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**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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**COUNTY OF SAN BERNARDINO; and JOSIE GONZALES, an  
individual**

*Petitioners,*

vs.

**GAVIN NEWSOM, in his official capacity as Governor of California,  
ERICA PAN, M.D., in her official capacity as Acting Public Health  
Officer of the State of California, SANDRA SHEWRY, in her official  
capacity as the State Public Health Officer and Department of Public  
Health Director**

*Respondents.*

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**VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE  
IN THE FIRST INSTANCE; MEMORANDUM  
OF POINTS AND AUTHORITIES**

**IMMEDIATE RELIEF REQUESTED  
NO LATER THAN DECEMBER 28, 2020  
(*Palma* Notice Requested)**

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**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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**CERTIFICATE OF INTERESTED ENTITIES OR PERSONS**

**California Rules of Court, rules 8.208, 8.490(i), 8.494(c), 8.496(c), or  
8.498(d)**

Supreme Court Case Caption:

**COUNTY OF SAN BERNARDINO; and JOSIE GONZALES, an  
individual**

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ERICA PAN, M.D., in her official capacity as Acting Public Health  
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capacity as the State Public Health Officer and Department of Public  
Health Director**

*Respondents.*

Please check here if applicable:

☒ There are no interested entities or persons to list in this Certificate as  
defined in the California Rules of Court.

Dated: December 14, 2020

  
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**VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE  
IN THE FIRST INSTANCE; MEMORANDUM OF POINTS AND  
AUTHORITIES**

**To the Honorable Tani Cantil-Sakauye, Chief Justice of the Supreme Court of California and to the Honorable Associate Justices of the Supreme Court of California:**

**INTRODUCTION**

**NECESSITY OF WRIT RELIEF**

To “make, amend, and rescind orders and regulations necessary...”<sup>1</sup>

The powers provided to Governor Newsom under the California Emergency Services Act (the “CESA”) are limited and enumerated. But, for the past several months the Governor acted contrary to long-standing legal doctrine by substituting himself as the chief and sole legislator for laws relating to the COVID-19 Pandemic. The Governor continues to substitute himself into the place of both the State Legislature and the County of San Bernardino (“County”), usurping the County’s statutory duties and substituting his judgment for that of the County and Legislature. The County seeks this instant writ to reclaim its police power over its residents and vast land mass, with incorporated and unincorporated areas, to enable it to tailor regulations and orders which are specific to its residents based on facts which are unique to their locations rather than subject its residents to overbroad multi-county, Governor-implemented, regionalized lockdowns. Accordingly, the County requests an immediate stay of the Respondents’ orders as well as an issuance of a peremptory writ of mandate in the first instance.<sup>2</sup>

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<sup>1</sup> Gov. Code § 8567.

<sup>2</sup> Code Civ. Proc., § 1088; *see also Lewis v. Sup. Ct.* (1999) 19 Cal.4th 1232 (Baxter, J. concurring) (Issuing a peremptory writ in the first instance reflects

## **IMMEDIATE JUDICIAL ACTION IS NECESSARY TO ADDRESS GOVERNOR NEWSOM'S EXECUTIVE ORDERS**

In December 2019, the World Health Organization (“WHO”) reported that a novel coronavirus was detected in Wuhan, China and dubbed it “COVID-19.”<sup>3</sup> On January 26, 2020, the State of California, through its public health officials, announced the first positive test of COVID-19 in the State. (Exhibit 1.) From January 26, 2020 through March 4, 2020, the California state health officials believed the risk posed by COVID-19 to California residents was “low”. (Exhibit 2.) On March 4, 2020 Governor Newsom declared a State of Emergency throughout the State of California due to the coronavirus pandemic and the California Department of Public Health (“CDPH”) issued its first COVID-19 guidelines. (Exhibit 3.) On March 11, 2020, Governor Newsom announced that state public health officials had recommended cancelling mass gatherings until the end of March. (Exhibit 4.) Just a day later on March 12, the Governor issued an executive order reflecting the March 11 recommendation. (Exhibit 5.) Among other things, the March 12 order noted the “need to secure numerous facilities to accommodate quarantine, isolation, or medical treatment of individuals testing positive for or exposed to COVID-19 ....” (*Ibid.*) The order cited the Governor’s authority under the California Emergency Services Act (“CESA”) (specifically, section 8572 of the Government Code) “to ensure adequate facilities exist to address the impacts of COVID-19 ....” (*Ibid.*) Thereafter, on March 19,

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recognition that, on occasion, immediate judicial action is necessary to prevent or correct unauthorized or erroneous action by the respondent where there is great urgency.)

<sup>3</sup> World Health Organization, Novel Coronavirus (2019-nCoV) Situation Report – 1, available as of the time of filing at: <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf>

2020, California Governor Newsom issued Executive Order N-33-20 ordering Californians to Stay-At-Home and directed them “to immediately heed the current State public health directives.” (Exhibit 6.) On or about March 19, 2020, the Respondents tasked the County with procuring compliance with the state laws and delegated the duties of compliance and enforcement to the San Bernardino County Department of Public Health (“SBPH”). (Decl. of Snoke ¶ 3; Decl. of Hagman ¶ 3; Decl. of Porter ¶¶ 4, 7.) Over the following months, Respondents regularly and consistently modified the restrictions on California businesses and individuals, thereby making it difficult for SBPH and the County to allocate resources between combating COVID-19 and its regular duties. (Decl. of Snoke ¶¶ 3, 5, 8; Decl. of Hagman ¶ 3; Decl. of McMahon ¶ 6.) At times, the restrictions were loosened as the virus began to subside, permitting the SBPH to reallocate its employees to its typical duties. (Decl. of Porter ¶¶ 5-6.) But at other times the restrictions were tightened, forcing the SBPH to relocate its resources to procuring the compliance of County residents. (Decl. of Porter ¶ 6.)

By May 2020, California flattened the curve, protected its health care system, and discovered less restrictive ways to slow the spread of COVID-19. But instead of lifting the order, on May 4, the Governor issued Executive Order N-60-20, that continued the Stay-At-Home directive indefinitely and instructed “[a]ll residents...to continue to obey State public health directives.” This order permitted non-essential operations to “gradually resume” activities according to Respondents’ designated Stages. (Exhibit 7.) In addition, Governor Newsom gave the State Public Health Officer discretion to add exceptions to the order by reopening certain activities based on individual counties’ success in testing for and controlling the virus. (*Ibid.*)

Subsequently, on August 28, 2020, the Respondents announced that the Stay-At-Home law would continue indefinitely and that state health officials were changing the reopening plan to be *more* restrictive than the May plan. (Exhibit 8.) The August 28, 2020 change in guidelines stretched the County's resources, making it difficult to obtain and manage compliance of thousands of non-complying residents. (Decl. of Snoke ¶¶ 5, 8; Decl. of Hagman ¶ 3; Decl. of McMahon ¶¶ 3, 6.)

On November 13, 2020, the CDPH issued a directive on guidance for the prevention of COVID-19 transmission for gatherings. (Exhibit 9.) This guidance instructed “[a]ll persons planning to host or participate in private gatherings” to comply with the rules enumerated therein including but not limited to the prohibition of gathering with more than three households; the imposition of a duty for citizens holding a gathering to obtain contact information for each of their guests; and ordered millions of citizens in “purple tier” to close their doors to family and friends in the holiday season. (*Ibid.*)

On November 19, a Limited Stay-At-Home law was issued by Respondents for Tier One (Purple) Counties requiring “all gatherings with members of other households and all activities conducted outside the residence...[to] cease between 10:00pm PST and 5:00am PST, except for those activities associated with...critical infrastructure...” (Exhibit 10.) The Respondents reasoned that this Limited Stay-At-Home law was necessary due to “unprecedented rate of rise in increase in COVID-19 cases across California...” (*Ibid.*) This order was effective for a “one month” period subject to the Respondents’ discretion to modify or extend the order.<sup>4</sup>

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<sup>4</sup> California Department of Public Health, California’s Limited Stay at Home Order: Questions & Answers; available as of the time of filing at:

To the dismay of residents statewide as well as the County, Governor Newsom, in cooperation with the CDPH and State Public Health Officer (“CPHO”), once again ordered a Regional Stay-At-Home law on December 3, 2020 with an effective date of December 5, 2020. The Respondents again relied on an “unprecedented rise in the rate of increase in COVID-19 cases...” and reasoned that the ICU beds in the State of California would reach capacity by the middle of December resulting in a crisis which “threatens to overwhelm the state’s hospital system.” (Exhibit 11.) Under an order, issued by the CPHO, Erica Pan, Respondents again changed the framework for measuring the COVID-19 impact and its response to increased tests and diminished ICU capacity. The Respondents arbitrarily divided the State into five regions, and the County is included in a sprawling “Southern California” region (also including the counties of San Diego, Imperial, Riverside, Orange, Los Angeles, Ventura, Santa Barbara, San Luis Obispo, Inyo, and Mono). Once the Respondents determine that the ICU capacity in any of the given counties falls below 15%, the entire region is placed in a minimum three-week lockdown, which places severe restrictions on California individuals and businesses. As of 11:59 p.m. on Sunday, December 6, 2020, the Southern California region was ordered to lockdown as its ICU capacity was determined to be below the 15% threshold. The order forces law abiding residents throughout the County to comply indefinitely under threat of criminal culpability while permitting other entities which are ordained as “critical” by the Respondents to operate with limited restrictions. (*Ibid.*) For example, workers who support television or media infrastructure – including movie production sets- can remain open, can remain operational, while dine-in

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<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/limited-stay-at-home-order-qa.aspx>.

restaurants, mom and pop boutiques, and other small businesses who do not have the advantage of lobbyists must close indefinitely.<sup>5</sup> This order expressly relied on provisions of the Health and Safety Code, the powers delegated by the Governor to the CDPH and CPHO through Executive Orders N-60-20 and N-25-20, and “other authority provided for under the Emergency Services Act.” (*Ibid.*)

The changing guidelines from the State stretch the County’s resources thin, creating increasing difficulty in obtaining and managing compliance with Respondents’ Stay-At-Home laws and eroding the County’s ability to manage its resources. (Decl. of McMahon ¶¶ 5, 6; Decl. of Hagman ¶ 3; Decl. of Porter ¶ 5.) Unlike March, residents statewide are plainly violating the Stay-At-Home laws. (Decl. of Porter ¶ 5; Decl. of McMahon ¶¶ 5-6.) Similar to the SBPH, the San Bernardino Sheriff (“Sheriff”) is also tasked with enforcement of the Respondents’ orders. (Decl. of McMahon ¶ 4.) Enforcement of the Stay-At-Home laws requires the Sheriff to allocate deputies to enforcement. (Decl. of McMahon ¶¶ 3, 5.) However, to ensure full compliance of its millions of residents, the Sheriff would need to devote a substantial amount of its resources solely to enforcement, potentially neglecting their critical duties to the community and jeopardizing the essential functions of the Sheriff’s Department. (Decl. of McMahon ¶¶ 3-6.) To date, the Sheriff’s Department allocated approximately 117, 281.5 regular hours, and 24,356.5 overtime hours to COVID-related activities. (Decl. of McMahon ¶ 3.) Fully fledged enforcement of the State orders and laws will add to existing challenges. These enforcement difficulties and the absence of resources are echoed through neighboring counties with Riverside County’s own Sheriff, Chad

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<sup>5</sup> State of California, Essential Workforce (accessed December 11, 2020.); available at the time of filing at <https://covid19.ca.gov/essential-workforce/>

Bianco, recently and publicly stating that they would not enforce the Stay-At-Home laws.<sup>6</sup> SBPH is charged with numerous other duties to its residents including but not limited to family services, animal care and control, nutrition, public health education, HIV/Aids, environmental health, emergency preparedness, and clinical operations. (Decl. of Porter ¶ 3.) The Respondents subjectively decided that these services were secondary to the enforcement of their Stay-At-Home laws, requiring the SBPH to enforce Respondents' legislative acts instead of allowing SBPH to provide important services to County residents. Moreover, it is of the utmost importance that the County reclaims its discretion in the distribution of its own resources to effectuate an expedient distribution of vaccines to its residents in 2021. (Decl. of Snoke ¶¶ 8-9; Decl. of Erickson ¶¶ 4, 7-8; Decl. of Porter ¶ 6.)

As reasoned by the Governor in March of 2020, the Stay-At-Home laws were issued in order to protect California's health care system from being overwhelmed by the hundreds of thousands of COVID-19 patients. (Exhibit 3, 5.) While the original emergence of COVID-19 required immediate intervention, Respondents' continued legislative role in the fight against COVID-19 is no longer warranted. Rather, it prevents the County from exercising its police powers and consumes necessary resources which should be provided back to County residents. (Decl. of Hagman ¶ 3; Decl. of McMahon ¶ 6; Decl. of Porter ¶¶ 4-9.) For the reasons set forth herein, the Governor must terminate the declared State of Emergency as the "Emergency" or urgent nature of the declaration has passed. Moreover, Governor Newsom exceeded his authority and abused his discretion by instead continuing the Stay-At-Home law indefinitely, usurping the

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<sup>6</sup> Sheriff Chad Bianco, *Message from Sheriff Bianco 12-04-20*, available as of the time of filing at: <https://www.youtube.com/watch?v=PvvRme0h2oY&feature=youtu.be>



County's statutory duties to its residents, issuing new orders in cooperation with the other named Respondents, and unlawfully delegating State Health Officials' discretion to create a new penal code as they see fit.

While the County understands the threat that the COVID-19 Pandemic poses to its residents, Governor Newsom does not have the power under the CESA to order all Californians to stay inside their homes unless they leave to partake in an activity which the Respondents ordained as "essential." A plain reading of the CESA does not permit these actions and orders. Even if the CESA can be construed to give the Governor that power, it should be declared unconstitutional as a violation of the non-delegation doctrine.

During his March 19, 2020 presentation, the Governor emphasized that "...this is not a permanent state, this is a moment in time."<sup>7</sup> As residents across the State quickly discovered, it was not a moment in time. The order persists nine months later without an end in sight. Returning this power to local authority rather than leaving it in the hands of the Respondents that are 400 miles away is critical to combatting this pandemic. In order to continue with its public duties, the Petitioner is left with no option but to petition this honorable Court for an order staying Respondents' orders and directives pursuant to the CESA, an annulment of the Respondents' Stay-At-Home laws, an order instructing the Governor to terminate the Stay-At-Home laws, or in the alternative a declaration of the unconstitutionality of the CESA. Accordingly, Petitioner respectfully requests immediate relief, not later than December 28, 2020.

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<sup>7</sup> Governor Newsom, March 19, 2020 Announcement, available as of the time of filing at: <https://www.youtube.com/watch?v=8OeyeK8-S5o>

## **ISSUE PRESENTED**

Does the California Emergency Services Act provide Respondents with the power to order all Californians to “Stay-At-Home”, refrain from gathering with other residents, and to refrain from activities which the Respondents deem non-essential or high risk in their own discretion?

## **PARTIES, IRREPARABLE INJURY, AND NECESSITY FOR RELIEF**

By this verified petition for a peremptory writ of mandate and immediate stay, Petitioners allege as follows:

1. Petitioner, the County of San Bernardino, is a legal subdivision of the State of California pursuant to article 11, section 1 of the California Constitution and Government Code section 23002.
2. As a legal subdivision of the State of California, Petitioners have a strong, direct, and beneficial interest in having state laws faithfully executed in a manner which is consistent with the long-standing legal principles of the California Constitution, as the enjoinder of the unconstitutional actions by Respondents directly impacts their finances, business, contractual relations, and undermine the County’s mandatory public duties to its residents;
3. Petitioner, Josie Gonzales, is an individual residing in the City of Fontana, County of San Bernardino. Josie Gonzales is a former supervisor in the County but brings this suit in her individual capacity as she has a strong, direct, and beneficial interest in the enjoinder of the Respondents’ actions which mandate her to Stay-At-Home through threat of culpability;
4. Respondent, Governor Newsom, is sued in his official capacity and Petitioner seeks this writ and stay against the Respondent in his official capacity;

5. Respondent Erica Pan, M.D., is sued in her official capacity and Petitioner seeks this writ and stay against the Respondent in her official capacity;

6. Respondent Sandra Shewry, is sued in her official capacity as the State Public Health Officer and Department of Public Health Director;

7. As a public official, Governor Newsom must follow the state constitution and state law;

8. As a public official, the Respondents individually and collectively have a fiduciary duty to uphold and faithfully execute the laws and the duties of their office;

9. The Governor has breached his fiduciary duty to the County and to the citizens of California by exceeding and disregarding the enumerated powers provided under the CESA as well as long-standing non-delegation doctrine;

10. Respondents continue to cause disorder to the civil system of government throughout the State of California by enacting a slew of orders in contradiction to State law;

11. There is no plain, speedy, or adequate remedy at law because the County's imminent obligations to effectuate the distribution of vaccines to its residents requires that the County reallocate its resources from enforcement of the Respondents' laws and regain the ability to manage its own resources. Respondents' actions continue to perpetuate the damage against the County, are capable of repetition, and must be addressed immediately;

12. This case presents an issue of significant statewide interest that must be handled immediately, because of the importance in maintaining and securing the integrity of the system of government;

13. It is urgent that this Court issue an order requiring the Respondents to comply with State law. Respondents' actions prevent the

County from sufficiently managing its resources to meet its enforcement obligations as the State interferes with the County's use of resources. (Decl. of Hagman ¶¶ 3, 6; Decl. of McMahon ¶ 6; Decl. of Porter ¶ 9.) Absent intervention by this Court, the County's residents may not be availed to the same services from the County. (Decl. of Hagman ¶ 3; Decl. of Porter, ¶¶ 4, 6.) Additionally, immediate intervention is necessary as the County must reclaim its discretion and shift resources from the impossible act of enforcement to effectuating vaccinations in the new year. Failing to stay Respondents' actions and issue a peremptory writ in the first instance will undermine the rule of law for California's entire system of government and will perpetuate chaos by turning otherwise law-abiding citizens and businesses into criminals for participating in long-standing holiday traditions which, in some cases, are consistent with their sincerely held religious beliefs, while business will be forced to layoff employees;

14. Relief is necessary because of the possibility of repetition and ongoing violations. To ensure immediate compliance and to give a decisive and final answer, this Court is the appropriate tribunal to hear such an important question of law;

15. Petitioners request that the Court exercise its original jurisdiction and grant an immediate stay issued from this Court as soon as possible, with the peremptory writ in the first instance to follow after the requirements for notice are met;<sup>8</sup>

16. Petitioners base the prayer for relief on this verified petition and the attached memorandum of points and authorities, hereby incorporated by reference as if set forth in full.

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<sup>8</sup> Cal. Const., art. VI, § 10.

