

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: The City of Huntington Beach vs. Newsom

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

CASE NUMBER:
30-2020-01139512-CU-MC-CJC

I certify that I am not a party to this cause. I certify that the following document(s), dated , Civil Case Cover Sheet dated 05/01/20, Summons Issued and Filed dated 05/01/20, Ex Parte Application - Other dated 05/01/20, Proposed Order dated 05/01/20, Declaration - Other dated 05/01/20, Declaration - Other dated 05/01/20, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on May 1, 2020, at 12:25:58 PM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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ELECTRONICALLY FILED
Superior Court of California,
County of Orange

5/1/2020

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21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **COUNTY OF ORANGE**

24 THE CITY OF HUNTINGTON BEACH, a
25 California charter city; THE CITY OF DANA
26 POINT, a California municipality; BALBOA
27 BAY CLUB VENTURES, LLC dba as Balboa
28 Bay Resort and Balboa Bay Club, a California
Limited Liability Company; PACIFIC CITY
INVESTMENTS, LLC dba Pasea Hotel, a
California Limited Liability Company; LIDO
HOUSE, LLC, a California Limited Liability

CASE NO. 30-2020-01139512-CU-MC-CJC
Assigned to Honorable C-25
Department: HEARING 5/1/2020
AT 2:30PM VIA COURTCALL

**COMPLAINT FOR DECLARATORY
RELIEF AND TEMPORARY AND
PERMANENT INJUNCTIVE RELIEF**

ASSIGNED FOR ALL PURPOSES TO:
JUDGE NATHAN SCOTT

1 Company; LOUNGE GROUP, INC., a California
2 Corporation;

3 Plaintiffs,

4 vs.

5 GAVIN NEWSOM, in his official capacity as
6 Governor of California, and DOES 1-300.

7 Defendants.

8
9 COMES NOW the City of Huntington Beach (hereinafter “Huntington Beach”), the City of
10 Dana Point (hereinafter “Dana Point”; collectively Huntington Beach and Dana Point shall be
11 referred to as the “Cities” or “City Plaintiffs”), Balboa Bay Club Ventures, LLC, dba as Balboa
12 Bay Resort and Balboa Bay Club (hereinafter the “Bay Club”) and Pacific City Investments, LLC
13 dba Pasea Hotel (“Pasea”), Lido House, LLC, and Lounge Group, Inc. for claims against the above
14 named Defendant Gavin Newsom, and DOES 1-300, and alleges as follows:

15 **INTRODUCTION**

16 1. By this action, Plaintiffs challenge Governor Newsom’s purported executive order directing
17 that all beaches in Orange County, but no other beaches in the State, be closed due to the novel
18 coronavirus.

19 2. The novel coronavirus is a global pandemic affecting the lives, health, and livelihoods of
20 peoples across the globe. Government bodies have taken significant and important steps in
21 stemming the spread of the virus and ensuring public health. However, executive overreach applied
22 in an arbitrary and capricious manner threatens the system of government guaranteed to the people
23 of the State of California by the United States and California constitutions. By and through this
24 action, Plaintiffs seek to limit the exercise of executive and governmental powers that threaten to
25 turn the carefully crafted division of powers between the State and Local Governments on its head.

26 3. The California Constitution prohibits the Governor of the State of California, even when
27 acting under the emergency powers legislatively granted to that office, from usurping the
28 independent jurisdiction of local municipalities, who answer directly to their residents, over their

1 own municipal affairs. The Governor’s order purportedly closing beaches in the County of Orange,
2 including local beaches under the independent authority and ownership of the Plaintiff Cities,
3 directly violates this Constitutional prohibition. The Plaintiffs have been left with no alternative
4 other than to seek judicial relief from this Executive Order promulgated in excess of the powers the
5 People granted to the Governor.

6 **PARTIES**

7 4. Plaintiff the City of Huntington Beach is and was at all relevant times, a charter city
8 organized under the California Constitution, specifically Article XI, and has the authority to make
9 and enforce within its limits all local, police, sanitary, and other ordinances and regulations
10 pursuant to the California Constitution. Plaintiff the City of Huntington Beach exercises jurisdiction
11 and authority over city beaches within its territorial limitations.

12 5. Plaintiff the City of Dana Point is and was at all relevant times, a general law city organized
13 under the laws of the State of California and the California Constitution has the authority to make
14 and enforce within its limits all local, police, sanitary, and other ordinances and regulations
15 pursuant to the California Constitution. Plaintiff the City of Dana Point exercises jurisdiction and
16 authority over city beaches within its territorial limitations

17 6. All of the City Plaintiffs are located within the County of Orange.

