

1 **SANTA ANA, CALIFORNIA - MONDAY, FEBRUARY 27, 2023**

2 **AFTERNOON SESSION**

3 * * * * *

4
5 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD
6 VIA TELECONFERENCE WITH THE COURT REPORTER IN A
7 REMOTE LOCATION SEPARATE AND APART FROM THE
8 ATTORNEYS AND JUDGE. THE PROCEEDINGS WERE
9 TRANSCRIBED TO THE BEST ABILITY OF THE COURT
10 REPORTER TO HEAR AND UNDERSTAND THE
11 PROCEEDINGS:)

12
13 **THE COURT:** CALLING THE CASE OF PEGGY HALL
14 VERSUS COUNTY OF ORANGE. CASE 2021-01220678.

15 APPEARANCES PLEASE ON BEHALF OF THE PETITIONER.

16 **MS. PEARSON:** NICOLE PEARSON ON BEHALF OF
17 PETITIONERS PEGGY HALL AND CHILDREN'S HEALTH DEFENSE
18 CALIFORNIA CHAPTER.

19 **MS. BARSOTTI:** JESSICA BARSOTTI ALSO ON BEHALF
20 OF PETITIONERS.

21 **THE COURT:** GOOD AFTERNOON AND WELCOME,
22 APPEARANCES PLEASE FOR THE COUNTY.

23 **MS. WATSON:** KAYLA WATSON DEPUTY COUNSEL ON
24 BEHALF OF THE RESPONDENT.

25 **MR. DUNNE:** KEVIN DUNN FOR RESPONDENTS.

26 **MS. SHOAI:** SUZANNE SHOAI FOR RESPONDENTS.

1 **THE COURT:** GOOD AFTERNOON AND WELCOME. THE
2 YES -- THERE'S ANOTHER PERSON. AND WHO ARE YOU?

3 **MS. ROSENBERG:** GOOD AFTERNOON, YOUR HONOR. I'M
4 DEPUTY ATTORNEY GENERAL JENNIFER ROSENBERG. I'M
5 COUNSEL FOR GOVERNOR NEWSOM IN THE ORANGE COUNTY BOARD
6 OF EDUCATION VERSUS NEWSOM CASE WHICH IS THE CASE TO
7 WHICH THERE'S A QUESTION OF RELATION THAT HAS BEEN
8 FILED.

9 **THE COURT:** OKAY. WELCOME.

10 **MS. ROSENBERG:** THANK YOU.

11 **THE COURT:** WE'RE ON CALENDAR TO ADDRESS
12 SEVERAL DIFFERENT ISSUES. THE MATTER -- THE CASE WAS
13 PREVIOUSLY HANDLED BY ANOTHER JUDICIAL OFFICER WHO
14 BASED ON MY REVIEW TO PREPARE FOR TODAY HAD DONE SOME
15 EXTENSIVE WORK WITH YOU ALL, SO I'M SORRY THAT YOU NO
16 LONGER HAVE THE SERVICES OF ONE BRIGHT JURIST IN THE
17 MATTER OF JUDGE LEE. YOU HAVE ME.

18 DID YOU GET MY TENTATIVE?

19 **MR. DUNNE:** YES.

20 **MS. BARSOTTI:** YES, I DID.

21 **THE COURT:** DO YOU WISH TO BE HEARD? SO THERE'S
22 SEVERAL MATTERS THAT ARE ON CALENDAR. THE FIRST ONE I
23 THINK WAS THE MOTION TO STRIKE. I DENIED THAT.

24 DO YOU WISH TO BE HEARD FURTHER?

25 **MS. PEARSON:** YOUR HONOR, WE'LL SUBMIT ON THE
26 TENTATIVE.

1 **MR. DUNNE:** YES, YOUR HONOR.

2 **THE COURT:** ON THE MOTION TO STRIKE.

3 **MR. DUNNE:** NOT WITH RESPECT TO THE MOTION TO
4 STRIKE.

5 **THE COURT:** SO THE TENTATIVE RELATED TO THE
6 MOTION TO STRIKE WILL BECOME THE ORDER OF THE COURT.

7 THE SECOND MATTER THAT'S ON CALENDAR IS AN
8 ORDER TO SHOW CAUSE, AND I'M GONNA SUMMARIZE WHERE I
9 THINK WE ARE AND YOU CAN TELL ME IF I'VE GOT IT WRONG.

10 SO ESSENTIALLY JUDGE LEE HAD CONDUCTED A HEARING
11 WITH YOU ALL RELATED TO -- THERE WERE TWO ISSUES. IT
12 WAS A DEMURRER AND THEN A REQUEST FOR AN ALTERNATIVE
13 WRIT, AND THAT HEARING WAS SEPTEMBER 22ND, 2022.

14 AS A RESULT OF THAT HEARING, THE DEMURRER WAS
15 OVERRULED AND THAT'S WHY YOU HAD TO FILE YOUR ANSWER.
16 AND THEN THE OTHER THING THAT HAPPENED IS AS A RESULT
17 OF THAT HEARING WAS AN ORDER ISSUED BY JUDGE LEE
18 REQUIRING THE COUNTY THROUGH AN ALTERNATIVE WRIT OF
19 MANDATE COMMANDING THE COUNTY TO REVIEW LOCAL
20 CONDITIONS UNDER HEALTH AND SAFETY CODE SECTION 101080
21 AND GOVERNMENT CODE SECTION 8630(D) AND HE SET THAT
22 FOR AN ORDER TO SHOW CAUSE DECEMBER 1, 2022.

23 AND THEN AS PART OF THAT SAME RULING, JUDGE LEE
24 ALSO AFFORDED -- ANOTHER WAY FORWARD IN THE
25 ALTERNATIVE RESPONDENT'S ORDER TO SHOW CAUSE WHETHER
26 THE BOARD OF SUPERVISORS IS COMPLYING WITH THEIR

1 OBLIGATIONS UNDER THE LAW IN CONDUCTING THE
2 STATUTORILY MANDATED REVIEW HEARINGS. AND YOU WERE
3 ORDERED TO SUBMIT A BRIEF ON OR BEFORE NOVEMBER 14TH.

4 AND BASED ON WHAT I SAW, IT APPEARS THAT YOU
5 ATTEMPTED TO -- THE COUNTY ATTEMPTED TO PROCEED UNDER
6 THAT MANNER.

7 AND SO MY TENTATIVE IS -- YOU KNOW, ESSENTIALLY
8 I DON'T BELIEVE YOU DISCHARGED WHAT JUDGE LEE ASKED
9 YOU TO DO; AND THEREFORE, WE'RE GOING TO GO BACK TO
10 THE ORIGINAL ORDER WHICH IS THE ORDER THAT HE MADE
11 WHICH IS YOU NEED TO DISCHARGE YOUR OBLIGATIONS UNDER
12 THOSE CODE SECTIONS I CITED.

13 SO IS THAT A FAIR SUMMARY OF WHERE WE ARE IN
14 THIS PARTICULAR MATTER?

15 **MS. BARSOTTI:** YES, IT IS.

16 **MR. DUNNE:** PROCEDURALLY, YES. WE HAVE SOME
17 DISAGREEMENTS --

18 **THE COURT:** WE'LL MAKE SURE THAT THEY DO THAT.
19 OKAY.

20 **MR. DUNNE:** THANK YOU, YOUR HONOR.

21 JUST A COUPLE OF HOUSEKEEPING MATTERS.

22 **THE COURT:** YES.

23 **MR. DUNNE:** ONE IS THAT ON NOVEMBER 30TH OF 2022
24 WE FILED A SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE.
25 AND ALSO ON FEBRUARY 26TH, FRIDAY LAST, WE FILED A
26 SECOND SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE.

1 **THE COURT:** I'M SORRY, WHAT DATE?

2 **MR. DUNNE:** THAT WAS ON FRIDAY, FEBRUARY 26TH OF
3 2023, JUST LAST FRIDAY.

4 **THE COURT:** OKAY.

5 **MR. DUNNE:** OH, RIGHT. THAT WAS THE 24TH.
6 THANK YOU.

7 SO AS TO BOTH OF THOSE ITEMS, I DID NOT SEE THE
8 COURT ADDRESS THOSE IN THE TENTATIVE RULING, SO I JUST
9 WANTED TO MAKE SURE THAT THE COURT HAD RECEIVED THOSE
10 AND HAD CONSIDERED THOSE BECAUSE I THINK THEY'RE
11 EXTREMELY GERMANE TO THE ARGUMENTS ABOUT TO BE MADE.

12 **THE COURT:** OKAY. HOLD ON. LET ME TAKE A LOOK.

13 I'M LOOKING AT THE RESPONDENT'S REQUEST FOR
14 JUDICIAL NOTICE NO. 246. THAT WAS THE ONE FILED
15 NOVEMBER 30TH, 2022 WAS GRANTED.

16 I'M READING IT. I DON'T KNOW WHAT PAGE IT'S ON
17 BECAUSE I DON'T HAVE IT NUMBERED BUT THAT ONE WAS
18 GRANTED.

19 AND THEN THE OTHER ONE -- I'M CERTAIN I DID NOT
20 REVIEW THE OTHER ONE IF IT WAS FILED ON FRIDAY. I
21 MEAN I'D HAVE TO LOOK TO TELL YOU THAT.

22 **MR. DUNNE:** SO WE PROVIDED ALSO A COURTESY
23 COPY IN PERSON, BUT I ALSO HAVE AN ADDITIONAL COPY
24 HERE TODAY IF THE COURT COULD ALLOW US TO SUBMIT THAT.

25 **MS. PEARSON:** AND YOUR HONOR, IF I MAY, NICOLE
26 PEARSON ON BEHALF OF THE PETITIONERS.

1 WE FILED OBJECTIONS TO THE BELATED SUPPLEMENTAL
2 REQUEST FOR JUDICIAL NOTICE THAT WAS FILED ON FRIDAY.
3 IT'S AN OCTOBER 17TH '22 PRESS RELEASE FROM GOVERNOR
4 NEWSOM'S OFFICE WHICH COUNSEL HAS HAD MORE THAN AMPLE
5 OPPORTUNITY TO PRESENT TO THIS COURT AND IN OR OPINION
6 IS NOT GERMANE TO THE ISSUE AT HAND.

7 **MR. DUNNE:** YOUR HONOR, ARE YOU INVITING
8 ARGUMENT YET OR ARE WE --

9 **THE COURT:** NOT YET. I'M JUST TRYING TO FIGURE
10 OUT WHAT'S GOING ON.

11 SO THERE'S A REQUEST FOR JUDICIAL NOTICE AND
12 FILED BY THE RESPONDENT TO WHICH THE PETITIONER
13 OBJECTS.

14 **MS. PEARSON:** YES. THE ONE ON FRIDAY, YES, YOUR
15 HONOR. WELL, TO BOTH BUT...

16 **THE COURT:** IT'S KIND OF IMPORTANT.

17 **MR. DUNNE:** IT'S VERY IMPORTANT.

18 **THE COURT:** SO I JUST REVIEWED IT BRIEFLY, AND
19 THE GIST OF THE ATTACHED EXHIBIT IS STATED INTENTION
20 OF THE GOVERNOR TO RENEGE THE STATE OF EMERGENCY
21 EFFECTIVE TOMORROW?

22 **MR. DUNNE:** YES.

23 **THE COURT:** OKAY. I'LL HEAR FROM THE
24 PETITIONER.

25 **MS. PEARSON:** SURE. NICOLE PEARSON ON BEHALF OF
26 THE PETITIONER.

1 IF YOUR HONOR LOOKS AT EXHIBIT 35 TO THEIR
2 SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE, THE PRESS
3 RELEASE FROM THE GOVERNOR'S OFFICE IS DATED
4 OCTOBER 17TH OF 2022. THIS WAS ONE MONTH BEFORE
5 RESPONDENTS WERE REQUIRED BY JUDGE LEE TO FILE THEIR
6 OPPOSITION TO THE OSC WHICH WAS FILED ON
7 NOVEMBER 14TH, 2022.