## **JURISDICTION**

This Court has original jurisdiction over this matter pursuant to article VI, section 10 of the California Constitution as well as Code of Civil procedure sections 1085 and 1086, and Rule 8.486 of the California Rules of Court to decide a matter which presents issues of great public importance that must be promptly resolved. It is appropriate for this Court to correct the abuse of discretion by Governor Newsom.<sup>9</sup>

This Court has recognized the right of a County to sue the State when the State's action(s) prevent the County from carrying out their lawful duties.<sup>10</sup> The County is a beneficially interested party as it has the responsibility under section 8568 of the CESA to take necessary actions to carry out the Governor's orders and must be properly and fully informed with respect to the legality of said orders to administer its public duties. Moreover, the County is a beneficially interested party due to the direct financial impact that the Governor's orders have on the County's annual budgets. (Decl. of Erickson ¶¶ 4, 7-9.)

## **TIMELINESS OF PETITION**

This Petition is timely filed in response to Governor Newsom's December 5, 2020 actions as it is filed within 9 days of the Respondents' actions. Petitioners now bring this Petition respectfully requesting interim relief pending a review of this instant writ, whether oral argument is requested or not.

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<sup>9</sup> *Bodinson Mfg. Co. v. California Employment Com.* (1941) 17 Cal.2d 321, 330 (Mandamus may be used "not only to compel the performance of a ministerial act."); *see Wood v. Strother* (1888) 76 Cal. 545, 548-49 (Writ may issue to correct an abuse of discretion.); *see also Fair v. Fountain Valley School Dist.* (1979) 90 Cal.App.3d 180, 186-187 (A writ will lie to correct an abuse of discretion by a public officer.)

<sup>10</sup> *Bd. of Soc. Welfare v. Cnty. of L.A.* (1945) 27 Cal.2d 98, 100-101.

## **PRAYER FOR RELIEF**

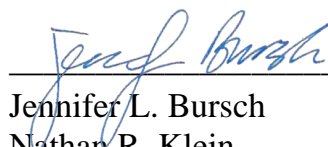
WHEREFORE, Petitioners pray as follows:

That this Court:

- A. Grant this Petition;
- B. Issue an immediate order commanding Respondents, their deputies, officers, agents, servants, employees, public entities, or persons acting at his behest or direction, to cease and desist from enforcing Stay-At-Home laws;
- C. Issue an immediate order annulling the Stay-At-Home laws which exceed Respondents' powers under the Act, or, in the alternative, issue an immediate order declaring the Act unconstitutional;
- D. Issue a peremptory writ of mandate in the first instance commanding Respondents, their deputies, officers, agents, servants, employees, public entities, or persons acting at his behest or direction, to terminate the Stay-At-Home laws;
- E. Award Petitioners the costs of this proceeding; and
- F. Award Petitioners any other and further relief the Court considers proper.

Dated: December 14, 2020

Respectfully submitted,




Jennifer L. Bursch  
Nathan R. Klein  
Cody J. Bellmeyer  
Tyler & Bursch, LLP  
Attorney for Petitioners

## VERIFICATION

I, Curt Hagman, am the Chairman of the Board of Supervisors for the County of San Bernardino. I am a citizen of the United States, a resident of the State of California, and am authorized to act on behalf of the County of San Bernardino. I have read the foregoing Verified Petition For Peremptory Writ Of Mandate In The First Instance; Memorandum Of Points And Authorities, I have personal knowledge of the facts alleged herein, and I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 14th day of December 2020 in San Bernardino, California.



Curt Hagman  
Chairman of Board of Supervisors  
On behalf of the County of  
San Bernardino

## VERIFICATION

I, Josie Gonzales, am a citizen of the United States, a resident of the State of California, and bring this suit in my personal capacity as a resident of the County of San Bernardino. I have read the foregoing Verified Petition For Peremptory Writ Of Mandate In The First Instance; Memorandum Of Points And Authorities, I have personal knowledge of the facts alleged herein, and I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 14th day of December 2020, in San Bernardino, California.

  
Josie Gonzales



## **MEMORANDUM OF POINTS AND AUTHORITIES**

In support of Petitioners' Request for a Peremptory Writ of Mandate and Immediate Stay, Petitioner presents this Memorandum of Points and Authorities for Writ of Mandate.

### **DISCUSSION**

This Petition should be granted as the Respondents – for the reasons enumerated herein – do not and cannot have the authority to order a “Stay-At-Home” mandate as it constitutes impermissible legislation under CESA and because an interpretation to the contrary would render CESA unconstitutional.

#### **I. THIS PETITION MERITS ORIGINAL JURISDICTION.**

As set forth above, Governor Newsom declared a State of Emergency relating to COVID-19 on March 4, 2020. Shortly thereafter, he issued Executive Order N-33-20 which ordered: “all residents are directed to immediately heed the current State public health directives.” (Exhibit 6.) On May 4, 2020, Governor Newsom issued Executive Order N-60-20 which reiterated the earlier order stating, “All residents are directed to continue to obey State public health directives.” (Exhibit 7.) Respondents subsequently cooperated in issuing numerous orders on August 28, 2020, November 13, 2020, and November 19, 2020. (Exhibits 8-11.) On December 5, 2020, Respondents issued yet another Stay-At-Home Order which forced the County to bring this instant writ to seek relief.

This Court has original jurisdiction to issue a writ of mandate.<sup>11</sup> The Court may exercise its original jurisdiction in “cases in which the issues presented are of great public importance and must be resolved promptly.”<sup>12</sup>

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<sup>11</sup> Cal. Const., art. VI, § 10.

<sup>12</sup> *San Francisco Unified School Dist. v. Johnson* (1971) 3 Cal.3d 937, 944 (quotation omitted) (original jurisdiction accepted for petition raising the validity of California Education Code section dealing with student

Absent intervention, the County will be unable to carry out its legal obligations to its residents as the Respondents' actions frustrate the County's ability to meet its obligations through their interference with the County's use of its resources. (Decl. of Snoke ¶¶ 8-9; Decl. of Hagman ¶ 3; Decl. of Porter ¶¶ 4-6.) The County and its hospitals have learned a significant amount about COVID-19 in the past nine months and are now better equipped to battle the virus. (Decl. of Porter ¶ 9.) SBPH has reallocated significant resources to combat COVID-19. (Decl. of Porter ¶ 4.) It is time for the Respondents to release the reigns and permit the Legislature and counties to do their jobs. To that end, the County must be properly and fully informed with respect to the legality of said Respondents' orders to administer its public duties under California law and the CESA.

For the following reasons, the County urges this Court to address the Respondents' Stay-At-Home laws.

## **II. THE CESA DOES NOT PROVIDE THE RESPONDENTS WITH THE POWER TO LEGISLATE OR TO ENACT A STATEWIDE STAY-AT-HOME LAWS**

The California Constitution is clear: "Persons charged with the exercise of one power may not exercise either of the others."<sup>13</sup> The December 5, 2020 Stay-At-Home law and all previous Stay-At-Home laws should be annulled because the Respondents do not have the authority under the CESA to legislate and create their own penal code which forces

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transportation); *see, e.g., Bramberg v. Jones* (1999) 20 Cal.4th 1045, 1054 (jurisdiction accepted of challenge to initiative relating to congressional term limits); *Calfarm Ins. Co. v. Deukmejian* (1989) 48 Cal.3d 805, 812 (jurisdiction accepted of challenge to initiative making fundamental changes to automobile insurance regulation)

<sup>13</sup> Cal. Const., art. III, § 3.

residents to indefinitely remain indoors unless leaving to participate in essential activities.

The CESA gives the Governor power to act quickly during a condition of “extreme peril to the safety of persons and property within the state ....”<sup>14</sup> But, these powers are limited. Specifically, these powers include the expenditure of money, a power typically provided to the Legislature.<sup>15</sup> Moreover, these powers include the authority to seize private property or personnel to respond to an emergency so long as reasonable value is provided for the items seized<sup>16</sup>, as well as the power to “make, amend, and rescind *orders and regulations* necessary to carry out the provisions of [the CESA].”<sup>17</sup> As addressed in greater detail below, a plain reading of these provisions affirms the County’s assertion that the Respondents’ lack the power under the CESA to craft a new penal code.

The distinction between creating law and making orders and regulations was explained by the U.S. Supreme Court in *Loving v. United States*, stating:

“The true distinction... is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.”<sup>18</sup>

Governor Newsom can “make, amend, and rescind orders and regulations”<sup>19</sup> but, contrary to his apparent belief, cannot, “unless permitted

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<sup>14</sup> Gov. Code § 8558, subd. (b).

<sup>15</sup> Gov. Code § 8566.

<sup>16</sup> Gov. Code § 8572.

<sup>17</sup> Gov. Code § 8567 (Emphasis supplied; brackets added).

<sup>18</sup> *Loving v. United States* (1996) 517 U.S. 748, 758-759 (citations omitted).

<sup>19</sup> Gov. Code § 8567 (Emphasis supplied; brackets added).

by the constitution...exercise legislative powers.”<sup>20</sup> The California Constitution does not provide the Governor with legislative power.<sup>21</sup>

The Superior Court for the County of Sutter recently addressed the Governor’s powers under CESA in *Gallagher v. Newsom*.<sup>22</sup> Although the decision was stayed by the Court of Appeal, it remains analogous in this instance. Similar to the instant matter, the Superior Court in *Gallagher* questioned whether the CESA provided the Governor the authority to legislate. In *Gallagher*, the Court analyzed the Governor’s ability to amend an existing statutory law under the language of the CESA.<sup>23</sup> In that case, the Governor argued that the CESA provided him with the ability to “exercise all police power vested in the state” in order to “issue, and enforce such orders and regulations as he deems necessary.”<sup>24</sup> The Court determined that, contrary to the Governor’s assertions, the plain language of the CESA does not convey the power to legislate.<sup>25</sup> As noted by the court in *Gallagher*, the term “statute” as used throughout other sections of the Government Code<sup>26</sup> is indicative of the Legislature’s understanding of the distinction between orders and statutes.<sup>27</sup> And, wherever possible, plain language of the statute should be used as “statutes are to be so construed, if their language permits, as to render them valid and constitutional rather than invalid and constitutional.”<sup>28</sup> As alleged in greater detail below, the CESA should be interpreted in a manner which does not permit Governor

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<sup>20</sup> *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1084.

<sup>21</sup> Cal. Const., art. III, § 3.

<sup>22</sup> *Gallagher v. Newsom*, Case No. CVCS20-0912

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Gov. Code § 8627.

<sup>27</sup> *Ibid.*

<sup>28</sup> *People of Amor* (1974) 12 Cal.3d, 20, 30; *City of Los Angeles v. Belridge Oil Co.* (1954) 42 Cal.2d 823, 832.

Newsom to create new law. An interpretation granting Governor Newsom with legislative powers would render the CESA unconstitutional as an unlawful delegation of powers from the Legislature to the Governor in contradiction to the California Constitution.

The CESA's interpretation is of the utmost importance in this matter as enumerated powers were limited by the California Legislature but crafted in recognition of the "fundamental role of government to provide broad state services in the event of emergencies resulting from conditions of disaster or of extreme peril to life, property, and the resources of the state."<sup>29</sup> Case precedent throughout the state stands as further indication of the unprecedented abuse of power exercised by the Governor under the CESA. For example, the Court in *Martin v. Mun. Court* addressed the Governor's ability to seize property during a declared State of Emergency where the Governor issued an emergency proclamation ordering the removal of fruit fly hosts from private properties.<sup>30</sup> The Court in *Martin* acknowledged that the use of the Governor's power during states of emergency to command or utilize private property so long as reasonable value is paid for the property.<sup>31</sup>

By way of further example, in 2001, in response to the Enron-driven power crisis, Governor Gray Davis utilized these emergency powers under the CESA to allocate approximately \$400 million to the purchase of electricity for twelve days. When the action was later challenged, a court upheld the action noting that the CESA provided Governor Davis with the power to spend government funds to address State emergencies. At the time it was undisputed that "there was a 'sudden and severe energy

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<sup>29</sup> *Martin v. Municipal Court (People of the State of Cal.)* (1983) 148 Cal.App.3d 693, 696.

<sup>30</sup> *Martin, supra*, 148 Cal.App.3d at p. 694-695.

<sup>31</sup> *Ibid.*

shortage’ that caused an immediate danger of widespread and prolonged disruptions of electrical services to residents and businesses.”<sup>32</sup> The courts ultimately opined that Governor Davis acted within his rights to respond to the emergency by buying electricity to prevent massive blackouts.<sup>33</sup>

In 2008, the Court of Appeal analyzed a similar exercise of emergency powers by Governor Schwarzenegger relating to the emergency decision to send inmates in overcrowded prisons to out-of-state private prisons in *California Peace Officers’ Association v. Schwarzenegger* (“CCPOA”).<sup>34</sup> The Court in *CCPOA* held that the Governor “did not exceed his power” under CESA when he entered into contracts during his declared state of emergency and suspended statutory authority proscribing the procedure for state business.<sup>35</sup> Though article VII of the California Constitution prohibits the State from contracting out services that are usually performed by state civil servants, section 19130 of the Government Code allowed such contracts to be entered into when “[t]he services contracted out are not available within civil service,” and when “[t]he services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.”<sup>36</sup> Notably, the Court in *CCPOA* emphasized that the private prison contracts “are for a *limited duration* and permit early cancellation when prison beds become available.”<sup>37</sup> As otherwise stated,

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<sup>32</sup> *Hendricks v. Hanigan* (Cal. Ct. App. Mar. 14, 2002) 2002 WL 397648, at \*8; see also *Soft Paths, Hard Choices: Environmental Lessons In The Aftermath Of California's Electric Deregulation Debacle*, 23 Va. Env'tl. L.J. 251.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Cal. Corr. Peace Officers’ Ass’n v. Schwarzenegger* (2008) 163 Cal.App.4th 802, 812 (“CCPOA”).

<sup>35</sup> *Id.* at pp. 808-809.

<sup>36</sup> *CCPOA*, *supra*, 163 Cal.App.4th at pp. 821-822 (quotations omitted.)

<sup>37</sup> *Id.* at p. 825 (emphasis added.)

the contracts had provisions which permitted the cancellation upon a cessation of the declared state of emergency.

The Governor's orders and delegations of power to the CDPH and CPHO bear no resemblance to limited actions upheld by courts in regard to the actions of Governors Davis and Schwarzenegger. In fact, Respondents actions are unprecedented and bear no resemblance to any Governor's emergency actions taken under the CESA. Unlike with Governor Davis, the Governor is not merely spending money, but is crafting a new criminal law at his sole discretion to penalize otherwise law-abiding citizens for leaving their homes for improper purposes. And, unlike *CCPOA*, the Governor's actions are not merely a suspension of an existing statute in order to effectuate necessary services to fight against COVID-19. Moreover, this instant Petition does not involve the seizure powers of the Governor pursuant to his emergency powers.<sup>38</sup> In contrast, the Governor, in cooperation with the CPHO and CDPH, created arbitrary Stay-At-Home laws, sectioning millions of Californians into five overbroad categories which group together citizens and cities that are hundreds of miles apart; and errantly exercised his discretion to craft law that dictates what industries are permitted to remain open, and what industries must close.

The County is charged with numerous other public health obligations to its residents including but not limited to family services, animal care and control, nutrition, public health education, HIV/Aids, environmental health, emergency preparedness, and clinical operations. (Decl. of Porter ¶ 3.) However, more importantly, the County will be charged with the distribution of the vaccines necessary to bring an end to this pandemic. (Decl. of Erickson ¶ 4.) Instead of permitting the County to carry out its statutory obligations, the Respondents substitute themselves in

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<sup>38</sup> *Martin, supra*, 148 Cal.App.3d at pp. 695-698; Gov. Code § 8572.

the position of the Legislature, forcing the County to decide between allocating resources to the implementation of Stay-At-Home laws against millions of non-complying residents or appropriately managing its resources to continue offering various community health programs. (Exhibit 5-11; Decl. of Snoke ¶ 9; Decl. of Porter ¶¶ 4-9.) Further, the County will need the resources necessary to coordinate an effective distribution of vaccines to its residents in the coming months. The Respondents’ Stay-At-Home laws do not constitute making, amending or rescinding orders and regulations under the plain language of the CESA, but rather the Respondents are exercising their judgment, discretion, and unprecedented power to govern what citizens should and should not be allowed to do statewide – exercising the power of the Legislature.<sup>39</sup>

Justice Gorsuch cautioned against similar situations in his dissent in *Gundy v. United States*. Although a Legislature can rely on the other branches for assistance in creating laws, it “...may never hand off...the power to write his own criminal code governing the lives of a half-million citizens. That ‘is delegation running riot.’”<sup>40</sup> The cautionary words of the Supreme Court Justices ring true here. As asserted in *Gallagher*, the Governor believes he can legislate and that he alone holds the ability to “exercise all police power vested in the state” in order to fight COVID-19 so long as he relies on the declared state of emergency. But as established herein, the CESA does not permit that. CESA specifically enumerates things the Governor *can* do during an emergency, and this Court should conclude based upon precedent that the Legislature intentionally drafted the plain language of the CESA to ensure the Governor was *not* provided

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<sup>39</sup> See *Loving v. United States* (1996) 517 U.S. 748, 758-759.

<sup>40</sup> *Gundy v. United States* (2019) 139 S.Ct. 2116, 2148 (Justice Gorsuch dissenting, joined by Justice Robert and Justice Thomas.)



unlimited powers in times of emergency.<sup>41</sup> Thus, the County asks this Court to analyze the plain language of Government Code section 8567 to find that the CESA does not provide the Governor power to legislate; to find that Governor Newsom is legislating by creating new laws, such as the Stay-At-Home laws which mandate that Californians remain indoors and businesses cease operations; and to render all orders and directives which are beyond the powers enumerated by the CESA void by granting this instant petition.

### **III. RESPONDENTS' ENACTMENTS VIOLATE THE ADMINISTRATIVE PROCEDURES ACT**

The Administrative Procedure Act (“APA”)<sup>42</sup> states, “[n]o State Agency shall issue, utilize, enforce, or attempt to enforce any ... regulation ... unless ... [it] has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.”<sup>43</sup> The APA is of particular importance in the instant matter as the term “State Agency” includes the departments within the executive branch of government unless expressly excepted.<sup>44</sup> Through its definition, judicial or legislative departments of the state government are exempted.<sup>45</sup> As explained further below, the APA was established with the intention of creating a review process to ensure regulations from the executive branch, including the Governor, are written in a manner consistent with the applicable law and authorized by statute.

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<sup>41</sup> See *Gikas v. Zolin* (1993) 6 Cal.4th 841, 852 (“*Expressio unius est exclusio alterius*. The expression of some things in a statute necessarily means the exclusion of other things not expressed.”)

<sup>42</sup> Gov. Code § 11340 et seq.

<sup>43</sup> Gov. Code § 11340.5, subd. (a).

<sup>44</sup> Gov. Code § 11342.520 (definition); see, e.g., Gov. Code §§ 11343, 11351.

<sup>45</sup> Gov. Code § 11340.9; see also *Lauderbach v. Zolin* (1995) 35 Cal.App.4th 578, 585 (APA rulemaking requirements do not apply to statutory enactments).

