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COUNTY OF LOS ANGELES
8 DEPARTMENT OF PUBLIC HEALTH,
MUNTU DAVIS, M.D., and BARBARA
9 FERRER, PhD

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

12 ALLIANCE OF LOS ANGELES
13 COUNTY PARENTS, an unincorporated
14 association,

15 Petitioner and Plaintiff,

16 v.

17 COUNTY OF LOS ANGELES
DEPARTMENT OF PUBLIC HEALTH;
18 MUNTU DAVIS, in his official capacity
as Health Officer for the County of Los
19 Angeles; BARBARA FERRER, in her
official capacity as Director of the County
20 of Los Angeles Department of Public
Health; and DOES 1 through 25, inclusive,

21 Respondents and Defendants.
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Case No. 22STCP02772

Assigned for All Purposes to:
Hon. James C. Chalfant, Dept. 85

- (1) **DEFENDANTS COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH’S, MUNTU DAVIS, M.D.’S, AND BARBARA FERRER, PHD’S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF’S FIRST AMENDED PETITION:**
- (2) **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF:**
- (3) **DECLARATION OF VALERIE E. ALTER IN SUPPORT THEREOF**

[Request for Judicial Notice and Declaration of Zachary Golda filed concurrently herewith]

Hearing Date: December 15, 2022
Time: 9:30 a.m.
Dep’t: 85

Complaint Filed: July 26, 2022
Trial Date: Not Set

1 **TO THE ABOVE-CAPTIONED COURT AND TO PLAINTIFFS AND THEIR**
2 **ATTORNEYS OF RECORD:**

3 Please take notice that on December 15, 2022, at 9:30 a.m., or as soon thereafter as
4 this matter can be heard in Department 85 of the above-captioned Court, located at 111
5 North Hill Street, Los Angeles, CA 90012, Defendants Los Angeles County Department of
6 Public Health, Muntu Davis, M.D., in his official capacity as Health Officer for the County
7 of Los Angeles, and Barbara Ferrer, PhD, in her official capacity as Director of the County
8 of Los Angeles Department of Public Health (collectively “LACDPH”) will and hereby do
9 bring this demurrer pursuant to CODE OF CIVIL PROCEDURE §§ 430.10(e) to the *First*
10 *Amended Petition* filed on September 30, 2022 by Plaintiff Alliance of Los Angeles County
11 Parents.

12 This demurrer is made on the ground that Plaintiff’s first, second, and fourth causes
13 of action fail to set forth sufficient facts to state a cause of action against LACDPH.

14 This demurrer is based on this notice, the attached demurrer, the attached
15 memorandum of points and authorities, the attached *Declaration of Valerie E. Alter* in
16 compliance with CODE OF CIVIL PROCEDURE § 430.41, and all other pleadings, records, and
17 papers on file, deemed to be on file, or of which this Court may or must take judicial notice
18 at the time this demurrer is heard, and upon such further evidence and arguments as may be
19 presented at or before the time of the hearing of this demurrer.

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21 Dated: October 31, 2022 SHEPPARD MULLIN RICHTER & HAMPTON LLP

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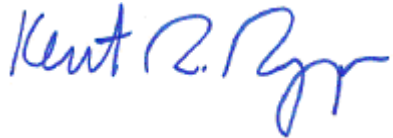
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By 
KENT R. RAYGOR

Attorneys for Defendants
COUNTY OF LOS ANGELES DEPARTMENT
OF PUBLIC HEALTH, MUNTU DAVIS, M.D.,
and BARBARA FERRER, PhD

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DEMURRER

Defendants Los Angeles County Department of Public Health, Muntu Davis, M.D., in his official capacity as Health Officer for the County of Los Angeles, and Barbara Ferrer, PhD, in her official capacity as Director of the County of Los Angeles Department of Public Health (collectively “LACDPH”) demur to the *First Amended Petition* filed on September 30, 2022 by Plaintiff Alliance for Los Angeles County Parents as follows:

DEMURRER TO PLAINTIFFS’ FIRST CAUSE OF ACTION

1. Plaintiff’s first cause of action for “Petition for Writ of Mandate – Abuse of Discretion under Health and Safety Code sections 120175 and 101040”, fails to state facts sufficient to constitute a cause of action against the LACDPH Defendants. CAL. CIV. PROC. CODE § 430.10(e).