8 THEY'VE HAD MORE THAN AMPLE OPPORTUNITY TO
9 PRESENT IT TO THE COURT TO GIVE PETITIONER'S TIME TO
10 RESPOND TO AND OBJECT TO THIS NOTICE. SO THEY HAVEN'T
11 EVEN SATISFIED THE STATUTORY PROCEDURAL AND
12 SUBSTANTIVE REQUIREMENTS UNDER EVIDENCE CODE SECTION
13 AND 452 AND 453(B).

14 SO AS A PRELIMINARY MATTER, THIS SHOULD NOT BE
15 GRANTED BECAUSE WE GOT NOTICE OF IT I THINK AROUND
16 4:00 P.M. ON FRIDAY, THE DAY BEFORE THIS HEARING WHEN
17 THEY'VE HAD 5 OR 6 MONTHS TO PRESENT THIS PIECE OF
18 EVIDENCE, NUMBER ONE.

19 NUMBER TWO, THIS PIECE OF EVIDENCE -- EXCUSE ME,
20 PRESS RELEASES IN CALIFORNIA SET OUT IN OUR OBJECTIONS
21 WHICH WE FILED TODAY, COURTS -- CALIFORNIA COURTS ARE
22 NOT REQUIRED TO TAKE JUDICIAL NOTICE.

23 IT'S NOT ONE OF THOSE COMPULSORY OR MANDATORY
24 DIRECTIVES THAT A COURT MUST TAKE JUDICIAL NOTICE OF
25 IN CALIFORNIA THAT RELATE TO AN INCIDENT OR AN EVENT
26 THAT MAY HAPPEN TOMORROW.

1 WE'VE ALREADY SEEN IN CALIFORNIA THAT THAT HAS
2 NOT HAPPENED WHERE THERE HAVE BEEN DECLARATIONS OF A
3 STATE OF EMERGENCY WILL -- A TERMINATION OF THE STATE
4 OF EMERGENCY WILL OCCUR AND THEY HAVE NOT.

5 BUT THE MOST IMPORTANT ISSUE IS THAT THE
6 GOVERNOR'S EXECUTIVE POWERS AND AUTHORITY OVER THE
7 STATE WIDE DECLARATION OF EMERGENCY HAS NOTHING TO DO
8 WITH THE GOVERNMENT CODE SECTION AND THE HEALTH AND
9 SAFETY CODE SECTION THAT ARE AT ISSUE HERE.

10 WE'RE TALKING ABOUT LOCAL GOVERNING BODIES.
11 WE'RE TALKING ABOUT LOCAL BOARDS OF SUPERVISORS AND
12 THEIR STATUTORY OBLIGATIONS DURING A STATE OF
13 EMERGENCY.

14 BUT THEY'RE SEPARATE AND APART FROM THOSE
15 OBLIGATIONS THAT A GOVERNOR HAS AS A PART OF THE
16 EXECUTIVE BRANCH --

17 **THE COURT:** HOLD ON.

18 **MS. PEARSON:** AND --

19 **THE COURT:** WELL, WASN'T THE ARGUMENT THAT AS OF
20 JUNE 22ND, 2021, THE COUNTY -- AGAIN, I'M GONNA
21 CHARACTERIZE, SO IF I'M UNFAIR, I APOLOGIZE.

22 BUT THE COUNTY SAID WE'RE GONNA HAVE OUR STATE
23 OF EMERGENCY IN PLACE AS LONG AS THE GOVERNOR SAYS
24 THAT THE STATE OF EMERGENCY IS IN PLACE.

25 AND SO ASSUMING IT'S GETS LIFTED, I ASSUME THE
26 STATE OF EMERGENCY WOULD -- THE ARGUMENT THAT THE --

1 ON WHICH THE RESPONDENTS RELY WOULD THEN GO AWAY;
2 RIGHT?

3 **MR. DUNNE:** IN WHAT MANNER? JUST THE LAST
4 SENTENCE THAT YOU STATED.

5 **THE COURT:** THE ARGUMENT THAT -- AND AGAIN, I'M
6 GONNA CHARACTERIZE IN A SUMMARY MANNER SO I'M
7 APOLOGIZING IN ADVANCE FOR BEING IMPRECISE.

8 BUT EFFECTIVELY, WE'RE NOT DOING THESE HEARINGS
9 OR PUBLIC HEARINGS INVOLVING THE BOARD BECAUSE WE
10 DON'T HAVE TO BECAUSE WE'VE MADE A DETERMINATION IN
11 JUNE OF 2021 THAT WE WOULD CONTINUE TO HAVE OUR STATE
12 OF EMERGENCY IN PLACE AT LEAST AS LONG AS THE STATE OF
13 CALIFORNIA HAS THEIR STATE OF EMERGENCY IN PLACE.

14 AND SINCE IT WILL RESOLVE I PRESUME. AND AGAIN,
15 I DON'T KNOW. AS YOU WERE SAYING, WE DON'T KNOW
16 WHAT'S GONNA HAPPEN, BUT THAT ONCE THAT OCCURS, THEN
17 THE COUNTY MAY TAKE A DIFFERENT POSITION IN THEIR
18 BRIEFS AS IT RELATES TO WHETHER OR NOT YOU'RE GONNA
19 HOLD HEARINGS.

20 BECAUSE THE RILING I MADE ON THE TENTATIVE BASIS
21 NOT UNDERSTANDING THAT THIS PIECE OF INFORMATION WAS
22 OUT THERE WAS HERE'S WHAT I READ JUDGE LEE TO SAY.
23 JUDGE LEE HEY, YOU NEED TO CONDUCT HEARINGS OR IF YOU
24 DON'T CONDUCT HEARINGS, AT LEAST TELL ME WHY YOU'RE
25 NOT.

26 AND THEN YOU'VE FILED YOUR BRIEF SAYING WE DON'T

1 HAVE TO DO HEARINGS FOR THE REASONS WE'VE ALREADY
2 ARGUED, AND THE REVIEWS THAT ARE BEING CONDUCTED ARE
3 BEING -- THEY'RE APPROPRIATE UNDER THE LAW.

4 AND MY TENTATIVE INDICATES I DON'T THINK THAT'S
5 WHAT JUDGE LEE SAID. AND I'M NOT THE COURT OF APPEAL,
6 SO WE'RE GONNA DO WHAT JUDGE LEE SAYS WHICH IS YOU
7 FILED TO DEMONSTRATE THAT YOU WERE OTHERWISE
8 COMPLYING; AND THEREFORE, YOU GOTTA DO TO THAT WHAT
9 JUDGE LEE AND NOW I AM ORDERING WHICH IS TO CONDUCT
10 THESE HEARINGS WHICH MAY NO LONGER BE IN DESPITE IF
11 THERE'S NO LONGER A STATE OF EMERGENCY.

12 ISN'T THAT HOW IT KIND OF PLAYS OUT?

13 **MR. DUNNE:** I HEAR THE COURT. I CONTINUE TO
14 HAVE SOME DISAGREEMENTS WITH THE WAY THAT IT'S
15 CHARACTERIZED AND WOULD INCORPORATE THOSE INTO MY
16 SUBSTANTIVE ARGUMENT.

17 **THE COURT:** ALL RIGHT.

18 **MS. WATSON:** THIS IS KAYLA WATSON.

19 TO ANSWER THE COURT'S QUESTION, WHEN THE STATE
20 OF EMERGENCY TERMINATES TOMORROW, THE LOCAL
21 EMERGENCIES IN ORANGE COUNTY WILL AUTOMATICALLY
22 TERMINATE AS WELL.

23 THE BOARD ALREADY VOTED ON THAT IN JUNE.

24 **THE COURT:** ALL RIGHT. THAT WAS MORE ARTICULATE
25 THAN I --

26 **MS. PEARSON:** NICOLE PEARSON. THAT DOES NOT

1 RESOLVE THE UNDERLYING WRIT PETITION DECLARATORY
2 RELIEF AND INJUNCTIVE RELIEF ACTION THAT WE HAVE WHICH
3 IS ASKING THIS COURT TO AFFIRM OUR INTERPRETATION OF
4 THE GOVERNMENT CODE AND THE HEALTH AND SAFETY CODE
5 WHICH REQUIRES, AND JUDGE LEE AGREED WITH US, REQUIRES
6 PUBLIC MEETINGS TO BE HOLD WHETHER IT'S EVERY 30 DAYS
7 OR EVERY 45 DAYS OR 15 DAYS, THAT THESE PUBLIC
8 MEETINGS NEED TO OCCUR EVEN IF THERE'S A STATE OF
9 EMERGENCY.

10 THE LOCALLY CONDITIONS NEED TO BE REVIEWED
11 DURING A PUBLIC MEETING AND THE DECISION TO CONTINUE
12 OR END A LOCAL EMERGENCY MUST BE MADE DURING A PUBLIC
13 MEETING REGARDLESS OF WHETHER THE STATE OF EMERGENCY.

14 **THE COURT:** NO, I --

15 **MS. PEARSON:** EVEN IF IT ENDS TOMORROW. IT
16 IGNORES THE LAST, YOU KNOW, YEAR AND A HALF WHERE NO
17 PUBLIC MEETINGS HAVE BEEN HELD AND WE DON'T HAVE A
18 FINAL RULING ON THAT ISSUE.

19 **THE COURT:** WELL, SO LET ME APOLOGIZE IN ADVANCE
20 BECAUSE I WAS EXPECTING SOMETHING DIFFERENT WHEN WE
21 CAME OUT HERE TODAY, BUT IT SEEMS LIKE THINGS MAY BE
22 DIFFERENT.

23 BUT WOULDN'T THAT BE A DIFFERENT ISSUE; RIGHT?
24 ISN'T THE ISSUE IF YOU'RE SEEKING A MANDATE WHICH IS
25 COMPULSION FOR THEM TO DO SOMETHING AND IF THAT'S
26 RENDERED MOOT, WOULDN'T YOUR CAUSE BE THEN, YOU KNOW,

1 SOME OTHER FORM OF RELIEF?

2 **MS. PEARSON:** WELL, THE FIRST THING -- I WOULD
3 LIKE TO JUST BACKUP FOR ONE SECOND.

4 **THE COURT:** STATE WHO YOU ARE.

5 **MS. PEARSON:** THIS IS NICOLE PEARSON ON BEHALF
6 OF PETITIONER'S COUNSEL.

7 WE HAVEN'T ADDRESSED THE PROPRIETY OF THE
8 SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE THAT WAS
9 SUBMITTED --

10 **THE COURT:** I'M SORRY, I DON'T MEAN TO INTERRUPT
11 YOU.

12 SO HERE'S WHAT I NORMALLY DO WHEN PEOPLE TELL ME
13 THAT THEY'RE SURPRISED. AND IT'S FAIR. I'VE READ IT.
14 YOU ACCURATELY DESCRIBED THE DATA. THE PRESS RELEASE
15 IS OCTOBER 2022 INDICATING SOMETHING THAT'S GONNA
16 HAPPEN TOMORROW. THAT IS AN ACCURATE DESCRIPTION OF
17 THE DOCUMENT THAT I SAW.

18 BUT TYPICALLY WHEN THAT ARISES AND THE RELEVANT
19 INFORMATION IS PRESENTED, THE COURT CAN DO A COUPLE OF
20 THINGS. THEY CAN SAY NO, I'M NOT GONNA CONSIDER IT OR
21 THEY CAN SAY ALL RIGHT, WELL, I'M GONNA CONSIDER IT
22 BUT I'M GONNA ELIMINATE ANY PREJUDICE THAT MIGHT
23 BEFALL TO THE PERSON WHO WOULD OTHERWISE BE IN THE
24 SITUATION OF BEING PREJUDICED. IN THIS CASE THAT
25 WOULD BE YOU, PETITIONER, AND GIVE YOU ADDITIONAL
26 TIME.

