

1 Julie A. Hamill (272742)
Hamill Law & Consulting
2 904 Silver Spur Road, #287
Rolling Hills Estates, California, 90274
3 (424) 265-0529
4 julie@juliehamill-law.com

5 Attorney for Petitioner and Plaintiff
ALLIANCE OF LOS ANGELES COUNTY PARENTS

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**

9 ALLIANCE OF LOS ANGELES COUNTY
10 PARENTS, an unincorporated association

11 Petitioner and Plaintiff,

12 vs.

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

18 Respondents and Defendants.
19
20
21

Case No.: 22STCP02772

**ALLIANCE OF LOS ANGELES COUNTY
PARENTS' OPPOSITION TO
RESPONDENTS' DEMURRER**

HEARING DATE: December 15, 2022
TIME: 9:30 a.m.
DEPT: 85

COMPLAINT FILED: July 26, 2022
TRIAL DATE: Not set

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 California public health officials enjoy broad discretion, but that discretion is not unbridled.
4 While government agencies are subject to a highly deferential standard of judicial review,
5 Respondents’ orders are not immune from judicial review as a matter of law.
6

7 Plaintiff and Petitioner, Alliance of Los Angeles County Parents, (“Petitioner”) is an
8 unincorporated association composed of parents of children who attend childcare programs, K-12
9 schools, and/or play youth sports in Los Angeles County (“County”). Petitioner advocates for fair,
10 humane, and equal treatment of all children within the County and for the removal all unnecessary
11 and harmful restrictions against children. Petitioner members suffer tremendously under orders
12 issued by the County, including those that force children to wear masks in school, childcare, and
13 youth sports. Petitioner members suffer speech delays, developmental delays, social isolation,
14 depression, anxiety, learning loss, facial rashes, heat-related illnesses, migraines, and those who
15 cannot tolerate masks have been forced out of their schools and social communities. Moreover,
16 Respondents’ orders causing these children to suffer have no measurable impact on the spread of
17 COVID.

18 Petitioner filed this action seeking injunctive and declaratory relief preventing Respondents
19 from imposing an arbitrary and capricious universal mask order on July 26, 2022. As a result,
20 Respondents refrained from issuing a new universal mask mandate. Respondents removed this
21 action to federal court on August 23, 2022, and Petitioner had the action remanded on August 31,
22 2022. Petitioner filed a First Amended Petition on September 27, 2022, adding specific allegations
23 regarding Respondents’ current 10-day exposure mandate and threatened future mandates, to which
24 Respondents now demur.

25 Respondents contend that Petitioner’s first, second, and fourth causes of action fail to state a
26 cause of action because Respondents’ orders are rational. If this Court were to accept Respondents’
27 reasoning, then no court would ever have authority to review a public health order.
28

1 Even if Respondents’ assertions were true, Respondents fail to meet the legal standard
2 required to sustain a demurrer. Petitioner pled sufficient facts to constitute the first, second and
3 fourth causes of action. For purposes of ruling on this demurrer, the Court accepts all facts alleged
4 as true. If Respondents wish to challenge the substance of Petitioner’s claims, they may do so at a
5 hearing on the merits.

6 With respect to the writ claims, Petitioner does not contend that the Court should stand in
7 the shoes of the Respondents and exercise its own discretion – no such relief is available under the
8 law. Instead, Petitioner asks this Court to recognize that based on the available data, Respondents’
9 orders are so beyond the bounds of reason that they fail as arbitrary and capricious and constitute an
10 abuse of discretion. Petitioner seeks to have this Court order Respondents to exercise their
11 discretion *in compliance with the law*. This means ending the use of falsified and inflated data upon
12 which Respondents rely to justify ongoing emergency public health orders, utilizing accurate
13 hospitalization data to calculate community risk levels, accounting for false positives when counting
14 cases, distinguishing between deaths “caused by” COVID versus deaths with incidental COVID,
15 acknowledging the now widely-known limitations of masks and low-quality evidence for public
16 mask mandates, acknowledging harms to children caused by forced masking in an educational
17 setting, and considering evidence of low hospitalization, mild severity, and low mortality now
18 associated with COVID. It means demonstrating that not only are the measures *effective*, but also
19 *necessary* to prevent the spread of COVID or occurrence of additional cases, as required under
20 Health and Safety Code section 120175.

21 Public health officer discretion is not limitless, for good reason. If public health officers
22 enjoyed unfettered discretion, then California citizens would be living in constant fear of being
23 locked in their homes, having their businesses shuttered, schools closed, and activities halted
24 despite insurmountable evidence that such measures are ineffective, unnecessary, and harmful.
25 Respondents contend that they have the authority to take *any* action they deem “rational,” no matter
26 what the data says, regardless of the futility of the actions, and no matter the harm caused. What is
27 the limit? Government agencies like Respondents have grown far too comfortable with emergency
28 orders and ruling by edict, which are incompatible with a democratic society. For three years,

1 Respondents have refused to engage in a legislative process in which harms and benefits are
2 weighed and whereby officials are accountable to the public.