DEMURRER TO PLAINTIFFS’ SECOND CAUSE OF ACTION

2. Plaintiff’s second cause of action for “Violation Of Equal Protection Clause Of California Constitution”, fails to state facts sufficient to constitute a cause of action against the LACDPH Defendants. CAL. CIV. PROC. CODE § 430.10(e).

DEMURRER TO PLAINTIFFS’ FOURTH CAUSE OF ACTION

3. Plaintiff’s fourth cause of action for “Deprivation of Substantive Due Process”, fails to state facts sufficient to constitute a cause of action against the LACDPH Defendants. CAL. CIV. PROC. CODE § 430.10(e).

Dated: October 31, 2022 SHEPPARD MULLIN RICHTER & HAMPTON LLP

By 
KENT R. RAYGOR

Attorneys for Defendants
COUNTY OF LOS ANGELES DEPARTMENT
OF PUBLIC HEALTH, MUNTU DAVIS, M.D.,
and BARBARA FERRER. PhD

I.

INTRODUCTION

Defendants Los Angeles County Department of Public Health, Muntu Davis, M.D., and Barbara Ferrer, PhD’s (collectively “LACDPH”) demurrer to the *First Amended Petition* (“*FAP*”) filed on September 30, 2022, by Plaintiff Alliance of Los Angeles County Parents should be sustained.

Plaintiff challenges a COVID-19 order promulgated by LACDPH that requires people in the County who have been exposed to COVID-19 to mask while indoors for a period of ten days after the exposure. According to Plaintiff, that order is arbitrary and capricious because Plaintiff disagrees with the LACDPH’s interpretation of COVID-19 hospitalization and transmission data, and the studies upon which LACDPH relied in issuing the challenged orders. On this basis, Plaintiff asserts:

- The first cause of action, seeking a petition for writ of mandate asserting that the LACDPH Defendants abused their discretion under CALIFORNIA HEALTH & SAFETY CODE sections 120175 and 101040;
- The second cause of action for violation of equal protection; and
- The fourth cause of action for violation of substantive due process rights.

The first cause of action admittedly is subject to the arbitrary and capricious standard of review. The second cause of action is subject to the similar rational basis standard of review because, as Plaintiff admits, the challenged order does not treat or implicate a suspect or protected class. The fourth cause of action is subject to the same rational basis standard of review because the challenged order does not implicate a fundamental right. Plaintiff’s claims must fail given the operative standard of review.

Plaintiff challenges LACDPH’s interpretation of the relevant data. In so doing, Plaintiffs *concede* that LACDPH considered that data. Plaintiff’s request that this Court sit as super-scientist and substitute its judgment for that of LACDPH as to the relevant data must fail. This is especially true because documents subject to judicial notice demonstrate that the challenged COVID-19 orders align with guidance promulgated by the Centers for

1 Disease Control (“CDC”), the highest public health authority in the nation. Thus, Plaintiff’s
2 first, second, and fourth claims fail as a matter of law, and LACDPH’s demurrer should be
3 sustained.

4 **II.**

5 **FACTS PLED IN THE FIRST AMENDED PETITION**

6 **A. The Parties.**

7 Plaintiff alleges that it is an unincorporated association that was organized for the
8 purpose of representing the interests of children residing in the County of Los Angeles
9 (“County”). [FAP, ¶ 18.] Defendant Los Angeles County Department Of Public Health is
10 the local health care agency for the County, defendant Muntu Davis, M.D. is the Health
11 Officer of LACDPH, and defendant Barbara Ferrer, PhD is the Director of the LACDPH.
12 [Id., ¶¶ 20-22.] Both individual defendants are named only in their official capacities. [Id.]

13 **B. The Challenged County Policy.**

14 Plaintiff challenges a policy that requires people in the County who have been
15 exposed to COVID-19 to mask while indoors for a period of ten days after such exposure.
16 [FAP, ¶ 10.] Plaintiff alleges that this requirement functions as a *de facto* mask mandate for
17 school-aged children. [Id., ¶ 10-11.] Plaintiff alleges that its members’ children have been
18 harmed by previous mask mandates in the County that required masking in schools and
19 youth sports activities. [Id., ¶ 28.]

