," and to exercise and enjoy other rights and privileges of being a resident of Orange County[.]"]). These ***verified*** allegations demonstrate the harms to Petitioners and the public when an unchecked declaration of local emergency leads to implementation of permanent emergency law. Respondents' attempt to claim that this does not, and has not, affected the citizenry because there is no *current* imposition of restrictions from Respondents upon the people is disingenuous and flawed. The emergency law contemplated by the legislature was meant to be short lived and often reviewed because it confers a massive amount of power to local governments, like Respondents. Failing to perform the ministerial duty of reviewing

the conditions that supposedly warrant a declaration emergency at all allows the local government to exercise a degree of power never contemplated by the legislature when these statutes were enacted.

Petitioners are also living under the constant threat of future harms capable of repetition and Respondents have not presented any authority standing for the proposition that this is not sufficient, which, again, is tantamount to a concession (*See Ewald, supra,* 13 Cal.App.5th at 948; *Dabney, supra,* 104 Cal.App.4th at 384; *People ex rel.,* 86 Cal.App.4th 280). This is likely because, according to the United States Supreme Court, such claims *are* sufficient. (*See Roman Catholic Diocese v. Cuomo* (2020) 141 S.Ct. 63). In *Cuomo*, a Church and synagogue filed §1983 actions, alleging that Governor's emergency Executive Order imposing occupancy restrictions on houses of worship during the pandemic violated the Free Exercise Clause. The Governor argued that the issue was moot because the restrictions were not currently being implemented and the restrictions had changed. In granting the restraining order, the Supreme Court noted, "It is clear that this matter is not moot . . . injunctive relief is still called for because the applicants remain under constant threat that the area in question will be reclassified as red or orange . . . [and] bar individuals in the affected area from attending services before judicial relief can be obtained." (*Id.* at 68). The constant threat of restrictions to fundamental rights, such as, *inter alia,* the First Amendment rights to assemble, speak, petition the government, etc., as set forth in greater detail in the SAP and Application, means this action is not moot and is ripe for consideration. Furthermore, as stated above, Respondents ignore over two years of harms detailed in over 50 pages of the SAP and Application. To be clear: **Petitioners and millions of Orange County residents have already suffered under the unchecked Emergencies for 28 months, and live in fear of additional, continued harm.** They also have an ongoing, past and future right as taxpayers and citizens to ensure that their elected representatives follow the law, uphold the Constitution, and do not misuse, steal or waste tax dollars. Petitioners' claims are certain and ripe for adjudication. Respondents disingenuously argue, with zero evidence in support, that Petitioners' "future" harms argument is without merit because the Abdication Vote was not final and did not mean exactly what it said:[1] or "The Emergencies will automatically end, without any review of conditions as required by law, when the Governor end his state of emergency." (SAP, Ex. A [emphasis added]). Respondents argue that, despite the vote's express,

[1] APPROVE IMMEDIATE TERMINATION OF THE LOCAL HEALTH EMERGENCY AND LOCAL EMERGENCY RELATED TO NOVEL CORONAVIRUS COVID-19 UPON THE GOVERNOR'S TERMINATION OF THE STATE OF EMERGENCY AND WITHOUT FURTHER ACTION OF THE BOARD.

unambiguous language and the meeting being devoid of **any** suggestion or agreement otherwise, what the Board **really** meant was that it would continue to review local conditions and make decisions on whether to maintain the Emergencies. Respondents' arguments are unbelievable and not supported by any evidence. If Respondents' interpretation of the clear language of the Abdication Vote was true, they could have easily presented some writing or testimony to support it. Instead, their unverified Opposition is devoid of any evidence for this novel – and bogus – interpretation. There also was no reservation of rights or authority in the June 22 Abdication Vote to "APPROVE… TERMINATION… WITHOUT FURTHER ACTION OF THE BOARD." There was no indication that Respondents intended to or did retain any discretion to review local conditions and/or end the Emergencies. Instead, the clear, unambiguous language of the Abdication Vote, as well as Respondents' actions, thereafter, demonstrate that Respondents abdicated and delegated their statutory duties – to both review local conditions that might warrant either emergency and terminate either emergency when the conditions warranted – to the Governor.[2]

D. Respondents' Clear, Affirmative, Mandatory and Ministerial Administrative Duties Were Not Suspended by the Governor's Proclamation.