3 By relying on demonstrably false and inflated data to impose harmful and ineffective
4 restrictions primarily on children, and refusing to acknowledge accurate data, Respondents continue
5 to act arbitrarily and capriciously. This Court may not substitute its own judgment for that of
6 Respondents, but the Court *can* find that there is no rational basis for existing and threatened public
7 health orders and compel Respondents to exercise discretion in compliance with the law. **This**
8 **Court not only has the legal authority, but the *duty* to evaluate Respondents’ exercise of**
9 **authority to ensure actions taken have a real and substantial relationship to public health and**
10 **safety.** *Jacobson v. Commonwealth of Massachusetts* (1905) 197 U.S. 11, 31.

11 **II. STANDARD ON DEMURRER**

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13 In reviewing the sufficiency of a complaint against a demurrer, courts assume the truth of
14 properly pleaded factual allegations, facts that can be reasonably inferred from those pleaded, and
15 facts of which judicial notice can be taken. *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074,
16 1081. To survive a demurrer, the complaint need only allege facts sufficient to state a cause of
17 action; each evidentiary fact that might eventually form part of the plaintiff’s proof need not be
18 alleged. *C.A. v. William S. Hart Union High Sch. Dist.* (2012) 53 Cal.4th 861, 872.

19 For the purpose of testing the sufficiency of the cause of action, the demurrer admits the
20 truth of all material facts properly pleaded. *Aubry v. Tri-City Hosp. Dist.* (1992) 2 C4th 962, 966-
21 967, 9 CR2d 92, 95; *Serrano v. Priest* (1971) 5 C3d 584, 591, 96 CR 601, 605; *Travelers Indem.*
22 *Co. of Conn. v. Navigators Specialty Ins. Co.* (2021) 70 CA5th 341, 358-359, 285 CR3d 289, 304.
23 The complaint must be “liberally construed, with a view to substantial justice between the parties.”
24 CCP § 452; *see Stevens v. Sup.Ct. (API Ins. Services, Inc.)* (1999) 75 Cal.App.4th 594, 601; *Perez v.*
25 *Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238 (where allegations are subject to
26 different reasonable interpretations, court must draw “inferences favorable to the plaintiff, not the
27 defendant.”)
28

1 **III. ARGUMENT**

2 **A. While This Court Must Show Great Deference to Respondents, Such Deference**
3 **is Not Without Limits**

4 Respondents rely on *County of Los Angeles Department of Public Health v. Superior Court*
5 *of Los Angeles County* (2021) 61 Cal.App.5th 478 (“CRA Opinion”) to support their argument that
6 this Court cannot question its health orders. The CRA Opinion overturned a preliminary injunction
7 issued by this Court in favor of the California Restaurant Association against Respondents. This
8 Court’s injunction was issued on December 15, 2020, and the CRA Opinion was filed March 1,
9 2021. As Respondents allege in the First Amended Petition, COVID has evolved significantly in the
10 years that followed.

11 The CRA Opinion holds that it is improper for a court to substitute its own judgment for that
12 of a government agency, and that ordering the County Department of Public Health to engage in a
13 risk/benefit analysis of its outdoor dining closure order was inconsistent with the court’s appropriate
14 role. According to the CRA Opinion, the Court’s review begins and ends with a determination of
15 whether the agency’s action has been arbitrary, capricious, or entirely lacking in evidentiary
16 support. The Court concluded that the County’s imposition of the order at issue was none of those
17 things. *County of Los Angeles Department of Public Health v. Superior Court of Los Angeles*
18 *County* (2021) 61 Cal.App.5th 478, 493. While the CRA Opinion expresses the need for “great
19 deference” to public agencies, it reiterates that such deference has its limits. *County of Los Angeles*
20 *Department of Public Health v. Superior Court of Los Angeles County* (2021) 61 Cal.App.5th 478,
21 489.

22 The Court declined to “second-guess public health officials’ actions in an area fraught with
23 medical and scientific uncertainties.” *County of Los Angeles Department of Public Health v.*
24 *Superior Court of Los Angeles County* (2021) 61 Cal.App.5th 478, 495. Two years after issuance of
25 the injunction referenced in the CRA Opinion, however, hundreds of scientific studies now provide
26 much greater insight into COVID. While Respondents were arguably flying blind in December of
27 2020, there is now substantial data available to guide rational decision-making. Respondents cannot
28 blame arbitrary, capricious, and irrational decision-making on scientific uncertainty. Respondents’

1 refusal to acknowledge scientific realities does not justify their continued issuance of irrational,
2 arbitrary and capricious orders and abuse of discretion.

3
4 **B. The Demurrer to the First and Fourth Cause of Action Should Be Overruled**

5 Respondents do not contend, nor can they, that Petitioner has failed to state facts sufficient
6 to constitute a cause of action. Instead, Respondents argue that Petitioner is wrong and that
7 Respondents' acted rationally. Respondents claim their orders are rational as a matter of law and
8 cannot be challenged. To survive a demurrer, a complaint need only allege facts sufficient to state a
9 cause of action, and Petitioner has done so with respect to the first and fourth causes of action.