20 Plaintiff challenges the scientific basis for a post-exposure masking rule. It alleges
21 that, according to the CDC’s Community Levels system as of July 20, 2022, the
22 hospitalization and community transmission metrics placed the County of Los Angeles in
23 the CDC’s high risk tier for community transmission. [FAC, ¶¶ 30-33.] Plaintiff, however,
24 asserts that CDC’s hospitalization data metrics, upon which LACDPH relied, are inaccurate.
25 [Id., ¶ 34-35.] Specifically, it contends that: (1) LACDPH used the wrong method for
26 calculating hospitalizations and deaths; (2) the studies considered by LACDPH were biased;
27 (3) LACDPH failed to consider certain evidence when deciding to issue COVID-19 public
28 health orders; and (4) LACDPH’s data were overinclusive. [Id., ¶¶ 117-18.] Plaintiff also

1 alleges that LACDPH has not conducted any “harm/benefit analysis to determine whether
2 the harms associated with forcibly masking children outweigh any purported benefit.” [*Id.*,
3 ¶ 29.]

4 **III.**

5 **PLAINTIFF’S FIRST, SECOND, AND FOURTH CAUSES OF ACTION FAIL TO**
6 **STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION UPON**
7 **WHICH RELIEF MAY BE GRANTED**

8 **A. The Standard Applicable To Demurrers.**

9 CAL. CIV. PROC. CODE § 430.10(e) provides that a defendant may demur to a
10 complaint when “[t]he complaint does not state facts sufficient to constitute a cause of
11 action.” The function of a demurrer is to test the sufficiency of the complaint as a matter of
12 law. *See Johnson v. County of Los Angeles* (1983) 143 Cal. App. 3d 298, 306. “All material
13 facts that were properly pleaded are deemed true, but not contentions, deductions, or
14 conclusions of fact or law.” *Camacho v. Automobile Club of Southern California* (2006)
15 142 Cal. App. 4th 1394, 1398 fn. 4. When ruling on a demurrer, courts may “also consider
16 matters which may be judicially noticed.” *Serrano v. Priest* (1971) 5 Cal. 3d 584, 591.

17 **B. Plaintiff’s First and Fourth Causes Of Action Fail Because The LACDPH**
18 **Defendants’ COVID-19 Orders Are Rational.**

19 Plaintiff asserts that LACDPH’s requirement that people who have been exposed to
20 COVID-19 mask indoors for 10 days following exposure is an abuse of discretion under
21 CALIFORNIA HEALTH & SAFETY CODE sections 120175 and 101040. [*FAC* (first cause of
22 action), ¶¶ 10, 117.] Courts review legislative and quasi-legislative acts related to public
23 health and safety under the arbitrary and capricious standard. *County of L.A. Dep’t of Pub.*
24 *Health v. Superior Court* (2021) 61 Cal. App. 5th 478, 495. The Court will uphold a law
25 under this standard unless a legislative decision is “*entirely lacking* in evidentiary support.”
26 *Id.* at 493 (emphasis added). Under the arbitrary and capricious standard, a court “cannot
27 reweigh the evidence or substitute its own judgment for that of the [legislature].” *Id.* at 490.
28 *See also id.* at 495 (“We decline the Restaurateurs’ invitation to second-guess public health

1 officials’ actions in an ‘area fraught with medical and scientific uncertainties.’” (cleaned
2 up)).

3 Where a substantive due process claim (fourth cause of action) does not allege
4 infringement of a fundamental right, the claim is analyzed under the rational basis standard.
5 *Perkey v. Department of Motor Vehicles* (1986) 42 Cal.3d 185, 189. “For purposes of
6 substantive due process claims, the rational basis test is the law must not be unreasonable,
7 arbitrary or capricious but must have a real and substantial relation to the object sought to be
8 obtained.” *County of L.A. Dep’t of Pub. Health*, 61 Cal .App. 5th at 490 (cleaned up).