“‘Regulation’ means every rule, regulation, order, or standard of general application ... adopted by any state agency to implement, interpret, or make the law enforced or administered by it, or to govern its procedure.”<sup>46</sup> When a noncompliant “regulation” is enforced by a state agency, such as the CDPH, without complying with the APA, it is unlawful as an “underground regulation.”<sup>47</sup> Although agencies may implement emergency regulations with abbreviated requirements, they may not wholly disregard the APA and must satisfy the APA within 180 days from the effective date of the emergency regulation, unless extended.<sup>48</sup>

The Legislature previously identified exemptions to the APA.<sup>49</sup> However, the CESA does not provide any similar exemptions. Rather, the CESA contains two sections, Government Code sections 8589.19 and 8682.9, which instruct compliance with the APA. The instructions stand as an indication of the drafters’ acknowledgment of the APA and their perceived intention to not carve out an exemption for the Respondents. The absence of exemption is likely tied to the finding that the APA was necessary to establish a process to “review regulations to ensure that they are written in a comprehensible manner, are authorized by statute, and are consistent with other law” to prevent “language [which] is often confusing to the persons who must comply with the regulations.”<sup>50</sup>

Over the past nine months, the Respondents enacted numerous laws and orders which required the County to “implement, interpret, or make

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<sup>46</sup> Gov. Code § 11342.600.

<sup>47</sup> Cal. Code Regs., tit 1, § 250 (a).

<sup>48</sup> Gov. Code § 11346.1; *see also* Gov. Code §§ 11349.5, 11349.6

<sup>49</sup> *See in re Garcia* (1998) 67 Cal.App.4th 841 (Finding an exemption in Penal Code § 5058(c)(1).); *see also Paleski v. State Dept. of Health Services* (2006) 144 Cal.App.4th 714 (Finding an exemption in Welfare & Institutions Code § 14105.395.)

<sup>50</sup> Gov. Code § 11340 subd. (b), (e).

specific” the Respondents’ orders in violation of and without compliance with the APA.<sup>51</sup> The Governor’s unlawful orders fall squarely within the requirements of the APA as they allocate legislative power and unbridled discretion to the CDPH and CPHO to decide fundamental issues surrounding COVID-19, and tasked the County with the enforcement. Indeed, the APA was designed by the Legislature to address situations like the matter at hand – reviewing the actions of the executive branch to ensure they were comprehensible, authorized, lawful, and understandable by the general public. Instead, Respondents disregard the APA, exempting themselves like the Legislature, and positioning themselves in the role of the Legislature, instructing the masses through routine and frequent and complicated website updates without any procedure to review the enactments as to their legality.

But Respondents are not the Legislature and cannot be exempt from the APA. The Legislature is not one person. Its members are comprised of elected representatives from 40 Senate Districts and 80 Assembly Districts representing the State of California.<sup>52</sup> These elected officials engage in structured collective discourse to enact their discretion as to what laws should govern the State of California.<sup>53</sup> The role of the Legislature and discourse from the representatives in its 120 elected seats is a far cry from the one-man legislator and his appointees who do not have the benefit of

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<sup>51</sup> Gov. Code § 8567 subd. (d).

<sup>52</sup> California State Legislature, Legislators and Districts, available at the time of filing at:

[http://www.legislature.ca.gov/legislators\\_and\\_districts.html](http://www.legislature.ca.gov/legislators_and_districts.html)

<sup>53</sup> See Standing Rules of the Senate, available as of the time of filing at: [http://www.leginfo.ca.gov/rules/senate\\_rules.pdf](http://www.leginfo.ca.gov/rules/senate_rules.pdf); see also, Standing Rules of the Assembly, available as of the time of filing at: [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160HR1&search\\_keywords=](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160HR1&search_keywords=); see also Standing Joint Rules, available as of the time of filing at: [http://www.leginfo.ca.gov/rules/joint\\_rules.pdf](http://www.leginfo.ca.gov/rules/joint_rules.pdf)

constructive discourse among equals. This is exactly the situation which the Legislature aimed to prevent in enacting the APA: unprecedented and unchecked orders from the executive branch which expend public funds and impose complex laws on every-day citizens who “do not have the resources to hire experts...”<sup>54</sup>

Accordingly, Respondents’ Stay-At-Home laws and related orders were improperly enacted without complying with the APA must be declared unlawful and unenforceable.

#### **IV. THE LEGISLATURE CANNOT DELEGATE ITS AUTHORITY TO THE GOVERNOR THROUGH THE EMERGENCY SERVICES ACT**

The plain language of the CESA is clear: The Governor does not have the authority to legislate and create law during a declared State of Emergency.<sup>55</sup> However, should this Court find that the Governor’s powers under CESA permit him to legislate and enact Stay-At-Home laws, Petitioners assert that such an interpretation of the CESA is an unconstitutional delegation of power by the California Legislature to the Governor, which is contrary to the express language of article III of the California Constitution.<sup>56</sup>

In California, the “powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this

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<sup>54</sup> Gov. Code §11340.

<sup>55</sup> *See People of Amor, supra*, 12 Cal.3d at p. 30 (Statutes are to be so construed, if their language permits, as to render them valid and constitutional, rather than invalid and unconstitutional, and the courts must adopt an interpretation of a statutory provision which, consistent with the statutory language and purpose, eliminates doubt as to its constitutionality.); *See also Belridge Oil Co., supra*, 42 Cal.2d at p. 832.

<sup>56</sup> Cal. Const., art. III, § 3.

Constitution.”<sup>57</sup> The California Constitution expressly vests the legislative power of the state in the Legislature.<sup>58</sup> Although the judiciary has interpreted this vesting so as not to prohibit all delegations, it nevertheless has imposed important limitations.<sup>59</sup> Of course, “[o]nce it has established the law, the Legislature may delegate the authority to administer or apply the law.”<sup>60</sup> But, “[a]n unconstitutional delegation of authority occurs only when a legislative body (1) leaves the resolution of fundamental policy issues to others or (2) fails to provide adequate direction for the implementation of that policy.”<sup>61</sup> The second limitation imposes the duty “to establish an effective mechanism to assure the proper implementation of its policy decisions.”<sup>62</sup> Such “proper implementation” may be achieved through establishing adequate “safeguards,” such as vigorous judicial review, similar to the relief sought here.<sup>63</sup> “Underlying these rules is the belief that the Legislature as the most representative organ of government

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<sup>57</sup> *Ibid.*; *Parker v. Riley* (1941) 18 Cal.2d 83, 89 (The primary purpose of Cal. Const., art. III, § 3 is “to prevent the combination in the hands of a single person or group of the basic or fundamental powers of government”); *see also Steen v. Appellate Division of Superior Court* (2014) 59 Cal.4th 1045, 1059 (citing Madison, *The Federalist Papers*, No. 47 (Cooke ed. 1961) p. 324 [“[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, ... may justly be pronounced the very definition of tyranny”].)

<sup>58</sup> Cal. Const. art. IV, § 1.

<sup>59</sup> *See generally Kugler v. Yocum*, 69 Cal.2d 371, 375 (1968) (“[T]he doctrine prohibiting delegation of legislative power is well established in California.”); *see also Dougherty v. Austin* (1892) 94 Cal. 601, 606-607 (Holding the power to suspend, amend, rescind, create, and enforce law is legislative in character, is vested exclusively in the legislature, and cannot be delegated by it.)

<sup>60</sup> *Wilkinson v. Madera Community Hospital* (1983) 144 Cal.App.3d 436, 442.

<sup>61</sup> *Carson Mobilehome Park Owners’ Assn. v. City of Carson* (1983) 35 Cal.3d 184, 190.

<sup>62</sup> *Kugler, supra*, 69 Cal.2d at pp. 376-377.

<sup>63</sup> *See Id.* at 381-82.

should settle insofar as possible controverted issues of policy and that it must determine crucial issues whenever it has the time, information and competence to deal with them.”<sup>64</sup>

As this Court previously recognized, “truly fundamental issues should be resolved by the Legislature” and not by the executive or judicial branches.<sup>65</sup> While the interplay between the three branches may occasionally effect the others, the interference is appropriate so long as the action is “properly within [the] sphere” of a particular branch with only an “incidental effect of duplicating a function or procedure delegated to another branch.”<sup>66</sup> This Court recognized the importance of distinct branches in *Carmel Valley Fire Prot. Dist. v. California*<sup>67</sup>, stating:

“[C]ourts have not hesitated to strike down provisions of law that either accrete to a single branch powers more appropriately diffused among separate branches or that undermine the authority and independence of one or another coordinate branch. The doctrine, however, recognizes that the three branches of government are interdependent, and it permits actions of one branch that may significantly affect those of another branch. The purpose of the doctrine is to prevent one branch of government from exercising the complete power constitutionally vested in another; it is not intended to prohibit one branch from taking action properly within its sphere that has the incidental effect of duplicating a function or procedure delegated to another branch.”

If the CESA is interpreted to permit the Governor to make these orders, then the statute should be held unconstitutional as it permits the Governor to exercise the power allocated to the Legislature under the California

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<sup>64</sup> *Clean Air Constituency v. State Air Resources Bd.* (1974) 11 Cal.3d 801, 816-817.

<sup>65</sup> *Wilke & Holzheise, Inc. v. Dep’t of Alcoholic Beverage Control* (1966) 65 Cal.2d 349, 369.

<sup>66</sup> *Carmel Valley Fire Prot. Dist. v. State* (2001) 25 Cal.4th 287, 298 (quotations omitted.)

<sup>67</sup> *Ibid.*

Constitution. Indeed, courts hold that “[d]eciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice.”<sup>68</sup> Presently the Respondents act to substitute their judgement for that of the Legislature in balancing the competing values of citizens across the state to determine what will and will not be sacrificed to fight against COVID-19. If the CESA provides the power for Respondents to dictate the day-to-day lives of citizens throughout the state through the creation of a new penal code, then the CESA is “[a]n unconstitutional delegation of legislative power” that “confers upon an administrative agency unrestricted authority to make fundamental policy decisions.”<sup>69</sup>

The Supreme Court of Michigan reached a similar conclusion regarding a similar emergency powers statute. In the Michigan case<sup>70</sup> the Michigan Supreme Court ruled that Governor Whitmer lacked the authority to extend or declare states of emergency in relation to the COVID-19 pandemic, ultimately ruling that Michigan’s Emergency Powers of the Governor Act of 1945 was unconstitutional on the grounds that the delegation of power was an unlawful delegation of legislative power to Governor Whitmer in violation of the Michigan Constitution.<sup>71</sup> The Michigan Supreme Court reasoned that:

[T]he ultimate judgment regarding the constitutionality of a delegation must be made not on the basis of the scope of the power alone, but on the basis of its scope plus the specificity of the standards governing its exercise. When the scope

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<sup>68</sup> *County of Sonoma v. Cohen* (2015) 235 Cal.App.4th 42, 48.

<sup>69</sup> *People ex rel. Lockyer v. Sun Pacific Farming Co.* (2000) 77 Cal.App.4th 619, 632–634.

<sup>70</sup> *In re Certified Questions* (2020) 505 Mich. \_\_\_\_, 2020 WL 5877599.

<sup>71</sup> “No person exercising power of one branch shall exercise powers properly belonging to another branch.” (Mich. Const., art. III, § 2.); *see also Home Bldg & Loan Ass’n v. Blaisdell* (1934) 290 US 298, 425 (“Emergency does not create power.”)

increases to immense proportions the standards must be correspondingly more precise.

The decision was grounded in the Michigan Supreme Court's acknowledgement that "[t]he principal of separation of powers was to protect individual liberty." The Michigan Supreme Court emphasized that the "durational scope of delegated power also has some relevant bearing"<sup>72</sup> noting that "conferral of indefinite authority accords a greater accumulation of power than does the grant of temporary authority."<sup>73</sup> The County asks this Court to implement similar reasoning here.

The Respondents' indefinite Stay-At-Home laws, inappropriate delegation of legislative powers to the CDPH and CPHO, and the Respondents' laws stemming from the exercise of legislative powers infringe on core legislative functions. Respondents' interpretation of the CESA permits the Governor and unelected state health officials to decide, for as long as they choose, what activities are most important and least dangerous for millions of people.<sup>74</sup> Unsurprisingly, the Respondents' discretion coincidentally aligns with the interests of large industry interests who have the financial stability to lobby, such as the movie and television industries. Such decisions must be made by the Legislature, using the appropriate legislative procedures to ensure robust public debate and transparency by *elected* representatives of the people. These powers cannot be delegated by the Legislature to the Governor or, as with the December 5, 2020 orders, to unelected state health officials.

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<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*

<sup>74</sup> *County of Sonoma, supra*, 235 Cal.App.4th at p. 48. ("Deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice.")



Furthermore, there is nothing in the Emergency Services Act that explains what policies the Legislature wants the executive branch to follow in choosing which activities are essential and safe during a pandemic, nor are there any standards to guide the Respondents in making those decisions. “Delegated power must be accompanied by suitable safeguards to guide its use and to protect against its misuse.”<sup>75</sup> “The absence of such standards, or safeguards ... renders effective review of the exercise of the delegated power impossible.”<sup>76</sup> As reasoned by the Michigan Supreme Court, the indefinite nature of delegations, or a standard that the Governor may do whatever is necessary to combat COVID-19, is not a meaningful standard.<sup>77</sup>

The problems created by an absence of safeguards or guidance by the Legislature is evident in this instant matter. Respondents will likely assert that their conduct and enactments were reasonable and undertaken in good faith to protect public health of citizens throughout the state as permitted by the CESA. But, without well-defined objective standards to guide enactments made under CESA, “reasonableness” turns into an amorphous standard which, during an emergency, will turn almost entirely to the Respondents’ subjective determination about what must be done to protect public health. Absent these standards, there is nothing to check the Respondents’ abuse of power under their interpretation of the CESA, permitting total control over the State, indefinitely, during a pandemic, as

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<sup>75</sup> *Blumenthal v. Bd. of Med. Examiners* (1962) 57 Cal.2d 228, 236.

<sup>76</sup> *Ibid.*

<sup>77</sup> *In re Certified Questions, supra*, 505 Mich. at p. \*18; see also Gov. Code § 8627 (“During a state of emergency the Governor shall, to the extent he deems necessary, have complete authority over all agencies of the state government and the right to exercise within the area designated all police power vested in the state by the Constitution and laws of the State of California in order to effectuate the purposes of this chapter.”)

Governor Newsom has done here. Citizens statewide witnessed Respondents' abuse of power and flagrant disregard for their own orders firsthand - watching the Governor attend a dinner party with lobbyists in violation of his own orders.<sup>78</sup> The Governor's flagrant disregard of his own laws implicitly concedes the overbroad, insincere, and arbitrary nature of Respondents' enactments.

To avoid interpreting the CESA in such a way as to mandate a declaration that it is unconstitutional, this Court should grant the writ and find that the Governor does not have the authority to legislate and create law during a declared State of Emergency and void the Stay-At-Home laws.<sup>79</sup> The threshold question of statutory interpretation of the CESA is of the utmost importance here where the Respondents impose criminal penalties, turning otherwise law-abiding citizens into criminals overnight simply for going to a place of work that the Governor has solely deemed

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<sup>78</sup> See Fox 11, Gov. Newsom at French restaurant allegedly not following COVID-19 protocols, available at the time of filing at: [https://www.foxla.com/news/fox-11-obtains-exclusive-photos-of-gov-newsom-at-french-restaurant-allegedly-not-following-covid-19-protocols.](https://www.foxla.com/news/fox-11-obtains-exclusive-photos-of-gov-newsom-at-french-restaurant-allegedly-not-following-covid-19-protocols;); see also LA Times, Photos raise doubts about Newsom's claim that dinner with lobbyist was outdoors amid COVID-19 surge, available at the time of filing at: <https://www.latimes.com/california/story/2020-11-18/newsom-french-laundry-dinner-explanation-photos-jason-kinney-california-medical-association-covid-19>.

<sup>79</sup> See *People of Amor*, *supra*, 12 Cal.3d at p. 30 (Statutes are to be so construed, if their language permits, as to render them valid and constitutional, rather than invalid and unconstitutional, and the courts must adopt an interpretation of a statutory provision which, consistent with the statutory language and purpose, eliminates doubt as to its constitutionality.); See also *People v. Gutierrez* (2014) 58 Cal.4th 1354, 1373 (discussing doctrine of constitutional avoidance, the "precept that a court, when faced with an ambiguous statute that raises serious constitutional questions, should endeavor to construe the statute in a manner which avoids any doubt concerning its validity," quotations omitted.)

nonessential.<sup>80</sup> Moreover, this Court’s statutory interpretation will serve a significant public interest by providing guidance to other cases pending across the state which are working through lower state and federal courts.

Accordingly, the County respectfully requests that the Court grant this Petition, finding that the CESA does not provide the Governor power to legislate and determining that the Stay-At-Home laws and laws stemming from the Respondents’ improper interpretation of the CESA are unlawful; or in the alternative, to hold that the CESA is an unconstitutional delegation of power in violation of well-settled Non-Delegation precedent.

## **V. THE EMERGENCY CONDITIONS NO LONGER DEMAND RESPONDENTS’ INTERVENTION**

Even if Respondents have extraordinary authority under the CESA – and the delegation of said power is found constitutional – this Court should grant this Petition and order Respondents to terminate the Stay-At-Home laws because the “emergency” conditions which were relied upon in enacting the declared state of emergency ceased to exist. While the COVID-19 pandemic remains a threat to individuals around the globe, the sudden, unanticipated, and urgent nature of the threat required to address the pandemic in the State of California has ceased nine months later.

Government Code section 8558 defines a “State of Emergency” as:

“[T]he duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions such as air pollution, fire, flood, storm, epidemic, riot, drought, cyberterrorism, sudden and severe energy shortage, plant or animal infestation or disease, the Governor’s warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy or conditions causing a “state of war emergency,” which, by reason of their

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<sup>80</sup> *Gutierrez, supra*, 58 Cal.4th at p. 1373 (citing cases and noting that “we have repeatedly construed penal laws, including laws enacted by initiative, in a manner that avoids serious constitutional questions”).

magnitude, are or are likely to be beyond the control of the services, personnel, equipment, and facilities of any single county, city and county, or city and require the combined forces of a mutual aid region or regions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission.”

The language of the Government Code communicates a general overtone: an emergency is something which is sudden, severe, or unexpected. In fact, courts have held that “the term ‘emergency’ depends upon the circumstances of each case; its central idea is that a *sudden or unexpected necessity requires speedy action*.”<sup>81</sup> As in the CESA, the court in *Malibu* noted that when “the statute speaks of an emergency affecting the public health or safety, the vital element is not official prescience or its lack but rather the acuteness of the threat to the public interest.”<sup>82</sup> Similar reasoning is evidenced by the CESA as manifested by its requirement that the Governor identify the situation of “extreme peril” and terminate the state of emergency “at the earliest possible date that conditions warrant.”<sup>83</sup>

Respondents exceed their authority under the CESA and abuse their discretion by extending and continuing to implement Stay-At-Home Laws for the duration of the pandemic. Make no mistake, the County understands the dire threat that COVID-19 poses to its residents. (Decl. of Snoke ¶ 3; Decl. of Hagman ¶ 3.) But COVID-19 is no longer an unexpected and sudden condition of “extreme peril” as it was in March of 2020. On March 18, 2020, Governor Newsom penned a letter to the President of the United States stating, “[w]e project that roughly 56% of

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<sup>81</sup> *Malibu W. Swimming Club v. Flournoy* (1976) 60 Cal.App.3d 161, 166 (emphasis added.)

