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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

**ALAMEDA COUNTY COMMITTEE OF OPEN GOVERNMENT**, an unincorporated association, on its own and on behalf of its members; **CHILDREN’S HEALTH DEFENSE-CALIFORNIA CHAPTER**, a California 501(c)(3) non-profit corporation, on its own and on behalf of its members, and **MARY CATHERINE BALDI**, an individual.

Petitioners,

vs.

**COUNTY OF ALAMEDA; ALAMEDA COUNTY BOARD OF SUPERVISORS,**

Respondents.

Case No.: **23CV028241**

**VERIFIED PETITION FOR ALTERNATIVE AND TRADITIONAL WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND ATTORNEYS’ FEES AND COSTS**

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

*[Application and Memorandum of Points of Authorities in Support of Application for Alternative Writ of Mandate, filed concurrently herewith]*

**INTRODUCTION**

1. This action seeks to restore the checks and balances on which American democracy and a representative government depend.

2. In March 2020, Governor Newsom eliminated these necessary checks and balances at the state level by declaring a state of emergency related to a “novel” Coronavirus, COVID-19, while various California counties and boards of supervisors, including Respondents COUNTY OF

1 ALAMEDA (the “County”) and ALAMEDA COUNTY BOARD OF SUPERVISORS (the “Board”)  
2 (hereinafter collectively “Respondents”), also eradicated a functioning representative government at  
3 the local level by declaring local states of emergencies or local health emergencies in their counties,  
4 and subsequently refusing to follow the applicable emergency law provisions for maintaining -- or  
5 terminating -- them.

6 3. *Almost three years* after declaring these states of emergency in March 2020, neither  
7 Governor Newsom nor the Respondent Board have terminated either the state-wide emergency or  
8 local emergencies, electing to keep California and County citizens in an unlawful and fraudulent state  
9 of “emergency” ruled by unelected “health” officials fully embracing medical authoritarianism,  
10 censorship, and the wholesale destruction of citizen participation in their own affairs.

11 4. This Verified Petition for Alternative and Traditional Writ of Mandate and Complaint  
12 for Declaratory and Injunctive Relief (“Petition”) is filed now because, despite repeated attempts by  
13 Petitioners to get Respondents to follow the applicable emergency laws put in place for these very  
14 times of declared emergencies, Respondents have refused to do so.

15 5. Instead, since declaring or ratifying the local health and/or local emergencies (together,  
16 the “Emergencies”) in the County in March 2020, Respondent Board has acted in a blatantly illegal  
17 manner by, among other things: (a) failing to engage in the requisite public reviews of local County  
18 conditions to determine whether the Emergencies are still warranted, and terminating them “at the  
19 earliest possible date” if they are not, as required by California Health & Safety Code section 101080  
20 and Government Code section 8630; (b) delegating their statutory duties under these provisions to the  
21 County health officer and/or other unelected officials outside of the County; and (c) holding secret,  
22 non-public meetings and refusing to hold public meetings on this issue, and actively censoring and/or  
23 preventing public input regarding the Board’s unperformed review of local conditions and consequent  
24 termination of the Emergencies, as required by these statutory provisions and the Ralph M. Brown  
25 Act (*See Gov. Code section 54953 et seq.*) (“Brown Act”).

26 6. Respondents apparently believe that they have no statutory duties to review the local  
27 conditions or terminate the Emergencies because Governor Newsom purportedly waived this  
28 legislatively enacted duty when he waived the specific 30 and 60 day automatic review periods

1 provided in Government Code section 8630 and Health and Safety Code section 101080 in his initial  
2 proclamation of a state-wide emergency on March 4, 2020.

3 7. However, this waiver of the 30 and 60 day automatic review periods specifically did  
4 not – and cannot – remove the underlying duties imposed by the California Legislature on the  
5 governing bodies of each county to both periodically review the local conditions and to terminate  
6 declared local emergencies at the “earliest possible date that conditions warrant.”

7 8. There is no statutory or Constitutional authority that permits any local board of  
8 supervisors, including this Board, to abdicate its duties to publicly review and assess whether the local  
9 conditions within its respective county justify the continuance of a local state of emergency or local  
10 health emergency or to delegate these duties to its health officer or anyone else. Indeed, a primary  
11 reason to have local county boards of supervisors in the first place is to put decision-making authority  
12 in the hands of those elected officials who must directly answer to the local citizens they were elected  
13 to govern. Delegating this quasi-legislative authority to an unelected health officer or any other  
14 unelected bureaucrat violates long standing principles of non-delegation, as well as the clear  
15 Separation of Powers expressly set-forth in the California Constitution.

16 9. Further, no statutory or Constitutional authority permits Respondents to keep the  
17 County in a three year declared state of emergency or state of a health emergency for convenience,  
18 “readiness,” “awareness,” or “flexibility,” or to continue to receive federal COVID-19 relief funding,  
19 where local conditions no longer warrant it. To the contrary, Respondents have a clear, present,  
20 ministerial, and affirmative duty to terminate the Emergencies “at the earliest possible date that  
21 conditions warrant the termination” under both California Health & Safety Code, section 101080, and  
22 Government Code, section 8630.

23 10. Finally, no statutory or Constitutional authority permits Respondents to hold secret, non-  
24 public meetings or communications or to prevent public input on the review of local conditions or  
25 whether to maintain or terminate the Emergencies, which is a matter of great public interest and thus the  
26 people’s business under the Brown Act.

27 11. Petitioners ALAMEDA COUNTY COMMITTEE OF OPEN GOVERNMENT  
28 (“ACCOG”) and CHILDREN’S HEALTH DEFENSE – CALIFORNIA CHAPTER (“CHD-CA”)

1 (hereinafter collectively “Petitioners”) are either themselves County residents and/or represent  
2 thousands of County residents and/or property and business owners whose businesses have been shut  
3 down and impacted by various “local health orders” in the County issued under guise of the declared  
4 Emergencies that mandated closures, eviction moratoriums, masking, testing, “social” distancing,  
5 implementation of personal protective equipment (“PPE”), and proof of vaccination to participate in  
6 society within the County, as well as parents, students, and children who have been subjected to County  
7 school closures, remote learning, masking, testing, quarantining, distancing, and vaccination  
8 requirements arising out of and imposed under cover of Respondents’ declarations of Emergencies.

9 12. Petitioners and their members are also residents and citizens of the County who have  
10 been deprived of their Constitutional and/or statutory rights to participate in matters of great public  
11 importance during Respondent’s statutorily required public board meetings, including the right to speak  
12 and comment on the need to review local conditions or to terminate the Emergencies or any orders or  
13 policies issued under cover of these Emergencies.

14 13. Petitioners and all Alameda County residents remain deeply impacted by the continuation  
15 of these Emergencies and the ongoing deprivation of their rights to participation in these matters of great  
16 public importance under the Brown Act.

17 14. It is now up to this Court to ensure a return to representative and participatory local  
18 government, as required by the laws of this State. Accordingly, Petitioners ask this Court to:

- 19 a. Grant an alternative writ under California Code of Civil Procedure section 1087, stay  
20 implementation of the Emergencies, and order Respondents to show cause why: (i)  
21 their periodic review of local conditions justifying the ongoing Emergencies should  
22 not be performed as part of their duties as the governing body of the County, and (ii)  
23 their refusal to hold periodic public meetings and allow public comment regarding  
24 the Board’s review of local conditions and/or its continuation of the Emergencies is  
25 not a violation of the Brown Act; and/or
- 26 b. Issue a peremptory writ of mandate under Code of Civil Procedure, section 1085,  
27 ordering Respondents to (i) comply with their ministerial duties to conduct the  
28 necessary, reasoned, and public review of local conditions and make a determination



1 and finding that said conditions justify the continued declarations of Emergencies  
2 under Government Code, section 8630 *et seq.*, and Health & Safety Code, section  
3 101080 *et seq.* (ii) comply with their duties under the Brown Act to hold public  
4 meetings and allow for public participation in this review of local conditions and  
5 termination of the Emergencies process; and (iii) vote to end the Emergences if local  
6 conditions no longer warrant them; and/or

7 c. Issue a preliminary and/or permanent injunction enjoining Respondents' further or  
8 continued implementation and enforcement of the Emergencies without statutorily  
9 required reviews consistent with the requirements of the California Health & Safety  
10 Code section 101080, Government Code section 8630, and the Brown Act; and

11 d. Declare that Respondents do not have the authority to ignore their statutory duties  
12 under California Health & Safety Code section 101080 and Government Code section  
13 8630 to review local conditions and to terminate declared local emergencies or local  
14 health emergencies when local conditions no longer warrant keeping them; and

15 e. Declare that Respondents do not have the authority to hold secret meetings or ignore  
16 their statutory duties under the Brown Act to hold periodic public meetings and to  
17 allow public comment on whether to maintain or terminate declared local  
18 emergencies or local health emergencies, issues that are the people's business and  
19 matters of great public importance; and

20 f. Issue a preliminary and/or permanent injunction enjoining Respondents' from  
21 continuing to seek, request, receive, use, and/or distribute or disperse state and/or  
22 federal emergency COVID monies in the absence of conditions that warrant  
23 maintaining the Emergencies.

24 **PARTIES AND STANDING**

25 15. Petitioner ALAMEDA COUNTY COMMITTEE OF OPEN GOVERNMENT  
26 ("ACCOG") is an unincorporated association founded in 2020 and headquartered in Alameda County,  
27 California, for the purpose of promoting peaceful assembly, the right to free speech, and effective public  
28 participation in their own government on matters of great public importance. ACCOG has over 200

1 members residing in Alameda County and paying taxes within the County who have been and are  
2 continuing to be negatively affected by the declaration and maintenance of the Emergencies, including  
3 impacts from damaging local health orders as well as the various mandates and/or policies adopted under  
4 guise of these local health orders, including, but not limited to, the loss of rental income under the  
5 unlawful eviction moratoriums maintained under the Emergencies, and who have also been negatively  
6 impacted by Respondents' repeated violations of the applicable local emergency laws as well as the  
7 Brown Act, including Respondents' deliberate interference with ACCOG members' ability to peacefully  
8 assemble and speak about the Emergencies and/or orders and policies issued under these Emergencies  
9 at regular or special Board meetings. ACCOG's members residing in the County have present,  
10 beneficial interests in Respondents following the laws and constitutions of the Country, State, and  
11 County, including those pertaining to the declarations of Emergencies, and voting to terminate them at  
12 the earliest date conditions warrant, otherwise, they and their children may continue to suffer from  
13 harmful lockdowns, school closures, forced masking, testing, coerced vaccination, distancing, eviction  
14 moratoriums, and other "emergency" measures should Respondents decide to unilaterally and arbitrarily  
15 re-implement any of them under the emergency powers that still exist under the ongoing Emergencies,  
16 exacerbating and continuing Petitioners' harms, which are easily capable of repetition so long as the  
17 Emergencies are in place. (*See e.g., Roman Catholic Diocese v. Cuomo* (2020) 592 U.S. \_\_\_, \_\_\_, 141  
18 S.Ct. 63, 68 [holding that the lifting of restrictions did not moot the application because "the applicants  
19 remain under a constant threat that those restrictions may be reinstated]). The interests that ACCOG  
20 seeks to protect in this action are also germane to its fundamental purpose and ACCOG has members  
21 residing in the County who have been and will continue to be negatively impacted by Respondents'  
22 failure to hold public meetings, review local conditions within the County as required by law, and to  
23 terminate the Emergencies at the earliest time conditions warrant and therefore ACCOG further meets  
24 all associational and public interest standing requirements for prosecuting this action.

25 16. Petitioner CHILDREN'S HEALTH DEFENSE, CALIFORNIA CHAPTER is a  
26 California 501(c)(3) nonprofit corporation incorporated under the laws of the State of California, and  
27 headquartered in Ross, California. CHD-CA was founded in 2020 as the California branch of Children's  
28 Health Defense, a national non-profit organization headquartered in Peachtree City, Georgia. CHD-CA

1 has over 7,000 members throughout California, consisting predominately of parents whose children have  
2 been negatively affected by environmental and chemical exposures and unsafe emergency measures  
3 including unsafe experimental injections, lockdowns, contact tracing, damaging quarantine and isolation  
4 policies, and emergency masking policies, among other things. CHD-CA represents the interests of  
5 thousands of children and families across California, and approximately 1,000 CHD-CA members reside  
6 in Alameda County, with children attending school in the County, and who are property and business  
7 owners paying taxes to the County. CHD-CA's members residing in the County have present, beneficial  
8 interests in Respondents' following the laws and constitutions of the Country, State, and County,  
9 including those pertaining to the declarations of Emergencies, and voting to terminate them at the earliest  
10 date conditions warrant, otherwise, they and their children may be forced into unreasonable and harmful  
11 lockdowns, school closures, forced masking, testing, vaccination, distancing and other "emergency"  
12 measures should Respondents decide to unilaterally and arbitrarily re-implement them under the  
13 emergency powers that still exist during these declared Emergencies, exacerbating and continuing  
14 Petitioners' harms, which are easily capable of repetition so long as the declarations of local emergency  
15 or local health emergency are in place. (*See Roman Catholic Diocese*, 141 S.Ct. at 68). The interests  
16 that CHD-CA seeks to protect in this action are also germane to its fundamental purpose and CHD-CA  
17 has members residing in the County who have been and will continue to be negatively impacted by  
18 Respondents' failure to hold public meetings regarding the Emergencies, review local conditions within  
19 the County as required by law, and to terminate the Emergencies at the earliest time conditions warrant  
20 and therefore CHD-CA further meets all associational and public interest standing requirements for  
21 prosecuting this action.

