SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE - WEST JUSTICE CENTER

DEPARTMENT W-15

PEGGY HALL,	)	
	)	
PETITIONER,	)	
	)	
VS.	)	NO. 30-2021-01220678
	)	
COUNTY OF ORANGE, A GOVERNMENTAL ENTITY, AND THE ORANGE COUNTY BOARD OF SUPERVISORS,	)	
	)	
RESPONDENTS.	)	
	)	

HONORABLE RICHARD LEE, JUDGE PRESIDING

REPORTER'S TRANSCRIPT

SEPTEMBER 22, 2022

APPEARANCES OF COUNSEL:

FOR PETITIONER:	LAW OFFICES OF NICOLE C. PEARSON BY: NICOLE C. PEARSON RITA BARNETT-ROSE JESSICA R. BARSOTTI ATTORNEYS AT LAW
FOR RESPONDENTS:	LEON J. PAGE, COUNTY COUNSEL BY: SUZANNE E. SHOAI D. KEVIN DUNN ATTORNEYS AT LAW

JENEE S. FRAINE, CSR #5446
OFFICIAL COURT REPORTER PRO TEMPORE

WITNESSES

(NONE)

EXHIBITS

(NONE)

WESTMINSTER, CALIFORNIA - THURSDAY, SEPTEMBER 22, 2022

MORNING SESSION

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(THE FOLLOWING PROCEEDINGS WERE HELD IN A HYBRID COURTROOM; COUNSELS NICOLE C. PEARSON AND RITA BARNETT-ROSE APPEARING IN PERSON; COUNSELS SUZANNE E. SHOAI, D. KEVIN DUNN AND JESSICA BARSOTTI APPEARING VIA ZOOM, WITH THE COURT REPORTER IN A REMOTE LOCATION, SEPARATE AND APART FROM THE COURT AND ATTORNEYS:)

THE COURT: OKAY. 52, HALL VERSUS COUNTY OF ORANGE.

MS. SHOAI: GOOD MORNING, YOUR HONOR, DEPUTY COUNTY COUNSEL SUZANNE SHOAI FOR RESPONDENT COUNTY OF ORANGE AND THE ORANGE COUNTY BOARD OF SUPERVISORS.

THE COURT: THANK YOU.

MS. PEARSON: GOOD MORNING, YOUR HONOR, NICOLE PEARSON ON BEHALF OF PETITIONER PEGGY HALL.

MS. BARNETT-ROSE: GOOD MORNING, YOUR HONOR, RITA BARNETT-ROSE FOR PETITIONERS AS WELL.

THE COURT: ALL RIGHT.

OKAY. IT SOUNDED LIKE MR. DUNN ALSO MADE HIS APPEARANCE.

MR. DUNN: YES, THANK YOU, YOUR HONOR.

THE COURT: MS. BARSOTTI.

MS. BARSOTTI: THANK YOU, YOUR HONOR. GOOD MORNING, JESSICA BARSOTTI ON BEHALF OF PETITIONERS.

THE COURT: THANK YOU. WE HAVE A COURT REPORTER AS WELL?

THE COURT REPORTER: YES. THIS IS JENEE FRAINE.

THE COURT: OKAY. THANK YOU.

SO EVERYONE WHO IS APPEARING REMOTELY ON ZOOM, CAN YOU SEE THE TWO COUNSEL APPEARING IN COURT HERE?

MS. SHOAI: YES, YOUR HONOR.

MS. BARSOTTI: YES, YOUR HONOR.

THE COURT: OKAY. AND PERHAPS IF EITHER OF YOU ARE GOING TO ADDRESS THE COURT, MAYBE YOU CAN DO ME THE COURTESY OF SPEAKING AT THE LECTERN BECAUSE THE MICROPHONE PICKS YOU UP A LITTLE BIT BETTER.

MS. PEARSON: IF I MAY, YOUR HONOR, JESSICA BARSOTTI WILL BE TAKING LEAD. WE'RE HERE AS A BACKUP AND TO ANSWER SPECIFIC QUESTIONS. BUT GIVEN TECHNICAL GLITCHES, AS YOUR HONOR HAS SEEN, WE'RE HERE.

THE COURT: JUST IN CASE.

MS. PEARSON: JUST IN CASE, YES.

THE COURT: ALL RIGHT. SO YOU FOLKS HAVE A DEMURRER AND THEN A SECOND APPLICATION. I PREPARED A VERY DETAILED TENTATIVE RULING ON IT. LET'S START WITH THE COUNTY COUNSEL AND INVITE ANY ARGUMENT THEY MAY HAVE AT THIS POINT ON BEHALF OF THE COUNTY.

MS. SHOAI: THANK YOU, YOUR HONOR. I'D LIKE TO ADDRESS THE DEMURRER FIRST. AND SPECIFICALLY, I'D

LIKE TO ADDRESS THE PENAL CODE 1085 FOR THE MANDATE ISSUE.

AS THE COURT KNOWS, THE BOARD MEMBERS ARE THE DEMOCRATICALLY ELECTED REPRESENTATIVES OF THE COUNTY. THEY MADE A DETERMINATION THAT COVID REPRESENTED A SUBSTANTIAL RISK TO THE SAFETY OF THE RESIDENTS OF ORANGE COUNTY. THEY APPROVED LOCAL EMERGENCIES AND THEY DETERMINED THAT THOSE EMERGENCIES SHOULD STAY -- TO REMAIN IN PLACE.

NOW, PETITIONERS OBVIOUSLY DISAGREE WITH THE BOARD. BUT IN THE ABSENCE OF A PRESENT, CLEAR, MANDATORY AND MINISTERIAL DUTIES TO DO SO -- I'M SORRY, THERE IS A ECHO. I DON'T KNOW IF YOU'RE HEARING THAT.

THE COURT: I AM, BUT I AM STILL UNDERSTANDING YOUR ARGUMENT.

MS. SHOAI: THANK YOU. OKAY.

IN THE ABSENCE OF A CLEAR, PRESENT, MANDATORY AND MINISTERIAL DUTY TO DO SO, THEY HAVE NO AUTHORITY TO REQUIRE THE BOARD TO RECONSIDER ITS DETERMINATION.

AND HERE, WHAT WE'RE SEEING IS PETITIONERS ARE TRYING TO FIND SOME SORT OF DUTY THAT THEY CAN HAVE THE COURT COMPEL THE BOARD TO PERFORM. AND THEY HAVE URGED THE COURT THAT THE BOARD -- THAT THE COURT CAN REQUIRE THE BOARD TO HOLD A REVIEW HEARING. AND THERE ARE TWO PROBLEMS WITH IT.

FIRST, THERE IS NO PRESENT DUTY FOR THE BOARD

TO ACT BECAUSE, AS THEY CONCEDE, THERE IS NO MANDATED TIME FRAME IN WHICH A REVIEW NEEDS TO OCCUR.

AND SECOND, EVEN IF THERE WERE A PRESENT DUTY TO REVIEW CONDITIONS, THERE IS NO DUTY TO DO SO IN A PUBLIC HEARING, AS PETITIONERS IMPLY.

SO THE FIRST ISSUE, THERE IS NO PRESENT MINISTERIAL DUTY FOR THE BOARD TO PERFORM A REVIEW OF CONDITIONS OR ANY TYPE OF FORMAL REVIEW OF CONDITIONS IN THE COUNTY BECAUSE THE GOVERNOR'S PROCLAMATION SUSPENDED THIS REQUIREMENT.

THE COURT: NOT REALLY, THOUGH. RIGHT? I MEAN --

MS. SHOAI: OH, ABSOLUTELY, YOUR HONOR. IN FACT, THIS IS CONCEDED BY -- WITH PLAINTIFFS IN THEIR PETITION. IT'S ACTUALLY ITEMS PARAGRAPH 38 THROUGH 41 THEY SPECIFICALLY STATE THAT THE GOVERNOR'S PROCLAMATION SUSPENDED IN 30-DAY AND 60-DAY REVIEW PERIODS. AND THEY IDENTIFIED THEM AS REVIEW PERIODS. AND THEY SAY THOSE ARE THE PERIODS THAT WERE NORMALLY REQUIRED FOR THE BOARD TO REVIEW, RENEW OR TERMINATE THE LOCAL CONDITIONS -- OR THE LOCAL STATE OF EMERGENCY.

SO THEY HAVE CONCEDED THAT THAT IS EXACTLY WHAT THE GOVERNOR DID; HE SUSPENDED.

THE COURT: SUSPENDING THE 30 AND 60-DAY TIME PERIODS WAS DIFFERENT THAN SUSPENDING THE REVIEW HEARINGS ALTOGETHER, ISN'T IT?

MS. SHOAI: WELL, WHAT I WOULD SAY IS THAT IF THERE IS NO TIME PERIOD REQUIREMENT FOR A HEARING OR A REVIEW TO TAKE PLACE, WHAT THAT MEANS IS THE PROCLAMATION IS PUTTING THE DISCRETION IN THE HANDS OF THE BOARD TO MAKE A DETERMINATION OF WHETHER A REVIEW HEARING IS WARRANTED.