<sup>82</sup> *Ibid.*

<sup>83</sup> Gov. Code §§ 8558, 8629.

our population - 25.5 million people - will be infected with the virus over an eight week period.”<sup>84</sup> The Governor provided the projection in conjunction with a plea that the USNS Mercy Hospital Ship be sent to Los Angeles to “help decompress the health care delivery system” in response to the sudden and unexpected surge in “critical care needs.”<sup>85</sup> The projection, at the time, was consistent with proclamations made when declaring the March 4, 2020 state of emergency indicating that “the number of persons needing medical care may exceed locally available resources” and that mitigation efforts will be necessary “to respond to an increasing number of individuals requiring medical care and hospitalization.” At the time, the unprecedented pandemic created a need to flatten the curve and slow the transmission of COVID throughout the state. These considerations were at the very core of Governor Newsom’s declared state of emergency.

Nine months later, COVID-19 remains but is no longer an “emergency” as both the Legislature and counties, having adjusted to life in the pandemic, are more than able to address a virus which has intertwined itself with the day-to-day lives of people worldwide. In fact, the Legislature can – and has – appropriately enacted laws which are aimed at addressing the COVID-19 pandemic. By way of example, the Legislature passed numerous laws including, but not limited to:

- AB 1867, as codified under Labor Code sections 248 and 248.1, providing supplemental paid sick leave relating to COVID-19;

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<sup>84</sup> Governor Gavin Newsom, *Letter to the President of the United States* (March 18, 2020) available as of the date of filing at: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.18.20-Letter-USNS-Mercy-Hospital-Ship.pdf>

<sup>85</sup> *Ibid.*

- AB 685 as codified under Labor Code sections 6325, 6409.6, and 64320, creating new notice and recordkeeping requirements for COVID-19 cases in the workplace;
- SB 1159, as codified under Labor Code sections 3212.85, 3212.88, establishing a revised framework for workers' compensation claims relating to COVID-19; and
- SB 1383, as codified in section 12945.2 of the Government Code, expanding the California Family Rights Act for employees with family members who have serious health conditions.

These are a few examples of the numerous laws which were passed by the California Legislature in response to COVID-19.<sup>86</sup> The declared state of emergency operated as intended, to address the immediate unexpected need to permit the Legislature to step in and enact legislation to appropriately govern the residents of the State of California. The Legislature has and continues to address COVID-19 through appropriate enactments. It can continue to do so without the assistance of Respondents errant legislation.

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<sup>86</sup> See AB 1867 (as codified, Cal. Labor Code §§ 248, 248.1 [Providing supplemental paid sick leave]); See also SB 1159 (as codified, Cal. Labor Code §§ 3212.85, 3212.88 [Establishing a revised framework for workers' compensation claims]); see also SB 1383 (as codified, Gov. Code § 12945.2) [Expanding the California Family Rights Act for employees with family members who have serious health conditions]; see also AB 685 (as codified, Cal. Labor Code §§ 6325, 6409.6, 64320, [Creating new notice and recordkeeping requirements for COVID-19 cases in the workplace.]); see also AB 2043 (as codified, Cal. Lab. Code § 6725 [An emergency measure which became effective *immediately* requiring California Division of Occupational Safety and Health to disseminate to employers information on best practices for preventing COVID-19 infections]; see also AB 3088 (as codified, Civ. Code § 789.4; amending Civ. Code §§ 798.56, 1942.5, 1946.2, 1947.12, 1947.13, 2924.15; Title 19 of Part 4 of Division 3 of the Civ. Code; and Chapter 5 (Commencing with Section 1179.01) of Title 3 of part 3 of the Code of Civ. Proc.)

Moreover, while the Governor believed it was necessary to enact Stay-At-Home laws in March, the emergency has certainly ceased here since the Legislature and counties obtained significant additional information about the virus in the past nine months, permitting them to properly address the pandemic. (Decl. of Porter ¶ 9.) Any exigency required during the sudden outburst of COVID-19 infection rates in the state have subsided as COVID-19 is no longer sudden or unexpected, and no longer requires immediate action by the Respondents.<sup>87</sup>

San Bernardino County is a massive geographic area with approximately 2,180,85 residents.<sup>88</sup> (Decl. of McMahon ¶ 2.) For example, the eastern parts of the County are approximately 300 miles from downtown Los Angeles and San Diego, 380 miles from Santa Barbara, and 450 miles from San Louis Obispo. (Decl. of Snoke ¶¶6-8; Decl. of Hagman ¶ 4; Decl. of McMahon ¶ 2.) The large geographic area contains large deserts between cities, mountain ranges, and geographically separates cities throughout the county. (Decl. of Snoke ¶ 6; Decl. of Hagman ¶ 4.) In fact, there are communities within the County that pose little risk of experiencing a COVID-19 outbreak. (Decl. of Snoke ¶ 7; Decl. of Hagman ¶¶4-5.) Businesses in the low risk areas of the County should not be closed due to ICU capacities hundreds of miles away. The County should not be forced to allocate significant public health resources to enforce Respondents' Stay-At-Home laws in lower risk areas. It is unreasonable, irrational, and is not grounded in any reasonable public health justification. (Decl. of Snoke ¶ 7-8; Decl. of Hagman ¶¶ 4-5.) The Respondents' regional classification is entirely arbitrary. Respondents are restricting the

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<sup>87</sup> *Malibu, supra*, 60 Cal.App.3d at p. 166.

<sup>88</sup> U.S. Census Bureau, Quick Facts, available as of the time of filing at: <https://www.census.gov/quickfacts/fact/table/sanbernardinocountycalifornia/AFN120212>

County residents and unnecessarily taxing its public health resources based on the ICU capacities of unrelated cities which are hundreds of miles away. The County and SBPH are in the best possible situation to understand the ICU capacities throughout their large geographic area and tailor restrictions through appropriate lawful orders to safeguard its residents while appropriately balancing its resources to meet its legal obligations to residents. The unlawful enactment of the Stay-At-Home laws effectively usurps the County's own police power and prevents its duties to its residents. Absent intervention from this Court, the County cannot carry out its legal obligations to its residents as the Respondents' actions frustrate effective distribution of vaccines in the coming months as their unlawful Stay-At-Home laws interfere with the County's use of its own resources. (Decl. of Snoke ¶¶ 4, 9; Decl. of Hagman. ¶¶ 6-7; Decl. of Porter ¶ 9.) The only result which can come from a delay in vaccinations is further loss of life under the illusory justification that residents are actually complying and remaining indoors. By way of example, the County's Sheriff is charged with administering a range of law enforcement activities for the benefit of County residents such as, keeping the peace, enforcing the law, patrol activities, responding to emergency calls, and investigating crimes throughout the County. (Decl. of McMahon ¶ 2.) These public duties are jeopardized by the amount of resources demanded by the enforcement of Respondents' Stay-At-Home laws. (Decl. of McMahon ¶ 6.) It has come time for the Governor to lift the state of emergency and permit the County to continue assisting its community through the local public health office.

The Stay-At-Home laws, which were once designed to provide the hospitals with sufficient time to prepare to address the needs of their local community, now contain dozens of exceptions created by Respondents manifesting and implicitly conceding the fact that the action is necessary. As one of this Court's former members noted, "creating a Byzantine system



of procedural hurdles, each riddled with exceptions and fact-intensive qualifications, only undermines their intended purpose.”<sup>89</sup> The County does not seek to have this Court substitute its opinion for that of medical professionals. Rather, the County simply seeks a determination that the Respondents’ legislative acts are no longer warranted in the fight against COVID-19. The intended purpose is well past, and the enumerated list of essential exceptions undermines any purpose it once had. Nine months later, the sense of exigency and unprecedented outbreak can be controlled by the Legislature as well as counties across the state.

Thus, the Governor has a duty to terminate the Stay-At-Home laws and should have done so at the end of the initial eight-week period. Respondents abuse their discretion in continuing to enact indefinite Stay-At-Home laws and the County requests that this Court correct their abuse of discretion and order the Respondents to terminate the Stay-At-Home laws once and for all.<sup>90</sup>

**VI. IRREPARABLE HARM EXISTS WHICH, IF LEFT UNADDRESSED, IS DETRIMENTAL TO THE COUNTY AND THUS, THE NEED FOR JUDICIAL ACTION AND IMMEDIATE RELIEF IS NECESSARY**

**A. No Adequate Remedy at Law**

The nature of the Executive Orders is such that no adequate remedy at law exists. “[M]andamus may be invoked in those cases where remedy by any other form of action or proceeding would not be equally as

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<sup>89</sup> *In re Gallego* (1998) 18 Cal.4th 825, 842 (Brown, J, concurring in part and dissenting in part.)

<sup>90</sup> *E.g., Nat’l Tax-Limitation Comm. v. Schwarzenegger* (2003) 113 Cal.App.4th 1266, 8 Cal. Rptr. 3d 4, 12-21 (citing cases and concluding that court could, under appropriate circumstances, order Governor to terminate state of emergency.)

convenient, beneficial, and effective.”<sup>91</sup> Because the County requests the ability to immediately resume the full scope of its public duties and seeks appropriate orders voiding Respondents’ Stay-At-Home laws, the writ of mandate is the most “convenient, beneficial, and effective” relief available. Absent this Court’s intervention, the Stay-At-Home laws will remain in full force and effect until the end of the pandemic. This case is precisely the sort that the writ of mandate is designed to remedy: reigning in public officials who are ignoring long-standing non-delegation doctrine and usurping the constitutional powers of the Legislature through a state of emergency which they have sole control over ending. Accordingly, the County petitions this Court to seek relief under the extraordinary writ and immediate stay procedures.

“Although courts generally deny writ relief ... a writ of mandate should not be denied when ‘the issues presented are of great public importance and must be resolved promptly.’”<sup>92</sup> Similarly, “the Supreme Court has repeatedly recognized the intervention of an appellate court may be required to consider instances of a grave nature or of significant legal impact, or to review questions of first impression and general importance to the bench and bar where general guidelines can be laid down for future

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<sup>91</sup> *Ross v. Bd. of Educ.* (1912) 18 Cal.App. 222, 225.

<sup>92</sup> *Corbett v. Superior Court (Bank of America, N.A.)* (2002) 101 Cal.App.4th 649, 657 (quoting *County of Sacramento v. Hickman* (1967) 66 Cal.2d 841, 845.)

cases.”<sup>93</sup> And writ review may be granted when the “resolution of the issue would result in a final disposition as to the petitioner.”<sup>94</sup>

Indeed, there are very few instances in this state’s history which parallel the need for this extraordinary relief. COVID-19 is unprecedented. And that unprecedented nature demands extraordinary intervention. Respondents’ Stay-At-Home laws warrant intervention by this Court. The County has the responsibility under section 8568 of the CESA to take necessary actions to carry out the Governor’s orders and must be properly and fully informed with respect to the legality of said orders to administer its public duties. To that end, the County requests this Court to fulfill its duty as the ultimate arbiter of state law and declare, in the first instance, that Respondents’ actions exceed their powers.

**B. The Writ Should Be Issued In the First Instance to Correct the Respondents’ Unbridled Abuses of Power.**

Under Code of Civil Procedure section 1088 and other applicable law, this Court should issue a peremptory writ in the first instance. A court may issue a peremptory writ in the first instance where petitioner’s entitlement to relief is so obvious that no purpose could reasonably be served by plenary consideration of the issue.<sup>95</sup>

Respondents have argued and will likely argue in this matter that they make a good faith attempt to safeguard the citizens of this golden state.

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<sup>93</sup> *Anderson v. Superior Court* (1989) 213 Cal.App.3d 1321, 1328, quotations omitted; see also *Noe v. Superior Court (Levy Premium Foodservice Limited Partnership)* (2015) 237 Cal.App.4th 316, 325 (granting writ review because “the petition presents a significant issue of first impression,” quotations omitted.)

<sup>94</sup> *Apple Inc. v. Superior Court (The Police Retirement Sys. of St. Louis)* (2017) 18 Cal.App.5th 222, 239.

<sup>95</sup> See *Alexander v. Superior Court* (1993) 5 Cal.4th 1218; *Ng v. Sup. Ct.* (1992) 4 Cal.4th 29, 35 (clear error under established law and unusual urgency are factors for *Palma* procedure.)

But this reasoning only furthers the necessity of a determination by this Court. “Experience should teach us to be most on our guard to protect liberty when the government’s purposes are beneficent. Men born to freedom are naturally alert to repel invasion by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.”<sup>96</sup> This Court acknowledged the grave warning of Justice Brandeis in *Conservatorship of Roulet*<sup>97</sup> and *Conservatorship of Early*.<sup>98</sup> The County asks that this Court again heed Justice Brandeis’ warning as to COVID-19. The CESA does not provide the Governor with the power to legislate and this Court should decide the critical issue of statutory interpretation once and for all. Absent direct intervention by this Court, the Respondents’ actions will continue to frustrate the County’s effective allocation of resources as it struggles to implement the unlawful Stay-At-Home laws against millions of its residents. (Decl. of Hagman ¶ 3, 6-7; Decl. of Porter ¶¶ 3-6.) The County, and its residents, are in urgent need of a declaration as to the Respondents’ powers under CESA.

Even if the operation of the state’s powers fall to the Governor, “interpreting the law is [still] a judicial function.”<sup>99</sup> The County requests that this Court exercise its judicial function to clarify the powers and authorities allocated to the Respondents under the CESA and, if necessary, declare the CESA unconstitutional. The pandemic presents grave dangers

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<sup>96</sup> *Olmstead v. United States* (1928) 277 U.S. 438, 480 (Brandeis, J., dissenting.)

<sup>97</sup> *Conservatorship of Roulet* (1979) 23 Cal.3d 219, 225.

<sup>98</sup> *Conservatorship of Early* (1983) 35 Cal.3d 224, 253.

<sup>99</sup> *McClung v. Employment Dev. Dep’t* (2004) 34 Cal. 4th 467, 470 (citing *Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137, 177.)

to humanity across the globe, but it can be no longer categorized as sudden, unpredictable, or demanding of speedy action from the Governor.<sup>100</sup>

This Petition requires this Court's immediate attention and the issuance of the writ in the first instance. The entitled relief is obvious: Require Governor Newsom and the CDPH to comply with the Constitutional framework of the State Constitution. Because the County effected personal service of this petition and a notice of an application for a writ of mandate in the first instance on Respondents on this date and seek an immediate stay and peremptory writ of mandate in the first instance, Petitioners respectfully request this Court to give *Palma* notice to Respondents.<sup>101</sup>

Moreover, a peremptory writ may issue in the first instance when at least ten days' notice is given and each party has sufficient opportunity to be heard.<sup>102</sup> In this case, 10 days' notice is being given to allow the party sufficient time to be heard. Because the harm to the County will continue until Respondents' flagrant disregard of the enumerated powers under the CESA is addressed, a stay is appropriate in this instant matter.

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<sup>100</sup> *Malibu, supra*, 60 Cal.App.3d at p. 166.

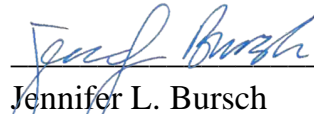
<sup>101</sup> *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178; *see also Ng, supra*, 4 Cal.4th at p. 35 (*Palma* procedure proper when "there has been clear error under well-settled principles of law and undisputed facts . . . or when there is an unusual urgency").

<sup>102</sup> Code Civ. Proc., § 1088. *Palma, supra*, 36 Cal.3d at p. 180.

## CONCLUSION

For all of the foregoing reasons, the County respectfully requests that this Court grant the relief sought in the Verified Petition for a Peremptory Writ of Mandate in the First Instance and Request for Immediate Stay.

Dated: December 14, 2020




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Jennifer L. Bursch  
Nathan R. Klein  
Cody J. Bellmeyer  
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25026 Las Brisas Rd,  
Murrieta, California 92562  
Attorney for Petitioners

### **CERTIFICATE OF WORD COUNT**

I, the undersigned counsel for Petitioners, relying on the word count function of Microsoft Word, the computer program used to prepare this brief, certify that the above document contains 13,656 words.

  
\_\_\_\_\_  
Jennifer L. Bursch, Esq.  
Attorney for Petitioners

### **CERTIFICATE OF SERVICE**

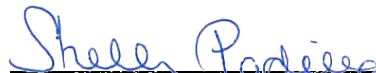
I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On December 14, 2020, I served a copy of the following document(s) described as:

- **VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE IN THE FIRST INSTANCE; MEMORANDUM OF POINTS AND AUTHORITIES**

on the interested party(ies) in this action by-email or electronic service [C.C.P. Section 1010.6; CRC 2.250-2.261]. The documents listed above were transmitted via e-mail to the e-mail addresses on the attached service list.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.

  
Shelly M. Padilla



## **SERVICE LIST**

Governor Gavin Newsom  
1303 10<sup>th</sup> Street, Ste. 1173  
Sacramento, CA 95814  
(916) 445-2841  
Email: [ServiceofProcess@gov.ca.gov](mailto:ServiceofProcess@gov.ca.gov)

Respondent

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Respondent

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Respondent

California Office of the Attorney  
General  
Xavier Becerra, Attorney General  
Email: [xavier.becerra@doj.ca.gov](mailto:xavier.becerra@doj.ca.gov)

Attorney for Respondents

EXHIBIT “1”

# OFFICE OF PUBLIC AFFAIRS

## Two Confirmed Cases of Novel Coronavirus in California

Date: January 26, 2020

Number: 20-001

Contact: Corey Egel | 916.440.7259 | [CDPHpress@cdph.ca.gov](mailto:CDPHpress@cdph.ca.gov)

SACRAMENTO – The California Department of Public Health (CDPH) has been informed that one individual in Los Angeles County and one individual in Orange County have tested positive for novel coronavirus 2019 (nCoV-2019). This information is confirmed by the Los Angeles County Department of Public Health (LADPH), the Orange County Health Care Agency (OCHCA), and the U. S. Centers for Disease Control and Prevention (CDC).

“The California Department of Public Health has been preparing for this situation by working closely with local health departments and health care providers,” said Dr. Sonia Angell, CDPH Director and State Health Officer. “We are supporting ongoing efforts by the Los Angeles County Department of Public Health and the Orange County Health Care Agency to respond to these cases, and will continue working with our partners to monitor for any additional cases that may occur in California, to ensure that persons can be safely and effectively evaluated for this novel virus, and to protect the health of the people of California.”