22           17.     Petitioner MARY CATHERINE BALDI, is a resident of the County, and a member of  
23 both Petitioner ACCOG and Petitioner Children's Health Defense, California Chapter (CHD-CA). Ms.  
24 Baldi is also a business owner, citizen, and taxpayer within the County who has suffered various  
25 physical, psychological, and financial harms, including loss of income, as well as losses to her liberty,  
26 speech, and associational rights under the federal and California Constitutions and under the Brown  
27 Act when the County instituted various public health mandates at the County-level and refused to allow  
28 her to speak at Respondent Board meetings on the topic of the Emergencies by engaging in various

1 hostile tactics as further explained herein. Ms. Baldi continues to be under constant threat of harm that  
2 the County may continue and/or reinstitute any of these unlawful measures against her as long as the  
3 Emergencies are maintained and not terminated. (*See Roman Catholic Diocese*, 141 St. Ct. at 68). Ms.  
4 Baldi also has a present, beneficial interest as a resident and taxpayer of this County under California  
5 Code of Civil Procedure section 526a in assuring that her tax dollars are spent appropriately and not  
6 illegally by Respondents. (*See Taschner v. City Council* (1973) 31 Cal. App. 3d 48, 55 [“Insofar as  
7 standing is concerned, the allegation that Petitioner was an elector, taxpayer, and owner of real property  
8 in the city was sufficient to give him standing to challenge the validity of the ordinance.”]).

9 18. Respondent ALAMEDA COUNTY (“County”) is a county in Northern California  
10 comprising more than 1.7 million residents.<sup>1</sup> The County is a legislative body within the meaning of  
11 the Brown Act and is subject to all statutory provisions of the Brown Act as set forth in Government  
12 Code sections 54950 *et seq.*

13 19. Respondent ALAMEDA COUNTY BOARD OF SUPERVISORS (“Board”) is an  
14 elected body governing the five Supervisorial Districts of Alameda County and is the “governing body”  
15 of the County for purposes of the Health & Safety Code section 101080 and Government Code 8630.  
16 The Board is also a legislative body within the meaning of the Brown Act and is subject to all statutory  
17 provisions of the Brown Act as set forth in Government Code sections 54950 *et seq.* The current Board  
18 members are Supervisor Keith Carson (District 5), Supervisor David Haubert (District 1), Supervisor  
19 Dave Brown (District 3), and Supervisor and President Nate Miley (District 4). The Board is charged  
20 with overseeing the management of the County government, which includes setting County policy,  
21 appointing or hiring local “health experts” and others to which they delegate some of their authority in  
22 supervising activities of the County, approving an annual budget and contracts, conducting public  
23 hearings on land-use and other matters, and making appointments to boards, committees, and  
24 commissions.

25 20. Petitioners have and will suffer significant, direct, irreparable harm if the Emergencies  
26 are not reviewed and/or terminated by Respondents, in accordance with their statutory obligations to

27 \_\_\_\_\_  
28 <sup>1</sup> United States Census Bureau, [https://factfinder.census.gov/faces/nav/jsf/pages/community\\_facts.xhtml](https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml) [as of  
September 13, 2021]

1 do so under Government Code section 8630 and Health & Safety Code section 101080, legal duties  
2 which were **not** suspended by any of the State’s emergency or executive orders, including but not  
3 limited to the Governor’s initial Proclamation of Emergency on March 4, 2020. The failure to follow  
4 the law and review the local conditions and end the local emergencies at the earliest date possible harms  
5 Petitioners because such failure creates conditions within the County wherein Petitioners and their  
6 members are still being subjected to or may at any time be subject to losing employment, rental income,  
7 businesses, business opportunities, and goodwill; being denied medical services, treatment, and care;  
8 being prevented from accessing necessary services and places of public accommodation; being denied  
9 their constitutional right to free public school education; being forced into remote learning, independent  
10 study programs, in violation of the Education Code; and being forced to comply with harmful and  
11 ineffective “COVID-19 safety measures,” such as masking, testing, vaccination, quarantining,  
12 sheltering at home, distancing, and eviction moratoriums, without due process of law, so long as local  
13 authorities improperly retain emergency police powers as herein alleged. (*See Roman Catholic Diocese,*  
14 *141 S.Ct. at 68*). As a result, Petitioners are entitled to the relief prayed for herein.

15 21. There is also substantial public interest in ensuring that Respondents comply with the  
16 laws of the state, including the California and United States Constitutions, the Brown Act and the  
17 emergency provisions under the California Government Code, Health & Safety Codes, California  
18 Education Code, and Alameda County’s Code of Ordinances, and Petitioners assert public interest  
19 standing on this basis as well. Public interest standing applies where the question is one of public right  
20 and the object of the action is to enforce a public duty, in which case, it is sufficient that the plaintiff  
21 be interested as a citizen in having the laws executed and the public duty enforced. (*See Rialto Citizens*  
22 *for Responsible Growth v. City of Rialto* (2012) 208 Cal. App. 4<sup>th</sup> 899, 914).

23 22. Petitioners bring this suit to redress these constitutional and statutory harms, and seek a  
24 alternative writ of mandate or a peremptory writ of mandate, and/or declaratory and injunctive relief,  
25 finding that Respondents have violated Petitioners’ rights under state law, as well as the California and  
26 United States Constitutions, and directing Respondents to act in accordance with such laws.

### **JURISDICTION AND VENUE**

27 23. This Court has jurisdiction to issue an alternative writ of mandate pursuant to California  
28

1 Code of Civil Procedure section 1087 as well as jurisdiction to issue a traditional writ of mandate  
2 pursuant to the California Code of Civil Procedure, section 1085. This Court also has jurisdiction to  
3 grant relief for Brown Act violations by mandamus, injunction, and/or declaratory relief for the purpose  
4 of stopping or preventing violations or threatened violations thereof, and to award attorneys' fees  
5 pursuant to both Government Code section 54960 and Code of Civil Procedure section 1021.5.

6 24. This Court has personal jurisdiction over Respondents because Respondents are  
7 governmental actors that conduct business in and maintain operations in Alameda County.

8 25. Venue is proper in the Superior Court of Alameda County under the California Code of  
9 Civil Procedure, sections 393(b), 394, and 395 because Respondents are Alameda County and its Board  
10 of Supervisors, a local agency, and all of the acts and omissions occurred in Alameda County.

11 26. Petitioners, and their members, have a clear, present, and beneficial interest in the proper  
12 performance of the law by Respondents and have no plain, speedy, and adequate remedy at law.

13 27. Petitioners, and their members, also have taxpayer standing and an interest in ensuring  
14 the proper and legal use of county funds under the California Code of Civil Procedure, section 526a.

15 **LEGAL BASIS**

16 28. Local boards of supervisors are the governing bodies of California counties and serve  
17 as both the legislative and executive authority of an individual county.<sup>2</sup> Board of supervisors' decision-  
18 making can be, at various times, quasi-legislative, quasi-adjudicative, or even quasi-judicial in nature.<sup>3</sup>  
19 (Gov. Code, §§ 25000 *et seq.*)

20 29. Under California's Ralph M. Brown Act, also known as the California Open Meeting Law,  
21 the California Legislature found and declared that the public commissions, boards, and other public  
22 agencies in the State exist to aid in the conduct of the people's business, and that the citizens of California  
23 do not yield their authority to the agencies that serve them, nor do they give these public servants the  
24 right to decide what is good for the people to know and what is not good for them to know. (Gov. Code  
25 § 54950).

26 30. The Brown Act requires that the people must remain informed as well as be given the

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27 <sup>2</sup> See California State Association of Counties, <https://www.counties.org/post/board-supervisors> [last visited April 26,  
28 2022]

<sup>3</sup> *Id.*

1 opportunity to participate in matters of public interest, so that they may retain control over the  
2 instruments they have created. (Gov. Code § 54950).

3 31. The central provision of the Brown Act requires that all “meetings” of a legislative body  
4 be open and public. (Gov. Code § 54952.2). With limited exceptions, the Brown Act requires all county  
5 board of supervisors meetings to be open and public and all discussion items properly agendized and  
6 publicly noticed for hearing. (*See* Gov. Code, §§ 54952, 54953.3, 54954, *et seq.*) The board must keep  
7 record of its decisions and the proceedings of all regular and special meetings. (*Ibid.*)

8 32. Individual board members have no power to act for the county merely because they are  
9 members of the board of supervisors; rather, meetings of the board of supervisors are subject to the  
10 restrictions and requirements of the Brown Act. (*Ibid.*)

11 33. Under the Brown Act, a meeting is “any congregation of a majority of members of a  
12 legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within  
13 the subject matter jurisdiction of the legislative body or the local agency to which it pertains.” (Gov.  
14 Code § 54952.2). If a majority of members are in the same room and *merely listen* to a discussion of  
15 county business, they will be participating in a Brown Act meeting that requires notice, an agenda, and  
16 a period of public comment. The Brown Act also prohibits a majority of members of a legislative body  
17 outside of a lawful meeting from directly or indirectly from using a series of meetings to discuss,  
18 deliberate, or take action on any item of business within the subject matter jurisdiction of the body.  
19 (Govt. Code 54952.2(b)(1)).

20 34. The Brown Act also mandates that agendas for regular meetings allow for two types of  
21 public comment periods. The first is a general audience public comment period, where members of the  
22 public can comment on any item of interest that is within the subject matter jurisdiction of the local  
23 agency. The second is a specific comment period pertaining to items placed on the agenda. The Brown  
24 Act requires that the governing body allow these specific comment periods on agenda items to occur  
25 prior to or during the governing body’s consideration of that item (Gov. Code § 54954.3).

26 35. The Brown Act also requires that agendas for special meetings also provide an  
27 opportunity for members of the public to address the body concerning any item listed on the agenda  
28 prior to the body’s consideration of that item. (Gov. Code § 54954.3).

1           36.     While a governing body can adopt *reasonable* regulations limiting the total amount of  
2 time allocated to each person for public testimony (e.g. 3-5 minutes per speaker), it may not prohibit  
3 public comment/criticism of the policies, procedures, programs, or services of the agency or the acts or  
4 omissions of the governing body (Govt. Code § 54954.3(c)).

5           37.     Under the emergency law provisions, a county board of supervisors is the governing body  
6 charged with reviewing whether local conditions exist to justify the declaration or continuance of a local  
7 state of an emergency or local health emergency at the county level in California. (*See* Gov. Code, §  
8 8630; Health & Safety Code § 101080). Accordingly, consideration of this issue is a clear part of the  
9 county’s business.

10          38.     For a county-level, local state of emergency under Government Code, section 8630:

- 11           a.     the emergency may be proclaimed only by the governing body of a city, county, or  
12                 city and county, or by an official designated by ordinance adopted by the governing  
13                 body;
- 14           b.     the local emergency **shall not remain in effect for a period in excess of seven**  
15                 **days unless ratified by the governing body;**
- 16           c.     the governing body **shall review** the need for continuing the local emergency at  
17                 least once every sixty (60) days until the governing body terminates the local  
18                 emergency; and
- 19           d.     the governing body **shall proclaim the termination of the local emergency at the**  
20                 **earliest possible date that conditions warrant.** [Emphasis added].

21          39.     Under Government Code, section 8558, a “local emergency” is defined as follows:

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



1 sudden and severe energy shortage requires extraordinary measures beyond the  
2 authority vested in the California Public Utilities Commission.

3 40. For a county-level, local health emergency under Health & Safety Code section 101080:

4 “[w]henever there is an imminent and proximate threat of the introduction of any  
5 contagious, infectious, or communicable disease, chemical agent,  
6 noncommunicable biologic agent, toxin, or radioactive agent, the director may  
7 declare a health emergency and the local health officer may declare a local health  
8 emergency in the jurisdiction or any area thereof affected by the threat to the  
9 public health. Whenever a local health emergency is declared by a local health  
10 officer pursuant to this section, the local health emergency shall not remain in  
11 effect for a period in excess of seven days unless it has been ratified by the board  
of supervisors, or city council, whichever is applicable to the jurisdiction. The  
board of supervisors, or city council, if applicable, **shall review**, at least every 30  
days until the local health emergency is terminated, the need for continuing the  
local health emergency **and shall proclaim the termination** of the local health  
emergency **at the earliest possible date that conditions warrant the  
termination.**” [Emphasis added].

12 41. With respect to any state-wide declared emergency under the California Emergency  
13 Services Act (“CESA”), under Government Code section 8629, “the Governor **shall proclaim the**  
14 **termination of a state of emergency at the earliest possible date that conditions warrant.** All of the  
15 powers granted the Governor by this chapter with respect to a state of emergency shall terminate when  
16 the state of emergency has been terminated by proclamation of the Governor or by concurrent resolution  
17 of the Legislature declaring it at an end.” [Emphasis added].