10 As Respondents admit in their demurrer, Petitioner contends (among other things): (1)
11 LACDPH uses an incorrect method for calculating hospitalizations and deaths; (2) the studies
12 considered by LACDPH are biased; (3) LACDPH failed to consider certain evidence when deciding
13 to issue COVID-19 public health orders; and (4) LACDPH's data is overinclusive. (First Amended
14 Petition, ¶¶ 117-18; Demurrer, 7:17-20). Petitioner provides extensive data demonstrating that the
15 pandemic has, mercifully, evolved to a much lower-risk illness, that the hospitalization and death
16 statistics used by Respondents are heavily inflated, and that the orders issued by Respondents
17 disproportionately harm children. Respondents contend these arguments fail as a matter of law
18 because the court cannot "second-guess the public health officials' analysis of data and evidence."

19 Further, Respondents contend that because the CDC recommends masking, and because the
20 CDC is the "highest public health authority in the United States," this Court has no authority to
21 question Respondents' mask mandates as a matter of law.

22 None of these arguments support sustaining Respondents' demurrer. Respondents contend
23 that because their orders are rational, this Court has no authority to inquire as to whether the orders
24 were arbitrary, capricious, and entirely lacking evidentiary support as alleged by Petitioner. On the
25 contrary, Petitioner pled sufficient facts alleging that the orders are *not* rational, and that they are
26 arbitrary, capricious, and entirely lacking evidentiary support. **This Court not only has the legal
27 authority, but the *duty* to evaluate Respondents' exercise of authority to ensure actions taken
28 have a real and substantial relationship to public health and safety. *Jacobson v. Commonwealth***

1 of *Massachusetts* (1905) 197 U.S. 11, 31. Whether a regulation is reasonable and directed to
2 accomplish the apparent purpose is a question for the court to determine. *Jew Ho v. Williamson*
3 (C.D. Cal. 1900) 103 F.10. Respondents cannot engage in a plain, palpable invasion of rights
4 secured by the constitution, act arbitrarily or oppress. *Jacobson v. Commonwealth of Massachusetts*
5 (1905) 197 U.S. 11, 31, 38.

6 Respondents point to CDC guidance as conclusive evidence that Respondents’ orders are
7 rational simply because the CDC is the “highest public health authority,” a blatant appeal to
8 authority masquerading as a substantive argument. Even if the CDC mandated masks, as opposed to
9 merely recommending them, an irrational and arbitrary act by one government agency does not
10 justify an irrational and arbitrary act by another government agency. To that end, even if the Court
11 were to take judicial notice of the CDC recommendation, it would not accept the truth of its
12 contents or accept a particular interpretation of its meaning. *E.g., Fremont Indem. Co. v. Fremont*
13 *Gen. Corp.*, 148 Cal.App.4th at 113; *Tenet Healthsystem Desert, Inc. v. Blue Cross of Calif.* (2016)
14 245 Cal.App.4th 821, 836 (“Taking judicial notice of a document is not the same as accepting the
15 truth of its contents or accepting a particular interpretation of its meaning.”). In other words, just
16 because the CDC recommends mask wearing does not mean a mask mandate is rational.

17 Respondents’ demurrer to Petitioner’s first and fourth causes of action accordingly fail as a
18 matter of law, and should be overruled.

19 **C. The Demurrer to the Second Cause of Action Should Be Overruled**

20 As with the Demurrer to the First and Fourth Causes of Action, Respondents contend that
21 the Second Cause of Action fails because Respondents’ “orders are rationally related to a legitimate
22 government interest.” (Demurrer, 9:24-26). Again, Respondents’ disagreement with the facts and
23 properly pled allegations in the Petition do not meet the standard required to sustain a demurrer.
24 Petitioner alleges sufficient facts showing that Respondents’ use of demonstrably false and
25 exaggerated hospitalization and death numbers, implementation of unproven measures that
26 disproportionately harm children, refusal to acknowledge the evolved mild nature of the virus, and
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1 refusal to acknowledge the seasonal nature of the virus, among other factors, demonstrate that the
2 orders at issue are not rationally related to a legitimate government interest.

3 If a government agency need only contend that its actions are rational in order to sustain a
4 demurrer, then no citizen would ever be able to challenge arbitrary, capricious, and harmful
5 government action.

6 The second cause of action is properly pled, and the demurrer should be overruled.

7
8 **II. CONCLUSION**

9 The Demurrer should be overruled in its entirety. Taking all of the facts alleged in the First
10 Amended Petition as true, Petitioner sufficiently pled the First, Second and Fourth Causes of
11 Action. The First Amended Petition includes 161 pages of facts, expert testimony and extensive
12 scientific studies in support of the allegations pled. Respondents' contention that these causes of
13 action should be dismissed because Respondents believe they acted rationally is not sufficient to
14 sustain a demurrer. If the Court is inclined to sustain Respondents' demurrer to any part of the
15 Petition, Petitioner respectfully requests leave to amend.

16
17 Dated: December 1, 2022

Hamill Law & Consulting

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19 By: /s/ Julie A. Hamill
20 Julie A. Hamill
21 Attorney for Petitioner
22 Alliance of Los Angeles County Parents
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