At this time, no other persons infected with nCoV-2019 have been identified in California. Currently, the immediate health risk from nCoV 2019 to the general public is low.

It is very important for persons who have recently traveled and who become ill to notify their health care provider of their travel history. Persons who have recently traveled to Wuhan, China, or who have had contact with a person with possible novel coronavirus infection should contact their local health department or health care provider.

CDPH has been prepared and is continuing with the following actions:

- Providing information about the outbreak and how to report suspect cases to local health departments and health care providers in California.
- Coordinating with CDC personnel who are doing screening of travelers from Wuhan, China at SFO and LAX airports.
- Assuring that health care providers know how to safely manage persons with possible nCoV-2019 infection.
- Supporting hospitals and local public health laboratories for collection and shipment of specimens for testing at CDC for nCoV-2019.
- Activating CDPH's Emergency Operations Center to coordinate response efforts across the state.

The nCoV-2019 outbreak in China continues to evolve and California is prepared for more cases that may arise. CDPH considers this a very important public health event: we are closely monitoring the situation and providing updates to partners across the state to support their preparedness efforts.

As with any virus, especially during the flu season, CDPH reminds you there are a number of steps you can take to protect your health and those around you:

- Washing hands with soap and water.
- Avoiding touching eyes, nose or mouth with unwashed hands.
- Avoiding close contact with people who are sick are all ways to reduce the risk of infection with a number of different viruses.
- If someone does become sick with respiratory symptoms like fever and cough, they should stay away from work, school or other people to avoid spreading illness.

CDPH will not be providing additional information about the patients beyond what is being shared by the LADPH and OCHCA

For more information about nCov-2019, please visit the CDPH website.

# EXHIBIT “2”

# OFFICE OF PUBLIC AFFAIRS

## **The California Department of Public Health and a Network of Labs Prepare to Begin Novel Coronavirus Testing in California**

Date: February 6, 2020

Number: NR20-004

Contact: Corey Egel | 916.440.7259 | [CDHPress@cdph.ca.gov](mailto:CDHPress@cdph.ca.gov)

### ***Photos and Video of Public Health Department's Richmond Lab Available***

SACRAMENTO – The California Department of Public Health announced today that 16 laboratories, including the state's Viral and Rickettsial Disease Laboratory in Richmond, California, will soon be able to perform testing for the novel coronavirus. This service will provide more rapid results than currently available and help to inform public health action and medical care for people who may have been exposed to novel coronavirus. Results from the Centers for Disease Control and Prevention currently take between two to seven days. The Public Health Department lab anticipates it will be able to conduct testing beginning Wednesday, February 12, and report results within two days of specimen receipt. Meanwhile, our local partners are also expected to be able to conduct tests within a couple of weeks.

"The California Department of Public Health laboratory is proud to be a part of this statewide network to provide novel coronavirus testing. This will support state and local public health departments and health care providers that are working to protect the health of the people of California," said Dr. Sonia Angell, California Department of Public Health Director and State Health Officer. "Providing this test in California will deliver more rapid test results to improve care of persons who may be sick with this new virus."

To date, based on testing carried out by the CDC, the California Department of Public Health confirms six individuals have tested positive for novel coronavirus 2019 in California: two people in Santa Clara County, two people in San Benito County, one person in Los Angeles County and one person in Orange County.

*Currently, the immediate health risk from novel coronavirus 2019 to the general public is low. California is carefully assessing the situation as it evolves.*

The California Department of Public Health considers this a very important public health event and we are providing updates to partners across the state to support their preparedness efforts.

It is very important that people who have recently traveled and who become ill to notify their health care provider of their travel history. Those who have recently traveled to China or who have had contact with a person with possible novel coronavirus infection should contact their local health department or health care provider.

The California Department of Public Health has been prepared and is continuing with the following actions:

- Providing information about the outbreak and how to report suspect cases to local health departments and health care providers in California.
- Coordinating with CDC personnel who are doing screening of travelers from China at SFO and LAX.
- Assuring that health care providers know how to safely manage persons with possible novel coronavirus 2019 infection.
- Activating the Department of Public Health's Emergency Operations Center to coordinate response efforts across the state.

As with any virus, especially during the flu season, we remind you there are a number of steps you can take to protect your health and those around you:

- Washing hands with soap and water.
- Avoiding touching eyes, nose or mouth with unwashed hands.
- Avoiding close contact with people who are sick.
- Staying away from work, school or other people if you become sick with respiratory symptoms like fever and cough.

For more information about novel coronavirus 2019, please visit the [CDPH website](https://www.cdph.ca.gov).

To obtain photos or video of the Public Health Department's lab in Richmond, please contact the California Department of Public Health – Office of Public Affairs at [CDHPressOPA@cdph.ca.gov](mailto:CDHPressOPA@cdph.ca.gov) after 3:30 p.m. on Thursday, February 6.

EXHIBIT “3”

**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**PROCLAMATION OF A STATE OF EMERGENCY**

**WHEREAS** in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

**WHEREAS** the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

**WHEREAS** on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

**WHEREAS** on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

**WHEREAS** the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

**WHEREAS** as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

**WHEREAS** as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

**WHEREAS** for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

**WHEREAS** California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and

**WHEREAS** experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

**WHEREAS** it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

**WHEREAS** if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

**WHEREAS** personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

**WHEREAS** state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

**WHEREAS** I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

**WHEREAS** I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

**WHEREAS** under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.



**IT IS HEREBY ORDERED THAT:**

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The



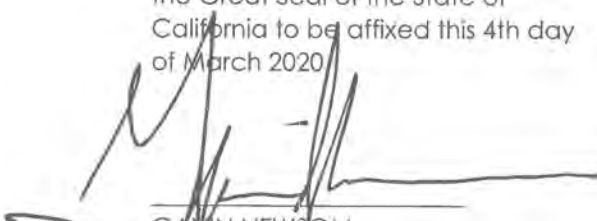
notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.

14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

**I FURTHER DIRECT** that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 4th day  
of March 2020



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

EXHIBIT “4”

# California Public Health Experts: Mass Gatherings Should be Postponed or Canceled Statewide to Slow the Spread of COVID-19

Published: Mar 11, 2020

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*State public health experts announce that gatherings with 250 people or more should be rescheduled or canceled*

*Smaller gatherings can proceed if organizers implement 6 feet of social distancing*

SACRAMENTO – Governor Gavin Newsom announced that California public health officials this evening issued an updated policy on gatherings to protect public health and slow the spread of COVID-19. The state’s public health experts have determined that gatherings should be postponed or canceled across the state until at least the end of March. Non-essential gatherings must be limited to no more than 250 people, while smaller events can proceed only if the organizers can implement social distancing of 6 feet per person. Gatherings of individuals who are at higher risk for severe illness from COVID-19 should be limited to no more than 10 people, while also following social distancing guidelines.

“Changing our actions for a short period of time will save the life of one or more people you know,” said Governor Newsom. “That’s the choice before us. Each of us has extraordinary power to slow the spread of this disease. Not holding that concert or community event can have cascading effects — saving dozens of lives and preserving critical health care resources that your family may need a month from now. The people in our lives who are most at risk – seniors and those with underlying health conditions — are depending on all of us to make the right choice.”

The state’s updated policy defines a “gathering” as any event or convening that brings together people in a single room or single space at the same time, such as an auditorium, stadium, arena, large conference room, meeting hall, cafeteria, or any other indoor or outdoor space.

This guidance applies to all non-essential professional, social and community gatherings regardless of their sponsor.

Essential gatherings should only be conducted if the essential activity could not be postponed or achieved without gathering, meaning that some other means of communication could not be used to conduct the essential function.

The full policy can be found [here](#).

“These changes will cause real stress — especially for families and businesses least equipped financially to deal with them. The state of California is working closely with businesses who will feel the economic shock of these changes, and we are mobilizing every level of government to help families as they persevere through this global health crisis,” added Governor Newsom.

## **State Efforts to Assist California Workers**

California will continue acting swiftly to help workers hurt by COVID-19. Affected workers can visit the Labor & Workforce Development Agency’s website to review what benefits are available to them. For instance,

- If you’re unable to work because you are caring for an ill or quarantined family member with COVID-19 you may qualify for Paid Family Leave (PFL).
- If you’re unable to work due to medical quarantine or illness, you may qualify for Disability Insurance. Those who have lost a job or have had their hours reduced for reasons related to COVID-19 may be able to partially recover their wages by filing an unemployment insurance claim.
- If a worker or a family member is sick or for preventative care when civil authorities recommend quarantine, workers may use accrued paid sick leave in accordance with the law.
- If workers are unable to do their usual job because they were exposed to and contracted COVID-19 during the regular course of their work, they may be eligible for workers’ compensation benefits. All information and resources can be found at [Labor.Ca.Gov/Coronavirus2019](https://labor.ca.gov/coronavirus2019)

## **All Community Guidance Released from CDPH:**

The California Department of Public Health has consolidated state guidance on how to prepare and protect Californians from COVID-19 in a [single location](#). This includes guidance for:

- Health care facilities, including long-term care facilities
- Community care facilities, including assisted living facilities and child care
- Schools and institutions of higher education
- First responders, including paramedics and EMTs
- Employers, health care workers and workers in general industry
- Health care plans
- Home cleaning with COVID-19 positive individuals
- Guidance for Using Disinfectants at Schools and Child Cares
- Laboratories
- Health care facilities from Cal/OSHA
- Homelessness Providers

**What to Do if You Think You're Sick:**

Call ahead: If you are experiencing symptoms of COVID-19 and may have had contact with a person with COVID-19, or recently traveled to countries with apparent community spread, call your health care provider or local public health department first before seeking medical care so that appropriate precautions can be taken.

**California's Response to COVID-19:**

We have been actively and extensively planning with our local public health and health care delivery systems. Here are some of the things we are already doing:

- As in any public health event, the California Department of Public Health's Medical and Health Coordination Center has been activated and is coordinating public health response efforts across the state.
- California continues to prepare and respond in coordination with federal and local partners, hospitals and physicians.
- Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19.
- Governor Gavin Newsom requested the Legislature make up to \$20 million available for state government to respond to the spread of COVID-19.
- California activated the State Operations Center to its highest level to coordinate response efforts across the state.
- 24 million more Californians are now eligible for free medically necessary COVID-19 testing.
- California made available some of its emergency planning reserves of 21 million N95 filtering face piece masks for use in certain health care settings to ease shortages of personal protective equipment.
- The Public Health Department is providing information, [guidance documents](#), and technical support to local health departments, health care facilities, providers, schools, universities, colleges, and childcare facilities across California
- The California Employment Development Department (EDD) is encouraging individuals who are unable to work due to exposure to COVID-19 to file a Disability Insurance claim.
- EDD is also encouraging employers who are experiencing a slowdown in their businesses or services as a result of the Coronavirus impact on the economy to apply for an Unemployment Insurance work sharing program.
- California continues to work in partnership with the federal government to aid in the safe return of 962 Californians from the Grand Princess cruise ship. This mission is centered around protecting the health of the passengers, and ensuring that when the passengers disembark, the public health of the United States, the State of California, and partner communities is protected.
- The Public Health Department is coordinating with federal authorities and local health departments that have implemented screening, monitoring and, in some cases quarantine of returning travelers.
- In coordination with the CDC, state and local health departments, we are actively responding to cases of COVID-19.
- The Public Health Department is supporting hospitals and local public health laboratories in the collection of specimens and testing for COVID-19.

The California Department of Public Health's state laboratory in Richmond and 18 other public health department laboratories now have tests for the virus that causes COVID-19. Eighteen of them are currently conducting tests, with the others coming online soon.

For more the most up to date information on COVID-19 and California's response, visit the [CDPH website](#).

###

EXHIBIT “5”



**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-25-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** despite sustained efforts, the virus remains a threat, and further efforts to control the spread of the virus to reduce and minimize the risk of infection are needed; and

**WHEREAS** state and local public health officials may, as they deem necessary in the interest of public health, issue guidance limiting or recommending limitations upon attendance at public assemblies, conferences, or other mass events, which could cause the cancellation of such gatherings through no fault or responsibility of the parties involved, thereby constituting a force majeure; and

**WHEREAS** the Department of Public Health is maintaining up-to-date guidance relating to COVID-19, available to the public at <http://cdph.ca.gov/covid19>; and

**WHEREAS** the State of California and local governments, in collaboration with the Federal government, continue sustained efforts to minimize the spread and mitigate the effects of COVID-19; and

**WHEREAS** there is a need to secure numerous facilities to accommodate quarantine, isolation, or medical treatment of individuals testing positive for or exposed to COVID-19; and

**WHEREAS**, many individuals who have developmental disabilities and receive services through regional centers funded by the Department of Developmental Services also have chronic medical conditions that make them more susceptible to serious symptoms of COVID-19, and it is critical that they continue to receive their services while also protecting their own health and the general public health; and

**WHEREAS** individuals exposed to COVID-19 may be temporarily unable to report to work due to illness caused by COVID-19 or quarantines related to COVID-19 and individuals directly affected by COVID-19 may experience potential loss of income, health care and medical coverage, and ability to pay for housing and basic needs, thereby placing increased demands on already strained regional and local health and safety resources such as shelters and food banks; and

**WHEREAS** in the interest of public health and safety, it is necessary to exercise my authority under the Emergency Services Act, specifically Government Code section 8572, to ensure adequate facilities exist to address the impacts of COVID-19; and



**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571 and 8572, do hereby issue the following order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

1. All residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.
2. For the period that began January 24, 2020 through the duration of this emergency, the Employment Development Department shall have the discretion to waive the one-week waiting period in Unemployment Insurance Code section 2627(b)(1) for disability insurance applicants who are unemployed and disabled as a result of the COVID-19, and who are otherwise eligible for disability insurance benefits.
3. For the period that began January 24, 2020 through the duration of this emergency, the Employment Development Department shall have the discretion to waive the one-week waiting period in Unemployment Insurance Code section 1253(d) for unemployment insurance applicants who are unemployed as a result of the COVID-19, and who are otherwise eligible for unemployment insurance benefits.
4. Notwithstanding Health and Safety Code section 1797.172(b), during the course of this emergency, the Director of the Emergency Medical Services Authority shall have the authority to implement additions to local optional scopes of practice without first consulting with a committee of local EMS medical directors named by the EMS Medical Directors Association of California.
5. In order to quickly provide relief from interest and penalties, the provisions of the Revenue and Taxation Code that apply to the taxes and fees administered by the Department of Tax and Fee Administration, requiring the filing of a statement under penalty of perjury setting forth the facts for a claim for relief, are suspended for a period of 60 days after the date of this Order for any individuals or businesses who are unable to file a timely tax return or make a timely payment as a result of complying with a state or local public health official's imposition or recommendation of social distancing measures related to COVID-19.
6. The Franchise Tax Board, the Board of Equalization, the Department of Tax and Fee Administration, and the Office of Tax Appeals shall use their administrative powers where appropriate to provide those individuals and businesses impacted by complying with a state or local public health official's imposition or recommendation of social

distancing measures related to COVID-19 with the extensions for filing, payment, audits, billing, notices, assessments, claims for refund, and relief from subsequent penalties and interest.

7. The Governor's Office of Emergency Services shall ensure adequate state staffing during this emergency. Consistent with applicable federal law, work hour limitations for retired annuitants, permanent and intermittent personnel, and state management and senior supervisors, are suspended. Furthermore, reinstatement and work hour limitations in Government Code sections 21220, 21224(a), and 7522.56(b), (d), (f), and (g), and the time limitations in Government Code section 19888.1 and California Code of Regulations, title 2, sections 300-303 are suspended. The Director of the California Department of Human Resources must be notified of any individual employed pursuant to these waivers.
8. The California Health and Human Services Agency and the Office of Emergency Services shall identify, and shall otherwise be prepared to make available—including through the execution of any necessary contracts or other agreements and, if necessary, through the exercise of the State's power to commandeer property – hotels and other places of temporary residence, medical facilities, and other facilities that are suitable for use as places of temporary residence or medical facilities as necessary for quarantining, isolating, or treating individuals who test positive for COVID-19 or who have had a high-risk exposure and are thought to be in the incubation period.
9. The certification and licensure requirements of California Code of Regulations, Title 17, section 1079 and Business and Professions Code section 1206.5 are suspended as to all persons who meet the requirements under the Clinical Laboratory Improvement Amendments of section 353 of the Public Health Service Act for high complexity testing and who are performing analysis of samples to test for SARS-CoV-2, the virus that causes COVID-19, in any certified public health laboratory or licensed clinical laboratory.
10. To ensure that individuals with developmental disabilities continue to receive the services and supports mandated by their individual program plans threatened by disruptions caused by COVID-19, the Director of the Department of Developmental Services may issue directives waiving any provision or requirement of the Lanterman Developmental Disabilities Services Act, the California Early Intervention Services Act, and the accompanying regulations of Title 17, Division 2 of the California Code of Regulations. A directive may delegate to the regional centers any authority granted to the Department by law where the Director believes such delegation is necessary to ensure services to individuals with developmental disabilities. The Director shall describe the need justifying the waiver granted in each directive and articulate how the waiver is necessary to protect the public health or safety from the threat of COVID-19 or necessary to ensure that services to individuals with developmental disabilities are not disrupted. Any waiver granted by a directive shall expire 30 days from the date of its issuance. The Director may grant one or more 30-day extensions if the waiver continues to be necessary

to protect health or safety or to ensure delivery of services. The Director shall rescind a waiver once it is no longer necessary to protect public health or safety or ensure delivery of services. Any waivers and extensions granted pursuant to this paragraph shall be posted on the Department's website.

11. Notwithstanding any other provision of state or local law, including the Bagley-Keene Act or the Brown Act, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to attend and to address the local legislative body or state body, during the period in which state or local public officials impose or recommend measures to promote social distancing, including but not limited to limitations on public events. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, at least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended, on the conditions that:

- (i) each state or local body must give advance notice of each public meeting, according to the timeframe otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) consistent with the notice requirement in paragraph (i), each state or local body must notice at least one publicly accessible location from which members of the public shall have the right to observe and offer public comment at the public meeting, consistent with the public's rights of access and public comment otherwise provided for by the Bagley-Keene Act and the Brown Act, as applicable (including, but not limited to, the requirement that such rights of access and public comment be made available in a manner consistent with the Americans with Disabilities Act).

In addition to the mandatory conditions set forth above, all state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 12th day  
of March 2020.

A handwritten signature in black ink, appearing to read 'Gavin Newsom', is written over a horizontal line. The signature is stylized with large, sweeping strokes.