18 42. Under Article III, Section 3 of the California Constitution, “The powers of state  
19 government are legislative, executive, and judicial. Persons charged with the exercise of one power may  
20 not exercise either of the others except as permitted by this Constitution.”

## 21 FACTUAL ALLEGATIONS

### 22 Declaration of a State-Wide “State of Emergency” in California

23 43. On March 4, 2020, Governor Newsom declared a state-wide state of emergency related  
24 to a purportedly “novel” coronavirus, COVID-19 (hereinafter “Proclamation”).<sup>4</sup>

25 44. In the Proclamation, Governor Newsom completely disrupted, reordered and/or  
26 suspended many ordinary aspects of democratic governance and the proper checks and balances on  
27

28 <sup>4</sup> “Proclamation of a State of Emergency,” <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf> [last visited April 26, 2022].

1 executive power, including proper agency rule-making requirements typically required under the  
2 California Administrative Procedure Act (“APA”). This suspension of normal governance allowed  
3 agencies such as the California Department of Public Health (“CDPH”) and other unelected officials  
4 to unilaterally impose unprecedented restrictions on California citizens under the guise of an  
5 “emergency” response to COVID-19, without going through any notice and comment rulemaking  
6 requirements or having to consider any public input on such unprecedented restrictions and  
7 requirements whatsoever.

8 45. Three years later, although many of the more onerous and destructive “health” orders  
9 have been lifted, California is still under this declared state of emergency for COVID-19, despite  
10 evidence establishing that much of the initial “data” used to support declaring and maintaining this state  
11 of emergency was inaccurate, overstated, and at times, fraudulent.

12 46. In addition, many of the unprecedented interventions imposed on Californians during  
13 this time have been revealed as severely destructive to public and individual physical and mental health.

14 47. Included in this Proclamation and supposed *temporary disruption* to normal democratic  
15 governance was the Governor’s suspension of the 30 or 60-day time periods normally required of local  
16 governing authorities to review, renew, or terminate local states of emergency.

17 48. Specifically, at paragraphs 7 and 8 of his Proclamation, the Governor indicated that “for  
18 the duration of [the] statewide emergency,” he was suspending the operation of the “30-day review  
19 period” in Health & Safety Code, section 101080 (local health emergency), and the “60-day review  
20 period” in Government Code, section 8630 (local emergency), the time periods within which a local  
21 governing authority would normally be required to review – and then either renew or terminate -- a  
22 declared local and/or local health emergency. Under this Proclamation, any such local emergency or  
23 local health emergency would “***remain in effect until each local governing authority terminates its  
24 respective local health emergency.***” (See Proclamation, attached hereto as “**Exhibit A**”).

25 49. Although this Proclamation gave local governing authorities a presumably temporary  
26 waiver of the requisite 30 and 60 day review periods, giving them more flexibility with respect to the  
27 timing of these periodic reviews, the Proclamation did ***not*** suspend the local governing authorities’  
28 legal duties to review the conditions under which a local and/or local health emergency declaration

1 could be renewed. It also did not relieve a governing body of its specific legal duty to terminate the  
2 local or local health emergency at the earliest opportunity conditions allowed. (Gov. Code § 8630(d);  
3 Health & Safety Code §101080). A termination of a local emergency presumably could not happen  
4 without a “review” occurring before such a determination could be made.

5 50. On February 25, 2022, rather than allowing the state-wide state of emergency to  
6 naturally expire on March 31, 2022, as he had earlier promised, Governor Newsom issued Executive  
7 Order N-04-22 instead. This order also indicated the Governor’s intent to keep many of his executive  
8 orders in place, including the wholly unlawful “temporary” waiver of the 30 and 60 day time periods  
9 for local governing bodies to review local emergencies and local health emergencies as contained in  
10 his initial Proclamation two years prior.

11 **Declaration and Continuation of the Emergencies in Alameda County**

12 51. On March 1, 2020, three days prior to Governor Newsom’s Proclamation, then Interim  
13 Health Officer of the County of Alameda, Dr. Erica Pan, declared a local health emergency pursuant  
14 to Health & Safety Code, § 101080. Under this statutory provision, and prior to the Governor’s  
15 Proclamation, Respondents were obligated to review this declared local health emergency every 30  
16 days. Dr. Erica Pan renewed this declaration of local health emergency on March 5, 2020, and ordered  
17 the Respondent Board on March 6, 2020 to ratify the local health emergency. (*See* Pan Declaration of  
18 Local Health Emergency, attached hereto as: **Exhibit “B”**). The Respondent Board then ratified the  
19 local health emergency as provided under Health & Safety Code section 101080 and in response to  
20 Pan’s directive on March 10, 2020.

21 52. On March 16, 2020, the Director of Emergency Services, Sheriff Gregory Ahern stated,  
22 “The Board of Supervisors is not in session and cannot immediately be called into session.” As a result,  
23 the Director of Emergency Services then proclaimed a local emergency on his own, pursuant to  
24 California Government Code § 8630. (*See* Ahern Proclamation, attached hereto as **Exhibit “C”**).

25 53. On March 17, 2020, the Respondent Board ratified the Director of Emergency Services’  
26 proclamation of a local emergency pursuant to Government Code section 8630. (*See*: RESOLUTION  
27 NUMBER R-2020--139. **“Exhibit D”**).

28 54. Despite declaring and/or ratifying these Emergencies, as repeatedly acknowledged by

1 Respondents and the Health Officer via press releases and public statements, none of the statutory  
2 conditions defining a “local emergency” or a “local health emergency” even existed at the time of  
3 these declarations under the applicable emergency laws put in place for these situations.

4 55. Specifically, under Government Code section 8558, a “local emergency” is  
5 defined as follows:

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

14 56. At the time of declaring these Emergencies, none of these articulated conditions under  
15 Government Code section 8558 for declaring or maintaining a local emergency existed in the County,  
16 and none of these specifically articulated conditions have existed ever since.

17 57. Yet, millions of lives within the County were needlessly disrupted, destroyed, and  
18 devastated due to the Respondents’ premature and/or fraudulent declarations of a local emergency and  
19 local health emergency and the prolonged and unlawful continuation of these Emergencies for coming  
20 up on three years.

21 58. Respondents have not only continued to maintain these Emergencies illegally and  
22 fraudulently, but, as evidenced through repeated admissions during Board meetings over this nearly  
23 three year period, Respondents have entirely abandoned and unlawfully delegated their authority to  
24 review local conditions and to terminate these ongoing Emergencies to their health officer, Dr.  
25 Nicholas Moss (“Health Officer”) and the Director of Health Services, Colleen Chawla, as well as  
26 other unnamed officials in six other, neighboring counties per an unlawful agreement with these  
27 neighboring counties to act in unison regarding public “health” issues (herein, the “Seven County  
28

1 Pact”).<sup>5</sup>

2 59. Specifically, per this Seven County Pact, itself an illegal conspiracy between officials  
3 that deprives County residents of actual representative and participatory government, Respondents  
4 have agreed to make public “health” determinations for their residents in lockstep with other counties  
5 and to allow their Health Officer and other unelected officials to dictate whether and when to  
6 terminate the Emergencies in the County, in blatant violation of Respondents’ statutory duties under  
7 the emergency laws to make these determinations themselves.

8 60. Beyond this unlawful delegation to others, it is clear that the unlawful maintenance of  
9 these local Emergencies for nearly three years has nothing to do with public health or the requirements  
10 set forth under Government Code section 8558, as actual local conditions have long warranted an end  
11 to these declared Emergencies. Indeed, numerous cities within the County, including the cities of both  
12 Livermore and Alameda, and numerous other California counties’ throughout the State voted to end  
13 their respective local emergencies many months ago, as local conditions clearly no longer warranted  
14 maintaining them and they were statutorily obligated to terminate them at that time.

15 61. Meanwhile, state-wide, since January of 2022, California has hosted the Super Bowl,  
16 removed indoor and K-12 mask mandates across the state, dropped requirements for public school  
17 staff to show proof of vaccination or to PCR test weekly, and life has returned to *almost* a fully  
18 “normal” society in many parts of the state. It is clear that the existence of conditions of disaster or of  
19 extreme peril to the safety of persons and property within the County due to COVID-19 or any of its  
20 variants do not exist, as required by our emergency laws.

21 62. Yet despite this clear data, other counties’ and cities’ termination of their own local  
22 emergencies, and observed daily reality in this County, Respondents have refused to: (1) engage in any

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23 <sup>5</sup> See e.g., *Bay Area residents ordered to stay home, starting Tuesday*, March 16, 2020, Palo Alto Weekly; *Joint*  
24 *Statement of the Seven Bay Area Health Officers on Upcoming Extension and Revisions to the Current Shelter-in-Place*  
25 *Orders*, April 27, 2020, Office of the Mayor London Breed, San Francisco; *Seven Bay Area Jurisdictions Order Residents*  
26 *to Stay Home*, March 16, 2020, Joint Press Release of 7 Bay Area Counties, [https://covid-19.acgov.org/covid19-](https://covid-19.acgov.org/covid19-assets/docs/press/press-release-2020.03.16.pdf)  
27 [assets/docs/press/press-release-2020.03.16.pdf](https://covid-19.acgov.org/covid19-assets/docs/press/press-release-2020.03.16.pdf); *Seven Bay Area Jurisdictions Order Laboratories Testing for COVID-19*,  
28 *March 30, 2020*, Joint Press Release of 7 Bay Area Counties - [https://covid-19.acgov.org/covid19-assets/docs/press/press-](https://covid-19.acgov.org/covid19-assets/docs/press/press-release-2020.03.24.pdf)  
[release-2020.03.24.pdf](https://covid-19.acgov.org/covid19-assets/docs/press/press-release-2020.03.24.pdf); *Seven Bay Area Jurisdictions Order Laboratories Testing for COVID-1*, March 24, 2020,  
<https://covid-19.acgov.org/covid19-assets/docs/press/press-release-2020.03.24.pdf>; *Seven Bay Area Jurisdictions to*  
*Update Shelter-in-Place Order in Coming Days*, March 30, 2020, [https://covid-19.acgov.org/covid19-](https://covid-19.acgov.org/covid19-assets/docs/press/press-release-2020.03.30.pdf)  
[assets/docs/press/press-release-2020.03.30.pdf](https://covid-19.acgov.org/covid19-assets/docs/press/press-release-2020.03.30.pdf); *Bay Area Health Officers Issue Updated Stay-at-Home Order with New*  
*Restrictions to Last Through May 3*, March 31, 2020, [https://covid-19.acgov.org/covid19-assets/docs/press/press-release-](https://covid-19.acgov.org/covid19-assets/docs/press/press-release-2020.03.31.pdf)  
[2020.03.31.pdf](https://covid-19.acgov.org/covid19-assets/docs/press/press-release-2020.03.31.pdf).

1 public meeting and review of local conditions in the County that could justify the ongoing  
2 Emergencies, (2) place this issue of great public importance on the board agenda as required by the  
3 Brown Act, and (3) terminate its Emergencies if conditions so warrant.

4 63. One reason for Respondents' failure to proceed in a manner required by law seems  
5 clear: by indefinitely continuing the declared Emergencies, Respondents have unlocked access to and  
6 received hundreds of millions in federal "COVID-19 relief" funds, including receipt of hundreds of  
7 millions in CARES money, and over \$324 million in ARPA funds.<sup>6</sup> These funds were "intended to  
8 support communities in their recovery from the COVID-19 pandemic, address economic fallout and  
9 lay the foundation for a strong recovery" and to "respond to the COVID-19 pandemic; replace lost  
10 revenue to strengthen support for vital public services and help retain jobs; support immediate  
11 economic stabilization for households and businesses; and address public health and other economic  
12 challenges." However, on information and belief, these funds were not properly distributed or used by  
13 Respondents to recover from the former COVID emergency, but were instead wasted, mismanaged,  
14 and/or used for projects that have nothing to do with the declared COVID emergencies, to the  
15 detriment of County taxpayers.

16 **Respondents' Repeated and Ongoing Brown Act Violations**

17 64. As the Emergencies continued, Petitioners have engaged in numerous attempts to  
18 educate Respondent Board members about their legal duties under the the applicable emergency laws  
19 to review the Emergencies, hold public meetings, and allow public comment on this matter of great  
20 public interest.

21 65. However, rather than acting like a governing body beholden to the people in the County  
22 who elected them, Respondents' have openly and intentionally thwarted public participation since  
23 March 2020.

24 66. Specifically, rather than properly putting the topic of the review of local conditions and  
25 the decision to maintain or terminate the Emergencies on the Respondent Board's agenda, allow  
26 meaningful public comment on the subject, or actually put the issue to a Board vote, Respondents

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27 <sup>6</sup> See:  
28 [https://www.rcrcnet.org/sites/default/files/useruploads/Documents/Barbed\\_Wire/March\\_12\\_2021/NACo%20California%20County%20Estimates\\_American%20Rescue%20Plan%202021.pdf](https://www.rcrcnet.org/sites/default/files/useruploads/Documents/Barbed_Wire/March_12_2021/NACo%20California%20County%20Estimates_American%20Rescue%20Plan%202021.pdf)

1 have instead engaged in hostile, unprofessional, and unlawful tactics to censor and/or outright prevent  
2 Petitioners and other members of the public from speaking on this topic.