SO IF THERE IS NO TIME PERIOD WHERE IT'S MANDATED, THEN THE DETERMINATION OF WHETHER ONE SHOULD TAKE PLACE IS INHERENTLY A DISCRETIONARY DETERMINATION, AND IT IS --

THE COURT: SO THAT'S A DELEGATION. THAT'S -- WHAT THAT IS IS INACTION BY THE BOARD AND JUST WAITING FOR THE GOVERNOR'S OFFICE TO MAKE A DECISION ON IT.

MS. SHOAI: WELL, THAT IS CERTAINLY HOW OPPOSING COUNSEL HAS CHARACTERIZED THE BOARD'S JUNE 22ND, 2021 MINUTE ORDER. I THINK THAT THEY HAVE MISCHARACTERIZED IT, FOR A NUMBER OF REASONS.

IT'S NOT A DELEGATION BECAUSE WHAT IT DOES IS IT BASICALLY SAYS THAT IF THE GOVERNOR LIFTS THE -- OR IF THE STATEWIDE EMERGENCY LIFTS, THEN THE LOCAL EMERGENCY WILL AUTOMATICALLY LIFT. IT DOESN'T SAY --

THE COURT: LET ME ASK YOU A QUESTION. HOW DO YOU HARMONIZE THE GOVERNOR'S PROCLAMATION, THE LAST SENTENCE IN PARAGRAPHS 7 AND 8, WITH YOUR POSITION, WHICH IS SPECIFICALLY THAT ANY SUCH LOCAL HEALTH EMERGENCY WILL REMAIN IN EFFECT UNTIL EACH LOCAL

GOVERNING AUTHORITY TERMINATES ITS RESPECTIVE LOCAL HEALTH EMERGENCY?

IT SEEMS TO THE COURT A LITTLE BIT CIRCULAR TO ARGUE THAT WE DON'T HAVE TO CONDUCT THE REVIEW HEARING, AT THE SAME TIME THE GOVERNOR'S PROCLAMATION DID NOT AFFECT THE LOCAL GOVERNING AUTHORITIES DETERMINATION OR REQUIREMENT TO TERMINATE THE LOCAL HEALTH EMERGENCY AS CONDITIONS WARRANT.

I WOULD BE MORE PERSUADED IF THE GOVERNOR'S PROCLAMATION JUST SUSPENDED THE REQUIREMENT AND THE STATUTE ALTOGETHER. BUT DON'T WE HAVE TO GIVE EQUAL MEANING TO THE LAST SENTENCE AS WELL?

MS. SHOAI: YOUR HONOR, THE LAST SENTENCE BASICALLY ALLOWS THE LOCAL AGENCY TO TERMINATE THE STATE OF EMERGENCY -- THE LOCAL STATE OF EMERGENCY PRIOR TO THE TERMINATION OF THE STATE PROCLAMATION OF EMERGENCY. BUT THAT DOES NOT --

THE COURT: HOLD ON. BUT IF THEY NEVER HOLD A REVIEW HEARING HOW CAN THAT EVER HAPPEN?

MS. SHOAI: I DON'T THINK THAT THERE IS ANY REQUIREMENT FOR THEM TO HOLD A REVIEW HEARING FOR THEM TO MONITOR CONDITIONS. AND THAT IS ONE OF THE --

THE COURT: THE REQUIREMENT IS SET FORTH IN THE CODE.

MS. SHOAI: THE CODE SAYS NOTHING --

THE COURT: THE HEALTH AND SAFETY CODE.

MS. SHOAI: YES, BUT THE CODE SAYS NOTHING ABOUT HOLDING A HEARING, AND THAT'S ONE OF THE FALLACIES IN PETITIONER'S ARGUMENT. THERE IS NOTHING IN THE CODE SECTION THAT REQUIRES A PUBLIC HEARING TO TAKE PLACE.

IN FACT, WHAT THE COURT HAS POINTED TO IS BASICALLY AN IMPLIED DUTY TO MONITOR CONDITIONS, BECAUSE THERE IS A DUTY FOR THE BOARD TO TERMINATE CONDITIONS -- OR TERMINATE THE STATE OF EMERGENCY AS SOON AS CONDITIONS WARRANT. BUT THAT IS NOT A MINISTERIAL DUTY. I'M SORRY, YOUR HONOR.

THE COURT: NO, NO, THAT'S ALL RIGHT. WE'RE HAVING AN INTELLECTUAL DISCUSSION ABOUT IT, SO I AM NOT TAKING ANY OFFENSE TO YOUR ADVOCACY.

OKAY. LET'S ASSUME THAT I UNDERSTAND THE DISTINCTION YOU'RE DRAWING ABOUT THE HEARING. BUT ARE YOU TELLING ME THAT THE BOARD AND THE COUNTY ARE DOING REVIEWS?

MS. SHOAI: ABSOLUTELY. ALTHOUGH, THAT IS NOT REALLY RELEVANT TO THIS -- THEY ARE. BUT ON DEMURRER, WHAT'S BASICALLY BEING -- WHAT'S BEING STATED BY PETITIONER IS THAT BECAUSE THEY ARE NOT HOLDING A FORMAL HEARING WHERE THEY ARE TAKING COMMENTS FROM THE PUBLIC, THAT THEY ARE NOT REVIEWING THE CONDITIONS WITHIN THE COUNTY.

AND THAT'S JUST A FALLACY, BECAUSE THE BOARD AND THE COUNTY HAS AN ENTIRE APPARATUS OF STAFF,

INTERNAL AGENCIES, THAT ARE INCLUDING THE ORANGE COUNTY HEALTHCARE AGENCY, THAT ARE MONITORING THE COVID CONDITIONS AND CONSISTENTLY REPORTING THOSE CONDITIONS TO THE BOARD.

SO THAT RIGHT THERE IS THE CONDITION MONITORING OR THE REVIEW, THAT THE ONLY REVIEW THAT IS REALLY REQUIRED IN ORDER TO IMPLEMENT ANY DUTY TO END -- TO TERMINATE THE LOCAL EMERGENCIES, WHENEVER THE BOARD DETERMINES THAT THE CONDITIONS SO REQUIRE. THAT'S EXACTLY WHAT GOES ON.

AND WHAT THEY HAVE DONE WITH THEIR PETITION IS THEY'VE TRIED TO TIE THE BOARD'S ACTION ON JUNE 22ND, 2021. THEY'VE TRIED TO SORT OF USE THIS MINUTE ORDER AS -- THEY'RE TRYING TO CREATE -- HOW DO I EXPLAIN IT?

THEY'RE BASICALLY TRYING TO HAVE THE COURT INFER THAT THIS MINUTE ORDER SAYS THAT THE BOARD IS NO LONGER GOING TO REVIEW THE CONDITIONS. AND THERE IS NOTHING IN THE MINUTE ORDER THAT SAYS THAT THE BOARD IS NOT GOING TO REVIEW THE CONDITIONS.

ALL THE MINUTE ORDER SAYS IS THAT WHEN THE STATE STATE OF EMERGENCY ENDS THE LOCAL STATE OF EMERGENCY WILL AUTOMATICALLY END. IT DOESN'T SAY ANYTHING ABOUT THE BOARD CEASING TO MONITOR CONDITIONS. IN FACT, THE BOARD MONITORS CONDITIONS VIA ITS STAFF AND VIA ALL OF THE -- MANY OF THE COUNTY AGENCIES THAT REPORT TO THE BOARD ON THESE ISSUES.

SO WHAT'S CONCERNING IS THE CLAIM THAT IF THERE IS NOT A PUBLIC HEARING AT WHICH THE BOARD HAS TO VOTE WHETHER OR NOT TO CONTINUE THE STATE OF EMERGENCY, THAT THAT SOMEHOW SHOWS THAT THE BOARD IS NOT REVIEWING CONDITIONS OR THAT SOMEHOW SHOWS THAT THE BOARD IS ACTING IN AN ARBITRARY OR CAPRICIOUS MANNER.

I THINK IT'S FULLY APPROPRIATE FOR THE BOARD TO GET BRIEFING FROM ITS STAFF AND TO GET BRIEFING FROM THE HEALTHCARE AGENCY, THE EXPERTS IN THIS MATTER, REGARDING WHAT IS THE STATUS OF COVID WITHIN THE COUNTY. AND IT'S ALSO FULLY APPROPRIATE FOR THE BOARD TO REFERENCE THE STATEWIDE STATE OF EMERGENCY IN ITS CONSIDERATION OF WHEN IT WOULD BE APPROPRIATE TO LIFT THE LOCAL STATE OF EMERGENCY, BECAUSE COVID DOESN'T EXIST IN A VACUUM. IT DOESN'T SORT OF CONFINE ITSELF TO COUNTY OR STATEWIDE BOUNDARIES. AND IT'S VERY APPROPRIATE FOR THE BOARD TO MAKE THE DETERMINATION THAT COOPERATION WITH THE STATE GOVERNMENT IS WHAT WILL BEST PROTECT THE LOCAL POPULATION FROM THIS RISK OF COVID.

SO TURNING TO THE ACTUAL -- THE SPECIFIC LANGUAGE OF THE STATUTE AND THE LANGUAGE OF THE PROCLAMATION. IF A PROCLAMATION MEANS ANYTHING, IT MEANS THAT WHILE THE STATE EMERGENCY IS IN EFFECT THE BOARD DOESN'T HAVE TO REVIEW, RENEW OR TERMINATE THE LOCAL EMERGENCIES WITHIN ANY PRESCRIBED TIME FRAME.