As Respondents admit, mandamus relief is proper to compel performance of a "clear, present and ministerial" duty and "[a] ministerial duty is one that is required to be performed in a prescribed manner under the mandate of legal authority without the exercise of discretion or judgment." (Oppo., p. 8:13-16, citing *County of San Diego v. State* (2008) 164 Cal.App.4th 580, 593). Petitioners bring the instant Application to enforce the law and the duties of Respondents under *Government Code* § 8630, and *Health & Safety Code* § 101080, which identify two mandatory, ministerial duties that Respondents must exercise without discretion or judgment: review local conditions and termination of the local and/or local health emergency, if conditions warrant. Respondents do not deny that *Government Code* section 8630 states, "(c) The governing body **shall** review the need for continuing the local emergency . . . until the governing body terminates the local emergency. (d) The governing body **shall** proclaim the termination of the local emergency at the earliest possible date that conditions warrant," or that *Health & Safety Code,* section 101080 states, "The board of supervisors, or city council, if applicable, **shall review** . . . until the local health emergency is terminated, the need for continuing the local health emergency and **shall proclaim** the termination of the local health

[2] Ironically (or not), Respondents spend a majority of their Opposition arguing they have no obligation or duty to review conditions or end the Emergencies. (Oppo., pp. 9-13).

emergency at the earliest possible date that conditions warrant the termination. (Gov. Code, § 8630; Health & Safety Code, § 101080 [emphasis added]). These are mandatory, affirmative duties. Respondents do not have discretion whether or not to review local conditions or terminate the local health or local emergency, they **must** do so under the statute. Contrary to Respondents twisting of Petitioners' clear arguments in the SAP and Application, Petitioners do **not** "concede" that "no law currently requires the Board to hold any official review or vote on whether or not to renew or terminate the Emergencies while the state-wide emergency is in effect." (Oppo., pp. 8-9:26-2). *Government Code*, sections 8630(c) and (d) and *Health and Safety Code,* section 101080 still exist and remain in full force and effect, even if there is a Proclamation or "emergency." The Proclamation did **not** suspend either Code section – nor could it (*see Newsom v. Super. Ct.* (2020) 63 Cal.App.5th 1099) – the Proclamation modified the timing requirements of Respondents' obligations. In fact, **the Proclamation specifically states that the local health and local emergencies "will remain in effect until each local governing authority terminates its respective local health emergency."** (SAP, Ex. B, p. 4, paras. 7, 8 [emphasis added]). In other words, the Governor specifically contemplated and preserved Respondents' duties and authority to review local conditions and terminate the Emergencies, even during his state of emergency. It could be that the Governor contemplated and intended to empower local boards to review the Emergencies **more frequently** than every 30 or 60 days. Nothing in the Governor's Proclamation relieved Respondents of their clear duties. Respondents also attempt to distort Petitioners' argument that determining whether local conditions warrant the continuation of local states of emergency is "a fundamental policy decision reserved for the local governing body of the relevant county" (App. at 13:17-18) as an "admission" that Respondents' mandatory, ministerial duties are discretionary. This interpretation is mistaken and not well-taken. This statement highlights that Respondents' duties are very important for Respondents to fulfill, and worthy and necessary of being compelled by the Court. Petitioners make no concession that the duty to review the conditions is discretionary, indeed it is not.

E. Respondents Acted in an Arbitrary Manner under the *Government* and *Health and Safety Codes* and Violated Separation of Powers.

As a preliminary matter, Petitioners do *not* "admit" that "state law has been explicitly waived by the Governor's Proclamation." (Oppo., p. 13:22-25; *see* discussion, above). Respondents bizarrely distort Petitioners' statement that "the Governor's Proclamation temporarily suspended the automatic 30- and 60-day review periods" as somehow "admitting" that the Governor "waived" state law. This could not be further