3         67. For example, Respondents would often respond to Petitioners' attempts to speak on this  
4 topic at Board meetings by, among other actions: (a) refusing to allow any comments that the Board  
5 deemed to be "inappropriate" or critical of the Board's actions with respect to its failure to review the  
6 Emergencies or to properly place the topic on the agenda; (b) making derisive, dismissive and  
7 inflammatory comments to those attempting to speak on this issue; (c) suddenly changing the order of  
8 agenda items and scheduling the Board's consideration of continued "social distancing" in County  
9 facilities – the only topic tangentially related to the Emergencies -- at the very end of Board meetings  
10 in order to prevent those members of the public having to go back to work or pick up their children  
11 from school from having any opportunity to speak; (d) cutting off the microphones or muting speakers  
12 mid-comment; e) not taking registered comments critical of the Board's inactions; (f) curtailing the  
13 public commentary period to such short time segments so that speakers could not speak substantively  
14 at all; (g) taking comment only on set items and comment limited to only a 2-minute period which  
15 makes it impossible to comment adequately on one item and impossible to comment on more than one  
16 item; (h) abusing remote "Zoom" board meeting protocols by, among other things, hiding participant  
17 lists so that the public could not see who raised their hand to speak, not calling on members of the  
18 public who had raised their hand to speak, allowing Respondents appearing remotely to remain off  
19 camera and unseen by their constituents, preventing remote members of the public from  
20 communicating with one another, and cutting the cameras to the gallery to prevent members of the  
21 public appearing remotely from seeing their fellow citizens, (i) removing members of the public  
22 refusing to wear masks from the gallery and preventing them from participating in their own  
23 governance, and (j) indicating to members of the public that decisions had been made behind closed  
24 doors already by the Health Officer and other unelected officers with respect to the Emergencies,  
25 including health officials and officers outside of the County.

26         68. Further, when pressed by Petitioners or other members of the public as to Respondents'  
27 unlawful inaction with respect to the Emergencies, Respondents would respond that they had already  
28 considered some private and undisclosed information given by the Health Officer or others behind

1 closed doors, and that they would continue to defer to the Health Officer’s decision to maintain the  
2 Emergencies, as well as to the decisions made by other health officials pursuant to the Seven County  
3 Pact.

4 69. The only issue periodically placed on the Board agenda by Respondents that was even  
5 tangentially related to the review or continuation of the Emergencies was an item considering the  
6 continuation of “social distancing” rules in County facilities, which was largely used to continue  
7 justifying Respondents’ ability to work remotely, as some Respondents preferred. During this update  
8 to consider continued remote appearances for Respondents, Respondents would not allow public  
9 comment on the Emergencies, but would only allow the Health Officer to give his continued  
10 recommendation for “social distancing” in County facilities. Respondents would then rubber stamp  
11 this recommendation.

12 70. On August 19, 2022, Petitioners informed Respondents that their actions and tactics in  
13 attempting to curtail public comment and input regarding the Emergencies was in direct violation of  
14 the Brown Act. (See August 19, 2022 Letter by ACCOG, attaced hereto as **Exhibit “E”**).

15 71. On September 16, 2022, counsel for the County, Donna R. Ziegler, responded to  
16 Petitioner ACCOG, and agreed that it would “unconditionally commit(s) that it would cease, desist  
17 from, and not repeat the challenged past actions” as described in Petitioner ACCOG’s August 19, 2022  
18 letter. (See County Counsel Response, dated September 16, 2022, attached hereto as **Exhibit “F”**).

19 72. Despite this “unconditional commitment” to cease and desist violating the Brown Act,  
20 Respondents continued to engage in the same or similar actions against County residents attempting to  
21 speak about the Emergencies and related topics of great public interest.

22 73. On November 9, 2022, Petitioners informed Respondents that they were required to  
23 come into immediate compliance with California Health and Safety Code, section 101080, and  
24 California Government Code § 8630(b) by appropriately reviewing the local conditions justifying  
25 continuing the Emergencies and terminating the Emergencies if warranted. (See Notice of Liabilty  
26 Letter, dated November 9, 2022, attached hereto as **Exhibit “G”**).

27 74. On November 18, 2022, Petitioners, through their former counsel, served Respondents  
28 with a Notice of Intent to File Writ Petition, which identified Petitioner’s Beneficial Standing,



1 Respondents' Mandatory Duties under the emergency laws, and Failure to Perform said Duty and  
2 Opportunity to Respond. (See **Exhibit "H"**)

3 75. Nevertheless, despite Petitioners' and other Alameda County residents' repeated  
4 requests that Respondents hold a public meeting to review local conditions and vote to end the  
5 Emergencies if local conditions no longer warranted maintaining them, and despite the fact that the  
6 Brown Act specifically precludes making these decisions behind closed doors and without an  
7 opportunity for public input, Respondents have continued to thwart and ignore these statutory duties  
8 and obligations to the People.

9 76. As of the date of filing this Petition, Respondents have not terminated the Emergencies  
10 and do not intend to review local conditions in Alameda County or to make a board determination to  
11 end the Emergencies, unless and until the unelected County Health Officer instructs them to do so, in  
12 clear violation of California law and long-standing principles of non-delegation. Accordingly, unless  
13 this Court properly orders Respondents to perform these statutory duties under the emergency laws  
14 and the Brown Act, Respondents and their public health agents and officers will continue to keep  
15 County residents in a perpetual state of emergency, stripped of their rights as citizens, and without any  
16 meaningful ability to "retain control over the instruments they have created." (Govt. Code § 54950).

17 **FIRST CAUSE OF ACTION**

18 **Writ of Mandate, Violation of Cal. Health & Safety Code,**

19 **§ 101080, Code of Civ. Proc., §§ 1087, 1085**

20 ***(By all Petitioners Against all Respondents)***

21 77. Petitioners reallege and incorporate by reference all the preceding paragraphs of this  
22 Petition, as though fully set forth herein.

23 78. Respondents have acted in violation of their mandatory, ministerial statutory duties and  
24 wholly without, outside the scope of, and in excess of their lawful jurisdiction and authority; acted  
25 arbitrarily and capriciously; and have abused their discretion by failing to proceed in the manner  
26 required by law.

27 79. Specifically, Respondents have violated their clear and mandatory duties under Health  
28 & Safety Code, section 101080 by: (a) failing to review local conditions to determine whether or not a

1 local health emergency was still warranted; (b) failing to terminate the local health emergency at the  
2 earliest possible date that conditions warrant; (c) delegating their duties under Health & Safety Code  
3 section 101080 to the Health Officer and/or to other county health officers via the Seven County Pact;  
4 and (d) failing to properly terminate the local health emergency in exchange for financial, professional,  
5 and other gains, rather than the health and safety of County residents.

6 80. Respondents have also exceeded their authority and/or abused their discretion as a local  
7 governing authority with quasi-legislative powers by improperly abdicating and delegating these  
8 powers and duties to the Health Officer and other counties' health officers who are part of the Executive  
9 Branch, in violation of the Separation of Powers inherent in Section 3 of Article III of the California  
10 Constitution, in addition to long-standing principles of non-delegation under California law. (*See e.g.*,  
11 *Carson Mobilehome Park Owners' Ass'n v. City of Carson* (1983) 35 Cal. 3d 184, 190 [an  
12 unconstitutional delegation of legislative authority occurs when a legislative body leaves the resolution  
13 of fundamental policy issues to others or fails to provide adequate direction for the implementation of  
14 that policy].).

15 81. A writ of traditional and/or alternative writ is necessary in this case to bring  
16 Respondents' actions into conformance with the law.

17 82. Petitioners have been, are being, and will continue to be harmed by Respondents' actions  
18 as described herein, above, and by Respondents potentially reinstating COVID-19 measures previously  
19 issued under the local health emergency and its accompanying police powers that, *inter alia*, restricted  
20 Petitioners' ability to conduct business, go to school, attend church, breathe freely, travel freely,  
21 associate with others freely, participate in society without having to "show papers," and to exercise and  
22 enjoy other rights and privileges of being a resident of the County and an American citizen, in general.

23 83. Petitioners, as taxpayers residing within the County, as well as general members of the  
24 public, have a right to have the laws of this State followed, and to have their local leaders comply with  
25 their duties under the law and the California Constitution.

26 84. Petitioners will be irreparably harmed if an injunction directing Respondents to perform  
27 their legal duties to review local conditions and vote to terminate the local health emergency if  
28 conditions warrant, and an accompanying stay preventing continued implementation of the

1 Emergencies if conditions do not so warrant are not issued pending resolution of this case. Petitioners  
2 will also be irreparably harmed if this Court does not issue a peremptory writ at the conclusion of this  
3 litigation requiring Respondents to review local conditions and vacate and rescind the Emergencies if  
4 conditions do not warrant their continuance.

5 85. Respondents have a clear and present mandatory duty to follow the law and California  
6 Constitution to both (i) review local conditions and determine whether they warrant the declaration of  
7 local health emergency, and (ii) terminate the local health emergency as soon as conditions warrant.  
8 Respondents cannot demonstrate that they are fulfilling their duties as described hereinabove if they  
9 never review local conditions warranting the local “emergency” in order to make this determination.

10 86. Unless mandated to perform their duties as required by law and the Constitution,  
11 Respondents will continue to violate Petitioners’ rights as organizations and individual taxpayers,  
12 citizens, and residents of the County, and Petitioners and the general public will continue to suffer  
13 irreparable harm.

14 87. An alternative and peremptory writ and/or preliminary and permanent injunction  
15 bringing Respondents’ duties into conformance with the law will not prevent Respondents from  
16 exercising their duties in the future if and when conditions of disaster or of extreme peril to the safety  
17 of persons or property arise in the County, as Respondents will be able to issue new declaration of a  
18 local health emergency as warranted to address that potential future emergency.

19 88. This action is seeking to enforce an important right affecting the public interest.  
20 Therefore, Petitioners are entitled to recover their costs and legal fees under Code of Civil Procedure,  
21 section 1021.5.

22 **SECOND CAUSE OF ACTION**

23 **Writ of Mandate, Violation of Cal. Gov. Code, § 8630; Code of Civ. Proc., §§ 1087, 1085**

24 ***(By all Petitioners Against all Respondents)***

25 89. Petitioners reallege and incorporate by reference all the preceding paragraphs of this  
26 Petition, as though fully set forth herein.

27 90. Respondents have acted in violation of their mandatory, ministerial statutory duties and  
28 wholly without, outside the scope of, and in excess of their lawful jurisdiction and authority; acted

1 arbitrarily and capriciously; and have abused their discretion by failing to proceed in the manner  
2 required by law.

3 91. Specifically, Respondents have violated their clear and mandatory duties under  
4 Government Code, section 8630 by (a) failing to review local conditions to determine whether or not a  
5 local emergency was still warranted; (b) failing to terminate the local emergency at the earliest possible  
6 date that conditions warrant; (c) delegating their duties under section 8630 to the Health Officer and/or  
7 other counties' health officers via the Seven County Pact; and (d) failing to properly terminate the local  
8 emergency in exchange for financial, professional, and other gains, rather than the health and safety of  
9 the County.

10 92. Respondents have also exceeded their authority and/or abused their discretion as a local  
11 governing authority with quasi-legislative powers by improperly abdicating and delegating these  
12 powers and duties to the Health Officer and/or other counties' health officers who are part of the  
13 Executive Branch, in violation of the Separation of Powers inherent in Section 3 of Article III of the  
14 California Constitution, in addition to long-standing principles of non-delegation under California law.  
15 (*See e.g., Carson Mobilehome Park Owners' Ass'n v. City of Carson* (1983) 35 Cal. 3d 184, 190 [an  
16 unconstitutional delegation of legislative authority occurs when a legislative body leaves the resolution  
17 of fundamental policy issues to others or fails to provide adequate direction for the implementation of  
18 that policy].).

19 93. A writ of traditional mandate and/or alternative writ is necessary in this case to bring  
20 Respondents' actions into conformance with the law.

21 94. Petitioners have been, are being, and will continue to be harmed by Respondents' actions  
22 as described herein, above, and by Respondents potentially reinstating COVID-19 measures previously  
23 issued under the local health emergency and the accompanying police powers that, *inter alia*, restricted  
24 Petitioners' ability to conduct business, go to school, attend church, breathe freely, travel freely,  
25 associate with others freely, participate in society without having to "show papers," and to exercise and  
26 enjoy other rights and privileges of being a resident of Alameda County and an American citizen, in  
27 general.

1           95.     Petitioners, as taxpayers residing within the County, as well as general members of the  
2 public, have a right to have the laws of this State followed, and to have their local leaders comply with  
3 their duties under the law and the California Constitution.

4           96.     Petitioners will be irreparably harmed if an alternative writ directing Respondents to  
5 perform their legal duties to review local conditions and vote to terminate the local health emergency  
6 if conditions warrant, and an accompanying stay preventing continued implementation of the  
7 Emergencies if such conditions do not warrant them are not issued pending resolution of this case.  
8 Petitioners will also be irreparably harmed if this Court does not issue a peremptory writ at the  
9 conclusion of this litigation requiring Respondents to review local conditions and vacate and rescind  
10 the Emergencies if such conditions do not warrant their continuance.