1 THAT'S WHAT I WOULD TYPICALLY DO BECAUSE -- AND
2 I'M NOT -- I GUESS I AM SPEAKING ABOUT MY JUDICIAL
3 PHILOSOPHY I SUPPOSE, BUT MY TYPICAL APPROACH IS THAT
4 IF THERE'S MORE INFORMATION THAT APPEARS RELEVANT TO
5 THE COURT THAT I'M GONNA WANT THAT INFORMATION TO BE
6 PRESENTED TO WHOMEVER THE TRIER OF FACT IS, WHETHER
7 IT'S ME OR A JURY AND SO THAT PEOPLE HAVE THE
8 OPPORTUNITY TO HEAR EVERYTHING THAT THEY NEED TO HEAR
9 AND NOBODY IS PREJUDICED.

10 UNDERSTANDING THE ARGUMENT I HAVE PREJUDICE
11 BECAUSE I WANT TO GO FORWARD TODAY, AND THAT -- YOU
12 KNOW AGAIN, I DON'T PREJUDGE ANYTHING BUT THAT
13 NORMALLY DOESN'T MOVE THE NEEDLE FROM MY PERSPECTIVE.

14 SO LET'S --

15 **MS. BARSOTTI:** JESSICA BAR TOWED. IF I MAY BE
16 HEARD BRIEFLY ON THIS ISSUE?

17 **THE COURT:** SURE.

18 **MS. BARSOTTI:** I THINK THE ISSUE HERE IS THAT
19 THIS PRESS RELEASE AND WHATEVER THE GOVERNOR DOES
20 TOMORROW IS IRRELEVANT TO WHAT WE'RE DOING HERE
21 BECAUSE COUNSEL JUST SAID THIS, THEY INTEND TO
22 AUTOMATICALLY END THE EMERGENCY WITH NO REVIEW HEARING
23 AND NO REVIEW OF CONDITIONS IF THE GOVERNOR ENDS IT.

24 WELL HAS PRECISELY WHAT LEE SAID THEY'RE NOT
25 ALLOWED TO DO, SO I DON'T THINK THAT THAT RESOLVES THE
26 ISSUE AND IT DOESN'T MAKE IT MOOT.

1 BECAUSE FOR EXAMPLE, IF THEY WERE TO END IT
2 AUTOMATICALLY TOMORROW WITH NO HEARING AND NO REVIEW,
3 THAT DEFIES LEE'S ORDER AND IT ALSO DEFIES THE
4 REQUIREMENTS UNDER THE TWO CODE SECTIONS THAT WE'RE
5 TALKING ABOUT.

6 AND EVEN IT DEFIES NEWSOM'S ORDER THAT SAYS THAT
7 LOCAL PEOPLE MUST END THEIR OWN EMERGENCIES. THEY
8 CAN'T RELY ON ME. SO IT DOESN'T RESOLVE THE ISSUE IN
9 ANY WAY.

10 **MR. DUNNE:** YOUR HONOR, I THINK THERE MIGHT BE
11 MORE EFFICIENT IF I WERE TO MAKE MY ARGUMENT FIRST AND
12 THEN THEY CAN REPLY BECAUSE I DON'T THINK THAT THE
13 PETITIONERS UNDERSTAND THE ARGUMENT THAT'S PRESENTED.

14 **THE COURT:** ALL RIGHT. LISTEN, WE'RE HERE FOR
15 AN ARGUMENT. LET'S HAVE AN ARGUMENT AND THEN MAYBE MY
16 TENTATIVE WILL CHANGE. HOW ABOUT THAT?

17 **MR. DUNNE:** YES.

18 **THE COURT:** YES.

19 **MR. DUNNE:** THANK YOU.

20 YOUR HONOR, THIS CASE IS IN FACT MOOT, AND THE
21 REASON THAT IT IS MOOT IS NOT JUST BECAUSE THE FACT
22 THAT THE EMERGENCY IS GOING TO END TOMORROW.

23 UNDER -- THE ORDER THAT WAS SUBMITTED AFTER THIS
24 COURT ISSUED ITS TENTATIVE TODAY, THE PROPOSED ORDER
25 BY THE PETITIONERS SIMILAR TO ITS PRIOR ORDER IS FOR
26 THIS COURT TO ORDER THE ORANGE COUNTY BOARD OF

1 SUPERVISORS TO PLACE ONTO ITS AGENDA TOMORROW,
2 FEBRUARY 28TH, AT THE REGULARLY SCHEDULED BOARD
3 MEETING AN AGENDA ITEM TO ADD COVID CONDITIONS IN
4 ORANGE COUNTY AND TO VOTE WHETHER TO TERMINATE THE
5 EMERGENCY.

6 THERE'S A FATAL DEFECT IN THE PETITIONERS'
7 REQUEST HERE. THE DEFINITION OF MOOTNESS IS WHEN A
8 CASE THROUGH THE PASSAGE OF TIME OR CHANGE IN
9 CIRCUMSTANCES HAS RENDERED A CASE WHERE NO JUDICIAL
10 RELIEF CAN BE GRANTED. THAT IS PRECISELY THE
11 SITUATION THAT'S FACING THIS CASE RIGHT NOW.

12 SO THE BOARD MEETING IS CALENDARED TOMORROW AS A
13 REGULAR BOARD MEETING AT 9:30 A.M. IT IS NOW 2:30 ON
14 FEBRUARY 27TH. WE ARE NOW WITHIN 17 HOURS LET'S SAY
15 OF THE BOARD MEETING BEGINNING TOMORROW, A REGULARLY
16 NOTICED BOARD MEETING.

17 UNDER THE BROWN ACT, SPECIFICALLY SECTION
18 54954.2(A)(1) PROVIDES AT LEAST 72 HOURS BEFORE A
19 REGULAR MEETING, THE LEGISLATIVE BODY OF THE LOCAL
20 AGENCY OR ITS DESIGNEE SHALL POST AN AGENDA CONTAINING
21 A BRIEF DESCRIPTION OF EACH ITEM OF BUSINESS TO BE
22 TRANSACTED OR DISCUSSED AT THE MEETING.

23 EVEN UNDER A SPECIAL BOARD MEETING WHICH HAS A
24 24-HOUR EXCEPTION. AND THIS WOULDN'T APPLY HERE
25 BECAUSE IT'S ALREADY A REGULARLY NOTICED BOARD
26 MEETING, BUT EVEN UNDER THE SPECIAL BOARD MEETING

1 RULES, 24 HOURS, WE ARE CURRENTLY WITHIN 24 HOURS OF
2 THE BOARD MEETING.

3 IT IS LEGALLY IMPOSSIBLE WITHOUT VIOLATING THE
4 BROWN ACT FOR THESE ITEMS TO BE PLACED ON THE AGENDA
5 PRIOR TO THE TERMINATION OF THE EMERGENCY.

6 WE HAVE A REPRESENTATIVE FROM THE ATTORNEY
7 GENERAL'S OFFICE HERE TODAY. THE ONLY EVIDENCE BEFORE
8 THIS COURT IS THAT THE EMERGENCY IS GOING TO END
9 TOMORROW.

10 THE REASON FOR US SUBMITTING THE GOVERNOR'S
11 PROCLAMATION WHEN WE DID IS BECAUSE WE KNEW AT THAT
12 POINT THAT THE BOARD WAS NOT GOING TO CALENDAR
13 ADDITIONAL ITEMS FOR TOMORROW'S BOARD MEETING.

14 ONCE WE KNEW THAT, AND THAT THE BOARD WAS NOT
15 GOING TO EXTEND THE EMERGENCY FURTHER OR MAKE ANY
16 OTHER ALTERATIONS TO ITS PRIOR DETERMINATION THAT THE
17 EMERGENCY WOULD END WHEN THE STATE EMERGENCY ENDS, WE
18 THEN ASKED THE COURT TO TAKE JUDICIAL NOTICE OF THAT.

19 BUT AGAIN, OVER AND ABOVE WHETHER THE EMERGENCY
20 ENDS TOMORROW, THERE IS LITERALLY NO WAY TO GET FROM
21 HERE TO THERE LEGALLY WITHOUT VIOLATING THE BROWN ACT,
22 AND THAT'S THEIR SPECIFIC REQUEST.

23 AND EVEN IF THE REQUEST WERE TO SAY OKAY, TWO
24 WEEKS LATER, WELL, THEN THE CASE IS GOING TO BE MOOT
25 BY THEN BY OPERATION OF THE GOVERNOR'S ENDING OF THE
26 STATE OF EMERGENCY.

1 AGAIN, THE ONLY EVIDENCE BEFORE THIS COURT IS
2 THAT THE EMERGENCY IS GOING TO END PURSUANT TO OUR
3 REQUEST FOR JUDICIAL NOTICE. THERE'S NO EVIDENCE
4 BEFORE THERE COURT TO CONTRADICT THAT.

5 THERE'S NO EVIDENCE INDICATING THAT THE
6 EMERGENCY WILL NOT END AS IT'S BEEN SCHEDULED TO DO
7 AS COUNTIES HAVE BEEN PREPARING IN ADVANCE OF SO THAT
8 THEY CAN TRANSITION FROM A STATE OF EMERGENCY TO NOT A
9 STATE OF EMERGENCY.

10 IF THE COURT WERE SO INCLINED, YOU COULD ASK THE
11 ATTORNEY GENERAL'S REPRESENTATIVE WHETHER THERE'S ANY
12 INFORMATION THAT ANYTHING IS GOING TO CHANGE ABOUT THE
13 TERMINATION OF THE EMERGENCY, BUT AGAIN, EVEN IF IT
14 DOESN'T, THE BROWN ACT PROHIBITS THE RELIEF THAT'S
15 BEING REQUESTED BY PETITIONER.

16 THE ISSUE WITH RESPECT TO -- DOES THE COURT WANT
17 TO JUST DEAL WITH THAT PARTICULAR ISSUE OR WOULD YOU
18 LIKE ME TO GO THROUGH INTO THE MERITS PART OF THE
19 ARGUMENT FIRST?

20 HOW WOULD YOU LIKE ME TO PROCEED?

21 **THE COURT:** WELL, YOU'LL HAVE A CHANCE.

22 IT SEEMS THAT THERE MAY BE SOME ADDITIONAL LEGAL
23 ISSUES THAT HAVE NOT ARISEN THAT WOULD NEED TO BE
24 BRIEFED SO EVERYBODY HAS AN OPPORTUNITY TO ADDRESS THE
25 ISSUE OF MOOTNESS BECAUSE -- AND AGAIN, I DON'T KNOW.
26 I HAVEN'T LOOKED AT IT IN GREAT DETAIL.

1 I'M NOT SITTING AS THE ALL KNOWING JUDGE WHO
2 KNOWS EVERYTHING ABOUT EVERYTHING, BUT WHEN I HEARD
3 THE FACTS, I SAID DOESN'T THAT RENDER IT MOOT. AND
4 YOU SAY NO AND THEY SAY YES, AND MY INITIAL RESPONSE
5 WAS DOESN'T THIS MOOT THE THING.

6 AND SO YOU KNOW, I DON'T WANT TO DELAY -- I
7 DON'T WANT TO DELAY THIS LONGER THAN THIS NEEDS TO BE
8 DELAYED, BUT I ALSO WANT TO HAVE A COMPLETE
9 UNDERSTANDING OF WHAT'S AT PLAY WHICH I MAY NOT HAVE
10 THE COMPLETE UNDERSTANDING TODAY. BUT SO THOSE ARE MY
11 THOUGHTS.

12 I THINK WE'LL FIGURE OUT WHAT WE WANT TO DO, BUT
13 IT MAY THAT WE JUST HEAR WHATEVER ARGUMENTS THERE ARE,
14 AND THEN I DON'T KNOW, MAYBE I ISSUE AN ORDER. I
15 DON'T KNOW.

16 GO AHEAD.

17 **MS. BARSOTTI:** JESSICA ROADS ON BEHALF OF
18 PETITIONER. OKAY. THIS -- THAT PRESS RELEASE DOES
19 NOTHING TO REVOLVE THIS CASE. I MEAN OPPOSING COUNSEL
20 SAID THERE'S NO EVIDENCE THAT THE EMERGENCY IS NOT
21 GONNA END. THAT'S NOT WHAT WE'RE TALKING ABOUT HERE
22 TODAY.