AND THAT TIME FRAME, AS I MENTIONED, IS THE

TIME FRAME IS THERE FOR A DISCRETIONARY ISSUE. IT CANNOT BE COMPELLED TO BE A RISK. THE BOARD MAKES THE DECISION OF A TIME FRAME IN WHICH IT MIGHT WANT TO VOTE ON A RENEWAL OR A TERMINATION OF THE EMERGENCY.

AND, YOU KNOW, THAT'S THE ENTIRE PURPOSE OF THE PROCLAMATION. THE PROCLAMATION IS TO PUT THE TIMING OF THESE REVIEWS AND THESE VOTES TO RENEW IN THE HANDS OF THE BOARD AND THE LOCAL AGENCY AND NOT IN THE HANDS OF ANY DISGRUNTLED CONSTITUENTS.

AND THE COURT SEEMS TO ACKNOWLEDGE THIS. IT ACKNOWLEDGES THAT IN ITS TENTATIVE RULING BY STATING THAT IT'S NOT SUGGESTING OR MANDATING OR COMPELLING A PARTICULAR TIME FRAME OR FREQUENCY UPON WHICH THE REVIEWS MUST OCCUR.

BUT THEN IT GOES ON TO REPLACE THE PREVIOUSLY SUSPENDED STATUTORY 60-DAY REVIEW PERIOD WITH, ESSENTIALLY, A JUDICIALLY MANDATED SEVEN-DAY REVIEW PERIOD, YOU KNOW, FROM NOW UNTIL DECEMBER 1ST. AND THIS IS IMPROPER BECAUSE IT SUBVERTS THE BOARD'S JUDGMENT REGARDING WHEN TO ACT. THE BOARD ALONE CAN DECIDE WHEN TO ACT.

THE COURT: BUT DOESN'T THE COUNTY -- I GUESS I'M JUST HAVING A DIFFICULT TIME ACCEPTING THE COUNTY'S POSITION THAT THE COUNTY HAS GIVEN NO INDICATION SINCE JUNE OF 2021 THAT THEY CONDUCTED ANY SORT OF REVIEW IN THIS MATTER.

SO I GUESS IF IT WERE A DIFFERENT FACTUAL SITUATION WHERE THE REVIEW HAPPENED, THERE WAS SOME INDICATION FROM THE COUNTY THAT THE REVIEW HAD OCCURRED BUT IT HAD OCCURRED 180 DAYS AFTER THE LAST REVIEW, I WOULD SAY YES, THE GOVERNOR'S PROCLAMATION MAKES IT CLEAR THAT THAT'S FINE AND THE COUNTY IS IN THE RIGHT THERE. BUT AT WHAT POINT DOES NOT HOLDING SUCH A REVIEW BECOME A DELEGATION OF THAT DUTY?

MS. SHOAI: YOUR HONOR, IN THE ABSENCE OF A MANDATORY MINISTERIAL DUTY TO PERFORM A PUBLIC REVIEW HEARING, THE COUNTY'S DECISION --

THE COURT: DO YOU HAVE A CODE SECTION OR SOME SORT OF STATUTORY AUTHORITY THAT DISTINGUISHES BETWEEN THE BOARD'S OBLIGATIONS TO CONDUCT A REVIEW VERSUS HAVING A PUBLIC HEARING ON THE ISSUE? IS THERE SOMETHING THAT DISTINGUISHES BETWEEN THE TWO OF THEM?

MS. SHOAI: WELL, YES, I WOULD REFER THE COURT TO THE HEALTH AND SAFETY CODE AND THE GOVERNMENT CODE SECTION. GOVERNMENT CODE SECTION 8630 JUST SAYS "REVIEW." IT DOESN'T SAY ANYTHING ABOUT HAVING A PUBLIC HEARING.

AND THE SAME THING WITH HEALTH AND SAFETY CODE SECTION 101080, ALSO JUST REFERENCES A REVIEW. THERE IS NO REFERENCE TO A REVIEW HEARING, NO REFERENCE TO A PUBLIC HEARING. AND, IN FACT, OPPOSING COUNSEL HAS CITED NOTHING TO INDICATE THAT A PUBLIC HEARING NEEDS TO

TAKE PLACE. TO THE EXTENT THAT THEY ARE ARGUING THAT THERE IS A BURDEN ON --

THE COURT: I AM FINDING IT A LITTLE BIT HARD TO BELIEVE THERE IS NO SORT OF AUTHORITY THAT SETS FORTH WHAT TYPE OF HEARINGS HAVE TO BE MADE PUBLIC, WHAT TYPES OF ISSUES HAVE TO BE BEFORE A PUBLIC HEARING.

IS THERE NO SUCH CODE SECTION?

MS. SHOAI: OH, THANK YOU, YOUR HONOR.

WELL, THERE IS THE BROWN ACT, AND THE BROWN ACT DOES DISCUSS SCENARIOS WHERE A HEARING MUST BE PUBLIC. BUT THERE IS NOTHING IN IT, AND IN THE ABSENCE OF SPECIFIC INDICATION THAT A PARTICULAR REVIEW OR ACTIVITY OF BOARD MEMBERS -- IN THE ABSENCE OF ANY SPECIFIC INDICATION THAT AN ACTIVITY OF BOARD MEMBERS NEEDS TO BE MADE IN A MEETING OR IN PUBLIC, THERE IS NO SUCH REQUIREMENT.

AND, IN FACT, THE WAY THAT THE COUNTY OPERATES ON A TYPICAL BASIS IS THAT WE HAVE HEADS OF DEPARTMENTS AND STAFF COMMUNICATING WITH BOARD MEMBERS ON A REGULAR BASIS TO UPDATE THEM ON CONDITIONS, INCLUDING THE COVID CONDITIONS WITHIN THE COUNTY.

THE FACT THAT THE BOARD DECLINED TO HAVE A PUBLIC HEARING ON THE MATTER DOESN'T MEAN THAT IT DIDN'T OCCUR -- IT DOESN'T MEAN THAT THE REVIEWS DIDN'T OCCUR.

THE COURT: FORGET ABOUT THE PUBLIC HEARING FOR JUST A MOMENT. IS THERE ANYTHING IN ANY OF THE

BOARD'S MINUTES OR ANY SORT OF DOCUMENTATION THAT THEY'VE ACTUALLY DONE ANY SORT OF REVIEW ON THIS SINCE JUNE OF 2021?

MS. SHOAI: YOUR HONOR, ON THAT ISSUE, YOU KNOW --

THE COURT: I SURE WOULD FEEL BETTER ABOUT YOUR POSITION IF YOU HAD SOMETHING LIKE THAT.

MS. SHOAI: WELL, YOUR HONOR, WHAT I WOULD ARGUE IS THAT RIGHT NOW AS WE'RE TALKING ABOUT THE DEMURRER, WE'RE TALKING ABOUT WHAT THEY HAVE ALLEGED, AND WE REALLY TRIED TO TAILOR OUR ARGUMENTS TO --

THE COURT: BUT THE FACTS ARE REALLY IN DISPUTE. I MEAN, I GET THAT AND I UNDERSTAND. AND I ADDRESSED THE DEMURRER FIRST, SURE.

MS. SHOAI: WELL, YOUR HONOR, IF WE WANTED TO TURN TO THE ALTERNATIVE WRIT. I MEAN, WHAT I WOULD JUST SAY IS THAT SHOULD THE COURT ISSUE THE ALTERNATIVE WRIT, WHICH I HOPE THE COURT DOESN'T BECAUSE I DON'T THINK THEY'VE SHOWN A MANDATORY MINISTERIAL DUTY OR A PRESENT MANDATORY MINISTERIAL DUTY TO HOLD A HEARING OR TO HOLD A PUBLIC HEARING.

BUT SHOULD THE COURT ISSUE THE ALTERNATIVE WRIT, THEN THE COUNTY WOULD CERTAINLY COME FORTH WITH ALL OF THE EVIDENCE OF ITS DECISION-MAKING, OF ITS MONITORING OF CONDITIONS. I MEAN, WE HAVE AN ENTIRE AGENCY THAT MONITORS THE COVID CONDITIONS WITHIN THE

COUNTY, AND THEY REPORT DAILY.

I MEAN, THIS IS NOT BEFORE THE COURT RIGHT NOW, BUT IT WOULD BE BEFORE THE COURT. THEY REPORT DAILY TO ALL OF THE BOARD OFFICES. THEY WOULD REPORT ALL OF THE NUMBERS. THEY REPORT THE TEST POSITIVITY RATE. THEY REPORT THE HOSPITALIZATION RATE. THAT IS SOMETHING -- THAT IS EVIDENCE THAT WOULD BE CONSIDERED TO SUPPORT WHERE TO GO FORWARD WITH THE ALTERNATIVE WRIT.