from the case. The clear language of the cited argument states that changes made by the Proclamation were "temporary" and only impacted the applicable review periods. Where the government has discretion, such as, here, in determining whether conditions warrant a continuance of the declaration of local emergency or health emergency, it cannot exercise said discretion in an arbitrary manner, beyond the bounds of reason, and/or in derogation of applicable legal standards. (*See Entezampour v. N. Orange County Cmmn. Coll. Dist.* (2010) 190 Cal.App.4th 832, 837-38). While the standard of review for abuse of discretion is deferential to the government, this does not mean that mandate is not available to aggrieved parties, as a matter of law when, as here, Petitioners are requesting that the court confirm the mandatory duty under the statute to exercise discretion to either confirm or terminate the local emergency after performing the mandatory review. Respondents cite no authority stating as much because none exists. (*See Cal. Hosp. Ass'n v. Maxwell-Jolly (2010)* 188 Cal.App.4th 559; *Miller Family Home, Inc. v. Dept. of Social Services* (1997) 57 Cal.App.4th 488, 491). Conversely, **both sides agree: the government's discretion is *not* without limits** and mandamus lies where a public official or agency abuses its discretion. (Oppo., pp. 10-11; *Cal. Soc'y of Anesthesiologists v. Brown* (2012) 204 Cal. App. 4th 390, 400). This is the Separation of Powers Doctrine, which Petitioners are asking this Court to preserve, and Respondents to respect. (*See Maxwell-Jolly, supra,* 188 Cal.App.4th at 559*; Miller, supra,* 57 Cal.App.4th at 491; *Santa Clara County Counsel Attys. Assn. v. Woodside* (1994) 7 Cal. 4th 525, 540; *Terminal Plaza Corp. v. City and County of San Francisco* (1986) 177 Cal.App.3d 892). Petitioners are not asking the Court to order – or Respondents to make – a specific finding after review of local conditions, or to order Respondents to exercise their discretion in a specific manner, e.g. to terminate the Emergencies.[3] Petitioners are asking the Court to compel Respondents to do what they are obligated to do by law, whatever the outcome may be, which Respondents have failed to do and do not intend to do since voting on the June 22 Resolution. (*See* Respondents' own authority, *County of Los Angeles Dep't of Pub. Health v. Superior Ct. of Los Angeles County* (2021) 61 Cal.App.5th 478, 493). Although the term "arbitrary or capricious" has no precise definition, "courts often characterize unsubstantiated determinations as arbitrary." (*Campbell v. Residential Rent Stabilization & Arb. Bd.*, (1983) 142 Cal. App. 3d 123, 129 [citations omitted]). Where

[3] Note: Petitioners are not asking this Court for Respondents to make a specific finding, even though Petitioners have authority and grounds to do so. (*See, e.g. California Correctional Supervisors Org., Inc. v. Department of Corrections* (2022) 96 Cal. App. 4th 824, 827 [finding "[w]here only one choice can be a reasonable exercise of discretion, a court may compel an official to make that choice."]).

government action has been based on "unsubstantiated speculation," California and federal courts have consistently held them to be arbitrary and unlawful. (*See In re: Smith* (2003) 114 Cal. App. 4th 343, 369; *see also In re: Rosenkranz* (2002) 29 Cal.4th 616, 665; *see e.g. Cal. v. Azar* (N.D. Cal. 2019) 385 F. Supp.3d 960, 1005). As stated in greater detail above, there was no indication – either in the Abdication Vote, discussion preceding it, or Respondents' actions thereafter – that Respondents reserved any rights or intended to continue to review local conditions and/or consider whether or not to end the Emergencies upon any action by the Governor. In doing so, Respondents acted in an arbitrary and capricious manner and violated well-settled principles of separation of powers. Respondents' June 22 vote and its refusal to review local conditions thereafter was "arbitrary, capricious, or entirely lacking in evidentiary support." It is for these reasons that Petitioners have sued Respondents and not the Governor or his affiliated agencies instead.

Additionally, even if Respondents do not have to explain their decisions with extensive findings or explanations, this does not take away their obligation to act at all. Respondents cite *Terminal Plaza*, *supra,* to establishes this; however, *Terminal Plaza* is distinguishable. In *Terminal Plaza*, an owner of a residential hotel challenged the validity of a city ordinance requiring residential hotel owners to provide relocation assistance to residents prior to conversion of hotel to any other use. (*Terminal, supra,* 177 Cal.App.3d at 892, 896). The court found that the ordinance could be adopted without review by the planning commission **because the statute did not specifically require the planning commission to review.** (*Id*. at 907-908). Here, the applicable *Government Code* and *Health and Safety Code* sections **do** require Respondents to review local conditions and make a determination whether or not these justify ongoing declarations of emergency. (*See Gov. Code,* § 8630; *Health & Safety Code,* § 101080). Additionally, even if the County was not required to make detailed supportive findings they have to **at minimum** review the conditions and end the emergency at the earliest possible date, as required by statute. These mandatory duties were given to local governments for a reason, and to ignore these duties would make that language in the statute superfluous. Courts must "give effect and meaning to all parts of a law if possible and avoid interpretations which render statutory language superfluous." (*Mundy v. Superior Court* (1995) 31 Cal.App.4th 1396, 1405). These portions of the statute would be rendered meaningless if there the court found no duty of any kind for Respondents.