9 Plaintiff concedes that the rational basis test applies to its substantive due process claim.
10 [*FAP*, ¶¶ 151-52 (alleging that LACDPH COVID-19 orders are arbitrary and
11 unreasonable).] Accordingly, Plaintiff’s first claim asserting that LACDPH acted in “excess
12 of power” and its fourth claim asserting substantive due process “constitutional arguments
13 both call for the same analysis[.]” *County of L.A. Dep’t of Pub. Health*, 61 Cal .App. 5th at
14 491.

15 Plaintiff asserts that LACDPH’s 10-day masking rule is arbitrary because it fails to
16 account for the current science around COVID-19. [*FAP*, ¶¶ 117-18.] Specifically, Plaintiff
17 contends that: (1) LACDPH used the wrong method for calculating hospitalizations and
18 deaths; (2) the studies considered by LACDPH were biased; (3) LACDPH failed to consider
19 certain evidence when deciding to issue COVID-19 public health orders; and (4) LACDPH’s
20 data was overinclusive. [*FAP*, ¶¶ 117-18.] Each of these reasons is insufficient because it
21 asks the court to second-guess the public health officials’ analysis of data and evidence. In
22 so doing, Plaintiff necessarily concedes that LACDPH considered the relevant data before
23 imposing health orders. That Plaintiff disagrees with LACDPH’s interpretation of that data
24 and wishes that LACDPH had followed the studies that Plaintiff advances cannot establish
25 that LADPH’s order is “entirely lacking in evidentiary support.” *See County of L.A. Dep’t*
26 *of Pub. Health*, 61 Cal. App. 5th at 493. Nor does Plaintiff assert that preventing the spread
27 of COVID-19 is not a legitimate government interest, nor can it. *County of L.A. Dep’t of*
28 *Pub. Health*, 61 Cal. App. 5th at 491 (“Stemming the spread of COVID-19 is

1 unquestionably a compelling interest . . .”; citing *Roman Catholic Diocese of Brooklyn v.*
2 *Cuomo* (2020) 141 S. Ct. 63). Thus, Plaintiff’s claim that the 10-day masking rule is
3 arbitrary or lacks any rational basis fails on the pleadings.

4 Plaintiff’s contention that LACDPH has not conducted any “harm/benefit analysis to
5 determine whether the harms associated with forcibly masking children outweigh any
6 purported benefit” does not change this conclusion. [*FAP*, ¶ 29.] A purported failure to
7 conduct a specific harm/benefit analysis does not render the LACDPH’s actions arbitrary
8 and capricious. *County of L.A. Dep’t of Pub. Health*, 61 Cal. App. 5th at 493 (reversing
9 grant of injunction mandating LACDPH to perform risk/benefit analysis for COVID-19
10 order). “Mandating a nebulous risk-benefit requirement is inconsistent with the court’s
11 appropriate role.” *Id.*

12 Moreover, judicially noticeable documents establish that LACDPH’s policy is
13 rational. The CDC still recommends masking to prevent the spread of COVID-19 in K-12
14 schools. [*Request for Judicial Notice (“RJN”), EXH. A.*] “Wearing a well-fitting mask or
15 respirator consistently and correctly reduces the risk of spreading the virus that causes
16 COVID-19.” [*Id.* at 9.] Moreover, the CDC specifically recommends masking following
17 exposure. [*Id.* at 10 (“people who were exposed to COVID-19 should follow
18 recommendations to wear a well-fitting mask”).] As Plaintiff concedes, the County was
19 designated as being at a high risk tier according to the CDC’s metrics when Plaintiff initially
20 filed this action in July, 2022 [*FAP*, ¶ 33], and experts in the field expect transmission levels
21 to rise in the winter months. [*Id.*, ¶ 14.] Because the highest public health authority in the
22 United States continues to recommend masking, it is (and was) rational for LACDPH to
23 conclude that masking is effective to prevent the spread of COVID-19 for students.