11           97.     Respondents have a clear and present mandatory duty to follow the law and California  
12 Constitution to both (i) review local conditions and determine whether they warrant the declaration of  
13 local emergency, and (ii) terminate the local emergency as soon as conditions warrant. Respondents  
14 cannot demonstrate that they are fulfilling their duties as described herein, above, if they never review  
15 local conditions warranting the local “emergency” in order to make this determination.

16           98.     Unless mandated to perform their duties as required by law and the Constitution,  
17 Respondents will continue to violate Petitioners’ rights as organizations and individual taxpayers,  
18 citizens, and residents of Alameda County, and Petitioners and the general public will continue to suffer  
19 irreparable harm.

20           99.     An alternative and peremptory writ and/or preliminary and permanent injunction  
21 bringing Respondents’ duties into conformance with the law will not prevent Respondents from  
22 exercising their duties in the future if and when conditions of disaster or of extreme peril to the safety  
23 of persons or property arising in the County, as Respondents will be able to issue a new declaration  
24 of a local health emergency as warranted to address that potential future emergency.

25           100.    This action is seeking to enforce an important right affecting the public interest.  
26 Therefore, Petitioners are entitled to recover their costs and legal fees under the Code of Civil  
27 Procedure, section 1021.5.

1 **THIRD CAUSE OF ACTION**

2 **Writ of Mandate, Arbitrary and Capricious Agency Action, Abuse of Discretion,**  
3 **and Failure to Justify the Decision, Cal. Code Civ. Proc., § 1085**

4 *(By all Petitioners Against all Respondents)*

5 101. Petitioners reallege and incorporate by reference all preceding paragraphs of this  
6 Petition, as though fully set forth herein.

7 102. In declaring and subsequently maintaining the local and local health emergencies under  
8 Government Code section 8630 and Health & Safety Code section 101080, Respondents were  
9 statutorily obligated to follow a reasoned decision-making process that considered all relevant factors  
10 and evidence associated with their declarations of emergency and that was not arbitrary and capricious.

11 103. Respondents violated those requirements, acted arbitrarily and capriciously, and abused  
12 their discretion by engaging in the actions alleged above, including but not limited to (1) failing to cite  
13 or reference any local medical or scientific authority, studies or data to justify their declarations of  
14 Emergencies; (2) failing to take into consideration, *ab initio*, the fiscal, physical, psychological, and  
15 financial impact of the declarations of Emergencies; (3) failing to take into consideration the fiscal,  
16 physical, psychological, and financial impact of the declarations of either emergency since the time of  
17 the initial declarations nearly three years ago and in any review of the Emergencies; (4) failing to do  
18 any meaningful review any of local conditions that warrant declaring a local emergency or local health  
19 emergency; and/or (5) failing to consider alternative, lesser-restrictive, and actually effective means for  
20 responding to COVID-19.

21 104. Instead, Respondents decided, in advance, to declare local health and local emergencies  
22 in response to a potential threat without any local data or evidence in support, and then voted to make  
23 that happen. Furthermore, since that time, Respondents have – by their own admission – maintained  
24 the declarations of the Emergencies simply to maintain access to federal COVID relief funds, and have  
25 failed to perform any meaningful review of local conditions to determine whether the continuance of  
26 the declarations of the Emergencies remain warranted under the current facts and circumstances.

27 105. Under Code of Civil Procedure, section 1085, this Court has authority to set aside quasi-  
28 legislative agency action that is arbitrary and capricious.

1 106. Petitioners have been, are being, and will continue to be harmed by Respondents'  
2 arbitrary and capricious actions as herein described herein, above.

3 107. A writ of traditional and/or administrative mandate and/or alternative writ is necessary  
4 in this case to bring Respondents' actions into conformance with the law.

5 108. Unless mandated to perform their duties as required by law and the Constitution,  
6 Respondents will continue to violate Petitioners' rights as organizations and individual taxpayers,  
7 citizens, and residents of the County, and Petitioners and the general public will continue to suffer  
8 irreparable harm.

9 109. An alternative and/or peremptory writ and/or preliminary and permanent injunction  
10 bringing Respondents' duties into conformance with the law will not prevent Respondents from  
11 exercising their duties in the future if and when conditions of disaster or of extreme peril to the safety  
12 of persons or property arising in the County, as Respondents will be able to issue a new declaration  
13 of a local health emergency as warranted to address that potential future emergency.

14 110. This action is seeking to enforce an important right affecting the public interest.  
15 Therefore, Petitioners are entitled to recover their costs and legal fees under Code of Civil Procedure,  
16 section 1021.5.

17 **FOURTH CAUSE OF ACTION**

18 **Declaratory Relief, Code Civ. Proc., § 1060**

19 ***(By all Petitioners Against all Respondents)***

20 111. Petitioners reallege and incorporate by reference all preceding paragraphs of this  
21 Petition, as though fully set forth herein.

22 112. Respondents contend that they have the power to declare and maintain local and local  
23 health emergencies pursuant to Government Code, section 8630 and Health & Safety Code, section  
24 101080, but that, on account of the Governor's Proclamation, they do not have the duty to review their  
25 declarations of Emergencies, nor the duty to terminate them at the earliest date conditions warrant.

26 113. Petitioners contend that Respondents have ongoing, mandatory, and affirmative duties  
27 under Health & Safety Code, section 101080, Government Code, section 8630, and Constitution to  
28 review, *inter alia*, local County conditions, regardless of the time intervals, to determine whether or not

1 the conditions justify continuing the Emergencies.

2 114. Petitioners seek a declaration from this Court that Respondents must comply with their  
3 statutory obligations to (1) periodically review local County conditions to determine whether there is a  
4 continued need for a declaration of either a local or local health emergency, and (2) terminate the local  
5 and/or local health emergency at the earliest opportunity conditions warrant, regardless of the time  
6 intervals at which these reviews and declarations might occur.

7 115. Declaratory relief is proper to seek interpretation of statutes governing an administrative  
8 agency's duties, as opposed to a review of a specific agency decision, and an actual and present  
9 controversy exists with respect to the disputes between Petitioners and Respondents, as alleged herein.

10 116. Absent declaratory relief, Respondents will continue to violate Petitioners' rights as  
11 organizations and individual taxpayers, citizens, and residents of the County, and Petitioners and the  
12 general public will continue to suffer irreparable harm.

13 117. This action is seeking to enforce an important right affecting the public interest.  
14 Therefore, Petitioners are entitled to recover their costs and legal fees under Code of Civil Procedure,  
15 section 1021.5.

16 **FIFTH CAUSE OF ACTION**

17 **Injunctive Relief, Code Civ. Proc., § 527**

18 ***(By all Petitioners Against all Respondents)***

19 118. Petitioners reallege and incorporate by reference all preceding paragraphs of this  
20 Petition, as though fully set forth herein.

21 119. Respondents contend that they have the power to declare and maintain local and local  
22 health emergencies pursuant to Government Code, section 8630 and Health & Safety Code, section  
23 101080, but that, on account of the Governor's Proclamation, they do not have the duty to review their  
24 declarations of Emergencies, nor the duty to terminate them at the earliest date conditions warrant.

25 120. As of the date of filing this Petition, Respondents have not committed to review local  
26 conditions or terminate the Emergencies.

27 121. Injunctions against public officials for actions purportedly for a public benefit are  
28 available when (a) the statute is unconstitutional and there is irreparable injury; (b) the statute is valid



1 but enforced in an unconstitutional manner; and (c) the public official's actions exceed his or her  
2 authority. (*See Alfaro v. Terhune* (2002) 98 Cal. App. 4<sup>th</sup> 492, 501; *see also* 6 Witkin, Cal. Procedure  
3 (4<sup>th</sup> ed. 1997)).

4 122. As further alleged hereinabove, Respondents have both exceeded their authority and  
5 have acted in an unconstitutional manner by failing to review local conditions and failing to terminate  
6 the Emergencies despite local conditions no longer warranting them.

7 123. Respondents' actions have already caused and will continue to cause irreparable harm  
8 to Petitioners and hundreds of thousands of County residents impacted by the Emergencies, as alleged  
9 further herein.

10 124. Petitioners have no administrative remedy or adequate remedy at law and will suffer  
11 irreparable harm if the Court does not declare unlawful the continued declarations of Emergencies  
12 without any review.

13 125. Petitioners seek preliminary and permanent injunctive relief enjoining Respondents  
14 from refusing to review local conditions to determine whether or not they justify continued declarations  
15 of the Emergencies, and refusing to terminate either the Emergencies at the earliest time conditions  
16 warrant.

17 126. This action is seeking to enforce an important right affecting the public interest.  
18 Therefore, Petitioners are entitled to recover their costs and legal fees under the Code of Civil  
19 Procedure, section 1021.5.

20 **SIXTH CAUSE OF ACTION**

21 **Injunctive and Declaratory Relief and Award of Attorneys' Fees,**

22 **Violations of the Ralph M. Brown Act, Government Code § 54950 et seq; 54950.2**

23 ***(By all Petitioners Against all Respondents)***

24 127. Petitioners reallege and incorporate by reference all preceding paragraphs of this  
25 Petition, as though fully set forth herein.

26 128. An actual controversy has arisen and now exists in that (a) Petitioners contend that the  
27 actions of Respondents as alleged herein, such as holding secret meetings to decide the people's business  
28 rather than holding open public meetings and engaging in harassing tactics to prevent Petitioners from

1 participating in open meetings are violations of the Brown Act; and (b) Respondents contend that  
2 Respondents may engage in secret meetings and make non-public decisions with respect to whether to  
3 review local conditons or terminate the Emergencies, and that such actions do not violate the Brown  
4 Act.

5 129. The central provison of the Brown Act requires that all “meetings” of a legislative body  
6 be open and public. (Gov. Code § 54952.2). With limited exceptions, the Brown Act requires all county  
7 board of supervisors meetings to be open and public and all discussion items properly agendized and  
8 publicly noticed for hearing. (*See* Gov. Code, §§ 54952, 54953.3, 54954, *et seq.*) The board must keep  
9 record of its decisions and the proceedings of all regular and special meetings. (*Ibid.*)

10 130. Individual board members have no power to act for the county merely because they are  
11 members of the board of supervisors; rather, meetings of the board of supervisors are subject to the  
12 restrictions and requirements of the Brown Act. (*Ibid.*)

13 131. Under the Brown Act, a meeting is “any congregation of a majority of members of a  
14 legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within  
15 the subject matter jurisdiction of the legislative body or the local agency to which it pertains.” (Gov.  
16 Code § 54952.2). If a majority of members are in the same room and *merely listen* to a discussion of  
17 county business, they will be participating in a Brown Act meeting that requires notice, an agenda, and  
18 a period of public comment.

19 132. The Brown Act also mandates that agendas for regular meetings allow for two types of  
20 public comment periods. The first is a general audience public comment period, where members of the  
21 public can comment on any item of interest that is within the subject matter jurisdiction of the local  
22 agency. The second is a specific comment period pertaining to items placed on the agenda. The Brown  
23 Act requires that the governing body allow these specific comment periods on agenda items to occur  
24 prior to or during the governing body’s consideration of that item (Gov. Code § 54954.3).

25 133. The Brown Act also requires that agendas for special meetings also provide an  
26 opportunity for members of the public to address the body concerning any item listed on the agenda  
27 prior to the body’s consideration of that item. (Gov. Code § 54954.3).

28 134. While a governing body can adopt *reasonable* regulations limiting the total amount of

1 time allocated to each person for public testimony (e.g. 3-5 minutes per speaker), it may not prohibit  
2 public comment/criticism of the policies, procedures, programs, or services of the agency or the acts or  
3 omissions of the governing body (Govt. Code § 54954.3(c)).

4 135. As fully alleged herein, Respondents have engaged in numerous and ongoing violations  
5 of the Brown Act that have severely curtailed public knowledge and participation in the people’s  
6 business with respect to the Emergencies.

7 136. Respondents have violated their obligations under the Brown Act by, among other  
8 actions: (a) refusing to put the topic of the review of local conditions or continuation or termination of  
9 the Emergencies onto the board meeting agenda for public input since first declaring them in March  
10 2020; (b) refusing to allow any comments that the Board deemed to be “inappropriate” or critical of  
11 the Board’s actions with respect to its failure to review the local conditions or terminate the  
12 Emergencies if local conditions no longer warranted keeping them; (c) making derisive, dismissive and  
13 inflammatory comments to those attempting to speak on these issues; (d) suddenly changing the order  
14 of agenda items and scheduling the topic of continued “social distancing” in County facilities at the  
15 very end of Board meetings in order to prevent certain members of the public from having any  
16 opportunity to speak about the only topic remotely related to the Emergencies; (e) cutting off the  
17 microphones or muting speakers mid-comment when they tried to speak to any topic related to the  
18 Emergencies; (f) not taking registered comments critical of the Board’s inactions with respect to the  
19 review of the Emergencies or any orders issuing therefrom, including but not limited to, the loss of  
20 necessary income due to ongoing eviction moratoriums maintained under the Emergencies; (g)  
21 curtailing the public commentary period to such short time segments so that speakers could not speak  
22 meaningfully or substantively at all; (g) abusing the use of “remote” meetings by, among other things,  
23 (i) hiding citizen/speaker participant lists so that the public could not see who raised their hand to speak,  
24 (ii) not calling on members of the public who had raised their hand to speak, (iii) keeping Respondents  
25 appearing remotely off camera and unseen by their constituents, (iv) preventing remote members of the  
26 public from communicating with one another, and (v) cutting the cameras to the gallery to prevent  
27 members of the public appearing remotely from seeing their fellow citizens; and (h) removing members  
28

1 of the public refusing to wear masks from the gallery and preventing them from participating in their  
2 own governance.