BUT AT THIS POINT, AS WE'RE DISCUSSING THE DEMURRER, THE ISSUE IS REALLY HAVE THEY ALLEGED A FAILURE TO COMPLY WITH A DUTY TO REVIEW? AND I DON'T THINK THEY'VE ALLEGED IT BECAUSE THEY JUST HANG THEIR HAT ON THE BOARD'S JUNE 22ND, 2021 MINUTE ORDER. AND THERE IS NOTHING IN THAT MINUTE ORDER THAT SAYS THAT WE'RE GOING TO CEASE REVIEWING THESE CONDITIONS OR WE'RE GOING TO CEASE MONITORING THESE CONDITIONS. AND THERE IS NOTHING IN THAT MINUTE ORDER THAT SAYS THAT WE'RE GOING TO DELEGATE THIS AUTHORITY TO THE GOVERNOR. AND TO THE EXTENT THAT THEY IMPLY IT, IT'S QUITE A LEAP TO JUMP TO THE CONCLUSION THAT WE WERE ABDICATING ALL DECISION-MAKING TO THE GOVERNOR.

I MEAN, IT'S JUST AS PLAUSIBLE THAT THE BOARD MADE THE EXTREMELY REASONABLE DETERMINATION THAT IT WANTED TO COOPERATE WITH THE STATE GOVERNMENT BECAUSE DOING SO WOULD BE HELPFUL TO THE RESIDENTS OF THE COUNTY

IN PREVENTING THE SPREAD OF COVID AND THAT WE'RE GOING TO CONTINUE TO DO THAT AS LONG AS THE STATE GOVERNMENT IS TELLING US THAT THERE IS A THREAT, BECAUSE IT'S REASONABLE TO RELY ON THE STATE GOVERNMENT AND THE STATE AGENCIES RELATED TO THE COVID THREAT, WHICH IS ENTIRELY REASONABLE.

BUT THEY LOOK AT THAT MINUTE ORDER AND THEY JUMP TO THE CONCLUSION THAT IT MUST SHOW THAT THERE IS AN INTENT TO CEASE REVIEWING COVID RESTRICTIONS. THERE IS NOTHING IN THERE THAT SAYS WE'RE NOT GOING TO REVIEW THEM. THERE IS NOTHING THERE THAT SAYS WE'RE NOT GOING TO MONITOR THEM. AND THEN THEY JUMP TO THE CONCLUSION THAT THERE MUST BE SOME SORT OF NEFARIOUS MOTIVE AND, YOU KNOW, IMPROPER INTENTION. AND THIS IS ALL SPECULATION.

THE COURT: I DON'T KNOW IT'S NEFARIOUS OR IMPROPER. BUT I DON'T KNOW IT'S UNREASONABLE, EITHER, WHEN IN JUNE OF 2021 THERE IS A SPECIFIC REFERENCE THAT THEY HAVE REVIEWED, RECEIVED A STATUS REPORT AND UPDATES FROM THE HEALTHCARE AGENCY CONCERNING EFFORTS TO ADDRESS AND MITIGATE THE PUBLIC HEALTH AND OTHER IMPACTS CAUSED BY THE NOVEL CORONA VIRUS EMERGENCY.

AND THEN I STILL HAVEN'T HEARD SINCE THEN ANY SIMILAR LANGUAGE IN ANY OTHER STATUS REPORT OR DOCUMENTATION COMING FROM THE BOARD. THAT'S THE STRUGGLE I'M HAVING, COUNSEL.

MS. SHOAI: WELL, YOUR HONOR, IT WOULDN'T COME IN ON DEMURRER. IN RESPONSE TO A DEMURRER, WE WOULDN'T BE DOING REQUEST FOR JUDICIAL NOTICE AS TO EVERYTHING THAT WAS SENT TO THE BOARD. BUT IT IS, IN FACT, SOMETHING THAT COULD BE PROVIDED TO THE COURT IF THE COURT FINDS THAT THEY'VE MADE A SHOWING. IF THE COURT FINDS THAT THEY'VE SATISFACTORILY --

THE COURT: I DO UNDERSTAND THAT.

MS. SHOAI: -- PLED THE REQUIREMENT.

THE COURT: BUT ON DEMURRER DON'T I ALSO ACCEPT AS TRUE EVERYTHING THAT IS CONTAINED IN THE ORIGINAL PETITION?

MS. SHOAI: BUT NOT THE CONCLUSIONS. YOU ACCEPT AS TRUE THE FACTS. AND HE SAYS THAT THERE ARE EXHIBITS ATTACHED TO A PETITION. IF THE EXHIBITS CONTRADICT THE CONCLUSIONS THAT ARE IN THE PETITION, YOU DON'T ACCEPT THOSE CONCLUSIONS, YOU DON'T ACCEPT THAT SPECULATION. WHEN YOU LOOK AT THE ACTUAL DOCUMENT THAT IS ATTACHED --

THE COURT: I DID LOOK AT IT. TO THE EXTENT YOU'RE CONCERNED THAT I THINK THERE IS SOME NEFARIOUS ACTION BY THE BOARD OR SOME CONSPIRACY, I DON'T. AND I'M NOT DRAWING ANY SUCH CONCLUSIONS. BUT I THINK WHAT IS SET FORTH IN THE PETITION IS SUFFICIENT TO SURVIVE DEMURRER.

MR. DUNN: YOUR HONOR, THIS IS KEVIN DUNN.

CAN I BE HEARD BRIEFLY?

THE COURT: YOU MAY.

MR. DUNN: THANK YOU.

WITH RESPECT TO THE DEMURRER AND OUR OPPOSITION TO THE APPLICATION FOR ALTERNATIVE WRIT, WE BELIEVE THAT THOSE ARE WELL-FOUNDED. HOWEVER, WITH -- IN BOTH OF THOSE SCENARIOS WE HAVE REALLY BEEN LITIGATING ON A PRIMA FACIE BASIS. SO THE DEMURRER IS DOES THE PETITION STATE A CAUSE OF ACTION? IS THERE STANDING? AND WE ARE SORT OF GOING ON WHAT THE ALLEGATIONS ARE AS PRESENTED BY PETITIONERS.

WITH RESPECT TO THE ALTERNATIVE WRIT, HOWEVER, IT WOULD SEEM THAT IF THE COURT BELIEVES THAT A SHOWING HAS BEEN MADE THAT WARRANTS THE GRANTING OF AN ALTERNATIVE WRIT, THEN THOSE CIRCUMSTANCES THE COURT SHOULD THEN PROVIDE THOSE ALTERNATIVES TO RESPONDENTS HERE, WHICH IS COMPLY OR SHOW CAUSE WHY YOU SHOULDN'T BE REQUIRED TO COMPLY OR HOW YOU OTHERWISE COMPLIED.

SO OUR REQUEST WITH RESPECT TO THE ALTERNATIVE WRIT, TO THE EXTENT THE COURT DOES NOT GRANT OUR OPPOSITION, WOULD BE FOR THIS COURT TO SET UP AN O.S.C. TO ALLOW US THAT OPPORTUNITY TO BRING FORWARD FACTS, OUR OWN FACTS, NOT THE ONES THAT ARE PUT FORTH IN PLAINTIFF'S PETITION BUT RATHER OUR FACTS THAT CAN DEMONSTRATE TO THIS COURT AND SATISFY THIS COURT'S CONCERNS THAT HAVE BEEN CLEARLY ARTICULATED THAT THERE

IS A CONCERN THAT NO REVIEWS ARE, IN FACT, OCCURRING.

IF WE COME FORWARD, AND I THINK THE COURT HAS SAID THE COURT WOULD FEEL MORE COMFORTABLE IF IT UNDERSTOOD THAT THE COUNTY WAS STILL ENGAGED IN AN ONGOING REVIEW OF CONDITIONS -- AND I MIGHT ADD ALSO THAT ONLY BOARD MEMBERS CAN AGENDIZE A TERMINATION OF THIS LOCAL HEALTH EMERGENCY ON THEIR OWN AT ANY TIME BASED ON THE INFORMATION THEY'RE GETTING.

SO WE WOULD JUST ASK FOR THAT OPPORTUNITY BY WAY OF AN O.S.C. FOR THE DATES THAT HAVE BEEN SET BY THE COURT TO ALLOW US THE OPPORTUNITY TO EITHER COMPLY OR TO DEMONSTRATE ALTERNATIVE COMPLIANCE OR WHY IT'S NOT REQUIRED UNDER LAW.

THE COURT: DO YOU ENVISION THAT BEING AN EVIDENTIARY HEARING OR BY WAY OF DECLARATION AND THE PAPERS?

MR. DUNN: I WOULD BE COMFORTABLE EITHER WAY. HOWEVER, I DO BELIEVE THE COURT COULD BE SATISFIED SOLELY ON DECLARATIONS AND REQUESTS FOR JUDICIAL NOTICE AND THE LIKE.

THE COURT: OKAY. I FEEL LIKE I SHOULD GIVE THE PETITIONERS AN EQUAL OPPORTUNITY TO ADDRESS THE COURT.

WHO IS GOING TO ADDRESS THE COURT?

MS. PEARSON: IF JESSICA WANTS TO GO FIRST.

THE COURT: MS. BARSOTTI. OH, YOU'RE MUTED,

MA'AM.

MS. BARSOTTI: CAN YOU HEAR ME NOW?

THE COURT: I CAN. PLEASE PROCEED.

MS. BARSOTTI: THANK YOU VERY MUCH, YOUR HONOR.

NOT SURPRISINGLY, YOU KNOW, THE PETITIONERS AGREE WITH THE COURT. THE COURT TOOK A LOT OF TIME TO GO THROUGH EACH AND EVERY ISSUE HERE A VERY, VERY DETAILED TENTATIVE RULING, AND THE COURT GOT IT RIGHT.