GAVIN NEWSOM  
Governor of California

**ATTEST:**

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ALEX PADILLA  
Secretary of State

EXHIBIT “6”



**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-33-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** in a short period of time, COVID-19 has rapidly spread throughout California, necessitating updated and more stringent guidance from federal, state, and local public health officials; and

**WHEREAS** for the preservation of public health and safety throughout the entire State of California, I find it necessary for all Californians to heed the State public health directives from the Department of Public Health.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665 do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) To preserve the public health and safety, and to ensure the healthcare delivery system is capable of serving all, and prioritizing those at the highest risk and vulnerability, all residents are directed to immediately heed the current State public health directives, which I ordered the Department of Public Health to develop for the current statewide status of COVID-19. Those directives are consistent with the March 19, 2020, Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response, found at: <https://covid19.ca.gov/>. Those directives follow:

ORDER OF THE STATE PUBLIC HEALTH OFFICER  
March 19, 2020

To protect public health, I as State Public Health Officer and Director of the California Department of Public Health order all individuals living in the State of California to stay home or at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>. In addition, and in consultation with the Director of the Governor's Office of Emergency Services, I may designate additional sectors as critical in order to protect the health and well-being of all Californians.

Pursuant to the authority under the Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150, this order is to go into effect immediately and shall stay in effect until further notice.

The federal government has identified 16 critical infrastructure sectors whose assets, systems, and networks, whether physical or virtual, are considered so vital to the United States that their incapacitation or

destruction would have a debilitating effect on security, economic security, public health or safety, or any combination thereof. I order that Californians working in these 16 critical infrastructure sectors may continue their work because of the importance of these sectors to Californians' health and well-being.

This Order is being issued to protect the public health of Californians. The California Department of Public Health looks to establish consistency across the state in order to ensure that we mitigate the impact of COVID-19. Our goal is simple, we want to bend the curve, and disrupt the spread of the virus.

The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they should at all times practice social distancing.

- 2) The healthcare delivery system shall prioritize services to serving those who are the sickest and shall prioritize resources, including personal protective equipment, for the providers providing direct care to them.
- 3) The Office of Emergency Services is directed to take necessary steps to ensure compliance with this Order.
- 4) This Order shall be enforceable pursuant to California law, including, but not limited to, Government Code section 8665.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have  
hereunto set my hand and caused  
the Great Seal of the State of  
California to be affixed this 19th day  
of March 2020.



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

EXHIBIT “7”



**EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA**

**EXECUTIVE ORDER N-60-20**

**WHEREAS** on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

**WHEREAS** on March 19, 2020, I issued Executive Order N-33-20, which directed all California residents to immediately heed current State public health directives; and

**WHEREAS** State public health directives, available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/>, have ordered all California residents stay home except for essential needs, as defined in State public health directives; and

**WHEREAS** COVID-19 continues to menace public health throughout California; and

**WHEREAS** the extent to which COVID-19 menaces public health throughout California is expected to continue to evolve, and may vary from place to place within the State; and

**WHEREAS** California law promotes the preservation of public health by providing for local health officers—appointed by county boards of supervisors and other local authorities—in addition to providing for statewide authority by a State Public Health Officer; and

**WHEREAS** these local health officers, working in consultation with county boards of supervisors and other local authorities, are well positioned to understand the local needs of their communities; and

**WHEREAS** local governments are encouraged to coordinate with federally recognized California tribes located within or immediately adjacent to the external geographical boundaries of such local government jurisdiction; and

**WHEREAS** the global COVID-19 pandemic threatens the entire State, and coordination between state and local public health officials is therefore, and will continue to be, necessary to curb the spread of COVID-19 throughout the State; and

**WHEREAS** State public health officials have worked, and will continue to work, in consultation with their federal, state, and tribal government partners; and

**WHEREAS** the State Public Health Officer has articulated a four-stage framework—which includes provisions for the reopening of lower-risk businesses and spaces (“Stage Two”), to be followed by the reopening of higher-risk businesses and spaces (“Stage Three”)—to allow Californians to gradually resume various activities while continuing to preserve public health in the face of COVID-19; and



**WHEREAS** the threat posed by COVID-19 is dynamic and ever-changing, and the State's response to COVID-19 (including implementation of the four-stage framework) should likewise retain the ability to be dynamic and flexible; and

**WHEREAS** to preserve this flexibility, and under the provisions of Government Code section 8571, I find that strict compliance with the Administrative Procedure Act, Government Code section 11340 et seq., would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, 8627, and 8665; and also in accordance with the authority vested in the State Public Health Officer by the laws of the State of California, including but not limited to Health and Safety Code sections 120125, 120130, 120135, 120140, 120145, 120150, 120175, and 131080; do hereby issue the following Order to become effective immediately:

**IT IS HEREBY ORDERED THAT:**

- 1) All residents are directed to continue to obey State public health directives, as made available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide.
- 2) As the State moves to allow reopening of lower-risk businesses and spaces ("Stage Two"), and then to allow reopening of higher-risk businesses and spaces ("Stage Three"), the State Public Health Officer is directed to establish criteria and procedures—as set forth in this Paragraph 2—to determine whether and how particular local jurisdictions may implement public health measures that depart from the statewide directives of the State Public Health Officer.

In particular, the State Public Health Officer is directed to establish criteria to determine whether and how, in light of the extent to which the public health is menaced by COVID-19 from place to place within the State, local health officers may (during the relevant stages of reopening) issue directives to establish and implement public health measures less restrictive than any public health measures implemented on a statewide basis pursuant to the statewide directives of the State Public Health Officer.

The State Public Health Officer is further directed to establish procedures through which local health officers may (during the relevant stages of reopening) certify that, if their respective jurisdictions are subject to proposed public health measures (which they shall specify to the extent such specification may be required by the State Public Health Officer) that are less restrictive than public health measures implemented on a statewide basis pursuant to the statewide directives of the State Public Health Officer, the public health will not be menaced. The State Public Health Officer shall additionally establish procedures to permit, in a manner consistent with public health and



safety, local health officers who submit such certifications to establish and implement such less restrictive public health measures within their respective jurisdictions.

The State Public Health Officer may, from time to time and as she deems necessary to respond to the dynamic threat posed by COVID-19, revise the criteria and procedures set forth in this Paragraph 2. Nothing related to the establishment or implementation of such criteria or procedures, or any other aspect of this Order, shall be subject to the Administrative Procedure Act, Government Code section 11340 et seq. Nothing in this Paragraph 2 shall limit the authority of the State Public Health Officer to take any action she deems necessary to protect public health in the face of the threat posed by COVID-19, including (but not limited to) any necessary revision to the four-stage framework previously articulated by the State Public Health Officer.

- 3) Nothing in this Order shall be construed to limit the existing authority of local health officers to establish and implement public health measures within their respective jurisdictions that are more restrictive than, or that otherwise exist in addition to, the public health measures imposed on a statewide basis pursuant to the statewide directives of the State Public Health Officer.

**IT IS FURTHER ORDERED** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of May 2020.



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

EXHIBIT “8”



SANDRA SHEWRY, MPH, MSW  
Acting Director

State of California—Health and Human Services Agency  
California Department of Public Health



GAVIN NEWSOM  
Governor

**Statewide Public Health Officer Order,  
August 28, 2020**

On March 19, 2020, the State Public Health Officer issued an order directing all individuals living in the State of California to stay at home except as needed to facilitate authorized activities or to maintain the continuity of operations of critical infrastructure sectors. (See [March 19, 2020 Order](#).) The scope of activities authorized under this order was subsequently modified in additional state public health directives. Then, consistent with Executive Order N-60-20, the State Public Health Officer set out California's path forward from this "Stay-at-Home" Order in California's [Pandemic Resilience Roadmap](#). That Roadmap identified four stages of the pandemic: safety and preparation (Stage 1), reopening of lower-risk workplaces and other spaces (Stage 2), reopening of higher-risk workplaces and other spaces (Stage 3), and finally an easing of final restrictions leading to the end of the stay-at-home order (Stage 4). On July 13, 2020, in response to a significant increase in the spread of COVID-19, the State Public Health Officer ordered the statewide closure of operations in certain high-risk sectors. (See [July 13, 2020 Order](#).) Counties on the County Monitoring List for three consecutive days were also required to close additional indoor operations for certain sectors in order to further slow community transmission.

Community spread of infection remains a significant concern across the state. In addition to the impact on the general population, community spread increases the likelihood of expanded transmission of COVID-19 in congregate settings such as nursing homes, homeless shelters, jails and prisons. Infection of vulnerable populations in these settings can be catastrophic. Higher levels of community spread also increase the likelihood of infection among individuals at higher risk of serious outcomes from COVID-19, including the elderly and those with underlying health conditions who might live or otherwise interact with an infected individual. COVID-19 infection is also disproportionately impacting our essential workforce. The anticipated influenza season is likely to impose additional burdens on the healthcare delivery system, increasing demand for space, supplies, and personnel.

The COVID-19 pandemic continues to evolve, and CDPH is continually monitoring new scientific evidence and improving its understanding of the disease. Based on the current state of the pandemic in California and current scientific understanding of transmission, it is my judgment that it is appropriate to further refine the approach in order to gradually reopen businesses and activities while reducing the risk of increased community spread. A targeted system for sector reopenings which considers both current epidemiological conditions and the latest understanding of transmission risk in certain



sectors will allow CDPH to monitor both counties and sectors for evidence of increased epidemiological risk and will reduce risk as California continues to reopen its economy and protect public health. [California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe](#) sets forth in detail the basis for the new Framework.

**NOW, THEREFORE, I, as Acting State Public Health Officer of the State of California, order all of the following:**

1. The updated framework for reopening, which shall be known as California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe, will rely on a set of Tiers corresponding to specific epidemiological profiles based on indicators of disease burden including case rates per capita and percent of positive covid-19 tests and proportion of testing and other covid-19 response efforts addressing the most impacted populations within a county. For each progressive Tier, this framework will permit a broader range of reopening guided by risk-based criteria pertinent to each sector. I may modify the epidemiological criteria for each Tier as well as the sectors, businesses, establishments, or activities within the Tiers as necessary based on the latest available public health information and research to protect public health and safety. The up-to-date Tier profiles and those sectors, businesses, establishments, or activities that are permitted to open in each Tier will be posted (along with necessary modifications), at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx>.
2. Pursuant to this framework, all local health jurisdictions in the state may reopen specified sectors according to their respective county's Tier. However, a local health jurisdiction that moves to a Tier permitting further reopening must pause for 21 days, or a different period that I identify, before reopening additional sectors.
3. Conversely, a local health jurisdiction must also close sectors according to their respective county's Tier consistent with the timeline and procedures set forth in California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.
4. A local health jurisdiction may continue to implement or maintain more restrictive public health measures if the jurisdiction's Local Health Officer determines that health conditions in that jurisdiction warrant such measures.

## Terms of Orders

5. This order shall go into effect August 31, 2020 and shall supersede the July 13, 2020 State Public Health Officer Order.
6. This order shall remain in effect until I determine it is appropriate to modify the order based on public health conditions.
7. I will continue to monitor the epidemiological data and will modify California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe as required by the evolving public health conditions. If I determine that it is necessary to change what will reopen or close, or otherwise modify the Plan, these modifications will be posted at [California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe](#).
8. Except to the extent this order or other state public health directives expressly provide otherwise, all CDPH guidance continues to apply statewide.
9. All references in CDPH or other State guidance to the County Monitoring List or the County Data Monitoring List shall refer to those counties falling within Tier 1 of California's Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.
10. This order is issued pursuant to Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120150, 120175, 120195 and 131080; EO N-60-20, N-25-20, and other authority provided for under the Emergency Services Act; and other applicable law.



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Erica S. Pan, MD, MPH  
Acting State Public Health Officer  
California Department of Public Health

EXHIBIT “9”





State of California—Health and Human  
Services Agency  
**California Department of  
Public Health**



November 13, 2020

**TO:** All Californians

**SUBJECT:** CDPH Guidance for the Prevention of COVID-19 Transmission for Gatherings

## Summary

This guidance provides an updated plan for Californians to gather outside their household and replaces the March 16, 2020, October 9, 2020 and other prior gatherings guidance. It applies to private gatherings, and all other gatherings not covered by existing sector guidance are prohibited. It also applies to activities protected by the First Amendment to the extent that they are not already permitted by other guidance, notwithstanding any guidance, orders, or directives to the contrary. Gatherings are defined as social situations that bring together people from different households at the same time in a single space or place. When people from different households mix, this increases the risk of transmission of COVID-19.

## Context

COVID-19 continues to pose a severe risk to communities and requires all people in California to follow necessary precautions and to adapt the way they live and function in light of this ongoing risk. The safest way to gather is to spend time with people in the same household, gather virtually, or gather outdoors.

The season of cold weather has now arrived in many parts of the state, and rainy season is imminent, making it more difficult to gather outdoors. Because of this, many people in California may feel the need to gather indoors instead. Indoor gatherings remain risky activities, and it would always be safer to gather outdoors or virtually whenever possible. But this guidance explains some important and necessary steps to make indoor gatherings less risky if they do occur.

In general, the more people from different households a person interacts with at a gathering, the closer the physical interaction is, and the longer the interaction lasts, the higher the risk that a person with a COVID-19 infection, symptomatic or asymptomatic, may spread it to others. Public health studies have also shown that the risk of transmission is increased in indoor spaces, particularly when there isn't appropriate ventilation. [1] Unlike indoor spaces, wind and air in outdoor spaces can help reduce spread of the virus from one person to another.

Planning scenarios published by the CDC estimate that, on average, a person with COVID-19 goes on to infect between 2-4 people, with a best estimate of 2.5 when there are no preventive measures.[2] For example, if each infected person spreads the virus to two people, who in turn spread it to two others each; those four will spread the virus to eight others; those eight will spread the virus to 16; and so on. As a result, after 10 transmission cycles, one person could be responsible for 1,024 other people contracting the virus.[3] Additionally, there is broad agreement that people who are not experiencing symptoms can still spread COVID-19[4].The fact that COVID-19

can be spread by people who don't have symptoms or aren't showing symptoms yet is one of the aspects of the COVID-19 that makes it difficult to control.

All gatherings pose a higher risk of transmission and spread of COVID-19 when people mix from different households and communities. The likelihood of transmission and spread increases with laughing, singing, loud talking and difficulty maintaining physical distance. Limiting attendance at gatherings is a way to reduce the risk of spread as it lowers the number of different people who are interacting. Additionally, by limiting attendance there is an improved ability to perform effective contact tracing if there is a positive case discovered, which can help to slow the spread of COVID-19[5]. People who do choose to attend gatherings should discuss and agree upon the specific group rules before convening together.

Like other types of activities, activities protected by the First Amendment pose risks of COVID-19 transmission. People who wish to engage in political, artistic, or other forms of expression or in religious expression and practice are strongly encouraged to find means of expression that do not involve in-person gatherings or to wait to gather in person until those activities are permitted by the Blueprint for a Safer Economy. However, because this guidance offers safer ways to operate in the colder climate, with higher likelihood of rain, associated with the time of year we now enter, the safeguards in this guidance apply as well to activities protected by the First Amendment and those activities are not prohibited if conducted in accordance with this guidance.

## **Recommendations & Mandatory Requirements for All Gatherings**

All persons planning to host or participate in a private gathering, as defined above, must comply with the requirements identified below and are strongly encouraged to follow the recommendations as well. Activities protected by the First Amendment may proceed under this guidance notwithstanding any guidance, orders, or directives to the contrary. Local health jurisdictions may be more restrictive than this guidance. Refer to your local guidance for what is allowed in your area.

### **1. Attendance**

- a. Gatherings that include more than 3 households are prohibited. This includes everyone present, including hosts and guests. Remember, the smaller the number of people, the safer.
- b. Keep the households that you interact with stable over time. By spending time with the same people, risk of transmission is reduced. Participating in multiple gatherings with different households or groups is strongly discouraged.
- c. The host should collect names of all attendees and contact information in case contact tracing is needed later.

### **2. Location: Gatherings Must be Outdoors for Counties in the Purple Tier**

- a. Gatherings that occur outdoors are significantly safer than indoor gatherings. All gatherings must be held outside in the Purple Tier, and indoor gatherings are strongly discouraged in Red, Orange and Yellow Tiers.
  - i. If gathering indoors, increase fresh air circulation by opening windows or doors, as much as possible, especially in the rooms where people are gathering.
- b. A gathering of no more than three households is permitted in a public park or other outdoor space, even if unrelated gatherings of other groups up to three households are also occurring in the same park or other outdoor

space. If multiple such gatherings are occurring, mixing between groups gatherings is not allowed. Additionally, multiple gatherings of three households cannot be jointly organized or coordinated to occur in the same public park or other outdoor space at the same time – this would constitute a gathering exceeding the permitted household limits.

### **3. Don't Attend Gatherings If You Feel Sick**

a. Anyone with any COVID-19-like symptoms (fever, cough, shortness of breath, chills, night sweats, sore throat, nausea, vomiting, diarrhea, tiredness, muscle or body aches, headaches, confusion, or loss of sense of taste/smell), must stay home and not come into contact with anyone outside their household.

b. Anyone who develops COVID-19 within 48 hours after attending a gathering should notify the organizer of the gathering and/or other attendees as soon as possible regarding the potential exposure.

### **4. Individuals in a High-Risk Group are Discouraged from Attending any Gatherings**

a. People at higher risk of severe illness or death from COVID-19 (such as older adults and people with chronic medical conditions) are strongly urged not to attend any gatherings, especially indoor gatherings.

b. If higher-risk individuals do attend any gatherings, they should do the following to decrease the risk for exposure:

i. Spend as much time outside, or near outside air flow such as open windows or doors, as possible.

ii. Wear a respirator or surgical mask instead of a cloth mask, and minimize any time at the event with the mask off.

iii. Remain at least six feet, or ideally even farther away, from others outside their household as much as possible, especially when people are eating or drinking without face coverings.

iv. Spend a shorter time at the gathering than others to reduce potential exposure.

### **5. Practice Physical Distancing and Hand Hygiene at Gatherings**

a. For any gatherings permitted under this guidance, the space must be large enough so that everyone at a gathering can maintain at least a 6-foot physical distance from others (not including their own household) at all times.

b. Seating must provide at least 6 feet of distance (in all directions—front-to-back and side-to-side) between different households.

c. Everyone at a gathering should frequently wash their hands with soap and water, or use hand sanitizer if soap and water are not available.

d. Shared items should be minimized during a gathering. Food and beverages should be served by a person who washes or sanitizes their hands frequently, and who must wear a face covering. Self-serve items from communal containers should be minimized.

e. Remind all persons to sanitize hands before eating or drinking, and after touching shared items if shared items are unavoidable.

## **6. Wear a Face Covering to Keep COVID-19 from Spreading**

a. When gathering, face coverings must be worn in accordance with the CDPH Guidance on the Use of Face Coverings, unless an exemption is applicable.

b. People at gatherings are advised to limit removal of their face coverings to when they are actively eating or drinking. While face coverings are removed for this purpose, they should stay at least 6 feet away from everyone outside their own household, and put their face covering back on as soon as they are done with the activity.

c. Face coverings can also be removed to meet urgent medical needs (for example, to use an asthma inhaler, take medication, or if feeling light-headed).

## **7. Keep it short**

a. Gatherings should be two hours or less. The longer the duration, the risk of transmission increases.