3 137. 139. In addition, Respondents have engaged, and are legally presumed to  
4 have engaged, in secret, covert, non-public communications about the Emergencies with their  
5 Health Officer and/or other officials outside of the County during private meetings that must  
6 be open to the public in blatant violation of the open meetings requirements of the Brown  
7 Act.

8 138. Petitioners gave notice to Respondents of the various violations of the Brown  
9 Act on August 19, 2022.

10 139. Respondents promised to cease and desist their violations of the Brown Act on  
11 September 16, 2022.

12 140. As of the date of filing this Petition, Respondents have not cured their  
13 numerous violations of the Brown Act and are engaged in ongoing violations of the Brown  
14 Act.

15 141. Respondents' Brown Act actions have already caused and will continue to cause  
16 irreparable harm to Petitioners and hundreds of thousands of County residents impacted by  
17 these violations and unable to participate in their representative government.

18 142. Petitioners have no administrative remedy or adequate remedy at law and will suffer  
19 irreparable harm if the Court does not declare unlawful the continued declarations of Emergencies  
20 without any review.

21 143. Petitioners seek mandamus and/or permanent injunctive relief from these numerous  
22 Brown Act violations and a declaration that Respondents must cease engaging in secret  
23 communications and private meetings and instead follow all provisions of the Brown Act with respect  
24 to the Emergencies and all orders and policies issued under these Emergencies.

25 144. Because Respondents failed to cure their violations of the Brown Act and continue to  
26 engage in violations of the Brown Act, Petitioners have been required to engage counsel in order to  
27 seek the relief sought herein. Petitioners are therefore entitled to an award of attorneys fees and costs  
28

1 in the prosecution of this action to obtain Respondents' compliance with the Brown Act, and seek this  
2 Court's award of fees and costs.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Petitioners pray for relief as follows:

5 1. That the Court issue an alternative and/or peremptory writ of mandate ordering  
6 Respondents to: (i) comply with Health & Safety Code, section 101080 and Government Code section  
7 8630, to review local conditions in the County and determine whether or not they warrant a continued  
8 declaration of local health emergency and local emergency, and to vote to end or continue the local  
9 health emergency and local emergency pursuant to these statutes; (ii) ensure that the deliberations as to  
10 the review of local conditions and determinations as to whether to maintain or terminate them are done  
11 in a publicly noticed board meeting that follows all of the requirements of the Brown Act; (iii)  
12 immediately inform County residents whether or not the local health emergency and/or local emergency  
13 have been terminated and the reasons therefor; and (iv) issue a return to this Court verifying that  
14 Respondents have completed the foregoing actions;

15 2. That the Court issue a preliminary and permanent injunction enjoining Respondents from  
16 further violating Health & Safety Code, section 101080 and Government Code section 8630, and  
17 compelling Respondents to review the local conditions in the County and whether they warrant a  
18 continued declaration of local health emergency and local emergency and vote whether to end the local  
19 health emergency and local emergency pursuant to these statutes in a publicly noticed board meeting  
20 that follows all of the requirements of the Brown Act;

21 3. That the Court immediately issue, pending issuance of the peremptory writ or alternative  
22 writ prayed for above, a temporary stay preventing further implementation of the Emergencies or any  
23 orders or policies issued under these Emergencies, absent a proper review of local conditions and  
24 determination of whether to continue the Emergencies at a publicly noticed meeting that fully complies  
25 with the requirements of the Brown Act;

26 4. For a judgment of declaratory relief decreeing that Respondents must comply with their  
27 obligations under Health & Safety Code section 101080 and Government Code 8630 to both  
28

1 periodically review local conditions and terminate local emergencies and local health emergencies at  
2 the “earliest date” that conditions no longer warrant keeping them.

3 5. For a judgment of declaratory relief decreeing that Respondents must comply with their  
4 obligations under the Brown Act with respect to the review of local conditions and the maintenance  
5 and/or termination of declared local emergencies or local health emergencies as well as any orders or  
6 policies issued under these declared local emergencies and local health emergencies, and further  
7 decreeing that Respondents cannot engage in secret, covert, non-public communications between or  
8 among members of the Board and/or with other unelected officials, including the Health Officer or  
9 other health officials outside of the County or make secret decisions affecting the public with respect  
10 to the Emergencies that must be determined during an open and public meeting in compliance with the  
11 Brown Act;

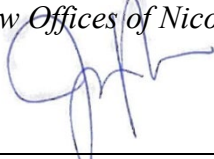
12 6. That the Court issue a temporary restraining order enjoining Respondents from applying  
13 for and/or receiving state and/or federal monies to “address” the effects of COVID-19 in Alameda  
14 County and from spending, allocating, or otherwise using or directing state or federal monies to  
15 “address” the effects of COVID-19 in Alameda County pending entry of judgment herein;

16 7. That the Court award Petitioners reasonable attorneys’ fees and costs of litigation under  
17 Code of Civil Procedure, section 1021.5, 42 U.S.C. § 1988, and any other applicable provisions of  
18 law;

19 8. That the Court grant any other relief the Court deems just and proper.

20 Dated: February 21, 2023

21 **FACTS LAW TRUTH JUSTICE**  
22 *Law Offices of Nicole C. Pearson*

23 

24 \_\_\_\_\_  
25 Jessica R. Barsotti, Esq.  
26 Rita Barnett-Rose, Esq.  
27 Nicole C. Pearson, Esq.  
28 Attorneys for Petitioners

# **Exhibit A**

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

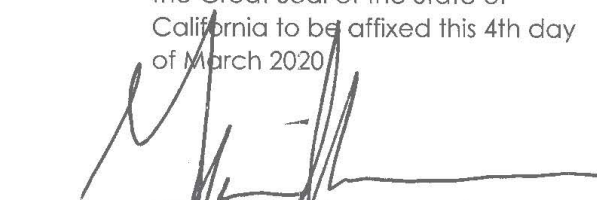


notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

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 B**



**OFFICE OF THE AGENCY DIRECTOR**

1000 San Leandro Boulevard, Suite 300  
San Leandro, CA 94577  
TEL (510) 618-3452  
FAX (510) 351-1367

March 6, 2020

The Honorable Board of Supervisors  
County Administration Building  
1221 Oak Street  
Oakland, CA 94612

**SUBJECT: ADOPT A RESOLUTION RATIFYING THE DECLARATION OF A LOCAL HEALTH EMERGENCY BY THE COUNTY HEALTH OFFICER RELATED TO THE 2019 NOVEL CORONAVIRUS**

Dear Board Members:

**RECOMMENDATION**

Adopt a Resolution ratifying the Declaration of a Local Health Emergency by the County Health Officer related to the 2019 Novel Coronavirus

**DISCUSSION/SUMMARY**

In December 2019, an outbreak of a respiratory illness due to a novel coronavirus (a disease known as 2019 Novel Coronavirus or COVID-19) was first identified in Wuhan City, Hubei Province, China. Since then, the outbreak has spread to more than 75 countries, including the United States. As of March 5, 14 California counties have had at least one citizen infected with the virus. The County of Alameda is among those counties, as are several Bay Area counties including Contra Costa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

The United States Centers for Disease Control and Prevention (CDC) considers COVID-19 to present a very serious threat to public health. On January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the United States. On January 31, 2020, the Secretary of the US Department of Health and Human Services declared a public health emergency in the United States.

As of March 6, 2020, the CDC has identified 164 confirmed cases of COVID-19 infection, across 19 states, including 45 in California. The number of reported cases has escalated dramatically, with more than 94,000 confirmed cases and more than 3,300 deaths worldwide.

On March 1, 2020, the California Department of Public Health confirmed that an Oakland resident had become infected with COVID-19 after providing healthcare to the Solano County COVID-19 patient. Two days later, an individual in Berkeley also tested positive for COVID-19 Infection.

California Health and Safety Code section 101080 allows a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, "whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent." On March 1, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP declared a local health emergency. Dr. Pan found that with "multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda." Dr. Pan renewed this declaration of emergency on March 5, 2020.

The declaration of a local health emergency provides the following benefits: it allows other jurisdictions and state agencies to provide mutual aid; it allows the extraordinary costs of providing mutual aid to be a legal charge against the state; and it provides immunity to healthcare providers who render aid during the emergency. The declaration also provides the local Health Officer with the authority to exercise the full range of her power to protect the community's public health, which includes issuance and enforcement of orders for quarantine and isolation.

Under section 101080, your Board is required to ratify the Health Officer's declaration of emergency. Ordinarily, your Board would need to renew this ratification every thirty (30) days; however, on March 4, 2020, California Governor Gavin Newsom issued a Proclamation of a State of Emergency relating to the COVID-19 outbreak that included a waiver of the renewal requirement: "The 30-day time period in Health & 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 emergency." The Governor similarly waived the renewal requirement for a declaration of local emergency.

#### **VISION 2026 GOAL**

This Resolution meets the 10X goal pathway of **Healthcare for All** in support of our shared visions of **Safe and Livable Communities**, **Thriving and Resilient Population**, and **Healthy Environment**.

Sincerely,

DocuSigned by:  
  
CB284AE84C50405...

Colleen Chawla, Director  
Health Care Services Agency

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA RATIFYING THE DECLARATION OF LOCAL HEALTH EMERGENCY BY THE COUNTY HEALTH OFFICER RELATED TO THE 2019 NOVEL CORONAVIRUS**

**WHEREAS**, California Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, non-communicable biological agent, toxin, or radioactive agent; and

**WHEREAS**, on March 1, 2020 and again on March 5, 2020, the County's Health Officer declared a local health emergency based on an imminent and proximate threat to public health from the introduction of a novel coronavirus (named COVID-19) in the County of Alameda; and

**WHEREAS**, under Health and Safety Code section 101080, the local health emergency shall not remain in effect for more than seven (7) days unless ratified by the Board of Supervisors; and

**WHEREAS**, the Board of Supervisors hereby finds that there continues to exist an imminent and proximate threat to public health from the introduction of COVID-19 in the County for reasons set forth in the declaration of local health emergency by the County's Health Officer, dated March 5, 2020;

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Supervisors of the County of Alameda as follows:

Section 1 – The local health emergency declared by the County's Health Officer on March 5, 2020 is hereby ratified. Under authority granted by California Governor Gavin Newsom in a Proclamation of a State of Emergency issued on March 4, 2020, this declaration of local emergency shall remain in effect until the Board of Supervisors determines that the emergency condition no longer exists.

Section 2 – The Board of Supervisors hereby delegates to the County's Health Officer authority to terminate the local health emergency, pursuant to Health & Safety Code section 101080 "at the earliest possible date that conditions warrant the termination."

Section 3 – All County departments and agencies take those actions, measures, and steps deemed necessary to assure the health, safety, and welfare of County citizens and property, including requesting mutual aid to the extent such aid is necessary.