AND UNLIKE HOW THE RESPONDENTS ARE TRYING TO CHARACTERIZE THIS, OF COURSE WE'RE NOT ASKING FOR ANY SPECIFIC TIME PERIOD OR ANY SPECIFIC DETERMINATION. BUT AS THE COURT NOTICED, THERE HAS TO BE SOME KIND OF REVIEW FOR THEM TO BE ABLE TO COMPLY WITH (INAUDIBLE) THE LAW. AND SO THAT'S ALL WE'RE ASKING FOR.

AND IT'S VERY IMPORTANT THAT THIS HAPPENS, BECAUSE THERE IS MASSIVE POWERS THAT ARE GIVEN UNDER EMERGENCY POLICE POWERS. AND SO OF COURSE IT'S A HUGE ISSUE FOR THE PUBLIC. OF COURSE THERE SHOULD BE A PUBLIC HEARING, BECAUSE THIS IS VERY IMPORTANT TO THE PUBLIC.

AND I MIGHT ADD, IN TERMS OF THE PUBLIC HEARING ASPECT, THE GOVERNMENT CODE 8630(B) DOES SAY THAT THE EMERGENCY HAS TO BE RATIFIED BY THE GOVERNING BODY. WELL, WHAT DOES THAT MEAN? THAT MEANS THERE NEEDS TO BE A HEARING AND THE BOARD NEEDS TO RATIFY IT.

AND SO I THINK THAT IMPLIES THAT IN ALL OF THESE INSTANCES WE ARE TALKING ABOUT REVIEW, THAT THE BOARD NEEDS TO BE INVOLVED AND THERE SHOULD BE A PUBLIC HEARING. AND REASONABLENESS WOULD SAY THAT THAT'S RIGHT AS WELL BECAUSE, AS I SAID, THESE ARE MASSIVE POWERS THAT ARE BEING GIVEN AND, YOU KNOW, THE PUBLIC HAS EVERY RIGHT TO KNOW WHAT'S GOING ON AND WHAT THEY'RE REVIEWING AND WHY THEY MAKE THESE KIND OF DECISIONS, BECAUSE THEY DO AFFECT EVERYBODY.

AND IN TERMS OF HOW -- YOU KNOW, IT'S CLEAR ON THE FACE OF THEIR RESOLUTION THAT THEY SAID THAT THE BOARD WAS NOT GOING TO TAKE ANY FURTHER ACTION FOR ANY OF THE EMERGENCY, YOU KNOW, INCONSISTENCE WITH THE GOVERNOR'S PROCLAMATION. AND SO THAT RIGHT THERE SAYS THAT THEY ARE NOT INTENDING ON DOING THEIR DUTY OF REVIEWING THE CONDITIONS.

AND SO I THINK THAT THE COURT GOT IT RIGHT. YOU KNOW, IT BECOMES A VERY SLIPPERY SLOPE IF WE ALLOW BOARDS LIKE THIS TO JUST IGNORE THE LEGISLATURE'S GUIDANCE TO DO THESE REVIEWS, AND IT'S MOST REASONABLE TO ALLOW THE PUBLIC TO SEE WHAT'S GOING ON (INAUDIBLE).

THE COURT: I'M SORRY, I DIDN'T HEAR THE LAST SENTENCE YOU SAID. CAN YOU REPEAT THAT?

MS. BARSOTTI: I WAS SAYING, IT MAKES ALL THE SENSE IN THE WORLD FOR THE PUBLIC TO BE INVOLVED IN THESE DECISIONS, AND WHY WOULDN'T THE BOARD WANT THE

PUBLIC TO SEE WHAT'S GOING ON?

AND IN TERMS OF THAT THEY'RE MONITORING THIS BUT NOT DOCUMENTING IT, YOU KNOW, THAT SEEMS TO BE KIND OF A SPURIOUS ARGUMENT, AND WE CERTAINLY WOULD LIKE TO SEE WHAT REVIEWS THEY HAVE DONE. AND SO IF THE COURT, YOU KNOW, IS INCLINED TO LOOK AT SOME EVIDENCE FROM THEM TO DETERMINE THIS ISSUE, YOU KNOW, OF COURSE THE PUBLIC WOULD LIKE TO SEE THAT. SO ...

THE COURT: I SEE IT'S GOING TO BE A PUBLIC FILING, SO ...

MS. PEARSON: YOUR HONOR, IF I COULD BE HEARD AS WELL. NICOLE PEARSON.

THE COURT: WAS THERE ANYTHING ELSE, MS. BARSOTTI?

MS. BARSOTTI: NO. THANK YOU SO MUCH, YOUR HONOR.

THE COURT: ALL RIGHT. YOU HAVE MY FULL ATTENTION, COUNSEL.

MS. PEARSON: I'M SORRY ABOUT THAT.

I JUST WANTED TO CLARIFY JUST FOR ONE SECOND. AS MUCH AS YOUR HONOR DECLINED TO INCLUDE ADDITIONAL ARGUMENTS OR EVIDENCE THAT RESPONDENTS BROUGHT IN ON THEIR REPLY, YOU SHOULD SIMILARLY DISREGARD THESE ARGUMENTS BECAUSE THESE ARGUMENTS ABOUT WHETHER OR NOT THERE IS A HEARING OR NOT, THESE ARE NEW ARGUMENTS THEY'VE NEVER BROUGHT IN THAT'S BEEN BROUGHT ON A

HEARING --

THE COURT: WITHOUT A HEARING.

MS. PEARSON: YEAH, CORRECT. THIS IS A NEW ARGUMENT THAT RESPONDENTS ARE PRESENTING TODAY AT THE HEARING, PRESUMABLY IN RESPONSE TO YOUR HONOR'S, AGAIN, VERY DETAILED AND THOROUGH TENTATIVE RULING IN OUR FAVOR.

SO THESE ARGUMENTS -- AND WE WOULD RESPECTFULLY REQUEST THAT THE COURT DECLINE TO ENTERTAIN THEM BECAUSE THEY'VE NEVER BEEN MADE BEFORE.

AND SPECIFICALLY WITH REGARD TO WHAT MS. BARSOTTI WAS SAYING, AND AGAIN TO THIS ARGUMENT SHOULD THIS COURT DECIDE TO ENTERTAIN IT, GOVERNMENT CODE 8630(B) SAYS SPECIFICALLY, "THE LOCAL EMERGENCY SHALL NOT --

THE COURT: I'M SORRY. 8630(D) AS IN DELTA?

MS. PEARSON: B AS IN BOY.

THE COURT: BRAVO?

MS. PEARSON: YES.

THE COURT: IF YOU'RE GOING TO READ, CAN YOU SLOW DOWN JUST A LITTLE BIT? I'M SURE THE COURT REPORTER WOULD APPRECIATE THAT.

MS. PEARSON: SURE. ABSOLUTELY.

"THE LOCAL EMERGENCY SHALL NOT REMAIN IN EFFECT FOR A PERIOD IN EXCESS OF SEVEN DAYS UNLESS IT HAS

BEEN RATIFIED BY THE GOVERNING BODY," WHICH IS WHAT MY CO-COUNSEL, MS. BARSOTTI, JUST SAID.

THE ONLY WAY AS CO-COUNSEL -- OR, EXCUSE ME, AS OPPOSING COUNSEL ACTUALLY MENTIONS THE BROWN ACT, THE ONLY WAY FOR A GOVERNING BODY TO RATIFY AN ACT IS BY A PUBLIC HEARING; OTHERWISE, IT WOULD BE A VIOLATION OF A BROWN ACT. SO IT'S NOT THAT IT IS IMPLIED OR SUGGESTED NECESSARILY BY THE BROWN ACT AND ALSO THE GOVERNMENT CODE; A PUBLIC HEARING IS REQUIRED.

AND, AGAIN, AS MS. BARSOTTI JUST POINTED OUT, THE MONITORING OF PRIVATE AND PUBLIC AGENCIES THROUGHOUT THE STATE OF CALIFORNIA -- EXCUSE ME, ORANGE COUNTY THAT INFORM A GOVERNING BODY WHEN THEY DO HAVE THE HEARING AND DECIDE WHETHER OR NOT TO TERMINATE OR RATIFY, THEY ARE TWO SEPARATE FUNCTIONS.

THOSE GOVERNING MONITORING AGENCIES ARE SEPARATE FROM THE BOARD OF SUPERVISORS, AND THEIR SERVICES INFORM THE BOARD OF SUPERVISORS IN ORDER FOR THEM TO DO THEIR OFFICIAL PUBLIC ACT AND TO SATISFY THEIR MANDATORY MINISTERIAL DUTIES UNDER THE CODE.

THE COURT: OKAY.

MS. PEARSON: I JUST WANTED TO REITERATE THAT.

THE COURT: ANYTHING ELSE?

MS. SHOAI: YOUR HONOR, COULD I RESPOND?

THE COURT: HOLD ON JUST ONE SECOND. LET ME

MAKE SURE THAT SHE IS DONE.

ANYTHING ELSE?

MS. PEARSON: NO, OTHER THAN I THINK YOUR HONOR HIT THE NAIL ON THE HEAD AND GOT IT RIGHT IN THE TENTATIVE. I DON'T WANT TO BELABOR THE ISSUES.