24 **C. Plaintiff’s Second Cause of Action for Violation of the Equal Protection Clause**
25 **Fails Because Rational Basis Review Applies to Plaintiff’s Claim.**

26 Plaintiff’s second cause of action alleges that LACDPH violated equal protection
27 because the 10-day masking rule disproportionately impacts children. [*See, e.g., FAP*,
28 ¶¶ 125, 130 (alleging intentional discrimination against children vis-à-vis adults).] Courts

1 apply a two-step inquiry to equal protection claims under the California Constitution based
2 on a disparate impact theory to determine the proper standard of review. First, courts
3 determine whether the challenged legislation adopts a classification that affects "similarly
4 situated groups in an unequal manner." *Kimco Staffing Services, Inc. v. State* (2015) 236
5 Cal. App. 4th 875, 884-85 (interpreting Cal. Const., art. I, § 7). Second, if the challenged
6 law treats similarly situated groups unequally, the court must determine the law involves a
7 suspect classification or infringes upon a fundamental right. *Id.* at 885. Where a distinction
8 between groups is not based on such membership, "a statutory classification must be
9 rationally related to a legitimate governmental purpose." *Clark v. Jeter* (1988) 486 U.S.
10 456, 461; *see Manduley v. Superior Court of San Diego County* (2002) 27 Cal. 4th 537,
11 571 (holding that equal protection analysis under the California Constitution is "substantially
12 the equivalent of the equal protection clause of the Fourteenth Amendment to the United
13 States Constitution"). "Rational basis review is the basic and conventional standard for
14 reviewing economic and social welfare legislation in which there is a 'discrimination' or
15 differentiation of treatment between classes or individuals." *Kimco Staffing Services, Inc.*,
16 236 Cal. App. 4th at 885 (cleaned up)

17 Age is not a suspect classification under the Equal Protection Clause. *Hicks v.*
18 *Superior Court* (1995) 36 Cal. App. 4th 1649, 1657 ("Age is not an immutable characteristic
19 and is not recognized as a suspect classification under either the United States or California
20 Constitutions."). As stated above, Plaintiff concedes that the challenged policies do not
21 infringe upon a fundamental right. [*FAP*, ¶¶ 151-52] Accordingly, rational basis review
22 applies to Plaintiff's equal protection claim, which Plaintiff also concedes. [*See FAP*,
23 ¶ 126.] *See also Clark*, 486 U.S. at 461; *Kimco Staffing Services, Inc.*, 236 Cal. App. 4th at
24 885. Thus, Plaintiff's equal protection claim fails for the same reasons as Plaintiff's first and
25 fourth causes of action—because the COVID-19 public health orders are rationally related to
26 a legitimate government interest.

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IV.

CONCLUSION

For all of the foregoing reasons, the County of Los Angeles respectfully requests that the County’s demurrer to Plaintiffs’ first, second, and fourth causes of action be sustained.

Dated: October 31, 2022 SHEPPARD MULLIN RICHTER & HAMPTON LLP

By 
KENT R. RAYGOR

Attorneys for Defendants
COUNTY OF LOS ANGELES DEPARTMENT
OF PUBLIC HEALTH, MUNTU DAVIS, M.D.,
and BARBARA FERRER, PhD

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DECLARATION OF VALERIE E. ALTER

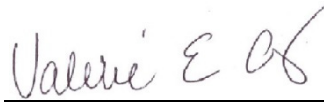
I, Valerie E. Alter, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am special counsel to Sheppard Mullin Richter & Hampton LLP, attorneys of record for Defendants County of Los Angeles Department of Public Health, Muntu Davis, M.D., in his official capacity as Health Officer for the County of Los Angeles, and Barbara Ferrer, PhD, in her official capacity as Director of the County of Los Angeles Department of Public Health (collectively the “**LACDPH Defendants**”) in this proceeding. If called as a witness, I could and would competently testify to all facts within my personal knowledge except where stated upon information and belief.

2. On Monday, October 24, 2022, I met and conferred via telephone with Julie Hamill, counsel for Plaintiff in this matter, about the basis for this demurrer. The parties were unable to reach agreement regarding the first, second and fourth causes of action asserted by Plaintiff in its *First Amended Petition* or the grounds to be asserted by the LACDPH Defendants in this demurrer concerning those causes of action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 31, 2022, at Los Angeles, California.



Valerie E. Alter