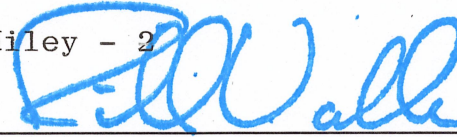


The foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Alameda, State of California, at a regular meeting of the Board on the 10 day of March, 2020 by the following vote:

AYES: Supervisors Carson, Haggerty and President Valle - 3

NOES: None

EXCUSED: Supervisors Chan and Miley - 2

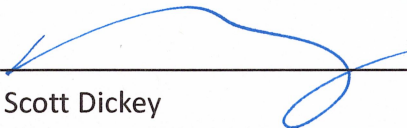


Richard Valle, President of the Board of Supervisors

ATTEST:  
Clerk of the Board of Supervisors,  
County of Alameda, State of California

By:   
Deputy

APPROVED AS TO FORM:  
Donna R. Ziegler, County Counsel

By:   
K. Scott Dickey  
Assistant County Counsel

## DECLARATION OF A LOCAL HEALTH EMERGENCY

**WHEREAS**, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent;

**WHEREAS**, COVID-19 is a contagious, infectious, or communicable disease;

**WHEREAS**, the Secretary of the United States Department of Health and Human Services declared a public health emergency on January 31, 2020, for the United States;

**WHEREAS**, the Centers for Disease Control and Prevention announced on February 25, 2020, that community spread of COVID-19 is likely to occur in the United States;

**WHEREAS**, the first confirmed case of COVID-19 has now been identified in the County of Alameda;

**WHEREAS**, the Governor Gavin Newsom issued a Proclamation of a State of Emergency on March 4, 2020 for California;

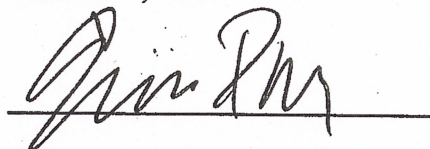
**WHEREAS**, based on the United States Department of Health and Human Services declaration and the Centers for Disease Control and Prevention statements, and multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda;

**WHEREAS**, based on the foregoing, the Health Officer of Alameda County does hereby find that there is an imminent and proximate threat of the introduction and spread of COVID-19 in the County of Alameda and a threat to the public health of the residents of the County of Alameda;

**THEREFORE**, the County Health Officer hereby declares a renewal of a local health emergency originally declared on March 1<sup>st</sup>, 2020 throughout the County of Alameda;

**IT IS SO DECLARED**, on this date: March 5<sup>th</sup>, 2020.

**BY:**



Name: Dr. Erica Pan

Title: Interim Health Officer

Public Health Department, County of Alameda

## DECLARATION OF A LOCAL HEALTH EMERGENCY

**WHEREAS**, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent;

**WHEREAS**, COVID-19 is a contagious, infectious, or communicable disease;

**WHEREAS**, the Secretary of the United States Department of Health and Human Services declared a public health emergency on January 31, 2020, for the United States;

**WHEREAS**, the Centers for Disease Control and Prevention announced on February 25, 2020, that community spread of COVID-19 is likely to occur in the United States;

**WHEREAS**, the first confirmed case of COVID-19 has now been identified in the County of Alameda;

**WHEREAS**, the Governor Gavin Newsom issued a Proclamation of a State of Emergency on March 4, 2020 for California;

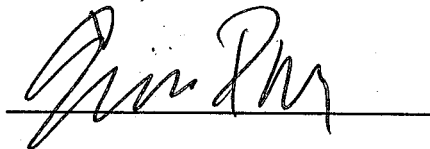
**WHEREAS**, based on the United States Department of Health and Human Services declaration and the Centers for Disease Control and Prevention statements, and multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda;

**WHEREAS**, based on the foregoing, the Health Officer of Alameda County does hereby find that there is an imminent and proximate threat of the introduction and spread of COVID-19 in the County of Alameda and a threat to the public health of the residents of the County of Alameda;

**THEREFORE**, the County Health Officer hereby declares a renewal of a local health emergency originally declared on March 1<sup>st</sup>, 2020 throughout the County of Alameda;

**IT IS SO DECLARED**, on this date: March 5<sup>th</sup>, 2020.

**BY:**



Name: Dr. Erica Pan

Title: Interim Health Officer

Public Health Department, County of Alameda

# **Exhibit C**





The foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Alameda, State of California, at a regular meeting of the Board on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 by the following vote:

AYES:

NOES:

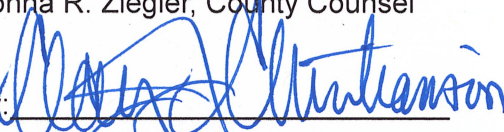
EXCUSED:

\_\_\_\_\_  
Richard Valle, President of the Board of Supervisors

ATTEST:  
Clerk of the Board of Supervisors,  
County of Alameda, State of California

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:  
Donna R. Ziegler, County Counsel

By:   
\_\_\_\_\_  
Clay J. Christianson  
Deputy County Counsel



**PROCLAMATION OF A LOCAL EMERGENCY  
BY THE DIRECTOR OF EMERGENCY SERVICES**

**WHEREAS**, Government Code section 8630 and Alameda County Administrative Code Section 2.118.110 authorize the Director of Emergency Services to proclaim a local emergency when the County of Alameda ("County") is threatened by conditions of disaster or extreme peril to the safety of persons and property within the County that are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the County, and the Board of Supervisors is not in session; and

**WHEREAS**, in December 2019, a novel coronavirus (COVID-19) was first detected in Wuhan City, Hubei Province, China, and has since spread to over 100 countries, including the United States; and

**WHEREAS**, the Centers for Disease Control and Prevention considers COVID-19 to be a very serious public health threat, which is now a pandemic according to the World Health Organization; and

**WHEREAS**, on March 1, 2020, the County Health Officer determined there was an imminent and proximate threat to public health from the introduction of COVID-19 in Alameda County, and has declared a Local Health Emergency as a result.

**WHEREAS**, on March 4, 2020, California Governor Gavin Newsom declared a state of emergency due to the spread of COVID-19; and

**WHEREAS**, on March 10, 2020, the County Board of Supervisors ratified the County Health Officer's declaration of a local health emergency; and

**WHEREAS**, on March 13, 2020, President Donald Trump declared the ongoing COVID-19 pandemic of sufficient severity and magnitude to warrant an emergency declaration for all states, tribes, territories, and the District of Columbia; and

**WHEREAS**, on March 16, 2020, Health Officers from six Bay Area counties, including Alameda County, and the City of Berkeley issued an order directing individuals to shelter in their place of residence based on evidence of increasing occurrence of COVID-19 within the county and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the County places it at risk for serious health complications, including death, from COVID-19; and

**WHEREAS**, the Director of Emergency Services hereby finds that conditions of extreme peril to the safety of persons and property have arisen within the County due to COVID-19; and



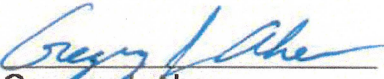
**WHEREAS**, the Board of Supervisors is not in session, and cannot immediately be called into session; and

**WHEREAS**, during a local emergency, the Director of Emergency Services or other individual authorized to serve in that capacity under Alameda County Administrative Code Section 2.118.100 is empowered by Alameda County Administrative Code section 2.118.120 to issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, that such rules and regulations must be confirmed at the earliest possible time by the Board of Supervisors;

The local emergency shall not remain in effect for a period in excess of seven days unless it has been ratified by the Board of Supervisors.

Date: 03/16/2020

Time: 1504 hours

By:   
Gregory J. Ahern  
Sheriff

APPROVED AS TO FORM AND LEGALITY:

  
Deputy County Counsel



# **Exhibit D**

**RESOLUTION NUMBER R-2020-139**

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA RATIFYING THE DECLARATION OF LOCAL EMERGENCY BY THE DIRECTOR OF EMERGENCY SERVICES RELATED TO THE 2019 NOVEL CORONAVIRUS**

**WHEREAS**, Government Code section 8630 and Alameda County Administrative Code Section 2.118.110 authorize the Director of Emergency Services to proclaim a local emergency when the County of Alameda ("County") is threatened by conditions of disaster or extreme peril to the safety of persons and property within the County that are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the County, and the Board of Supervisors is not in session; and

**WHEREAS**, on March 16, 2020, the Director of Emergency Services declared a local emergency based on conditions of extreme peril to the safety of persons and property within the County from the introduction of a novel coronavirus (named COVID-19) in the County; and

**WHEREAS**, under Government Code section 8630, the local emergency shall not remain in effect for more than seven (7) days unless ratified by the Board of Supervisors; and

**WHEREAS**, the Board of Supervisors hereby finds that there continues to exist conditions of extreme peril to the safety of persons and property within the County from the introduction of COVID-19 in the County for reasons set forth in the declaration of local health emergency by the Director of Emergency Services, dated March 16, 2020;

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Supervisors of the County of Alameda as follows:

Section 1 – The local emergency declared by the Director of Emergency Services on March 16, 2020 is hereby ratified. Under authority granted by California Governor Gavin Newsom in a Proclamation of a State of Emergency issued on March 4, 2020, this declaration of local emergency shall remain in effect until the Board of Supervisors determines that the emergency condition no longer exists.

Section 2 – All County departments and agencies take those actions, measures, and steps deemed necessary to assure the health, safety, and welfare of County citizens and property, including requesting mutual aid to the extent such aid is necessary.

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The foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Alameda, State of California, at a regular meeting of the Board on the 17th day of March, 2020 by the following vote:

AYES: Supervisors Carson, Chan, Haggerty & President Valle - 4

NOES: None

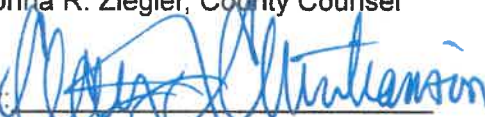
EXCUSED: Supervisor Miley - 1

  
Richard Valle, President of the Board of Supervisors

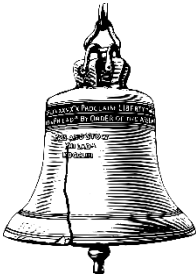
ATTEST:  
Clerk of the Board of Supervisors,  
County of Alameda, State of California

By:   
Deputy

APPROVED AS TO FORM:  
Donna R. Ziegler, County Counsel

By:   
Clay J. Christianson  
Deputy County Counsel

# **Exhibit E**



Alameda County  
Committee of Open Government

August 19, 2022

Keith Carson, President  
Alameda County Board of Supervisors  
1221 Oak Street, Suite 536  
Oakland, California 94612

Demand to Cease and Desist from Practices Violating the Ralph M. Brown Act

Dear Mr. Carson,

This notice is to caution you that the body over which you preside has violated the Ralph M. Brown Act, in engaging in or ratifying the practice of cutting off public comment during the prescribed public comment period and attempting to curtail or discourage the content of public comment. The Alameda County Committee of Open Government represents one or more individuals who have suffered prejudice due to the following:

**Violations Complained of**

1. On April 29, 2002, Supervisor Valle prohibited a member of the Public from speaking at the meeting of the Public Protection Committee and then closed all further public comment and the entire meeting itself after the disagreement between Mr. Valle and the member of the Public could not be resolved.
2. On June 19, 2022, on 2 separate occasions in the same meeting, during the PUBLIC COMMENT (ITEMS ON THE AGENDA) and during PUBLIC INPUT (ITEMS NOT ON THE AGENDA), you, President Carson, ended public comment before all speakers in the queue had the opportunity to speak.

The Ralph M. Brown Act provides, in subdivision (e)(2)(G)(iii) of Government

Demand to Cease and Desist from Practices Violating the Ralph M. Brown Act Alameda County Committee of Open Government, August 19, 2022

Code Section 54953:

A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

Source:

[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=2.&chapter=9.&part=1.&lawCode=GOV&title=5)

And 54954.3(a):

Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2 .

3. On June 7, 2022, during the Board of Supervisor's regular meeting, President Carson stipulated that he would only take 2 more comments on "the first amendment item" and that when the next caller was called on, they could only comment on anything but "the first amendment item." The First Amendment item he is referring to is a Notice to Cease and Desist the violations of law by the County and within that Notice was a detailed description of all of the ways that the County was in violation of the law. While he "appreciates the callers on the First Amendment issue" he only wanted to hear "any other item than the First Amendment."

The Ralph M. Brown Act provides, in subdivision (c) of Government Code Section 54954.3:

The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

Demand to Cease and Desist from Practices Violating the Ralph M. Brown Act Alameda County Committee of Open Government, August 19, 2022

4. On August 2, 2022, during the Board of Supervisor's regular meeting, you President Carson stipulated that you only take two 30 minutes more of public comment during the public comment period on agenda items. You went ahead and allowed comment on item 50, but then decided to abridge commentary. And there were several people still waiting to comment.

### **Unconditional Commitment to Cease and Desist**

The Alameda County Board of Supervisors has 30 days from receipt of this letter to provide us with an unconditional commitment to cease, desist from, and not repeat the practices noted above as **items 1 through 4**, in the manner compliant with Government Code section 54960.2, subdivision (c). Its failure to do so will entitle individuals of the Ad-hoc assembly of the Alameda County of Open Government to file an action for declaratory judgment and injunctive relief and for attorney's fees and costs.

Respectfully,

Alameda County Committee of Open Government  
PO Box  
2201 Shoreline Drive #1414  
Alameda, California [94501]  
510-343-9782  
[standupac@protonmail.com](mailto:standupac@protonmail.com)

# **Exhibit F**





## BOARD OF SUPERVISORS

September 16, 2022

Alameda County Committee of Open Government  
P.O. Box  
2201 Shoreline Drive #1414  
Alameda, California 94501  
Email: standupac@protonmail.com

To Alameda County Committee of Open Government:

The County of Alameda Board of Supervisors ("Board") and its Public Protection Committee ("Committee") have received your cease and desist letter, dated August 19, 2022, alleging the Board and Committee engaged in past actions violating the Ralph M. Brown Act at Government Code Sections 54953(e)(2)(G)(iii), 54954.3(a) and 54954.3(c), by engaging in or ratifying the practice of cutting off public comment during the prescribed public comment period and attempting to curtail or discourage the content of public comment.

As quoted below, you cite the following as examples of the Board or Committee engaging in or ratifying the practice of cutting off public comment during the prescribed public comment period and attempting to curtail or discourage the content of public comment:

1. On April 29, 2002 [sic], Supervisor Valle prohibited a member of the Public from speaking at the meeting of the Public Protection Committee and then closed all further public comment and the entire meeting itself after the disagreement between Mr. Valle and the member of the Public could not be resolved.
2. On June 19, 2022, on 2 separate occasions in the same meeting, during the PUBLIC COMMENT (ITEM ON THE AGENDA) and during PUBLIC INPUT (ITEMS NOT ON THE AGENDA), you, President Carson, ended public comment before all speakers in the queue had the opportunity to speak.
3. On June 7, 2022, during the Board of Supervisor's regular meeting, President Carson stipulated that he would only take 2 more comments on "the first amendment item" and that when the next caller was called on, they could only comment on anything but "the first amendment item." The First Amendment item he is referring to is a Notice to Cease and Desist the violations of law by the County and within that Notice was a detailed description of all of the ways that the County was in violation of the law. While he "appreciates the callers on the First Amendment issue" he only wanted to hear "any other item than the First Amendment."
4. On August 2, 2022, during the Board of Supervisor's regular meeting, you President Carson stipulated that you only take two 30 minutes more of public comment during the public comment period on the agenda items. You went ahead and allowed comment on item 50, but then decided to abridge commentary. And there were several people still waiting to comment.