23 WE'RE AT AN ORDER TO SHOW CAUSE HEARING, AND THE
24 EVIDENCE THAT'S SUPPOSEDLY PRESENTED IS THAT THEY HAVE
25 BEEN DOING THE HEARINGS IN THE PAST. THEY HAVEN'T
26 BEEN DOING THE HEARINGS.

1 IN FACT, THE EVIDENCE THAT THEY SUBMITTED
2 CONCEDES THAT, SAYS THAT DIRECTLY. WE HAVE NOT HELD
3 THE HEARINGS. WE'VE HAD THE BEHIND-THE-SCENES
4 CONVERSATIONS, ETCETERA, ETCETERA.

5 WHAT THERE IS NO EVIDENCE OF HERE IS THAT THEY
6 WILL HOLD THE HEARINGS OR THAT THEY HAVE. THERE IS NO
7 EVIDENCE OF THAT, AND THAT'S WHAT WE'RE TALKING ABOUT
8 HERE TODAY.

9 SO WHETHER NEWSOM IS GONNA DO WHATEVER HE'S
10 GONNA DO TOMORROW, THAT HAS NOTHING TO DO WITH THE
11 MERITS OF THE ORDER TO SHOW CAUSE THAT WE'RE DEALING
12 WITH TODAY.

13 YOU KNOW, IF THEY HAD COME IN AND SAID HEY LOOK,
14 WE REQUESTED JUDICIAL NOTICE OF OUR AGENDA TOMORROW.
15 WE'VE AGENDIZED IT, AND WE'RE GONNA DO IT TOMORROW,
16 THAT WOULD MOOT THE ISSUE POTENTIALLY BUT THEY
17 ACTUALLY DIDN'T TO THAT.

18 IN FACT, THE AGENDA DOESN'T HAVE IT ON THE LIST
19 WHICH THEY COULD HAVE DONE THAT AND MOOTED THE WHOLE
20 ISSUE BUT THEY DIDN'T.

21 AND IF NEWSOM IS GONNA END IT, THEY STILL HAVE
22 CONTINUING OBLIGATIONS, SO IT DOES NOT RESOLVE THE
23 ISSUE IN ANY WAY AND SHOULDN'T FURTHER DELAY THIS CASE
24 WHICH FRANKLY, HAS BEEN PUT INTO CHAOS FROM THEIR
25 NOTICE OF RELATED CASE THAT WAS COMPLETELY BOGUS.

26 **THE COURT:** DIFFERENT ISSUE.

1 **MS. BARSOTTI:** YES. I'M JUST SAYING THAT'S
2 RELATED. THAT'S RELATED.

3 **THE COURT:** STATE YOUR NAME.

4 **MS. PEARSON:** NICOLE PEARSON ON BEHALF OF
5 PETITIONERS.

6 OUR SECOND AMENDED PROPOSED ORDER WHICH WAS
7 SUBMITTED AFTER WE SAW THE TENTATIVE CLARIFIED, AND WE
8 HAVE EXTRA COPIES FOR YOUR HONOR TO FILE AS WELL, BUT
9 WE ITEMIZED THE COURT'S FINDINGS AND THEN THE ORDERS
10 ARE NOT JUST -- WE'RE NOT HERE TO END THE EMERGENCIES.

11 WE'RE HERE FOR THE RESPONDENTS, THE COUNTY AND
12 THE BOARD TO SATISFY THEIR STATUTORY AND NOW
13 COURT-MANDATED OBLIGATIONS PURSUANT TO JUDGE LEE TO
14 CONDUCT PUBLIC REVIEW HEARINGS OF THE LOCAL CONDITIONS
15 TO VOTE.

16 AND IN THE AMENDED -- THE SECOND AMENDED
17 PROPOSED ORDER WE ITEMIZE AND WE SAY REVIEW THE
18 CONDITIONS IN A PUBLIC HEARING, DETERMINE WHETHER
19 THESE CONDITIONS -- AND DO IT IN A PUBLIC HEARING.

20 WE'VE FLUSHED IT OUT, SO IT'S NOT ABOUT
21 TERMINATING -- EVEN IF THEY WERE GONNA TERMINATE IT
22 WHICH AS MY CO-COUNSEL POINTED OUT, THEY HAVE NO
23 INTENTION OF DOING SO OR THEY OTHERWISE WOULD HAVE
24 AGENDIZED IT PURSUANT TO THIS OCTOBER 17TH, 2022
25 DECLARATION FROM GOVERNOR NEWSOM WHICH HAS ALREADY
26 BEEN PUT ON THE AGENDA.

1 **THE COURT:** ALL RIGHT. BECAUSE IN THE TENTATIVE
2 I ISSUED -- I REALIZED AFTER I ISSUED IT I DIDN'T HAVE
3 A TIME FRAME WITHIN WHICH TO COMPEL COMPLIANCE, SO WE
4 WOULD HAVE A DISCUSSION ABOUT THAT BUT I COULD NOT
5 ENVISION AN SCENARIO WHERE AFTER TODAY'S HEARING I SAY
6 I ORDER YOU TO CONDUCT A HEARING TOMORROW.

7 YOU KNOW, WE COULD CHOOSE A REASONABLE TIME.

8 **MS. PEARSON:** SURE. OBVIOUSLY, ORDERS ARE
9 AMENDED ALL THE TIME BY THE JUDGE IN WRITING. THIS IS
10 A SUGGESTION, AN OUTLINE. THE DATES CAN CHANGE. WHAT
11 IS ORDERED CAN CHANGE.

12 BUT AGAIN, THEM SATISFYING THEIR STATUTORY
13 OBLIGATIONS AS DIRECTED BY JUDGE LEE AND OUR
14 UNDERSTANDING WAS REAFFIRMED BY YOUR HONOR INTO YOUR
15 TENTATIVE RULING ARE NOT VITIATED BY GOVERN NEWSOM'S
16 POSSIBLE ACTIVITIES TOMORROW BECAUSE WE DON'T KNOW.

17 **THE COURT:** OKAY.

18 **MS. BARSOTTI:** JESSICA BARSOTTI. VERY BRIEFLY,
19 JUDGE LEE EVEN POINTED THIS OUT WHEN HE READ THIS, YOU
20 KNOW, RESOLUTION THAT THEY SAID THAT THE BOARD WOULD
21 AUTOMATICALLY END IT WHEN NEWSOM ENDED IT.

22 AND LEE SAID WELL, THAT MEANS NO FURTHER ACTION
23 BY YOUR BOARD WHICH IS REQUIRED UNDER THE CODE. THAT
24 DOESN'T MAKE SENSE. THAT'S NOT ALLOWED.

25 SO WE'RE BACK AT THAT SAME PLACE, AND I DON'T
26 THINK THAT THIS CHANGES ANYTHING. IT REALLY DOESN'T

1 CHANGE ANYTHING.

2 THEY'VE ADMITTED THEY HAVEN'T DONE THE HEARINGS.
3 THEY'VE ADMITTED THAT THEY'VE DONE A BUNCH OF STUFF
4 BUT THEY'VE NEVER HELD PUBLIC HEARINGS.

5 **THE COURT:** ALL RIGHT.

6 **MR. DUNNE:** THAT'S JUST NOT ACCURATE. THE COURT
7 HAS ALREADY GRANTED OUR REQUEST FOR JUDICIAL NOTICE ON
8 NOVEMBER 30TH. THIS SHOWS THAT ON NOVEMBER 29TH THERE
9 WAS A MEETING THAT ADDRESSED COVID 19 CONDITIONS AT A
10 PUBLIC MEETING SO THAT'S JUST NOT ACCURATE AT ALL.

11 YOUR HONOR, THIS CASE IS -- THERE ARE A NUMBER
12 OF ISSUES RAISED BY THE TENTATIVE RULING AS WE SEE IT.
13 THIS CASE IS STRAIGHTFORWARD AND THERE'S NO LEGAL
14 ISSUE PRESENTED PRESENTLY THAT WOULD ALLOW THE COURT
15 TO ISSUE A WRIT BECAUSE THERE'S NO PRESENT MANDATORY
16 MINISTERIAL DUTY THAT'S AT ISSUE.

17 IN NORMAL CIRCUMSTANCES HEALTH AND SAFETY CODE
18 101080 AND GOVERNMENT CODE 8630 REQUIRE DECLARED LOCAL
19 HEALTH EMERGENCIES TO BE REVIEWED EVERY 30 OR 60 DAYS
20 RESPECTIVELY FOR THE TYPE OF EMERGENCY AND THAT THEY
21 BE TERMINATED AT THEIR EARLIEST POSSIBLE DATE AS
22 CONDITIONS WARRANT.

23 AFTER THE GOVERNOR ISSUED ITS PROCLAMATION
24 SUSPENDING THE REQUIREMENTS OF THE 30- AND 60-DAY
25 MEETINGS, THE ONLY REMAINING OBLIGATION ON THE COUNTY
26 WAS TO TERMINATE THE EMERGENCIES AT THE EARLIEST

1 OPPORTUNITY OR EARLIEST THAT CONDITIONS WARRANT
2 TERMINATION.

3 WE ACCEPT THAT THAT WOULD OBVIOUSLY NECESSITATE
4 LOOKING AT THE CONDITIONS TO DETERMINE WHETHER
5 CONDITIONS WARRANT, SO WHEN THE COURT SAID WELL, THE
6 COUNTY IS GOING TO JUST TERMINATE WHICH THE GOVERNOR
7 TERMINATES, THAT'S TRUE BASED ON THE JUNE 2021
8 ORDINATE, BUT THE BOARD AT ANY TIME CAN AGENDIZE THIS
9 TO TERMINATE EARLY IF IT HAD CONDITIONS THAT WARRANTED
10 THAT TERMINATION.

11 SO GIVEN THE FACT THAT THE GOVERNOR WAIVED THE
12 30- AND 60-DAY REVIEW REQUIREMENTS, AND I SHOULD POINT
13 OUT THAT THE PETITIONERS CONCEDE THIS EXPLICITLY IN
14 THEIR PLEADINGS.

15 THIS IS THEIR SECOND AMENDED PETITION AT
16 PARAGRAPHS 41 AND 42. THEY ACKNOWLEDGE THAT THE
17 GOVERNOR SUSPENDED THE REVIEW REQUIREMENTS.

18 **MS. BARSOTTI:** NO.

19 **STPHAO:** REVIEW REQUIREMENTS. QUOTE "REVIEW
20 REQUIREMENTS" PURSUANT TO THOSE TWO PROVISIONS. THIS
21 IS A CONCESSION, AN ADMISSION BY THE PETITIONERS THAT
22 THERE IS NO SUCH REQUIREMENT IF THE EXPLICIT PLAIN
23 LANGUAGE OF THE PROCLAMATION ITSELF DIDN'T SAY SO.

24 BUT THIS SECTION NOW SEEKS TO HAVE THIS COURT
25 ORDER THAT THE BOARD NOTWITHSTANDING THE BLACK AND
26 WHITE LETTERS THAT APPEAR IN THE GOVERNOR'S

1 PROCLAMATION, THAT THOSE DON'T MEAN WHAT THEY SAY; AND
2 IN FACT, THOSE ARE ILLUSORY; THAT THERE WAS NO
3 SUSPENSION OF THE 60 AND 30-DAY MEETING REQUIREMENTS;
4 THAT SOMEHOW THOSE SURVIVED THE GOVERNOR'S
5 PROCLAMATION STATING EXPLICITLY THAT THEY ARE WAIVED
6 FOR THE DURATION OF THE STATE EMERGENCY.

7 **THE COURT:** RIGHT. BUT THAT'S NOT WHAT JUDGE
8 LEE FOUND. YOU MIGHT READ HIS ORDER DIFFERENTLY THAN
9 I READ IT.

10 JUDGE LEE SAID THOSE -- HE AGREED THAT THE TIME
11 FRAME ARTICULATED IN THE CODE SECTIONS HAD BEEN
12 ELIMINATED BUT FOUND THAT THE NECESSARY REVIEW HAD NOT
13 OCCURRED IN ORDER TO DEMONSTRATE HOW IT HAD.