THE COURT: YES. COUNTY COUNSEL, I'LL GIVE YOU THE FINAL WORD.

MS. SHOAI: THANK YOU, YOUR HONOR.

IN TERMS OF RATIFICATION, A RATIFICATION ALREADY TOOK PLACE, AND THE ISSUE NOW IS IF THE PERTINENT CODE SECTIONS REQUIRE REVIEW. AND IF THEY DO REQUIRE A REVIEW, HOW DOES THAT --

THE COURT: THEY DO.

MS. SHOAI: HOW DOES THAT REVIEW --

THE COURT: THEY DO.

MS. SHOAI: WELL, I WOULD ARGUE THAT THEY DON'T -- THERE IS NO PRESENT DUTY TO IMPLEMENT A REVIEW BECAUSE THE COURT -- THE PROCLAMATION WAIVED THE TIME LIMITS REQUIREMENT FOR THE REVIEW. SO THERE IS NO PRESENT DUTY. THERE IS A DUTY TO REVIEW, BUT THERE IS NO PRESENT DUTY TO REVIEW. THE ONLY --

THE COURT: HOW LONG IS THIS PROCLAMATION GOING TO GO ON?

MS. SHOAI: WELL, IT'S GOING TO GO ON AS SOON AS -- OR FOR AS LONG AS THE STATE FINDS IT FIT TO HAVE A STATE OF EMERGENCY, A STATEWIDE STATE OF EMERGENCY.

THE COURT: CERTAIN GOVERNMENT GOVERNOR PROCLAMATIONS DECLARING STATES OF EMERGENCY THAT HAVE EXISTED AND GONE BACK FOR MANY, MANY YEARS, I THINK RELATING TO THE DROUGHT, WILD FIRE DANGERS. I MEAN, THAT BRINGS UP A TOTALLY DIFFERENT INTERESTING QUESTION, WHICH I'M NOT SURE IS RELEVANT TO THIS CONVERSATION.

MS. SHOAI: YOUR HONOR, BUT WHAT I WOULD SAY IS --

THE COURT: BUT I'M PRETTY SURE THAT MY DEFINITION OF EMERGENCY IS PROBABLY A LITTLE DIFFERENT THAN THE WAY SACRAMENTO SEES IT.

MS. SHOAI: BUT, YOUR HONOR, THE POINT IS THAT SACRAMENTO -- OR THE GOVERNOR, IN HIS DISCRETION, MADE THIS PROCLAMATION SPECIFICALLY TRYING TO ALLOW THE LOCAL AGENCIES TO HAVE DISCRETION ABOUT WHEN THEY CHOOSE TO VOTE, NOT JUST --

THE COURT: CAN I ASK YOU A QUESTION? DOES THE GOVERNOR'S PROCLAMATION PRECLUDE YOU FROM DOING A REVIEW --

MS. SHOAI: NO.

THE COURT: -- FOR A PUBLIC HEARING --

MS. SHOAI: NO.

THE COURT: -- EVALUATING THE EMERGENCY CONDITIONS IN ORANGE COUNTY?

MS. SHOAI: I DON'T THINK THAT IT SPECIFICALLY PRECLUDED IT, BUT --

THE COURT: SO YOU'RE STILL PERMITTED TO DO IT, RIGHT?

MS. SHOAI: YEAH, I THINK WE ARE PERMITTED TO DO IT. BUT THERE IS NO MANDATORY MINISTERIAL DUTY TO DO IT, AND DEFINITELY NO MANDATORY MINISTERIAL --

THE COURT: NO, THERE IS A DUTY TO DO IT. YOU KEEP SAYING THAT, BUT THERE IS A DUTY UNDER THE CODE. THERE IS JUST NO TIME REQUIREMENT AS TO WHEN THAT MUST HAPPEN, BUT IT'S BEEN 18 -- ALMOST 18 MONTHS. I GUESS IT'S NOT QUITE 18 MONTHS.

MS. SHOAI: AS ALLEGED. AS ALLEGED, IT HAS BEEN.

THE COURT: JULY THROUGH SEPTEMBER. 15 MONTHS?

MS. SHOAI: I WOULD SAY THERE IS NO PRESENT DUTY BECAUSE OF THE TIME LIMITS REQUIREMENT. BUT THEN I WOULD ALSO SAY TO THE EXTENT THAT THE COURT -- IF THE COURT DOES NOT AGREE WITH ME AND BELIEVES THAT A REVIEW IS REQUIRED, THERE IS NOTHING IN THAT STATUTE THAT REQUIRES THAT REVIEW TO TAKE PLACE VIA A PUBLIC HEARING. IT DOESN'T SAY A REVIEW HEARING. IT JUST SAYS A REVIEW. IT JUST SAYS YOU NEED TO REVIEW THE CONDITIONS SO THAT YOU CAN MAKE A DECISION ABOUT WHETHER YOU WANT TO CONTINUE THE STATE OF EMERGENCY. IT SAYS THAT THE BOARD NEEDS TO REVIEW THE CONDITIONS. THAT'S ALL IT SAYS.

THEY ARE CORRECT THAT IF THE BOARD NEEDED TO

TAKE ACTION TO RATIFY A STATE OF EMERGENCY, WHEN THE COURT -- WHEN THE BOARD WAS REQUIRED TO DO THAT PRIOR TO THE PROCLAMATION. BUT WHEN THE BOARD WAS REQUIRED TO DO THAT, THEN THE BOARD WOULD HAVE TO ASK IN A MEETING. BUT IN ORDER TO INFORMALLY REVIEW OR, YOU KNOW, MONITOR CONDITIONS THAT ARE ONGOING THROUGHOUT THE COUNTY, I DON'T THINK -- I THINK THE WHOLE PURPOSE OF THE GOVERNOR'S PROCLAMATION WAS TO NOT REQUIRE THAT LEVEL OF FORMALITY BECAUSE, YOU KNOW, JUST TO BE CANDID, I THINK IT WOULD BE REDUNDANT WHEN YOU HAVE A STATEWIDE EMERGENCY AND COVID THAT IS UNLIKE --

THE COURT: DO YOU FACTUALLY DISAGREE WITH THE PETITIONER'S ARGUMENTS IN THEIR PAPERS THAT CERTAIN CITIES WITHIN ORANGE COUNTY HAVE DECLARED THAT THERE IS NO LONGER A LOCAL EMERGENCY? IS THAT AN INCORRECT FACTUAL STATEMENT?

MS. SHOAI: NOT THAT I KNOW OF, YOUR HONOR. AND I DON'T THINK THAT IT'S REALLY RELEVANT BECAUSE -- JUST BECAUSE SOME HAVE CHOSEN TO DO SO DOESN'T MEAN --

THE COURT: YOUR ARGUMENT --

MS. SHOAI: -- THERE'S A DUTY TO.

THE COURT: NO, BUT YOUR ARGUMENT SEEMS TO SUGGEST THAT JUST BECAUSE THE STATE HASN'T DECIDED TO LIFT THE STATE OF EMERGENCY, THEREFORE, NO MUNICIPAL OR LOCAL GOVERNMENT CAN DO THAT, AND I JUST DON'T KNOW THAT THAT LOGIC IS SOUND.

MS. SHOAI: YOUR HONOR, THAT'S NOT MY SUGGESTION. I WANT TO BE CLEAR.

WHAT I AM SAYING IS THAT THAT IS CERTAINLY A FACTOR THAT THE BOARD CAN CONSIDER IN MAKING ITS DECISION ABOUT WHETHER IT WANTS TO LIFT THE LOCAL EMERGENCY. AND HERE, IT'S CLEAR THAT THAT WAS A FACTOR THAT THE BOARD TOOK INTO CONSIDERATION, AND THEN IT IS WITHIN THE BOARD'S DISCRETION TO DO SO. AND SO IT'S NOT --

THE COURT: BUT YOUR ARGUMENT IS THEY NEVER CONDUCT A REVIEW HEARING BECAUSE THEY ARE NOT REQUIRED BY ANY TIME PERIOD TO DO IT WITHIN, RIGHT? IF THEY NEVER CONDUCT THE REVIEW HEARING, WHEN ARE THEY GOING TO MAKE THAT DETERMINATION?

MS. SHOAI: YOUR HONOR, AS MY COLLEAGUE MENTIONED, ANY BOARD MEMBER CAN AT ANY TIME IF HE OR SHE BELIEVES THAT THE CONDITIONS --

THE COURT: I GET THAT.

MS. SHOAI: -- WARRANT, THEY CAN PUT IT ON CALENDAR.

THE COURT: SURE. BUT THE GOVERNMENT CODE SECTION 8630 STATES THAT THE GOVERNING BODY SHALL REVIEW THE NEED, AT SUBPARAGRAPH D SAYS:

"THE GOVERNING BODY SHALL PROCLAIM THE TERMINATION OF THE LOCAL EMERGENCY AT THE EARLIEST

POSSIBLE DATE THAT CONDITIONS WARRANT."

HEALTH AND SAFETY CODE 101080 PROVIDES:

"THE BOARD OF SUPERVISORS, THE WHOLE BOARD, NOT AN INDIVIDUAL BOARD MEMBER, SHALL REVIEW AT LEAST EVERY 30 DAYS."