## **8. Singing, Chanting, Shouting, Cheering and Similar Activities Are Strongly Discouraged at Outdoor Gatherings and Prohibited at Indoor Gatherings**

a. Singing, chanting, shouting, cheering, physical exertion, and similar activities significantly increase the risk of COVID-19 transmission because these activities increase the release of respiratory droplets and fine aerosols into the air. Because of this, singing, chanting, shouting, cheering, and similar activities are strongly discouraged in outdoor settings, but if they occur, the following rules and recommendations apply:

i. All people who are singing, chanting, shouting, cheering, or engaging in similar activities should wear a face covering at all times while engaging in those activities, including anyone who is leading a song, chant, or cheer. Because these activities pose a very high risk of COVID-19 transmission, face coverings are essential to reduce the spread of respiratory droplets and fine aerosols;

ii. People who are singing, shouting, chanting, cheering, or exercising are strongly encouraged to maintain physical distancing beyond 6 feet to further reduce risk.

iii. People who are singing or chanting are strongly encouraged to do so quietly (at or below the volume of a normal speaking voice).

b. Instrumental music is allowed outdoors as long as the musicians maintain at least 6-foot physical distancing. Musicians must be from one of the three households. Playing of wind instruments (any instrument played by the mouth, such as a trumpet or clarinet) is strongly discouraged, and if played should use protective or tightly woven cloth barriers on the instrument bells or at the end of the instrument to protect from spread of condensation droplets. If music is played, it is recommended that the volume be quiet enough that attendees can speak in a normal voice without shouting.

c. Singing, chanting, shouting, cheering, playing of wind instruments and similar activities are not permitted in indoor gatherings.

[1] See, e.g., Hiroshi Nishiura, et al., Closed environments facilitate secondary transmission of coronavirus disease 2019 (COVID-19); Hu Qian, et al., “Indoor transmission of SARS-CoV-2” [pre-print] published in medRxiv on April 4, 2020.

[2] See Planning Scenarios.

[3] See, e.g., Report 3: Natsuko Imai et al, WHO Collaborating Centre for Infectious Disease Modelling, MRC Centre for Global Infectious Disease Analysis, J-IDEA, “Imperial college London, UK. Transmissibility of 2019 -n-CoV).” See also Inglesby T B JAMA Public Health Measures and the Reproduction Number of SARS-CoV-2. JAMA Network.2020.7878 (May 1, 2020).

[4] Transmission of SARS-CoV-2: implications for infection prevention precautions.

[5] See Preventing the Spread of the Coronavirus

California Department of Public Health  
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377  
Department Website (cdph.ca.gov)



Page Last Updated : November 13, 2020

EXHIBIT “10”



State of California—Health and Human Services Agency  
**California Department of Public Health**



November 19, 2020

**TO:** All Californians

**SUBJECT:** Limited Stay At Home Order

Upon assessment of the recent, unprecedented rate of rise in increase in COVID-19 cases across California, the California Department of Public Health (CDPH) is taking immediate actions to prevent the spread of the virus. These immediate actions will help reduce community spread, protect individuals at higher risk of severe illness or death from COVID-19, and prevent the state's health care delivery system from becoming overwhelmed. Reducing movement and mixing of individual Californians is critical to decreasing transmission, hospitalizations, and deaths.

Therefore, as the State Public Health Officer, I am issuing a Limited Stay at Home order, effective in counties under Tier One (Purple) of California's Blueprint for a Safer Economy, requiring that all gatherings with members of other households and all activities conducted outside the residence, lodging, or temporary accommodation with members of other households cease between 10:00pm PST and 5:00am PST, except for those activities associated with the operation, maintenance, or usage of critical infrastructure[1] or required by law. This order does not apply to persons experiencing homelessness. Nothing in this order prevents any number of persons from the same household from leaving their residence, lodging, or temporary accommodation, as long as they do not engage in any interaction with (or otherwise gather with) any number of persons from any other household, except as specifically permitted herein.

This Limited Stay at Home Order will reduce opportunities for disease transmission with the goal of decreasing the number of hours individuals are in the community and mixing with individuals outside of their household. Every intervention to decrease mixing of households is critical during this unparalleled increase in case rate rise of about 50 percent during the first week in November. In particular, activities conducted during 10:00pm to 5:00am are often non-essential and more likely related to social activities and gatherings that have a higher likelihood of leading to reduced inhibition and reduced likelihood to adhere to COVID-19 preventive measures (e.g., wearing face coverings and maintaining physical distance).

This order shall take effect on November 21, 2020, at 10:00pm PST.

For counties that move into Tier One (Purple) after the effective date of this Order, the terms of this Order shall apply at 10:00pm PST on day two after the county is assigned to Tier One (Purple). For the purpose of counting days, day one shall be the first full day following the date of the tier assignment.

This order remains in effect until 5:00am PST on December 21, 2020, and may be extended or revised as needed.

This order is issued pursuant to Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120175, 120195 and 131080; EO N-60-20, N-25-20, and other authority provided for under the Emergency Services Act; and other applicable law.

Erica S. Pan, MD, MPH  
Acting State Public Health Officer  
California Department of Public Health

[1] See the [COVID19.ca.gov Essential Workforce](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID19/EssentialWorkforce.aspx) web page for full list of California's Critical Infrastructure workforce.

California Department of Public Health  
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377  
Department Website ([cdph.ca.gov](https://cdph.ca.gov))



EXHIBIT “11”





**Sandra Shewry**  
*Acting Director*  
**Erica S. Pan, MD, MPH**  
*Acting State Health Officer*

State of California—Health and Human  
Services Agency  
**California Department of  
Public Health**



**GAVIN NEWSOM**  
*Governor*

December 3, 2020

**TO:** All Californians

**SUBJECT:** Regional Stay at Home Order

Upon assessment of the recent, unprecedented rise in the rate of increase in COVID-19 cases, hospitalizations, and test positivity rates across California, the California Department of Public Health (CDPH) is taking immediate actions to prevent the spread of the virus.

The State, like the nation, continues to record an unprecedented surge in the level of community spread of COVID-19. California implemented an accelerated application of the Blueprint Framework metrics on November 16 and a limited Stay at Home Order issued on November 19. However, in the interim, the number of new cases per day has increased by over 112%, (from 8,743 to 18,588) and the rate of rise of new cases per day continues to increase dramatically. The number of new hospital admissions has increased from 777 on November 15, to 1,651 on December 2, and because of the lag between case identification and hospitalizations, we can only expect these numbers to increase.

Current projections show that without additional intervention to slow the spread of COVID-19, the number of available adult Intensive Care Unit (ICU) beds in the State of California will be at capacity in mid-December. This is a sign that the rate of rise in cases, if it continues, is at risk of overwhelming the ability of California hospitals to deliver healthcare to its residents suffering from COVID-19 and from other illnesses requiring hospital care. ICU beds are a critical resource for individuals who need the most advanced support and care and the ability to add additional ICU capacity is limited by the lack of available ICU nurses and physicians as a result of the nationwide surge in hospitalizations and ICU admissions.

Because the rate of increases in new cases continues to escalate and threatens to overwhelm the state's hospital system, further aggressive action is necessary to respond to the quickly evolving situation. While vaccines are promising future interventions, they are not available to address the immediate risks to healthcare delivery in the current surge. The immediate aggressive institution of additional non-pharmaceutical public health interventions is critical to avoid further overwhelming hospitals and to prevent the need to ration care.

## **NOW, THEREFORE, I, as Acting State Public Health Officer of the State of California, order:**

1. CDPH will evaluate public health based on Regions, responsive to hospital capacity for persons resident in those Regions.
2. CDPH will evaluate the adult ICU bed capacity for each Region and identify on [covid19.ca.gov](https://covid19.ca.gov) any Regions for which that capacity is less than 15%. When that capacity is less than 15%, the following terms (the Terms of this Order) will apply.
  - a. All gatherings with members of other households are prohibited in the Region except as expressly permitted herein.
  - b. All individuals living in the Region shall stay home or at their place of residence except as necessary to conduct activities associated with the operation, maintenance, or usage of critical infrastructure,<sup>1</sup> as required by law, or as specifically permitted in this order.
  - c. Worship and political expression are permitted outdoors, consistent with existing guidance for those activities.
  - d. Critical infrastructure sectors may operate and must continue to modify operations pursuant to the applicable sector guidance.
  - e. Guidance related to schools remain in effect and unchanged. Accordingly, when this Order takes effect in a Region, schools that have previously reopened for in-person instruction may remain open, and schools may continue to bring students back for in-person instruction under the Elementary School Waiver Process or Cohorting Guidance.
  - f. In order to reduce congestion and the resulting increase in risk of transmission of COVID-19 in critical infrastructure retailers, all retailers may operate indoors at no more than 20% capacity and must follow the guidance for retailers. All access to retail must be strictly metered to ensure compliance with the limit on capacity. The sale of food, beverages, and alcohol for in- store consumption is prohibited.

g. To promote and protect the physical and mental well-being of people in California, outdoor recreation facilities may continue to operate. Those facilities may not sell food or drink for on-site consumption. Overnight stays at campgrounds are not permitted.

h. Nothing in this Order prevents any number of persons from the same household from leaving their residence, lodging, or temporary accommodation, as long as they do not engage in any interaction with (or otherwise gather with) any number of persons from any other household, except as specifically permitted herein.

i. Terms (a) and (b) of this section do not apply to persons experiencing homelessness.

3. Except as otherwise required by law, no hotel or lodging entity in California shall accept or honor out of state reservations for non-essential travel, unless the reservation is for at least the minimum time period required for quarantine and the persons identified in the reservation will quarantine in the hotel or lodging entity until after that time period has expired.

4. This order shall take effect on December 5, 2020 at 1259pm PST.

5. For Regions where the adult ICU bed capacity falls below 15% after the effective date of this order, the Terms of this Order shall take effect 24 hours after that assessment.

6. The Terms of this Order shall remain in place for at least three weeks from the date the order takes effect in a Region and shall continue until CDPH's four-week projections of the Region's total available adult ICU bed capacity is greater than or equal to 15%. Four-week adult ICU bed capacity projections will be made approximately twice a week, unless CDPH determines that public health conditions merit an alternate projection schedule. If after three weeks from the effective date of the Terms of this Order in a Region, CDPH's four-week projections of the Region's total available adult ICU bed capacity is greater than or equal to 15%, the Terms of this Order shall no longer apply to the Region

7. After the termination of the Terms of this Order in a Region, each county within the Region will be assigned to a tier based on the Blueprint for a Safer Economy as set out in my August 28, 2020 Order, and the County is subject to the restrictions of the Blueprint appropriate to that tier.

8. I will continue to monitor the epidemiological data and will modify this Regional Stay-at-Home Order as required by the evolving public health conditions. If I determine that it is necessary to change the Terms of this Order, or otherwise modify the Regional Stay-at-Home Order, these modifications will be posted at [covid19.ca.gov](https://covid19.ca.gov).

9. When operative in a Region, the Terms of this Order supersede any conflicting terms in other CDPH orders, directives, or guidance. Specifically, for those Regions with ICU bed capacity triggering this order, the Terms of this Order shall supersede the State's Blueprint for a Safer Economy and all guidance (other than guidance for critical infrastructure sectors) during the operative period. In all Regions that are not subject to the restrictions in this order, the Blueprint for a Safer Economy and all guidance shall remain in effect.

10. This order is issued pursuant to Health and Safety Code sections 120125, 120130(c), 120135, 120140, 120145, 120175, 120195 and 131080; EO N-60-20, N-25-20, and other authority provided for under the Emergency Services Act; and other applicable law.



Erica S. Pan, MD, MPH

Acting State Public Health Officer

California Department of Public Health

California Department of Public Health  
PO Box, 997377, MS 0500, Sacramento, CA 95899-7377  
Department Website ([cdph.ca.gov](https://cdph.ca.gov))



Page Last Updated : December 4, 2020

**S266106**

**S**\_\_\_\_\_

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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**COUNTY OF SAN BERNARDINO; and JOSIE GONZALES, an  
individual**

*Petitioners,*

vs.

**GAVIN NEWSOM, in his official capacity as Governor of California,  
ERICA PAN, M.D., in her official capacity as Acting Public Health  
Officer of the State of California, SANDRA SHEWRY, in her official  
capacity as the State Public Health Officer and Department of Public  
Health Director**

*Respondents.*

---

**DECLARATION OF MATTHEW ERICKSON IN SUPPORT OF  
VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE  
IN THE FIRST INSTANCE  
IMMEDIATE RELIEF REQUESTED  
NO LATER THAN DECEMBER \_\_, 2020  
(*Palma Notice Requested*)**

---

**TYLER & BURSCH, LLP**

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25026 Las Brisas Road

Murrieta, California 92562

Tel: (951) 600-2733

Fax: (951) 600-4996

Attorneys for *Petitioners*

I, MATTHEWRICKSON, the undersigned declare as follows:

1. I am the Chief Financial Officer for the County of San Bernardino ("County"). I have held this position since I was appointed in 2018. I make the following declaration based on my own personal knowledge and if called to testify as a witness I could and would testify competently thereto.

2. I make this declaration in support of the County's Verified Petition For Peremptory Writ of Mandate in the First Instance.

3. My office is responsible for developing and overseeing the County budget, providing financial forecasts, tracking legislation and State and Federal mandates and actions to determine the overall impact to County finances. My office has handled the administration of the Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act Coronavirus Relief Funds that were allocated to the County since adoption of the Act. Since the beginning of the pandemic, the County has received \$430,587,509 in Coronavirus Relief Funds, with \$380,408,021 directly allocated by the Federal Government and \$50,179,488 passed through from the State of California Department of Finance. Of that amount \$118,161,713 was set aside for potential use by cities and other local agencies, including school districts, private hospitals, non-profits and fire agencies; \$30,000,000 was allocated by the Board of Supervisors to be utilized by small businesses, all to help combat COVID-19 and its impacts. The funds are to be used for eligible activities and expenditures pursuant to the Act to help protect the public from the spread of the Coronavirus.

4. The County's direct pandemic response costs on top of assistance to cities and local agencies have been extensive and are currently projected to total approximately \$300 million from March 1, 2020 through December 30, 2020 (the eligibility period for which expenditures can be funded with CARES Act Coronavirus Relief Funds). In addition to

significant costs incurred by the County's Detention centers to ensure safety and social distancing, over \$110.0 million in COVID-related expenditures have been reported by our Arrowhead Regional Medical Center (through September 2020), the County Fire Agency (through November 2020) and Inland Counties Emergency Medical Agency (through November 2020). Excluding the most recent peaks in demand for COVID-19 testing, the County has already spent an estimated \$18.4 million through September 2020 by acquiring testing kits, setting up and running testing sites and personnel costs. Testing costs are projected to drastically escalate as the County has entered the holiday season and the County is now projecting between \$6.3 million to \$13.2 million per month for testing, which will continue into the foreseeable future. In addition to testing costs, the County will be required to continue numerous pandemic response efforts well beyond the expiration date of available CARES Act funds. Costs associated with personnel for vaccinations, extending surge capacity for hospitals, Personal Protective Equipment purchases, and numerous other emergency response needs, has the County preparing to pay for an estimated \$21.5 million in monthly pandemic-related response costs without the availability of federal stimulus dollars past December 30, 2020.

5. As of November 25, 2020, small business revenue within the County has decreased by 17.9% compared to January 2020. Additionally, during that same timeframe the number of small businesses open has decreased by 27% in the County (data compiled by the Opportunity Insights Economic Tracker website). The small business closures, and the corresponding loss of jobs, could negatively impact the County's economic future for many years.

6. There is an extreme amount of uncertainty related to the County's sales tax receipts. Sales tax generating industries have been greatly impacted by the ongoing pandemic and the Governor's stay at home orders



issued on March 19 and December 3, 2020. Although losses have not been as pronounced as many have anticipated, a State Legislative Analyst Office report published November 2020 projects that sales tax will not recover to 2018-19 levels until 2023-24. The issuance of the second of the Governor's stay at home orders with the restrictions on businesses already suffering revenue losses, particularly during the holiday season, may have more of a significant adverse effect on the County's revenue sources.

7. Once the CARES Act funding ends, to the extent expenditures are still needed to combat COVID-19 and its impacts, the County may be required to use County General Fund monies to pay for costs that were previously reimbursed from the Federal and State funds. The testing costs described in Paragraph 4 are one example of the significant costs the County would be forced to assume with potentially no other source of reimbursement. Any decrease in County revenues could have a detrimental impact on the ability to use General Fund monies to pay for such expenditures.

8. I am aware that the State has threatened to withhold State funding from local governments that do not follow State orders relating to COVID. According to the Associated Press, the Governor did withhold funds from the City of Atwater and the City of Coalinga as a result of Atwater declaring itself a "Sanctuary City" for businesses and Coalinga adopting a resolution declaring all businesses essential. In addition, the Governor recently stated that enforcement of his December 3 order would be handled by local authorities but that uncooperative counties would be penalized financially (<https://policetribune.com/gov-newsom-is-pulling-funding-from-counties-which-dont-enforce-his-orders/> (December 4, 2020)) If this were to occur with respect to the County, we could be forced to use other County monies to cover COVID and other costs.



9. The State's Legislative Analyst Office is currently projecting State Operating deficits of approximately \$17 billion by 2024-25 largely due to tepid revenue growth and increased safety net program costs resulting from the pandemic. If the State chooses to address budget deficits through reductions in county funding for mandated services, the County could be faced with additional operating deficits for years to come.

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 14, 2020 at San Bernardino, California.

  
\_\_\_\_\_  
MATTHEW ERICKSON

### **CERTIFICATE OF SERVICE**

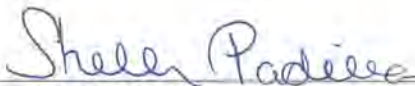
I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On December 14, 2020, I served a copy of the following document(s) described as:

- **DECLARATION OF MATTHEW ERICKSON IN SUPPORT OF VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE IN THE FIRST INSTANCE**

on the interested party(ies) in this action by-email or electronic service [C.C.P. Section 1010.6; CRC 2.250-2.261]. The documents listed above were transmitted via e-mail to the e-mail addresses on the attached service list.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.

  
Shelly M. Padilla

## **SERVICE LIST**

Governor Gavin Newsom  
1303 10<sup>th</sup> Street, Ste. 1173  
Sacramento, CA 95814  
(916) 445-2841  
Email: [ServiceofProcess@gov.ca.gov](mailto:ServiceofProcess@gov.ca.gov)

Respondent

Sandra Shewry  
Email: [ServiceofProcess@gov.ca.gov](mailto:ServiceofProcess@gov.ca.gov)

Respondent

Erica Pan, M.D.  
Email: [ServiceofProcess@gov.ca.gov](mailto:ServiceofProcess@gov.ca.gov)

Respondent

California Office of the Attorney  
General  
Xavier Becerra, Attorney General  
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Attorney for Respondents

**S266106**

**S**\_\_\_\_\_

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

---

**COUNTY OF SAN BERNARDINO; and JOSIE GONZALES, an  
individual**

*Petitioners,*

vs.