14 SO I'M NOT GONNA HEAR A MOTION FOR
15 RECONSIDERATION BECAUSE THAT'S NOT MY JOB.

16 **MR. DUNNE:** I -- ABSOLUTELY, YOUR HONOR, HOWEVER
17 IT'S IMPORTANT TO POINT OUT WHAT THE ACTUAL LEGAL
18 STATUS IS.

19 JUDGE LEE WAS PROCEEDING ON AN ALTERNATIVE WRIT.
20 AT NO POINT DID HE ISSUE A PREROGATIVE WRIT. AT NO
21 POINT DID HE ORDER US TO HOLD A MEETING. MOREOVER,
22 WHEN THERE'S A RULING ON AN ALTERNATE WRIT, LAW OF THE
23 CASE DOESN'T APPLY. THERE IS NO AFFIRMATIVE RULING
24 BASED ON THAT.

25 HE WAS RULING IN THE CONTEXT OF OVERRULING A
26 DEMURRER AND RULING ON AN APPLICATION FOR AN

1 ALTERNATIVE WRIT. IT DOESN'T -- A FINDING TO SET A
2 HEARING ON AN ALTERNATIVE WRIT DOESN'T EVEN SAY
3 ANYTHING ABOUT THE SUFFICIENCY OF THE PLEADING. ALL
4 IT DOES IS SAY THERE'S ENOUGH HERE TO GRANT YOU A
5 HEARING.

6 AT NO POINT WERE WE FORECLOSED. WE WERE INVITED
7 TO SHOW CAUSE EITHER THAT WE'RE NOT REQUIRED TO DO
8 THESE REVIEW HEARINGS OR ALTERNATIVELY, THAT WE ARE
9 DOING THEM.

10 AND WHAT WE PROVIDED WAS EVIDENCE THAT BOTH ARE
11 TRUE. WE ARE NOT REQUIRED TO DO THEM AND
12 NEVERTHELESS, HE HAVE DONE THEM. WE HAVE DONE THEM IN
13 TWO PARTICULAR MANNERS.

14 ONE IS -- AND THIS IS EXPLICITLY AUTHORIZED BY
15 THE BROWN ACT. THIS IS SECTION 54952.2 PARAGRAPH A2,
16 THE PROHIBITION ON TAKING ACTION AS A BOARD OUTSIDE OF
17 A BROWN ACT MEETING.

18 PARAGRAPH ONE "SHALL NOT BE CONSTRUED AS
19 PREVENTING AN EMPLOYEE OR OFFICIAL OF A LOCAL AGENCY
20 FROM ENGAGING IN SEPARATE CONVERSATIONS OR
21 COMMUNICATIONS OUTSIDE OF A MEETING AUTHORIZED BY THIS
22 CHAPTER WITH MEMBERS OF A LEGISLATIVE BODY IN ORDER TO
23 ANSWER QUESTIONS, PROVIDE INFORMATION REGARDING A
24 MATTER THAT IS WITHIN THE SUBJECT MATTER JURISDICTION
25 OF THE LOCAL AGENCY.

26 IF THAT PERSON DOES NOT COMMUNICATE TO THE

1 PERSONS OF THE LEGISLATIVE BODY, THE COMMENTS OR
2 POSITION OF ANY OTHER MEMBERS OR MEMBER OF THE
3 LEGISLATIVE BODY."

4 THESE BRIEFINGS THAT HAVE BEEN GOING ON
5 THROUGHOUT THE ENTIRE PANDEMIC EMERGENCY ARE
6 EXPLICITLY AUTHORIZED AS A MATTER OF REVIEW OF
7 CONDITIONS WITHIN THE JURISDICTION OF THE COUNTY BY
8 THE BROWN ACT. THIS IS ALSO REPEATED ELSEWHERE IN
9 THAT SECTION AT PARAGRAPH 3A AS WELL REGARDING SOCIAL
10 MEDIA.

11 SO THE BOARD HAS BEEN REVIEWING CONDITIONS IN
12 ABSOLUTE COMPLIANCE WITH THE BROWN ACT. GETTING
13 BRIEFINGS FROM STAFFING FROM ITS STAFF, GETTING
14 REPORTS, GETTING COMMENTS AT PUBLIC MEETINGS, AND IN
15 FACT, HOLDING A PUBLIC MEETING ADDRESSING COVID 19
16 CONDITIONS ON NOVEMBER 29TH.

17 EVERY POSSIBLE WAY THAT COMPLIANCE COULD HAVE
18 BEEN DEMONSTRATED HAS BEEN DEMONSTRATED BY OUR MERITS
19 IN THIS CASE.

20 IN THE TENTATIVE RULING, WE CAUGHT NOTE OF THIS.
21 THE COURT REFERRED TO OUR MERITS BRIEF WHERE HE
22 SUBMITTED EVIDENCE, THE FIRST TIME WE EVER SUBMITTED
23 EVIDENCE ON THIS. THIS WAS ALL PROCEEDING ONLY ON THE
24 PLEADINGS FROM HERE TO POINT.

25 THE COURT REFERRED TO IT AS OUR SUPPLEMENTAL
26 BRIEFING, BUT IN FACT, THAT IS OUR PRIMARY EVIDENTIARY

1 BRIEF FOR THE FIRST TIME IN THIS MATTER.

2 WHAT IT DEMONSTRATES AGAIN IS THAT
3 NOTWITHSTANDING THAT THE MEETINGS ARE NOT REQUIRED
4 UNDER 101080 OR 8630, THE BOARD CONTINUED TO MAINTAIN
5 ITS APPRAISAL OF CONDITIONS IN ORANGE COUNTY WITH AN
6 EYE TOWARD WHETHER THOSE MANDATED THAT THE CONDITIONS
7 WERE NOW APPROPRIATE TO TERMINATE THE LOCAL
8 EMERGENCIES.

9 THE BOARD HAS DETERMINED THAT THEY ARE NOT. AS
10 OUR EVIDENCE SHOWS, THEY HAVE BEEN CONSTANTLY INFORMED
11 THAT THE CONDITIONS HAVE NOT SIGNIFICANTLY DROPPED TO
12 A SAFE LEVEL, AND IN FACT, THE PUBLIC HEALTHY ERECTOR
13 AS WELL AS THE HEALTH CARE AGENT DIRECTOR HAS
14 CONSISTENTLY ADVISED INDIVIDUAL BOARD MEMBERS THAT
15 THEY DO NOT BELIEVE THAT THE EMERGENCY SHOULD END;
16 HENCE, THE REASON THAT IT DIDN'T GO ON THE AGENDA OR
17 VOTE PRIOR TO TOMORROW'S PREVIOUSLY SCHEDULED MEETING.

18 THERE HAS TO BE A MANDATORY DUTY TO LOOK ONTO
19 FOR PURPOSES OF ISSUANCE OF A WRIT. GIVEN THE FACT
20 THAT THERE'S NO REQUIREMENT THAT THESE MEETINGS BE
21 HELD AT ANY INTERVAL OR THAT A PUBLIC MEETING BE HELD
22 AT ALL IN THE ABSENCE -- I MEAN IN THE WAIVER OF THE
23 GOVERNOR'S WAIVER OF THE HEALTH AND SAFETY CODE AND
24 GOVERNMENT CODE REQUIREMENTS, THERE'S NO OBLIGATION
25 THAT WE'RE VIOLATING.

26 WE WERE REQUIRED TO CONTINUE TO MAINTAIN UPDATES

1 ON COVID CONDITIONS SO THAT WE COULD TERMINATE WHEN IT
2 WAS APPROPRIATE TO DO SO. THE BOARD HAS DONE
3 PRECISELY THAT IN COMPLIANCE WITH THE BROWN ACT.

4 THE BOARD HAS ADDITIONALLY AS I POINTED OUT ALSO
5 HELD PUBLIC MEETINGS ADDRESSING COVID 19 CONDITIONS.
6 IT SEEMS THERE'S ALMOST NOTHING MORE THE BOARD COULD
7 HAVE DONE TO COMPLY WITH ITS REQUIREMENTS UNDER LAWS
8 THAT EXIST NOW OTHER THAN IF WE HAD JUST CALENDARED
9 30- AND 60-DAY REVIEW HEARING AS WE'RE NOT REQUIRED TO
10 DO.

11 THE REQUESTED ORDER BY THE PETITIONERS HERE
12 DRAMATICALLY ASK THIS COURT TO USURP THE AUTHORITY OF
13 THE BOARD OF SUPERVISORS. SO NOT ONLY IS THE BOARD OF
14 SUPERVISORS GRANTED THE DISCRETION TO DETERMINE WHEN
15 CONDITIONS WARRANT TERMINATION OF THE EMERGENCIES, BUT
16 THE BOARD HAS ABSOLUTELY DISCRETION TO DETERMINE WHAT
17 THOSE FACTORS ARE THEMSELVES.

18 THOSE COULD BE FINANCIAL. THOSE COULD BE
19 MEDICAL. THOSE COULD BE FACTORS WE DON'T EVEN KNOW
20 ABOUT AS WE SIT HERE TODAY. THAT'S WHY THESE
21 DECISIONS ARE ENTRUSTED TO THIS BRANCH OF GOVERNMENT
22 AND SO THAT THE ELECTED OFFICIALS ACCOUNTABLE TO THE
23 PEOPLE CAN LOOK AT THE CONDITIONS AND MAKE PUBLIC
24 POLICY DECISIONS FOR THE COUNTY IN ACCORDANCE WITH
25 THEIR AUTHORITY.

26 **THE COURT:** WHAT EVIDENCE DID YOU SUBMIT TO THE

1 COURT THAT DEMONSTRATED THAT ANY BOARD MEMBER
2 CONSIDERED THE INFORMATION THAT YOU SUBMITTED FOR YOUR
3 DECLARANTS?

4 **MR. DUNNE:** SO THIS IS AN INTERESTING ISSUE AND
5 WE HAD DISCUSSED THIS. NO HUMAN CAN KNOW THE MIND OF
6 ANOTHER HUMAN IN TRUTH.

7 IS IT POSSIBLE THAT THE BOARD MEMBERS LOOKED
8 AT THE PAPERS, ASKED QUESTIONS, RESPONDED, HAD
9 BACK-AND-FORTH DISCUSSIONS ON THIS AND AT THE SAME
10 TIME HAD NO INTAKE OF THE INFORMATION OR DIDN'T
11 CONSIDER IT?

12 IT'S POSSIBLE. I DON'T THINK THAT'S AN ISSUE
13 THIS COURT CAN REMEDY, BUT THERE'S NO INDICATION OF
14 THAT THAT LIKewise COULDN'T BE PROVEN THAT THEY DIDN'T
15 ABSORB THE INFORMATION.

16 THEY WERE PRESENTED THE -- WHAT MORE CAN A
17 REVIEW BE THAN BE PRESENTED INFORMATION AND TO ENGAGE
18 WITH THE INFORMATION.

19 **THE COURT:** THERE'S ANOTHER DECLARANT WHO
20 WOULD BE AVAILABLE TO PROVIDE THE COURT WITH THAT
21 INFORMATION.

22 **MR. DUNNE:** I'M SORRY?

23 **THE COURT:** THERE'S ANOTHER DECLARANT WHO
24 WOULD BE AVAILABLE TO PROVIDE THE COURT WITH THAT
25 INFORMATION, ISN'T THERE?

26 **MR. DUNNE:** IF YOU'RE REFERRING TO THE BOARD OF

1 SUPERVISORS, WE DIDN'T FEEL THE NEED TO GET INTO THAT.
2 THERE'S ALSO A PRIVILEGE AS A LIMITED PROCESS
3 PRIVILEGE THAT COVERS THEIR COMMUNICATIONS.

4 SO FOR INSTANCE IN THE DEPOSITIONS THAT HAVE
5 BEEN HAD HERE, WE HAVE BEEN MORE THAN WILLING TO TALK
6 ABOUT EVERYTHING THAT WENT TO THE BOARD OF
7 SUPERVISORS, WHETHER THEY WERE PAYING ATTENTION, WERE
8 THEY ASLEEP DURING THE MEETING, ALL OF THAT.