SO IF WE JUST ELIMINATE THE "AT LEAST EVERY 30 DAYS," THEY STILL SHALL REVIEW THE NEED FOR CONTINUING THE LOCAL HEALTH EMERGENCY, AND SHALL PROCLAIM THE TERMINATION OF THE LOCAL HEALTH EMERGENCY AT THE EARLIEST POSSIBLE DATE THAT CONDITIONS WARRANT THEIR DETERMINATION.

I'M NOT READING A LOT OF AMBIGUITY IN THE STATUTE.

MS. SHOAI: WELL, THERE IS NOTHING IN THE STATUTE THAT SAYS THAT THAT REVIEW NEEDS TO TAKE PLACE PUBLICLY. AND THERE IS NOTHING IN THE STATUTE THAT PRECLUDES THE BOARD FROM REVIEWING VIA BRIEFING FROM ITS STAFF AND VIA BRIEFING FROM ITS COUNTY AGENCIES, WHO ARE THE EXPERTS IN THIS AREA.

THE COURT: CLEARLY IT'S NOT THE COUNTY'S POSITION -- OR MAYBE IT IS, BUT IT WOULD STRIKE ME AS AN ODD POSITION TO TAKE -- THAT THE BOARD OF SUPERVISORS AS A UNIT IS MAKING DETERMINATION OUTSIDE OF THE PUBLIC VIEW.

MS. SHOAI: YOUR HONOR, REVIEWING IS NOT SYNONYMOUS WITH MAKING A DETERMINATION, AND IT'S NOT SYNONYMOUS WITH MAKING A -- ACTING TO RATIFY OR TO TERMINATE A STATE OF EMERGENCY.

IF THE BOARD ACTED TO RATIFY OR TERMINATE A STATE OF EMERGENCY, PLAUSIBLY THE BOARD -- THERE MIGHT BE SOME BROWN ACT REQUIREMENT THAT REQUIRED THE BOARD TO CONVENE TO DO SO. BUT IN ORDER TO MONITOR CONDITIONS, THAT'S INHERENTLY A PASSIVE ACT.

THE COURT: YEAH. YEAH. I'M TRYING TO UNDERSTAND.

CAN YOU GIVE ME AN EXAMPLE, NOT IN THIS CONTEXT, WHERE THE BOARD AS A COHESIVE GROUP, THE ENTIRE BOARD, IS TASKED WITH REVIEWING SOMETHING BUT THAT DOES NOT HAPPEN IN A PUBLIC HEARING?

BECAUSE THE BOARD MEMBERS ARE INDIVIDUALS WHO MAY HAVE DIFFERING OPINIONS, I ASSUME. I JUST DON'T KNOW HOW THEY CAN DO THAT SORT OF GROUP REVIEW UNLESS IT'S IN THE PUBLIC SETTING. BUT MAYBE YOU ARE AWARE OF SOMETHING I'M NOT.

I'LL BE THE FIRST TO TELL YOU HOW THE BOARD OPERATES IS NOT CURRENTLY MY AREA OF EXPERTISE, BUT APPARENTLY IT'S SOMETHING I WILL BE LEARNING A LOT ABOUT.

MS. SHOAI: YOUR HONOR, I CAN TELL YOU AS A WHOLE THAT STAFF ROUTINELY SENDS BRIEFING UP TO BOARD

OFFICES SO THAT THE BOARD MEMBERS CAN REVIEW.

THE COURT: I FULLY EXPECT THAT. BUT THAT'S NOT TO SAY THAT THE BOARD AS A WHOLE GROUP MAKING A REVIEW, RIGHT?

MS. SHOAI: I JUST DON'T -- I AM UNAWARE OF ANY REQUIREMENT THAT THE BOARD REVIEW, WHICH IS INHERENTLY A PASSIVE ACT, THAT IT DO SO IN A MEETING. THERE IS NO REQUIREMENT THAT IT DO SO IN A MEETING AND THERE IS NO REQUIREMENT THAT IT DO SO PUBLICLY.

THE COURT: I'M SURE YOU'RE GOING TO FIND ME SOME EXAMPLES OF THAT, SO ...

MR. DUNN: COULD I OFFER ONE?

THE COURT: SURE, MR. DUNN, GO AHEAD.

I HAVE KNOWN MR. DUNN A LONG TIME. HE WAS OVER AT JUVENILE COURT. SEEMS LIKE A PRIOR LIFETIME AGO WHEN I WAS PRESIDING OVER JUVENILE COURT.

MR. DUNN: SO LET'S ASSUME THERE WAS A STATUTE THAT SAID THE COUNTY OF BOARD OF SUPERVISORS IS REQUIRED TO MAINTAIN THE SAFETY OF THE RESIDENTS OF ORANGE COUNTY. WE'RE JUST USING THIS AS AN EXAMPLE. AND WITH THAT OVERARCHING REQUIREMENT THAT THE BOARD MAINTAIN THE SAFETY FOR ITS RESIDENTS, MEMBERS OF THE BOARD OF SUPERVISORS GO TO VARIOUS MEETINGS. THEY GO TO CONFERENCES. THEY MEET WITH THEIR CONSTITUENTS. THEY MEET WITH THEIR AGENCIES. THEY LEARN OF SOMETHING THAT'S GOING ON IN GARDEN GROVE, LET'S SAY. I'M JUST

MAKING THIS UP. BUT THEY LEARN OF SOMETHING THAT'S GOING ON IN GARDEN GROVE.

WOW, I DIDN'T KNOW THIS WAS AN ISSUE OVER HERE. THERE IS A LOT OF JUST SORT OF LOW-LEVEL CRIME THAT'S AFFECTING BUSINESSES, I JUST LEARNED ABOUT THAT. I'M GOING TO BRING THAT INFORMATION BACK. I'M GOING TO PREPARE PERHAPS A REPORT TO SHARE WITH MY COLLEAGUES.

NO DECISION IS BEING MADE. THE BOARD OF SUPERVISORS ONLY IS REQUIRED TO MAKE THESE DECISIONS IN PUBLIC. THEY'RE NOT REQUIRED TO EVERY TIME THEY GET A PIECE OF PAPER HANDED TO THEM BY A CONSTITUENT TO DO THAT IN A PUBLIC FORUM. THAT'S JUST SIMPLY NOT THE CASE. AND SO IF THAT BOARD MEMBER --

THE COURT: I DON'T TAKE ISSUE WITH THAT. BUT SURELY IF THE BOARD OF SUPERVISORS OR A SUPERVISOR DOES THEIR OWN INVESTIGATION OR GETS INFORMATION THAT WOULD CONSTITUTE A REVIEW AND THEY DISTRIBUTE IT TO THEIR FELLOW BOARD OF SUPERVISORS, BEFORE ANY SORT OF CONSENSUS IS REACHED ABOUT WHETHER JUST INFORMATION ITEM OR A DECISION IS ACTUALLY MADE ON IT, I ASSUME THERE IS SOME RECORD OF THAT SOME PLACE. AM I WRONG IN THAT?

MR. DUNN: IT DEPENDS. THERE MAY OR MAY NOT BE. OF WHAT DOCUMENTS THEY RECEIVE ON A DAILY BASIS YOU MEAN?

THE COURT: NOT WHAT THEY -- NO, I'M NOT AS INTERESTED IN WHAT INFORMATION THEY RECEIVE ON A DAILY

BASIS. BUT THE BOARD AS AN ENTITY HAS TO MAKE A REVIEW. AND SO IF THE BOARD AS AN ENTITY IS REVIEWING SOME INFORMATIONAL ITEM RAISED BY ONE BOARD MEMBER OR ANOTHER, OR EVEN BY ONE STAFF MEMBER OF A BOARD MEMBER, I FEEL LIKE THERE PROBABLY IS SOME MECHANISM THAT REFLECTS THAT, IS THERE NOT?

MR. DUNN: SO THERE WOULD LIKELY BE IN THAT SITUATION. BUT MORE IMPORTANTLY, AND I THINK MORE TO YOUR POINT IS, LET'S SAY THAT THE BOARD MEMBER FOR GARDEN GROVE SAYS I NEED TO AGENDIZE THIS BECAUSE I THINK WE SHOULD BE PUTTING MORE RESOURCES TO FIGHT THIS KIND OF CRIME.

THEY MAY NOTIFY THEIR FELLOW BOARD MEMBERS THAT THEY'RE GOING TO PUT IT ON THE AGENDA, AND THEN AT THAT POINT THE STAFF REPORTS ARE INCLUDED AS PART OF THE AGENDA OFTEN. THE WORKING DOCUMENTS THAT THEY'RE GOING TO BE DISCUSSING AT THE BOARD MEETING ARE OFTEN INCLUDED AS PART OF THE AGENDA. AND ANY DECISION THAT WOULD BE MADE PURSUANT TO THOSE RECORDS WOULD ALL BE MADE IN A PUBLIC MEETING, NO QUESTION ABOUT THAT.

AND I WOULD SAY ALSO, THOUGH, IN CASE THIS WAS AT ISSUE AT ALL, THE COUNTY DOES NOT DISPUTE IN ANY WAY THAT TO MODIFY, TERMINATE OR EXTEND THE EMERGENCY DECLARATIONS WOULD ABSOLUTELY HAVE TO TAKE PLACE IN A PUBLIC MEETING. NO QUESTION ABOUT THAT.