**GAVIN NEWSOM, in his official capacity as Governor of California,  
ERICA PAN, M.D., in her official capacity as Acting Public Health  
Officer of the State of California, SANDRA SHEWRY, in her official  
capacity as the State Public Health Officer and Department of Public  
Health Director**

*Respondents.*

---

**DECLARATION OF CURT HAGMAN IN SUPPORT OF  
VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE  
IN THE FIRST INSTANCE  
IMMEDIATE RELIEF REQUESTED  
NO LATER THAN DECEMBER \_\_, 2020  
(*Palma Notice Requested*)**

---

**TYLER & BURSCH, LLP**

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Nathan R. Klein (State Bar No. 306268)

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25026 Las Brisas Road

Murrieta, California 92562

Tel: (951) 600-2733

Fax: (951) 600-4996

Attorneys for *Petitioners*

I, CURT HAGMAN, the undersigned, declare as follows:

1. I am the Supervisor for the 4th Supervisorial District for the County of San Bernardino (the "County") and currently serve as the Chairman of the Board of Supervisors. I have held the position of Supervisor since I was elected in 2014 and have served as the Chairman since being selected to serve in this capacity in January 2019. I make the following declaration based on my own personal knowledge and if called to testify as a witness I could and would testify competently thereto.

2. I make this declaration in support of the County's Verified Petition For Peremptory Writ of Mandate In the First Instance.

3. The County recognizes the dire threat that COVID-19 poses to its residents. The County has been proactive in coming up with creative solutions to slow the spread of COVID-19. The changing guidelines from the State have stretched the County's resources thin. It is becoming increasingly difficult for the County to manage compliance with the State's shelter-in-place orders, including the recent December 5, 2020 regional lockdown, and continue to perform its normal legal obligations to its residents.

4. The County is the largest county within the contiguous United States of America by land mass. It is approximately 20,000 square miles and it larger than about six states. Geographically the County consists of different areas such as the mountains, high desert, central valley and eastern desert and ranges from urban environment to sparsely populated areas. The County desires the authority to manage the pandemic at a micro level in order to serve the various needs of the different areas. Those residents within the sparsely populated, remote minimal risk communities are impacted by the ICU numbers from cities and counties that are hundreds of miles away.

5. Similarly, there appears to be no rational basis to treat the entire Southern California region as a single entity. The eastern parts of this County

are up to 300 miles from downtown Los Angeles or San Diego, 380 miles from Santa Barbara, and 450 miles from San Luis Obispo, all of which are areas that impact whether the December 5, 2020 orders require this County to shelter-in-place for three weeks.

6. The County had previously sought support from the State to create regions within its own borders instead of treating the entire County as a single entity. The State denied the County's request. The County does not wish to treat those living within remote communities where the COVID-19 is relatively low the same as those residents living in one of the metropolitan cities that are experiencing outbreaks at heightened levels. It does not make fiscal sense to use County resources to ensure compliance within communities such as Lake Havasu or Desert Heights. Yet, under the State's orders, the County is charged with ensuring that residents within low-risk areas are complying with the shelter-in-place orders. As a consequence, the State's orders are putting unnecessary strain on the County. The County is in a better position to manage its resources and develop appropriate orders and regulations for its diverse populations within its own borders than the State.

7. Accordingly, the County desires to restore local authority to allow a more tailored and measured response to the current outbreak.

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 14, 2020 at San Bernardino, California.

  
CURT HAGMAN

## **CERTIFICATE OF SERVICE**


I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On December 14, 2020, I served a copy of the following document(s) described as:

- **DECLARATION OF CURT HAGMAN IN SUPPORT OF VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE IN THE FIRST INSTANCE**

on the interested party(ies) in this action by-email or electronic service [C.C.P. Section 1010.6; CRC 2.250-2.261]. The documents listed above were transmitted via e-mail to the e-mail addresses on the attached service list.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.

  
\_\_\_\_\_  
Shelly M. Padilla

## **SERVICE LIST**

Governor Gavin Newsom  
1303 10<sup>th</sup> Street, Ste. 1173  
Sacramento, CA 95814  
(916) 445-2841  
Email: [ServiceofProcess@gov.ca.gov](mailto:ServiceofProcess@gov.ca.gov)

Respondent

Sandra Shewry  
Email: [ServiceofProcess@gov.ca.gov](mailto:ServiceofProcess@gov.ca.gov)

Respondent

Erica Pan, M.D.  
Email: [ServiceofProcess@gov.ca.gov](mailto:ServiceofProcess@gov.ca.gov)

Respondent

California Office of the Attorney  
General  
Xavier Becerra, Attorney General  
Email: [xavier.becerra@doj.ca.gov](mailto:xavier.becerra@doj.ca.gov)

Attorney for Respondents



**S266106**

**S**\_\_\_\_\_

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

---

**COUNTY OF SAN BERNARDINO; and JOSIE GONZALES, an  
individual**

*Petitioners,*

vs.

**GAVIN NEWSOM, in his official capacity as Governor of California,  
ERICA PAN, M.D., in her official capacity as Acting Public Health  
Officer of the State of California, SANDRA SHEWRY, in her official  
capacity as the State Public Health Officer and Department of Public  
Health Director**

*Respondents.*

---

**DECLARATION OF JOHN McMAHON IN SUPPORT OF  
VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE  
IN THE FIRST INSTANCE  
IMMEDIATE RELIEF REQUESTED  
NO LATER THAN DECEMBER 28, 2020  
(*Palma Notice Requested*)**

---

**TYLER & BURSCH, LLP**

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25026 Las Brisas Road

Murrieta, California 92562

Tel: (951) 600-2733

Fax: (951) 600-4996

Attorneys for *Petitioners*

I, JOHN McMAHON, the undersigned, declare as follows:

1. I am the Sheriff/Coroner/Public Administrator for the County of San Bernardino (the "County"). I have held this position since being appointed 2013 to fulfill an unexpired term and I have since been elected and reelected. I make the following declaration based on my own personal knowledge and if called to testify as a witness I could and would testify competently thereto.

2. The Sheriff's Department ("Department") provides law enforcement services in the largest county in the contiguous United States by area. The Department provides a full range of law enforcement services throughout the County's unincorporated areas and for 14 cities/towns within the County and for the San Manuel Band of Mission Indians, thereby serving a substantial portion of the County's approximate population of 2.2 million. The Department is charged with upholding peace, enforcing the law, and serving the interests of the County's residents through all facets of law enforcement including: patrol activities, investigations, crime laboratory services, operation of jails, and aviation services for general patrol and search and rescue activities. The Department accomplishes these goals by responding to emergency calls, non-emergency calls, investigating incidents, and providing an active presence with the County by performing regular patrolling. In addition to the services provided pursuant to my obligations as Sheriff, as the Coroner, it is my obligation to investigate the cause and manner of death of individuals, while the office of Public Administrator manages the estate of deceased persons for whom no executor is appointed. As Sheriff it is my job to establish and oversee the implementation of Department policies, goals, performance measures.

3. Since March, the Department has tracked 117,281.5 regular work hours devoted to COVID-19 related activities, and 24,356.5 overtime hours.

4. Pursuant to Penal Code section 26602, I am charged with authority to enforce the State's public health orders and the Governor's "shelter-in-place" orders issued on March 19, and December 3, 2020. The shelter-in-place orders, including the December 3, order which was triggered in the Southern California Region on December 5, requires that citizens remain in their homes and businesses shut down or reduce services, subject to certain limited exceptions.

5. Enforcement of shelter-in-place orders across the County requires the Department to monitor compliance with those orders. After the first stay-at-home order in March 2020, the County established a "business compliance" program in an effort to educate businesses on the requirements of the order and help them maintain compliance or come into compliance. Sheriff Deputies have participated in this program by spending time visiting business establishments (especially those observed to be non-compliant) and engaging owners and managers in an attempt to encourage compliance.

6. To ensure full compliance with the current orders, the Department would need to devote a substantial amount of additional resources to enforcement of the orders, thereby potentially neglecting other critical duties the Department is legally charged with performing, thereby potentially jeopardizing other essential functions of the San Bernardino County Sheriff's Department.

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 14, 2020 at San Bernardino, California.



---

JOHN McMAHON

## **CERTIFICATE OF SERVICE**


I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

On December 14, 2020, I served a copy of the following document(s) described as:

- **DECLARATION OF JOHN McMAHON IN SUPPORT OF VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE IN THE FIRST INSTANCE**

on the interested party(ies) in this action by-email or electronic service [C.C.P. Section 1010.6; CRC 2.250-2.261]. The documents listed above were transmitted via e-mail to the e-mail addresses on the attached service list.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am an employee in the office of a member of the bar of this Court who directed this service.

  
\_\_\_\_\_  
Shelly M. Padilla

## **SERVICE LIST**

Governor Gavin Newsom  
1303 10<sup>th</sup> Street, Ste. 1173  
Sacramento, CA 95814  
(916) 445-2841  
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Respondent

Sandra Shewry  
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Respondent

Erica Pan, M.D.  
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Attorney for Respondents

**S266106**

**S**\_\_\_\_\_

**IN THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

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**COUNTY OF SAN BERNARDINO; and JOSIE GONZALES, an  
individual**

*Petitioners,*

vs.

**GAVIN NEWSOM, in his official capacity as Governor of California,  
ERICA PAN, M.D., in her official capacity as Acting Public Health  
Officer of the State of California, SANDRA SHEWRY, in her official  
capacity as the State Public Health Officer and Department of Public  
Health Director**

*Respondents.*

---

**DECLARATION OF CORWIN PORTER IN SUPPORT OF  
VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE  
IN THE FIRST INSTANCE  
IMMEDIATE RELIEF REQUESTED  
NO LATER THAN DECEMBER \_\_, 2020  
(*Palma Notice Requested*)**

---

**TYLER & BURSCH, LLP**

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Attorneys for *Petitioners*

I, CORWIN PORTER, the undersigned, declare as follows:

1. I am the Director for the Public Health Department (the “PHD”) for the County of San Bernardino (the “County”). I have held this position since I was appointed in June 2020, and I had been the Assistant Director since 2015. I make the following declaration based on my own personal knowledge and if called to testify as a witness I could and would testify competently thereto.

2. I make this declaration in support of the County’s Verified Petition For Peremptory Writ of Mandate In the First Instance.

3. The PHD is charged with promoting and improving the health, wellness, safety, and quality of life within the County. PHD provides dozens of services, both those required by State law and voluntary community-oriented programs, to assist County businesses and residences, including, but not limited to, family services, animal care and control, nutrition, health education, HIV/Aids, environmental health, emergency preparedness and response, and clinic operations. As Director, it is my responsibility to evaluate and establish the policies and goals of the PHD, to oversee the execution and implementation of those policies and goals and to administer the public health objectives of the PHD.

4. The PHD is also charged with monitoring and responding to viral outbreaks, such as SARS CoV (COVID-19) pandemic that has impacted the County since approximately March 2020. PHD has undertaken various emergency responses in the attempt to combat and slow the spread of COVID-19 within the County since approximately March 2020. In addition, since the Governor declared a state of emergency due to the COVID-19 pandemic and issued “shelter-in-place” orders on March 19, 2020, PHD bears significant responsibility that the shelter-in-place orders are followed within the County. The shelter-in-place orders, including the December 5, 2020, order requires that citizens remain in their homes and businesses shut



down or reduce services, subject to certain exceptions. The PHD has had to reallocate significant resources to combat COVID-19 pursuant to the State's various orders intended to combat COVID-19.

5. Combatting COVID-19 and following the State's various orders has had an impact on PHD's resources. As an example, we have brought on 191 contact tracers and 171 staff to provide testing to the community. PHD has also reassigned 5 to 6 employees to solely handle the data reporting/monitoring requirements. The most recent round of shelter-in-place orders are more difficult to enforce as more and more residents and businesses ignore the orders.

6. As a result of reassigning personnel for data collection, the Joint Information Center, the school task force, and supporting PHD operations center, PHD resources are stretched thin and I have had to make the tactical decision to reduce several of our usual community health programs. Examples of the tangible impact of the Governor's shelter-in-place orders includes halting, or limiting programs such as Community Outreach and Education/Healthy Communities; Research, Assessment and Planning; Strategic Planning, and; Workforce Development.

7. PHD is also responsible for reporting COVID-19 statistics. To do so, PHD has diverted employees to maintain and continuously update the County's website, located at:

<https://sbcpd.maps.arcgis.com/apps/opsdashboard/index.html#/44bb35c804c44c8281da6d82ee602dff>).

The website is updated daily to report, case details, testing details, location details, contact tracing, and a variety of other statistics regarding the COVID-19 within the County. The website uses some information provided by the State of California, however, the PHD website accurately depicts the County's reporting information concerning COVID-19.



9. We in the public health profession have learned a significant amount of information about COVID-19 and how to combat its spread during the past 9+ months. The County and its hospitals are far better equipped to handle the pandemic than we were in early March 2020. The County has created and implemented dozens of policies and procedures to help slow and combat the spread of COVID-19. While there is no dispute that COVID-19 continues to spread throughout the County, we are much better at responding to the outbreaks given what we have learned this year.

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 14, 2020 at San Bernardino, California.



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CORWIN PORTER

### **CERTIFICATE OF SERVICE**

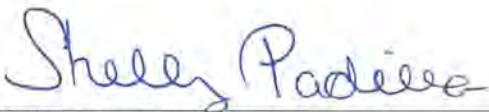
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Shelly M. Padilla

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Attorney for Respondents

**S266106**

**S**\_\_\_\_\_

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vs.

**GAVIN NEWSOM, in his official capacity as Governor of California,  
ERICA PAN, M.D., in her official capacity as Acting Public Health  
Officer of the State of California, SANDRA SHEWRY, in her official  
capacity as the State Public Health Officer and Department of Public  
Health Director**

*Respondents.*

---

**DECLARATION OF LUTHER SNOKE IN SUPPORT OF VERIFIED  
PETITION FOR PEREMPTORY WRIT OF MANDATE IN THE  
FIRST INSTANCE  
IMMEDIATE RELIEF REQUESTED  
NO LATER THAN DECEMBER \_\_, 2020  
(*Palma Notice Requested*)**

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Murrieta, California 92562

Tel: (951) 600-2733

Fax: (951) 600-4996

Attorneys for *Petitioners*

I, LUTHER SNOKE, the undersigned, declare as follows:

1. I am the Chief Operating Officer for the County of San Bernardino (the “County”). I have held this position since I was appointed on October 7, 2020. Prior to that time, I served as a Deputy Executive Officer since 2019 and I have been actively involved in various County operations since that time, including the County’s response to the COVID-19 pandemic. I make the following declaration based on my own personal knowledge and if called to testify as a witness I could and would testify competently thereto.

2. I make this declaration in support of the County’s Verified Petition For Peremptory Writ of Mandate In the First Instance.

3. The County recognizes the dire threat that COVID-19 poses to its residents. The County has been proactive in coming up with creative solutions to slow the spread of COVID-19. The County’s Joint Information Center (“JIC”) has been one of the County’s primary means of informing and educating the public regarding compliance with the various shelter-in-place orders. In addition, I am involved with coordinating various County departments and some agencies to ensure the public is educated regarding COVID-19 and the orders issued by all levels of the government. These same departments and agencies are also tasked with monitoring compliance with the orders. Code Enforcement, the Sheriff’s Department, the County Fire Protection District, the Public Health Department and Arrowhead Regional Medical Center are the primary County departments and agencies that have assisted with the management of the County’s response to COVID-19. The County has had to shift resources and reassign personnel to ensure compliance with the State’s ever-changing orders.

4. Since about April 2020, the JIC has been established using primarily reassigned County employees to take hundreds of phone calls daily concerning compliance with the State’s orders. Some of these calls involved complaints about businesses that appeared to be operating outside the

restrictions of those State orders. Such complaints were sent to a team of County employees who would investigate the complaints. Once a complaint was received, these complaints would be grouped by geographic area and sent to cities, where appropriate, for follow-up to determine the validity of the complaint and whether the business needed to make adjustments in order to be compliant. In each case a letter was generated setting forth possible enforcement action under State law that was either sent to the business by the County departments or provided to the cities for sharing with the businesses during a site visit. Often local law enforcement would be provided with the lists of those businesses to make a site visit on those who would not comply. Site visits included dialogue and a distribution of materials to assist the business to come into compliance with the State orders, such as sanitation practices, face coverings, spacing, etc. Some site visits were made proactively as our Public Health Department proactively visited nearly 2,000 higher risk businesses.

5. The changing guidelines from the State have stretched the County's resources thin. It is becoming increasingly difficult for the County to manage compliance with the State's shelter-in-place orders, including the recent December 5, 2020 regional lockdown, and continue to perform its normal legal obligations to its residents.

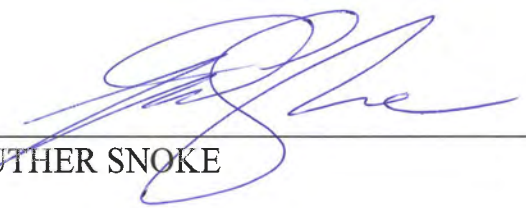
6. The County is the largest county within the contiguous United States of America by land mass. It is approximately 20,000 square miles and is larger than about six states. Geographically the County consists of different areas such as the mountains, high desert, central valley and eastern desert and ranges from urban environment to sparsely populated areas. The County desires the authority to manage the pandemic at a micro level in order to serve the various needs of the different areas. Those residents within the sparsely populated, remote minimal risk communities are impacted by the ICU numbers from cities and counties that are hundreds of miles away.

7. Similarly, there appears to be no rational basis to treat the entire Southern California region as a single entity. The eastern parts of this County are approximately 300 miles from downtown Los Angeles or San Diego, 380 miles from Santa Barbara, and 450 miles from San Luis Obispo, all of which are areas that impact whether the December 5, 2020 orders require this County to shelter-in-place for three weeks.

8. The County had previously sought support from the State to create regions within its own borders instead of treating the entire County as a single entity. The State denied the County's request. The County does not wish to treat those living within remote communities where COVID-19 is relatively low the same as those residents living in one of the metropolitan cities that are experiencing outbreaks at heightened levels. It does not make fiscal sense to use County resources to ensure compliance within communities such as Lake Havasu or Desert Heights. Yet, under the State's orders, the County is charged with ensuring that residents within low-risk areas are complying with the shelter-in-place orders. As a consequence, the State's orders are putting unnecessary strain on the County. The County is in a better position to manage its resources and develop appropriate orders and regulations for its diverse populations within its own borders than the State.

9. Accordingly, the County desires to restore local authority to allow a more tailored and measured response to the current outbreak.

I declare, under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 14, 2020 at San Bernardino, California.

  
\_\_\_\_\_  
LUTHER SNOKE

## CERTIFICATE OF SERVICE

I am an employee in the County of Riverside. I am over the age of 18 years and not a party to the within entitled action; my business address is 25026 Las Brisas Road, Murrieta, California 92562.

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Shelly M. Padilla



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Attorney for Respondents