9 BUT WHEN IT GOT INTO WHAT QUESTIONS WERE THEY
10 ASKING, WHAT WAS THEIR DELIBERATIVE PROCESS, WE
11 OBJECTED RIGHTFULLY ON DELIBERATIVE PROCESS.

12 SO WE DIDN'T VOLUNTEER TO ABROGATE OUR CLIENT'S
13 DELIBERATIVE PROCESS PRIVILEGE WHEN WE COULD PRESENT
14 THE INFORMATION SHOWING THE VOLUMINOUS INFORMATION
15 THAT THEY WERE PRESENTED THROUGHOUT THE ENTIRE
16 PANDEMIC TO CONSIDER THE CONDITIONS.

17 **THE COURT:** OKAY.

18 **MS. BARSOTTI:** JESSICA BARSOTTI. A COUPLE
19 RESPONSES.

20 FIRST OF ALL, I BELIEVE COUNSEL JUST SAID THAT
21 TO BE ABLE TO TERMINATE THE EMERGENCY, THEY NEED TO
22 HOLD A HEARING. AND IN FACT, COUNSEL HAD CONCEDED TO
23 THAT AT THE HEARING WITH JUDGE LEE AS WELL. IF WE'RE
24 GONNA TERMINATE IT, WE NEED TO HOLD A HEARING.
25 EVERYBODY AGREED TO THAT.

26 SECOND OF ALL, WHEN YOU'RE TALKING ABOUT

1 THESE -- THE DECLARATIONS THAT WERE SUBMITTED, THEY
2 DON'T SHOW THE GOVERNING BODY OR THE LEGISLATIVE BODY
3 REVIEWING CONDITIONS.

4 IT TALKS ABOUT SPEAKING TO INDIVIDUAL MEMBERS.
5 INDIVIDUALS MEMBERS' MEETINGS IS NOT A REVIEW BY THE
6 GOVERNING BODY. AND JUDGE LEE ALSO POINTED THAT OUT
7 THAT, YOU KNOW, YOU HAVE TO HAVE THEM SITTING TOGETHER
8 TO REVIEW IT AS A BODY AND THAT'S WHAT THE CODE
9 REQUIRES.

10 SO IT'S DISINGENUOUS TO SAY THAT WE'VE BEEN
11 DOING REVIEWS AS A GOVERNING BODY WHEN THE BODY
12 NEVER MET TO DISCUSS OR REVIEW IT. WHETHER THEY GOT
13 INFORMATION FROM THESE VARIOUS DECLARANTS DOES NOT
14 SHOW THAT THEY REVIEWED IT AS A BODY IN ANY WAY.

15 FURTHER, YOU KNOW, IT'S INTERESTING THAT
16 RESPONDENTS ARE TRYING TO -- AT THE HEARING WITH JUDGE
17 LEE, THE RESPONDENTS CONCEDED THAT THEY HAD A DUTY AND
18 SAID WELL, NO, NO, WHEN JUDGE LEE SAID NO, YOU HAVE A
19 DUTY, THE TIME INTERVAL IS NO BUT THE DUTY YES.

20 AND THEY CONCEDED THEY HAD A DUTY, AND THEY SAID
21 WELL, NO, ACTUALLY WE'VE BEEN DOING REVIEWS. WE'VE
22 BEEN DOING IT. AND SO IT'S A DISINGENUOUS ARGUMENT TO
23 ARGUE BOTH WE DON'T HAVE A DUTY AND WE'VE ALSO BEEN
24 DOING IT BECAUSE IT CAN'T BE BOTH.

25 SO WHEN THEY CONCEDE THAT HAD AT THE HEARING,
26 THAT'S THE PATH THAT THEY CHOSE. THEY CONFIRMED THAT

1 WHEN THEY CHOSE TO FILE THE 14-PAGE BRIEF OR THE
2 15-PAGE BRIEF ON NOVEMBER 14TH BECAUSE THAT WAS A
3 THIRD ALTERNATIVE.

4 SO THEY'RE NOT SAYING WE DON'T HAVE TO DO IT OR
5 REARGUING LIKE YOU POINTED OUT THEIR INITIAL ARGUMENT,
6 BUT THEY'RE SAYING NO, WE PIVOTED DURING THAT HEARING
7 AND SAID NO, WE HAVE BEEN DOING IT. LET US SHOW YOU,
8 AND THAT'S THE PATH THAT THEY CHOSE.

9 AND SO I THINK IT'S -- THEY CAN'T GO BACK AND
10 NOW SAY NO, NO, NO, WE BOTH DON'T HAVE A DUTY AND WE
11 DID THE DUTY. IT'S GOT TO BE ONE OR THE OTHER, AND
12 THEY CHOSE THE SECOND ONE. THEY CONCEDED WE HAVE A
13 DUTY AND HERE'S HOW WE'VE BEEN DOING.

14 THEY PRESENTED THE DECLARATIONS TO THE COURT
15 WHICH DIDN'T SHOW THAT THE BODY REVIEWED ANYTHING, SO
16 THEY DIDN'T SHOW CAUSE. AND I THINK THE COURT GOT IT
17 RIGHT THAT, YOU KNOW, THAT'S THE STATE OF THE
18 SITUATION.

19 **MS. PEARSON:** AND IF I MAY ADD. NICOLE PEARSON
20 ON BEHALF OF PETITIONER'S COUNSEL.

21 I THINK YOUR HONOR HIT THE NAIL ON THE HEAD WITH
22 THE BOARD THAT THE WAY TO SHOW THAT THE GOVERNING BODY
23 HAS CONSIDERED ALL OF THE EVIDENCE THAT THEY'VE
24 PRESENTED IS BY PRESENTING SOME DECLARATIONS FROM THE
25 BOARD.

26 THERE ARE WAYS TO TAILOR THOSE DECLARATIONS SO

1 THERE'S -- NO DELIBERATIVE PROCESS IS BEING VIOLATED.
2 IT CAN BE AS SIMPLE AS I RECEIVED THIS E-MAIL. I,
3 DOUG CHAFFEY, HAVE PERSONAL KNOWLEDGE OF THESE FACTS.
4 I'M SUBMITTING THIS IN SUPPORT OF X, Y, Z. PARAGRAPH
5 ONE ON SUCH AND SUCH DATE, I REVIEWED AND I CONSIDERED
6 SUCH AND SUCH E-MAILS FROM CLAYTON CHOW.

7 PARAGRAPH FOUR, ON SUCH AND SUCH A DATE, I
8 REVIEWED -- I RECEIVED, REVIEWED AND CONSIDERED SUCH
9 AND SUCH STATUS REPORT FROM LILLY SIMMERING. AND ON
10 AND ON AND ON.

11 HE COULD HAVE AT LEAST DECLARED THAT WITHOUT
12 GIVING ANY INSIGHT INTO THE DELIBERATIVE PROCESS. AND
13 THAT'S EXACTLY WHAT WE'RE DEALING WITH HERE. IN FACT,
14 WE'RE FILING OUR MOTION TO COMPEL THE BOARD MEMBERS'
15 DEPOSITIONS.

16 THEY HAVEN'T VERIFIED THE COMPLAINT. THEY HAVE
17 NOT SUBMITTED ONE PIECE OF VERIFIED EVIDENCE. THEY'RE
18 THE ONLY ONES WHO CAN TELL US WHAT THEY DID EXPECT AND
19 CONSIDER AND REVIEW, NUMBER ONE WHICH IS VERY
20 ALARMING.

21 NUMBER TWO, WE DISAGREE WITH COUNSEL'S
22 CHARACTERIZATION OF THE ABOVE LOCAL GOVERNING BODY OR
23 BOARD OF SUPERVISORS' OBLIGATIONS AND LIMITATIONS
24 UNDER THE BROWN ACT.

25 YOUR HONOR CITED TO STOP THE NEWSPAPER IN THE
26 TENTATIVE RULING WHICH SHOWS THAT COLLECTIVE GATHERING

1 THAT KIND OF INFORMATION OR AN ORDER TO FUEL AN
2 ULTIMATE DECISION WITHIN THEIR PURVIEW IS A VIOLATION
3 OF THE BROWN ACT.

4 WE NEVER HEARD OF THIS GOVERNMENT CODE SECTION
5 THAT HE JUST CITED WHICH I WOULD RESPECTFULLY ASK THIS
6 COURT TO IGNORE SINCE IT'S NEW EVIDENCE THAT'S BEING
7 PRESENTED HERE AT THE HEARING WHICH THEY HAD MORE THAN
8 AMPLE TIME TO PROVIDE.

9 REGARDLESS, WE'RE NOT HERE TO DISCUSS BROWN ACT
10 VIOLATIONS. WE'RE HERE TO DISCUSS THE GOVERNMENT CODE
11 SECTION AND HEALTH AND SAFETY CODE SECTION.

12 AND WE ALREADY ESTABLISHED, AND I WOULD LIKE TO
13 GO BACK TO JUDGE LEE'S TENTATIVE RULING, WHERE THEY
14 ORDERED THEM, ORDERED RESPONDENTS TO REVIEW LOCAL
15 CONDITIONS TO DETERMINE WHETHER THERE REMAINS A NEED
16 FOR CONTINUING EITHER OF THE EMERGENCIES AND THIS WAS
17 NO LATER THAN FIVE DAYS -- HOLD ON.

18 IT'S ORDERED THAT AN ALTERNATIVE WRIT OF MANDATE
19 ISSUE COMMANDING RESPONDENTS TO REVIEW LOCAL
20 CONDITIONS.

21 WE'RE TALKING ABOUT REVIEWING LOCAL CONDITIONS
22 TO DETERMINE WHETHER THERE REMAINS A NEED FOR
23 CONTINUING THE LOCAL HEALTH EMERGENCY AND/OR LOCAL
24 EMERGENCY AS REQUIRED BY THE HEALTH AND SAFETY CODE
25 SECTION AND GOVERNMENT CODE SECTION AND TO PROCLAIM
26 THE TERMINATION OF THE LOCAL HEALTH EMERGENCY AND/OR

1 LOCAL EMERGENCY SHOULD THE CONDITIONS WARRANT.

2 AND WHEN COUNSEL PIVOTED AND SAID THAT THEY
3 HAD BEEN DOING IT, THAT IS WHEN HE ADDED TO HIS
4 TENTATIVE RULING IN THE ALTERNATIVE RESPONDENTS ARE
5 ORDERED TO SHOW CAUSE WHETHER THE BOARD OF SUPERVISORS
6 IS COMPLYING WITH THEIR OBLIGATIONS UNDER LAW AND
7 CONDUCTING THE STATUTORILY MANDATED REVIEW HEARINGS
8 AND THEN SUBMIT A BRIEF IN SUPPORT OF THEIR POSITION.

9 IT IS ABOUT CONDUCTING THE REVIEW OF LOCAL
10 CONDITIONS AND VOTING WHETHER OR NOT TO EXTEND THE
11 TERM IN THE PUBLIC REVIEW HEARINGS.

12 AND I'M SORRY, THERE ARE A LOT OF ISSUES RAISED.
13 I NEED ONE MORE MINUTE.

14 **THE COURT:** IT'S OKAY.

15 **MS. PEARSON:** GO AHEAD.

16 **THE COURT:** JUDGE LEE'S MINUTE ORDER SAYS YOU
17 WILL RESPOND BY SHOWING STATUTORILY MANDATED REVIEW
18 HEARINGS; RIGHT?

19 DID YOU SHOW THAT THERE HAD BEEN ANY STATUTORILY
20 MANDATED REVIEW HEARINGS?

21 **MR. DUNNE:** YES, NOVEMBER 29, 2022.

22 **MS. PEARSON:** AND MAY I RESPOND TO THAT, YOUR
23 HONOR?

24 **MS. WATSON:** BEFORE SHE DOES, MAY I ADD
25 SOMETHING? THIS IS KAYLA WATSON.