THE COURT: OKAY. I FEEL LIKE THE ISSUE HAS

BEEN WELL-BRIEFED. THE ISSUE HAS BEEN WELL-ARGUED. I HAVE GIVEN BOTH SIDES A LITTLE BIT EXTRA TIME BECAUSE I THINK IT'S AN IMPORTANT ISSUE. I THINK I'VE CONVEYED SORT OF MY VIEW OF IT.

I MEAN, IT'S ENTIRELY POSSIBLE THAT THE BOARD CONDUCTS A MEETING AND DECIDES THE CURRENT CONDITIONS STILL WARRANT THE CURRENT EMERGENCY AND THEN NOT HOLD ANOTHER REVIEW OR HEARING OR EITHER/OR, I SUPPOSE, FOR ANOTHER 90 OR 120 DAYS. BUT I JUST FEEL LIKE THIS -- AT THIS POINT OVER A YEAR IS A LITTLE BIT TOO LONG.

I'LL TAKE IT UNDER SUBMISSION. I AM VERY STRONGLY CONSIDERING THE SUGGESTION BY THE COUNTY TO GIVE THEM AN OPPORTUNITY, IN THE ALTERNATIVE, TO EITHER COMPLY OR SUBMIT -- SO LET ME UNDERSTAND, MR. DUNN.

YOU WANT TO SUBMIT ADDITIONAL EVIDENCE AND ARGUMENT WITH REGARD TO WHY THE BOARD SHOULD NOT HAVE TO COMPLY; IS THAT CORRECT?

MR. DUNN: YES. IT WILL BE IN THE -- IT WILL BE EVIDENCE THAT THE BOARD IS -- BOARD MEMBERS ARE RECEIVING INFORMATION PERTINENT TO THIS SUBJECT THAT INFORMS THEIR DECISION-MAKING ABOUT THIS ISSUE, THAT THE ISSUE IS BEING REVIEWED.

THE COURT: I THINK THAT'S THE REAL ISSUE IS WHETHER OR NOT THE BOARD IS CONDUCTING STATUTORILY REQUIRED REVIEWS. I THINK THAT'S MS. SHOAI'S -- AM I SAYING YOUR NAME CORRECTLY?

MS. SHOAI: THAT'S CORRECT. YOU ARE, YOUR HONOR.

THAT'S CORRECT, THAT'S THE ISSUE.

THE COURT: THAT'S THE DISTINCTION YOU'VE BEEN TRYING TO HIGHLIGHT FOR ME THIS HEARING HERE.

MS. SHOAI: YOUR HONOR, FOR WHAT IT'S WORTH, THAT IS HOW I UNDERSTOOD THE COURT'S ORDER, BECAUSE THE COURT DID INDICATE THAT IT WAS ISSUING AN ALTERNATIVE WRIT. AND THE COURT DID NOTE THAT AN ALTERNATIVE WRIT IS NOT A RULING ON THE MERITS AND IT'S INTERIM RELIEF AND THAT IT BASICALLY SETS UP BRIEFING FOR WHETHER OR NOT A PEREMPTORY WRIT SHOULD ISSUE.

SO THAT'S ACTUALLY HOW I UNDERSTOOD IT. BUT IF THAT WAS NOT THE COURT'S INTENTION, WE WOULD DEFINITELY ASK FOR THAT OPPORTUNITY.

THE COURT: I THINK IT PROBABLY WAS MY INTENTION, BUT I THINK I CAN PROBABLY MAKE IT A LITTLE MORE PLAIN.

ASSUMING THAT YOU WANTED TO PROCEED IN THAT ALTERNATE PATH, HOW MUCH TIME WOULD YOU NEED?

MS. SHOAI: WELL, YOUR HONOR, WE COULD DO THE BRIEFING -- I THINK THE DATE THAT YOU IDENTIFIED FOR THE BRIEF, YOU KNOW, FIVE DAYS BEFORE THE O.S.C., WE COULD PROVIDE A BRIEF ON THAT DATE, IF THAT WOULD SATISFY THE COURT.

THE COURT: WELL, I'D PROBABLY NEED A LITTLE

MORE TIME IF YOU'RE GOING TO -- IF YOU'RE GOING TO GIVE ME ADDITIONAL AUTHORITY AND EVIDENCE, I THINK IT'S ONLY FAIR TO GIVE PETITIONERS AN OPPORTUNITY TO REPLY TO SUCH ADDITIONAL ARGUMENTS OR EVIDENCE. I THINK THE FIVE DAYS WAS MORE THAT IF YOU'RE GOING TO HAVE THE HEARING, JUST TELL ME FIVE DAYS BEFORE WE HAD THE HEARING, IT WAS ON THIS DATE, THIS WAS THE OUTCOME OF IT.

MS. SHOAI: RIGHT.

THE COURT: I STILL THINK THAT'S PROBABLY THE BETTER WAY TO GO, BUT THAT'S NOT A DECISION FOR ME TO MAKE AT THAT POINT.

OKAY. I THINK I UNDERSTAND. I'LL LOOK AT THE CALENDAR, AND I'LL TAKE IT UNDER SUBMISSION AND I'LL LET YOU ALL KNOW.

MS. PEARSON: I HAVE A QUESTION FOR YOUR HONOR.

THE COURT: YES, MA'AM.

MS. PEARSON: BECAUSE THIS IS NOT ONLY ABOUT REVIEWING. AS WE JUST MENTIONED, GOVERNMENT CODE SECTION 3680(B) REQUIRES RATIFICATION OF LOCAL -- OF THE LOCAL EMERGENCY. AND RATIFICATION PER THE GOVERNMENT CODE AND ALSO THE BROWN ACT, IT'S CODE SECTION 54952.2 STATES THAT:

"ANY CONGREGATION OF A MAJORITY OF MEMBERS OF THE LEGISLATIVE BODY HERE AT THE ORANGE COUNTY BOARD OF

SUPERVISORS, AT THE SAME TIME AND PLACE TO HEAR, DISCUSS OR DELIBERATE ANY ITEM WHICH IS THE SUBJECT MATTER OF JURISDICTION OF THE BODY MUST BE MADE IN A PUBLIC HEARING."

IN PLAIN ENGLISH, BASICALLY, THAT IF THERE IS A MEETING OR ANY GATHERING OF A MAJORITY OF THE MEMBERS TO HEAR OR DISCUSS ANY ITEM OF CITY BUSINESS OR POTENTIAL CITY BUSINESS, THIS MUST BE CONDUCTED IN A PUBLIC HEARING.

SO IT'S NOT JUST REVIEW. WE'RE NOT DEBATING -- I MEAN, WE ARE QUESTIONING A LITTLE BIT ABOUT THE REVIEW. IT'S THE ACTUAL HEARING WHERE THEY ARE RATIFYING, AS IS REQUIRED BY 8630(B), RATIFYING, WHICH IS AN OFFICIAL ACT BY THE MAJORITY BOARD OF SUPERVISORS THAT MUST BE CONDUCTED IN A PUBLIC HEARING.

SO I'M A LITTLE BIT CONFUSED ABOUT WHAT THIS EVIDENTIARY HEARING IS GOING TO BE ABOUT. IT'S SIDE-STEPPING THE ISSUE OF THIS BLACK LETTER LAW ISSUE.

THE COURT: SURE. I UNDERSTAND. IT'S POSSIBLE, MS. PEARSON, THAT UPON FURTHER REFLECTION THE COUNTY WILL RECONSIDER THAT POSITION AND CHOOSE A DIFFERENT ARGUMENT. BUT IF THEY PERSIST AND WANT TO CONTEND THAT REVIEWS ARE OCCURRING AND THEY HAVE EVIDENCE OF THAT AND THEY FEEL THAT THAT IS SATISFACTORY, THAT'S WHY I WANT TO MAKE SURE TO GIVE YOU

AN OPPORTUNITY TO RESPOND TO THAT. AND I HAVE EVERY CONFIDENCE YOU WILL REMIND ME OF THAT CODE SECTION AT THAT TIME.

MS. PEARSON: I WILL.

THE COURT: ALL RIGHT.

OKAY. THANK YOU VERY MUCH, FOLKS. HAVE A NICE DAY.

MS. SHOAI: THANK YOU, YOUR HONOR.

MS. PEARSON: THANK YOU VERY MUCH.

THE COURT: THE C.M.C. IS CONTINUED TO DECEMBER 1, 2022. AND I'LL LET YOU KNOW WHAT I DECIDE.

MS. BARSOTTI: THANK YOU, YOUR HONOR.

MS. SHOAI: THANK YOU.

(RECESS.)

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, JENEE S. FRAINE, CSR #5446, OFFICIAL COURT REPORTER PRO TEMPORE, DO HEREBY CERTIFY THAT THE WITHIN AND FOREGOING REPORTER'S TRANSCRIPT IS A FULL, TRUE AND CORRECT TRANSCRIPT OF MY SHORTHAND NOTES THEREOF, AND A FULL, TRUE AND CORRECT STATEMENT OF THE PROCEEDINGS HAD IN SAID CAUSE.

Jenee Fraine
OFFICIAL COURT REPORTER
PRO TEMPORE

DATED: 9-25-22