F. <u>Petitioners Do Not Have Any Remedy at Law.</u>

Petitioners lay out, in painstaking detail, how Respondents' refusal to review local conditions and

declarations of Emergencies harmed them. These harms include, not only loss of employment and business opportunities, but inability to receive medical care; to assemble and speak freely; to petition their government for redress of grievances; to travel and move freely about society; and many more harms that cannot and will not ever be rectified with money. There is no remedy at law to redress these, or to compel – or annul or restrain governmental action refused or already taken in violation of law. (*Wilson, supra,* 103 Cal.App.2d at 431; *Ass'n of Deputy Distr. Atty's for Los Angeles County v. Gascon* (2022) 79 Cal.App.5th 503, 523; citing *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 441-42 [finding that mandamus "is the traditional remedy for the failure of a public official to perform a legal duty"]. Petitioners' Application for Alternative Writ of mandate is proper as there is no adequate remedy at law to compel Respondents to perform their ministerial duties as requested here.

G. <u>Petitioners Timely and Properly Filed and Served the Application.</u>

When a petitioner **initiates** an action with an alternative writ application the petitioner may personally serve said application. (*Code Civ. Proc*., § 1107). "When a writ of mandate is sought pursuant to the provisions of Section 1088.5, the action may be filed and served in the same manner as an ordinary action under Part 2 (commencing with Section 307)." (*Code Civ. Proc*., § 1107). Here, Petitioners commenced this action with a Petition for Writs of Traditional and Administrative Mandate under *Code of Civil Procedure,* sections 1094 and 1088.5, and Complaint for Declaratory and Injunctive Relief, and this was personally served on Respondents pursuant to the statute. Petitioners have satisfied their procedural duties in serving the action under the code. Even if the Application were not properly served (which it was) "the court may act on the petition **without *any* service** if it decides to do so." (*See Board of Sup'rs v. Super. Ct.* (1994) 23 Cal.App.4th 830 [emphasis added]; *see also Peter v. Board of Sup'rs of Kern County* (1947) 78 Cal.App.2d 515). Section 1107, which contains general provisions regarding applications for all types of prerogative writs, states in part: "The court in which the application is filed, in its discretion and for good cause, may grant the application *ex parte*, without notice or service of the application as herein provided." (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1246.) A noticed alternative writ can be heard within ten (10) calendar days of filing, and as confirmed in *Lewis*, alternative writs are often issued by the court at an *ex parte* hearing. (*See Code Civ. Proc*., §§ 1087, 1088, 1107). That said, Respondents have been personally served with the initial pleadings, have been properly served with this Application in the manner agreed upon by the parties (e-service), with more

than the statutory time period to respond. Respondents' procedural arguments are meritless.[4]

III. CONCLUSION

For the foregoing reasons Petitioners' Application should be granted and Respondents should be ordered to perform their mandatory ministerial duty to review conditions in the county that potentially warrant a declaration of local emergency and local health emergency and to terminate if conditions no longer warrant. The Petitioners have standing, the issue is ripe and there is no remedy at law available for Petitioners to direct Respondents to perform their duties at law. Focusing exclusively on the clear ministerial and mandatory duties of Respondents under the law, Petitioners' Application must be granted, and Respondents directed to perform the required review and either terminate or affirm the ongoing declarations of local emergency or order to show cause why they do not have such duty.

LAW OFFICE OF NICOLE C. PEARSON
FACTS LAW TRUTH JUSTICE

Dated: August 11, 2022

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

[4] Respondents repeatedly complain that the **Application** is not verified; however, Respondents cite to no authority requiring as much. The authority cited regarding verification of a filing refers to the original writ petition or pleading, and Petitioners' operative Petition *is* verified.

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 **REPLY TO OPPOSITION TO 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:

Laura Knapp Office of the County Counsel County of Orange 400 West Civic Center Drive, Suite 202Santa Ana, CA 92701-1379 714.834.3400 *Deputy County Counsel*	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

/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 _____.

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

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

Executed at **NEWPORT BEACH, California**.

DATED: August 11, 2022

_____
MICHELLE CUSUMANO