26 IN ADDITION, BECAUSE WE ARE AT THE ALTERNATIVE

1 WRIT STAGE, WHEN JUDGE LEE ISSUED HIS ORDER, THIS
2 COURT BECAUSE WE SUBMITTED BRIEFING ON WHETHER WE ARE
3 COMPLYING WITH OUR STATUTORY OBLIGATIONS IS NOW IN A
4 POSITION TO DETERMINE WHETHER THE GOVERNOR'S
5 PROCLAMATION WAIVED THOSE STATUTORILY REVIEW HEARINGS.

6 AND BY THE COURT'S TENTATIVE, IT'S NOT CLEAR
7 THAT THE COURT HAS RULED ON THAT, AND INSTEAD, IT
8 SEEMS THAT THE COURT MAY HAVE ADOPTED JUDGE LEE'S
9 INTERPRETATION.

10 BUT BECAUSE WE ARE NOW AT A MERITS HEARING,
11 THIS COURT CAN DETERMINE WHETHER THOSE STATUTORILY
12 REVIEWED HEARINGS WERE WAIVED BY THE GOVERNOR AND
13 WHETHER WE SHOWED COMPLIANCE BECAUSE WE WERE NOT
14 STATUTORILY REQUIRED TO HOLD THEM EVERY 30 AND
15 60 DAYS.

16 **THE COURT:** I THINK JUDGE LEE'S RATIONALE ON
17 THAT WAS SOUND, AND I BELIEVE IT'S THE CORRECT
18 ANALYSIS FOR THE -- ELIMINATING THE 30 AND THE 60,
19 DOESN'T ELIMINATE THE NEED IN PERPETUITY TO CONDUCT A
20 REVIEW.

21 **MS. WATSON:** AND SO THEN WE WOULD OFFER THE
22 EVIDENCE THAT WE SUBMITTED THAT IN THE ALTERNATIVE WE
23 DID HOLD THE PUBLIC MEETINGS. ONE EXAMPLE IS ON
24 NOVEMBER 29TH.

25 **MR. DUNNE:** AND THERE'S NO STATUTORY OR
26 OTHERWISE REQUIREMENT WHEN ALL OF THOSE HAVE TO BE

1 CONSIDERED IN A PUBLIC DOMAIN.

2 ONLY THAT THEY -- LET'S ASSUME THAT IT IS
3 REQUIRED IN A PUBLIC MEETING, THAT IS DEMONSTRATED
4 THAT IN THE CONTEXT OF RSV FLU AND COVID 19, THE BOARD
5 WAS BRIEFED AT A PUBLIC MEETING ABOUT CONDITIONS
6 RELATED TO THESE THREE INTERSECTING BREATHING VIRUSES
7 IN A PUBLIC MEETING, REVIEWED COMMENTS FROM THE
8 PUBLIC, RECEIVED BRIEFING FROM STAFF.

9 **THE COURT:** I'M LISTENING.

10 **MR. DUNNE:** HOLD ON.

11 **THE COURT:** OKAY. IF I COULD JUST HAVE THE
12 IDEA THAT THESE TWO THINGS CAN'T EXIST IN THE SAME
13 UNIVERSE; THAT WE'RE BOTH NOT REQUIRED TO DO IT AND
14 WE'RE DOING IT, IS JUST AN ARGUMENT WITHOUT MERIT.

15 I'M NOT REQUIRED TO STAND UP RIGHT NOW, BUT IF I
16 DID, THAT DOESN'T MEAN I'M NOT STANDING. I MEAN THE
17 IDEA THAT NOT HAVING A LEGAL MANDATE BUT DOING
18 SOMETHING THAT YOU'RE NOT LEGALLY MANDATED TO DO AND
19 THAT EXISTS SIMULTANEOUSLY IS ELEMENTARY.

20 **MS. PEARSON:** YOUR HONOR, IF I MAY RESPOND WHEN
21 YOU'RE READY.

22 **THE COURT:** YES AND YOU SHOULD ALWAYS IDENTIFY
23 WHO YOU ARE.

24 **MS. PEARSON:** SURE. NICOLE PEARSON. EXCUSE ME.
25 (BRIEF PAUSE IN THE PROCEEDINGS.)

26 **MS. PEARSON:** FIRST, I'LL LIKE TO QUOTE FROM

1 JUDGE LEE'S RULING. IT'S ONE OF THOSE LONG PAGES, SO
2 I HAVE IT ON PAGE 43 OUT OF 47.

3 THE PROCLAMATION ON ITS FACE ONLY WAIVED THE
4 STRICT 30 AND 60 DAYS TIME PERIODS IN WHICH SUCH
5 REVIEWS SHOULD MUST OCCUR. HE SPECIFICALLY FOUND
6 THAT.

7 ALSO HE ALSO MENTIONED THAT THE GOVERNOR'S
8 PROCLAMATION SAID AT THE END, ANY SUCH -- AFTER
9 SUSPENDING THE 30 AND 60 DAY TIME PERIODS. ANY
10 SUCH LOCAL HEALTH EMERGENCY WILL REMAIN IN EFFECT
11 UNTIL EACH LOCAL GOVERNING AUTHORITY TERMINATES THE
12 RESPECTIVE HEALTH EMERGENCY.

13 AND AS TO THE LATTER, THAT ANY LOCAL EMERGENCY
14 PROCLAIM WILL REMAIN IN EFFECT UNTIL EACH LOCAL
15 GOVERNING AUTHORITY TERMINATES ITS RESPECTIVE LOCAL
16 EMERGENCY. THAT'S HIM REFERRING TO GOVERNOR NEWSOM'S
17 PROCLAMATION SUSPENDING THE 30 AND 60 DAYS TIME
18 INTERVALS.

19 SUCH STATEMENTS IN THE GOVERNOR'S PROCLAMATION
20 ARE CONSISTENT WITH THIS COURT'S INTERPRETATION THAT
21 ONLY THE TIME PERIODS HAVE BEEN WAIVED, NOT THE
22 REVIEWS THEMSELVES IS DISINGENUOUS BUT IT'S PUTTING IT
23 THAT JUDGE LEE DID NOT FIND THIS EXPLICITLY.

24 IN FACT, HE WENT ON TO SAY, TO BE CLEAR THE
25 COURT IS NOT SUGGESTING THAT RESPONDENTS MUST REACH A
26 PARTICULAR CONCLUSION OR RESULT WHEN IT UNDERTAKES A

1 STATUTORY MANDATED REVIEW.

2 THIS COURT IS NOT SUGGESTING THAT CURRENT
3 CONDITIONS WARRANT THE TERMINATION OF THE LOCAL HEALTH
4 EMERGENCY OR LOCAL EMERGENCY.

5 THE COURT IS NOT SUGGESTING MANDATING OR
6 COMPELLING AS A PARTICULAR TIME FRAME OR FREQUENCY
7 UPON WHICH SUCH REVIEWS MUST OCCUR. HOWEVER, REVIEWS
8 AS SET FORTH IN BOTH THE HOLD AND GOVERNMENT CODE MUST
9 BE SCHEDULED AND OCCURRED VERBATIM FROM JUDGE LEE'S
10 RULING ON SEPTEMBER 29TH.

11 I WANT TO BACK UP VERY QUICKLY BECAUSE THIS
12 ARGUMENT DOES NOT COMPLY WITH THE OVERARCHING PURPOSE
13 OF THE BROWN ACT.

14 I WOULD LIKE TO READ THAT INTO THE RECORD WHICH
15 IS IN ENACTING THIS CHAPTER, THAT BEING THE GOVERNMENT
16 CODE SECTION 54950 ET SEQ., THE LEGISLATURE FINDS AND
17 DECLARES THAT THE PUBLIC COMMISSIONS BOARD AND COUNSEL
18 AND THE OTHER PUBLIC AGENCIES IN THIS STATE EXIST TO
19 AID THE CONDUCT OF THE PEOPLE' BUSINESS.

20 IT IS THE INTENT OF THE LAW THAT THEIR ACTIONS
21 BE TAKEN OPENLY AND THEIR DELIBERATIONS BE CONDUCTED
22 OPENLY. THE PEOPLE OF THE STATE DO NOT YIELD THEIR
23 SOVEREIGNTY TO THE AGENCIES WHICH SERVE THEM.

24 THE PEOPLE IN DELEGATING THEIR AUTHORITY DO NOT
25 GIVE THEIR PUBLIC SERVANTS THE RIGHT TO DECIDE WHAT IS
26 GOOD FOR THE PEOPLE TO KNOW AND WHAT IS NOT GOOD FOR

1 THE PEOPLE TO KNOW. THE PEOPLE INSIST ON REMAINING
2 INFORMED SO THAT THEY MAY RETAIN CONTROL OVER THE
3 INSTRUMENT THEY HAVE CREATED.

4 THERE'S NO ABSOLUTELY NOT WAY THAT WHAT THEY
5 ARE DESCRIBED OR PURPORTEDLY SUBMITTED EVIDENCE OF
6 COMPLIES WITH OR SATISFIES THE LEGISLATIVE INTENT LET
7 ALONE THEIR STATUTORY AND COURT-OBLIGATED MANDATED
8 OBLIGATIONS UNDER THE GOVERNMENT CODE AND HEALTH AND
9 SAFETY CODE.

10 I'D ALSO LIKE TO RESPOND TO THEIR POINT THAT
11 THEY CONDUCTED A HEARING REGARDING THE COVID 19 LOCAL
12 EMERGENCY ON NOVEMBER 29TH, 2020 VERBATIM FROM THE --
13 RIGHT HERE SUPPLEMENTAL AGENDA ITEM OF THE AGENDA
14 STAFF REPORT.

15 THIS IS DATED NOVEMBER 2ND, 2022 WAS ATTACHED
16 TO THEIR SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE.
17 THE RECOMMENDED ACTIONS WERE TO ADOPT A RESOLUTION
18 RATIFYING THE DECLARATION OF THE LOCAL HEALTH
19 EMERGENCY BY COUNTY HEALTH OFFICER DATED OCTOBER 31,
20 2020 RELATED TO THE RESPIRATORY SYNCYTIAL VIRUS, RSV
21 AND OTHER RESPIRATORY ILLNESSES INCLUDING FLU. IT HAD
22 NOTHING TO DO WITH THE COVID 19 EMERGENCIES.

23 NUMBER TWO, ADOPT A RESOLUTION RATIFYING THE
24 PROCLAMATION OF LOCAL EMERGENCY BY THE CHAIR OF
25 EMERGENCY MANAGEMENT COUNSEL DATED OCTOBER 31ST, 2022
26 RELATED TO RSV AND OTHER RESPIRATORY ILLNESSES.

1 AGAIN, NO MENTION OF COVID 19 BECAUSE IT HAD ITS OWN
2 SEPARATE STANDING LOCAL EMERGENCIES WHICH HAD ALREADY
3 BEEN DECLARED. THIS HAD NOTHING TO DO WITH COVID 19.

4 THERE WAS ONE MORE ITEM. ADOPT BY RESOLUTION
5 THAT ALL COUNTY DEPARTMENTS AND THEIR AGENCIES --

6 **THE COURT:** MA'AM.

7 **MS. PEARSON:** EXCUSE ME. ADOPT BY RESOLUTION
8 THAT ALL COUNTY DEPARTMENTS AND AGENCIES TAKE THOSE
9 ACTIONS, MEASURES AND STEPS DEEMED NECESSARY TO ENSURE
10 THE HEALTH SAFETY AND WELFARE OF ORANGE COUNTY
11 CITIZENS AND PROPERTY INCLUDING LOCAL REQUESTING
12 MUTUAL AID TO THE EXTENT SUCH AID IS NECESSARY.

13 THESE ARE ALL RELATED TO A NEW DECLARATION OF
14 EMERGENCIES RELATED TO RSV, FLU AND PNEUMONIA WHICH
15 WERE SPIKING IN THE COUNTY IN NOVEMBER AND DECEMBER
16 AND JANUARY.