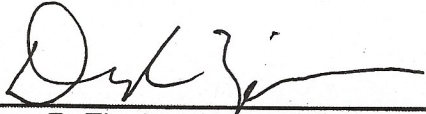


In order to avoid unnecessary litigation and without admitting any violation of the Ralph M. Brown Act, the County of Alameda Board of Supervisors hereby unconditionally commits that it will cease, desist from, and not repeat the challenged past action of engaging in or ratifying the practice of cutting off public comment during the prescribed public comment period, or attempting to curtail or discourage the content of public comment, in a manner that violates Government Code Sections 54953(e)(2)(G)(iii), 54954.3(a) or 54954.3(c).

The County of Alameda Board of Supervisors and Committee may rescind this commitment only by a majority vote of its membership taken in open session at a regular meeting and noticed on its posted agenda as "Rescission of Brown Act Commitment." You will be provided with written notice, sent by any means or media you provide in response to this message, to whatever address or addresses you specify, of any intention to consider rescinding this commitment at least 30 days before any such regular meeting. In the event that this commitment is rescinded, you will have the right to commence legal action pursuant to subdivision (a) of Section 54960 of the Government Code. That notice will be delivered to you by the same means as this commitment or may be mailed to an address that you have designated in writing.

County of Alameda Board of Supervisors  
and Public Protection Committee

By:



Donna R. Ziegler, County Counsel  
Pursuant to authority delegated by the Board  
and Committee on September 16, 2022

# **Exhibit G**



Alameda County  
Committee of Open Government

November 9, 2022

Keith Carson, President  
Alameda County Board of Supervisors  
1221 Oak Street, Suite 536  
Oakland, California 94612

**Notice of Liability and  
Demand to Cease and Desist from practices violating California Health and Safety  
Code § 101080, California Government Code § 8630 and The Ralph M. Brown Act**

Dear President Carson,

This notice is to caution you that the body over which you preside has violated California Health and Safety Code § 101080 and California Government Code § 8630(b)(c)(d), by failing in your clear, legal and statutory duties to publicly review and assess if conditions warrant a continuation of the local health emergency R-2020-91 and the local emergency R-2020-139 and to terminate these emergencies at the “earliest possible date.”

**Violations Complained of**

1. Since the Health Officer's declaration of a local health emergency pursuant to Health & Safety Code, section 101080 on March 1, and 5, 2020, and the March 16, 2020, declaration of a local emergency by the Director of Emergency Services and Sheriff Ahern, and the ratification of the emergency by the board pursuant to Government Code section 8630(a), a clear and legal public discussion, and review of the conditions warranting an emergency or a vote to terminate the emergency has not been conducted by your Board in violation of section 8630(c)(d) and California Health and Safety Code § 101080.
2. There has been an ongoing and clear violation of the statutory requirements to end the state of emergency if conditions do not warrant its continuance pursuant to Gov. Code § 8630 (c) (b) and Health & Safety Code § 101080.
3. There is no statutory or Constitutional authority for this Board of Supervisors to abdicate its duties to review and assess whether the local conditions warrant the continuance of a local state of emergency or to delegate these duties to the public health officer or anyone else pursuant to section 8630.
4. On and before the November 1, 2022, meeting, your board continued the practice of placing an item on the Consent Calendar in the Appendix that only mentions the “state of emergency” has been “reconsidered” meaning the discussion was done out of public view in violation of The Ralph M. Brown Act Gov. Code §54950 et seq.

At the regular meetings of June 7, 2022, June 28, 2022, July 19, 2022, July 26, 2022, August 2, 2022, September 20, 2022, and November 1, 2022, individuals of the Committee attended and notified your board through written and public comments of your lack of compliance with the law and presented your board with multiple points of evidence that an emergency does not now, or ever existed and, that harms and damages to constituents of Alameda County are ongoing and result from policies implemented under the guise of these local emergencies. The response from Supervisors Miley on August 8, 2022, was, "...when our health officers and the counties and the state **feel** that the public health emergency is over, it will be over and until that time, life is going on...."

On September 18, 2022, the Superior Court of the County of Orange stated in Hall v. County of Orange Case No. 30-2021-01220678, "IT IS ORDERED that an Alternative Writ of Mandate issue commanding Respondents to review local conditions to determine whether there remains the need for continuing the local health emergency and/or local emergency as required by Health & Safety Code section 101080 and Government Code section 8630(c), and to proclaim the termination of the local health emergency and/or local emergency should conditions warrant as required by Health & Safety Code section 101080 and Government Code section 8630(d), or in the alternative, to show cause why Respondents have not done so on the date and time set forth below."

This decision affirms that you have a duty to perform under the Statutes cited here.

#### **Demand to Cease and Desist**

The Alameda County Board of Supervisors has by the next scheduled regular meeting or no later than 14 days from the receipt of this letter, to come into immediate compliance with California Health and Safety Code § 101080 and California Government Code § 8630 and cease and desist from repeating items 1 - 4. To be in proper compliance the board must put on the meeting agenda a local emergency review line item where the Board conducts a clear and legal public discussion and review of conditions that warrant continuing these states of emergency.

The board must present to the public the conditions that substantiate the existence of a state of emergency and explain how the conditions warrant the continuance of the local emergencies. The board must then conduct a public and legal vote to continue or to end the emergency at the earliest opportunity. The Board must also comply with the Ralph M. Brown Act in all aspects in so doing. Failure to do so will entitle individuals of the Ad-hoc assembly of the Alameda County of Open Government to file an action for declaratory judgment and writ relief and for attorney's fees and costs.

Respectfully,

Alameda County Committee of Open Government  
PO Box 2201 Shoreline Drive #1414  
Alameda, California 94501  
510-343-9782  
standupac@protonmail.com

# **Exhibit H**

LAW OFFICE OF DENNISE S. HENDERSON  
Dennise S. Henderson  
1903 21st Street  
Sacramento, CA 95811  
Fax: (866) 388-3788

---

Attorneys at Law

November 18, 2022,

Donna Ziegler, County Counsel  
1221 Oak Street, Suite 450, Oakland CA 94612  
Telephone: (510) 272-6700 | Fax: (510) 272-5020

VIA FAX

Prospective Action:

Alameda County Committee of Open Government (“Prospective Petitioner”)  
Alameda County Board of Supervisors (“Expected Adverse Party”)

**Re: Notice of Intent to File Writ Petition to Compel the Performance of an Act  
Which the Law Specially Enjoins *Cal. Code Civ. Proc. § 1085(a)***

Dear Ms. Ziegler,

We represent the Prospective Petitioner in the above, Prospective Action. Prospective Petitioner seeks a traditional writ of mandate under Code of Civil Procedure, section 1085, ordering Respondents to (i) rescind their vote abdicating or delegating their legal duties as the local governing body of Alameda County to review the County’s conditions under Government Code, section 8630 and Health & Safety Code, section 101080, and decide as to whether or not said conditions warrant continued declarations of local and local health emergencies (ii) comply with their ministerial duties to conduct the necessary, reasoned, and public review of local conditions and decide and finding that said conditions justify the continued declarations of Emergencies under Government Code, section 8630 et seq., and Health & Safety Code, section 101080 et seq., and (iii) vote to end the Emergencies if local conditions no longer warrant them.

**Prospective Petitioner is Entitled to Writ Relief**

*1. Beneficial Standing*

A proceeding for a writ of mandate is initiated by filing a verified petition of the party beneficially interested, and the writ must be issued in all cases where there is not a plain, speedy, and adequate remedy in the ordinary course of law. (Code Civ. Proc. § 1086.) “The beneficial interest must be direct and substantial.” *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.

Here, Prospective Petitioner Alameda County Committee of Open Government, was founded in 2020, an unincorporated association headquartered in Alameda California, for the special purpose to promote peaceful assembly in Alameda County.

Members throughout Alameda County, consisting of business owners, taxpayers, and parents whose children have been negatively affected by environmental and chemical exposures and damaging emergency measures, including unsafe emergency vaccines, unsafe emergency lockdowns, illegal contact tracing, damaging quarantine and isolation policies, and damaging emergency masking policies, among other things.

Prospective Petitioner's has a special interest to promote peaceful assembly in Alameda County which is under constant threat of harm that Expected Adverse Party might reinstitute any of these measures as long as the local health and local emergency declarations are not terminated.

## 2. *Mandatory Duty*

“[w]here a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion.” “[Citation.]” (*Schwartz v. Poizner* (2010) 187 Cal.App.4th 592, 596)

Health & Safety Code section 101080 provides that “[t]he board of supervisors, or city council, if applicable, shall review, at least every 30 days until the local health emergency is terminated, the need for continuing the local health emergency and shall proclaim the termination of the local health emergency at the earliest possible date that conditions warrant the termination.” (Health & Safety Code § 101080, emphasis added.)

Government Code section 8630 states, in relevant part:

“(c) The governing body shall review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency. “(d) The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.” (Gov’t Code § 8630(c)-(d).)

Thus, the plain language of Health & Safety Code section 101080 and Government Code section 8630 still mandate that the board of supervisors and/or the “local governing body” of a county (1) review the need for continuing a local health emergency and/or local emergency, as well as (2) proclaim the termination of the local health emergency and/or local emergency at the earliest possible date that conditions warrant the termination.

The Governor’s Proclamation did not suspend the mandate that the board of supervisors or local governing body review the need for the continuing local health emergency or local emergency, or proclaim the termination of a local health emergency or local emergency at the earliest possible date that conditions warrant the termination. Such a determination necessarily would require some manner of review of the conditions. The Proclamation, on its face, only waived the strict 30 and 60-day periods within which such reviews must occur. Had the Governor intended to waive the review requirements in the Health & Safety Code and



Government Code sections altogether, presumably, the Proclamation would have explicitly said so. *Hall vs. County of Orange* 30-2021-01220678-CU-WM-CJC (9/22/2022).

*3. Failure to Perform*

On November 9, 2022, Expected Adverse Party received notice of Expected Adverse Party's duty and failure to perform such duty from Prospective Petitioner. On November 22, 2022, Prospective Adverse Party scheduled a public conference call with legal counsel regarding Prospective Petitioner's "Threat of litigation pursuant to Subdivisions (d)(2), (e)(5) of Government Code § 54956.9 (One Case) with the record of the claim available for public inspection pursuant to Government Code § 54957.5"

Based on the foregoing, it appears that the Expected Adverse Party has a mandatory and ministerial duty to (1) review the need for continuing a local health emergency or a local emergency; as well as (2) proclaim the termination of the local health emergency and local emergency at the earliest possible date that conditions warrant the termination.

*4. Opportunity to Respond*

Please immediately respond with Expected Adverse Parties position; (i) extension of time to respond; (ii) request to meet and confer; (iii) legal argument with the grounds that Expected Adverse Party maintains to dispute Prospective Petitioner's claim; (iv) identification of a plain, speedy, and adequate remedy in the ordinary course of law.

Upon completion of Business on Tuesday, November 22, 2022, our full intent is to commence the above action. Upon commencement, the outset of litigation expenses starts at twenty-five thousand dollars.

**Service request.** Fax: (866) 388-3788

Respectfully,

/s Dennise S. Henderson

By \_\_\_\_\_  
Dennise S. Henderson, Bar No. 208640

VERIFICATION AS TO FORM AN CONTENT

(file copy only)

I, Mary Catherine Baldi am the authorized representative of Alameda County Committee of Open Government. I am a resident of the County of Alameda, State of California. I am over the age of 18 and have read the foregoing Notice of Intent to File Writ Petition to Compel the Performance of an Act Which the Law Specially Enjoins Cal. Code Civ. Proc. § 1085(a). 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 day, 18th day of November 2022.

*Mary Catherine Baldi*

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Mary Catherine Baldi, Authorized Representative of  
Alameda County Committee of Open Government.

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VERIFICATION

I Mary Catherine Baldi am a resident of the County of Alameda, State of California. I am over the age of 18 and have read the foregoing Petition. 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.

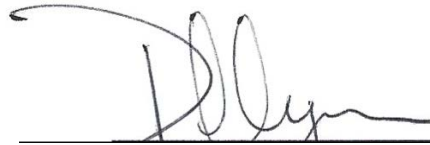
Executed this 21 day of February 2023, in San Leandro, California.

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Individual Petitioner and Petitioner  
Representative for ALAMEDA COUNTY  
COMMITTEE OF OPEN GOVERNMENT  
By: Mary Catherine Baldi, ABB  
Mary Catherine Baldi

**VERIFICATION**

I, Denise Young, am a resident of the County of Los Angeles, State of California. I am over the age of 18 and have read the foregoing Petition. 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 21st day of February 2023, in *Santa Monica* California.



Petitioner CHILDREN'S HEALTH DEFENSE  
CALIFORNIA CHAPTER  
By: Denise Young, Executive Director