17 AND THE LAST THING I THINK IS CRITICAL FOR
18 THE -- FOR YOUR HONOR TO RECALL IS THAT GOVERNOR
19 NEWSOM SUSPENDED THE 30- AND 60-DAY TIME INTERVALS IN
20 MARCH OF 20.

21 DESPITE THIS, THEY CONTINUED TO HOLD REVIEW
22 HEARINGS EVERY 30 AND 60 DAYS RELATING TO THE COVID 19
23 DECLARATIONS OF LOCAL AND LOCAL HEALTH EMERGENCIES.

24 FOR OVER ALMOST A YEAR AND A HALF FROM
25 MARCH 2020 UNTIL JUNE 2021 AND THEN ALL OF A SUDDEN
26 JUNE 2020, JUNE 22ND OF 2021, THEY PASSED THE

1 ADVOCATION BILL AND DECIDED THEY WERE NO LONGER GOING
2 TO CONDUCT THE STATUTORILY REQUIRED PUBLIC REVIEW
3 HEARINGS.

4 AND THEN FROM JUNE 2021 UNTIL TODAY, WE'RE NOW
5 ALMOST TWO YEARS INTO THIS, WE HAVE NOT AS ORANGE
6 COUNTY RESIDENTS HAD ONE PUBLIC REVIEW HEARING
7 REGARDING LOCAL COVID 19 CONDITIONS TO DETERMINE
8 WHETHER WE AND OUR FUNDAMENTAL CONSTITUTIONAL RIGHTS
9 SHOULD BE SUSPENDED.

10 WE HAVE NO IDEA WHAT'S GOING ON WHAT THEY'RE
11 REVIEWING WHAT LOCAL CONDITIONS LOOK LIKE FOR ALMOST
12 TWO YEARS NOW. THIS IS ABOUT DUE PROCESS. THIS IS
13 ABOUT THE BROWN ACT. THIS IS ABOUT CONTROLLING OUR
14 OBJECTS AS WE HAVE CREATED.

15 THIS IS ANTITHETICAL TO THE CONSTITUTION,
16 CALIFORNIA, FEDERAL AND ALSO THE BROWN ACT AND THE
17 GOVERNMENT CODE AND HEALTH AND SAFETY CODE SECTIONS.

18 **THE COURT:** OKAY. I HAVE MANY, MANY OTHER
19 MATTERS ON MY CALENDAR TODAY. MY -- HERE'S WHAT I'M
20 THINKING AT THIS POINT.

21 I'M GONNA ORDER SUPPLEMENTAL BRIEFS ON THE ISSUE
22 OF MOOTNESS. WE'LL FIGURE OUT A TIMING FOR WHEN THAT
23 WILL BE DONE WHICH IS EFFICIENT BUT PRODUCTIVE:

24 AND WHATEVER JUDGE LEE ISSUED AS HIS ORDER WILL
25 REMAIN UNTIL I REVISIT THIS ISSUE OF MOOTNESS BECAUSE
26 I BELIEVE IT WILL INTERPLAY WITH THE REQUESTED REMEDY.

1 YOU CAN ADDRESS HOW IT DOESN'T UNDERSTANDING
2 YOUR ARGUMENT IS IT DOESN'T BECAUSE YOU'RE TALKING
3 ABOUT HISTORICAL THINGS THAT THEY'VE DONE. I'M SORRY,
4 THE COUNTY HAS DONE TO DEMONSTRATE THEY'RE
5 UNWILLINGNESS -- YOUR ARGUMENT IS THEIR UNWILLINGNESS
6 TO COMPLY WITH THAT WHICH THE LAW REQUIRES OR WHAT
7 JUDGE LEE'S ORDER AND YOU CAN TELL ME YOU'RE DEAD ON
8 SPOT ACCURATE DOING EVERYTHING OKAY.

9 SO WHO DOES IT MAKE -- LET'S TALK ABOUT THE
10 BRIEFING SCHEDULE. WHO -- DOES ANYONE VOLUNTEER TO GO
11 FIRST? OKAY. I SEE NO HANDS.

12 **MR. DUNNE:** WE CAN GO FIRST.

13 **THE COURT:** THEN RESPONDENT WILL FILE THEIR
14 FIRST BRIEF. SO LET'S TALK ABOUT EVERYBODY'S
15 REASONABLE TIME FRAMES.

16 I'M GONNA PUT YOU ON MY CALENDAR WHENEVER WE
17 FIGURE OUT REASONABLE TIME FRAMES FOR BRIEFING.

18 **MS. PEARSON:** DO WE HAVE A PAGE LIMIT IN MIND?

19 **THE COURT:** YES, 15 PAGES. OPENING BRIEF DUE
20 MARCH 13TH. REPLY OR OPPOSITION, HOWEVER YOU WANT TO
21 CHARACTERIZE IT, A WEEK LATER, THE 20TH.

22 **MS. PEARSON:** 15 PAGES AND NO REPLY.

23 **THE COURT:** AND THEN NO REPLY.

24 **MS. BARSOTTI:** YOUR HONOR, JESSICA BARSOTTI IF I
25 MAY BRIEFLY. I'M CONCERNED WITH THIS -- ANOTHER DELAY
26 HERE.

1 **THE COURT:** I UNDERSTAND.

2 **MS. BARSOTTI:** AND ALSO THE FACT THAT WHAT I
3 DON'T WANT TO HAPPEN IS TO HAVE RESPONDENTS COME IN ON
4 MARCH 13TH AND SAY GUESS WHAT, WE AGENDIZED IT AND SO
5 THIS IS OVER. THIS HAS BEEN GOING ON --

6 **THE COURT:** YOU'LL ADDRESS THAT. YOU'RE
7 ARTICULATE. YOU'RE SOUND. YOU'RE SAVVY. YOU'RE AN
8 ADVOCATE. YOU'RE GONNA TELL ME HOW THAT DOESN'T
9 REMEDY WHAT THE PROBLEM IS.

10 AND I'M GONNA LISTEN WITH OPEN EARS.

11 **MS. BARSOTTI:** OKAY. I UNDERSTAND. IT'S JUST
12 WE'VE BEEN --

13 **THE COURT:** I UNDERSTAND.

14 **MS. BARSOTTI:** IT'S BEEN VERY DIFFICULT, AND
15 SINCE DECEMBER 1ST AS YOU KNOW OUR PROBLEMS WITH THE
16 RELATED CASE REALLY PUT THIS INTO CHAOS AND IT WAS --

17 **THE COURT:** I UNDERSTAND.

18 **MS. BARSOTTI:** AND IT WAS NOT GOOD LITIGATION
19 TACTICS IN MY PERSONAL OPINION.

20 **THE COURT:** I UNDERSTAND. OKAY. THERE WAS
21 SOMETHING ELSE ON CALENDAR.

22 **MS. BARSOTTI:** IT WAS THE EX PARTE NOTICE. AND
23 WE HAVE A CMC TO SET A TRIAL DATE I BELIEVE.

24 **THE COURT:** OKAY. SO I RULED ON YOUR EX PARTE.
25 CASE MANAGEMENT CONFERENCE, YOU WANT TO DO IT ON THE
26 DAY WE'RE COMING BACK FOR THE HEARING ON --

1 **MS. PEARSON:** YOUR HONOR, I HAVE A QUESTION.
2 I'M SORRY.

3 **THE COURT:** HOLD ON. SO WE'RE GOING TO DO A
4 HEARING AT ROUGHLY APRIL -- APRIL 3RD. NO? IT WILL
5 BE IN THE AFTERNOON. IT WILL BE ON THE LAW AND MOTION
6 CALENDAR. THE HEARING ON IT WILL BE APRIL 3RD.

7 **MS. BARSOTTI:** ON THE CMC, YOUR HONOR?

8 **THE COURT:** WELL, WE'RE GOING TO CONTINUE THE
9 CMC TO THE SAME DAY AS THE SUBSTANTIVE HEARING.

10 DOES APRIL 3RD WORK?

11 **MS. BARSOTTI:** YES.

12 **MS. PEARSON:** I JUST HAD TO CLARIFY.

13 **THE COURT:** AT 2:00 O'CLOCK.

14 **MS. BARSOTTI:** THAT WORKS FOR ME.

15 **THE COURT:** GO AHEAD.

16 **MS. PEARSON:** SO TO BE CLEAR TODAY, THE REASON
17 THAT THE TENTATIVE IS NOW CHANGING NOW WE'VE NOW
18 OPENED UP A COMPLETELY NEW SCHEDULING BRIEFING
19 SCHEDULE BASED ON THIS ENTIRELY NEW ISSUE IS BECAUSE
20 OF THE SUPPLEMENTAL -- THE FURTHER SUPPLEMENTAL
21 REQUEST FOR JUDICIAL NOTICE ON A PRESS RELEASE THAT
22 THEY KNEW ABOUT SINCE SEPTEMBER 27TH, 2022.

23 **THE COURT:** CORRECT.

24 **MS. PEARSON:** OKAY.

25 **THE COURT:** ALL RIGHT. DO YOU WAIVE NOTICE?

26 **MR. DUNNE:** NOTICE WAIVED.

1 **MS. BARSOTTI:** NOTICE WAIVED.

2 **MS. ROSENBERG:** YOUR HONOR, I'M SORRY. THIS IS
3 DEPUTY ATTORNEY GENERAL JENNIFER ROSENBERG.

4 I HAVE SEEN THE TENTATIVE, BUT I DON'T KNOW SEE
5 THAT IT HAS ADDRESSED THE REQUEST TO RELATE CASES.

6 IS THE COURT MAKING A RULING ON THAT OR...

7 **THE COURT:** AS I UNDERSTAND THE CALIFORNIA RULES
8 OF COURT AS IT RELATES TO RELATED CASES, SHOULD THE
9 COURT DECIDE THEY ARE RELATED, THE COURT WILL TAKE
10 STEPS.

11 I DON'T SEE ANY AFFIRMATIVE DUTY BY A JUDGE IF
12 THEY'RE NOT RELATED AS I READ THE CALIFORNIA RULES OF
13 COURT.

14 **MS. ROSENBERG:** UNDERSTOOD. WE FILED AN
15 OPPOSITION TO THE RELATED CASES SO I DIDN'T KNOW IF
16 YOU WOULD LIKE ME TO APPEAR AT SUBSEQUENT --

17 **THE COURT:** YOU ARE ALWAYS WELCOME TO APPEAR.

18 **MS. ROSENBERG:** THANK YOU, YOUR HONOR.

19 **THE COURT:** ALL RIGHT. THANK YOU.

20 **MR. DUNNE:** THANK YOU.

21 **MS. BARSOTTI:** YOUR HONOR, BRIEFLY THIS IS
22 JESSICA BARSOTTI. JUST SO I UNDERSTAND, SO THE ORDER
23 TO SHOW CAUSE HEARING IS BEING CONTINUED UNTIL THE
24 APRIL 3RD; IS THAT ACCURATE?

25 **THE COURT:** CORRECT.

26 **MS. PEARSON:** IT'S STILL TENTATIVE. NO FINAL

1 RULING.

2 **THE COURT:** CORRECT.

3 **MS. PEARSON:** SUPPLEMENTAL BRIEFING AND --

4 **THE COURT:** AND THE FINAL RULING, YES.

5 **MS. PEARSON:** THANK YOU.

6 **MS. BARSOTTI:** THANK YOU, YOUR HONOR.

7 (PROCEEDINGS CONCLUDED.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

REPORTER'S CERTIFICATE

I, ARLENE M. FERRARO, CSR NO. 12035,
COURT-APPROVED OFFICIAL COURT REPORTER PRO TEM IN
AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
COUNTY OF ORANGE, DO HEREBY CERTIFY THAT THE FOREGOING
TRANSCRIPT IS A TRUE AND CORRECT TRANSCRIPT OF MY
SHORTHAND NOTES AND A FULL, TRUE AND CORRECT STATEMENT
OF THE PROCEEDINGS HAD IN SAID CAUSE.

DATED THIS 28TH DAY OF FEBRUARY, 2023.

Arlene Ferraro

ARLENE M. FERRARO, CSR NO. 12035
APPROVED OFFICIAL COURT REPORTER PRO TEMPORE