18 7. Plaintiff Balboa Bay Club Ventures, LLC dba Balboa Bay Resort and Balboa Bay Club is
19 a limited liability company organized under the laws of the State of California and doing business
20 in the County of Orange and the City of Newport Beach.

21 8. Plaintiff Pacific City Investments, LLC dba Pasea Hotel is a limited liability company
22 organized under the laws of the State of California and doing business in the County of Orange and
23 the City of Huntington Beach.

24 9. Plaintiff Lido House, LLC, is a limited liability company organized under the laws of the
25 State of California and doing business in the County of Orange and the City of Newport Beach.

26 10. Plaintiff the Lounge Group, Inc. is a corporation organized under the laws of the State of
27 California and doing business in the County of Orange and the City of Newport Beach.

28 11. Defendant Gavin Newsom (“Newsom”) is made a party to this Action in his official

1 capacity as the Governor of California. The California Constitution vests the “supreme executive
2 power of the State” in the Governor, who “shall see that the law is faithfully executed.” Cal. Const.
3 Art. V, § 1.

4 **FACTUAL ALLEGATIONS**

5 12. Throughout the early part of 2020, a novel the Coronavirus disease 2019 (“COVID-
6 19”) emerged and gained a foothold in the United States of America and the State of California.

7 13. On or about March 4, 2020, Governor Newsom proclaimed a State of Emergency to
8 exist in the State of California as a result of COVID-19. In Governor Newsom’s Emergency
9 Proclamation, The Governor found that conditions of Government Code section 8558(b), part of
10 the California Emergency Services Act, were met. Governor Newsom also found that local
11 authority was and is inadequate to cope with the threat posed by COVID-19.

12 14. On or about March 13, 2020, President of the United States of America Donald J.
13 Trump proclaimed a National State of Emergency as a result of the threat of the emergence of the
14 COVID-19.

15 15. On or about March 19, 2020, Governor Newsome signed Executive Order N-33-20.
16 Therein, Governor Newsom “in accordance with the authority vested in me by the State
17 Constitution and statutes of the State of California, and in particular, Government Code sections
18 8567, 8627, and 8665” ordered “order all individuals living in the State of California to stay home
19 or at their place of residence except as needed to maintain continuity of operations of the federal
20 critical infrastructure sectors.” Executive Order N-33-20 went “into effect immediately and shall
21 stay in effect until further notice.”

22 16. The City Plaintiffs have determined that social distancing guidelines and practices,
23 intended to protect the City Plaintiffs’ residents and all who enter their territorial limits, have
24 resulted in demonstrable improvements in the rates and numbers of people subject to COVID-19.
25 The County of Orange in particular has an exceedingly low number of persons afflicted by COVID-
26 19. In the announcement for the Executive Order, Governor Newsom praised the County of Orange
27 for its efforts and results related to its exceedingly low number of persons afflicted by COVID-19.

28 17. On or about April 29, 2020, it was widely reported in the news media that an official

1 memorandum was circulated among law enforcement agencies in the State of California that
2 allegedly stated that beaches in the State of California were to be closed under Governor Newsom’s
3 alleged authority.

4 18. On or about April 30, 2020, Governor Newsom proclaimed on live television that
5 beaches were to be closed pursuant to the Governor’s claimed authority under the California
6 Emergency Services Act. However, Governor Newsom specifically stated and ordered, that he was
7 ordering only the beaches located in the County of Orange to close. In contrast, the Executive Order
8 permits all other local municipalities outside the County of Orange to control the status of their
9 beaches.

10 19. In the afternoon of April 30, 2020, Governor Newsom, through the Governor’s
11 Office of Emergency Affairs, promulgated a written order to City Council Members in Orange
12 County. The written order stated that all Orange County State Beach will be fully closed beginning
13 on May 1, 2020. The written order also stated that all beaches “operated by local governments in
14 Orange County” are to be fully closed beginning on May 1, 2020. Full closure was defined as “no
15 public access to these beaches....” The written order also states that all restrooms are to be closed,
16 no parking facilities are to be open for visitors, and all sunbathers, walkers, runners, and other
17 participants in watersports are prohibited from enjoying the beaches. The Governor’s remarks on
18 television and in the written order shall be referred to herein as the “Executive Order.”

19 20. Governor Newsom’s television appearance and order to close all beaches within
20 Orange County has engendered significant, on-going public unrest. Plaintiffs are informed and
21 believe, and thereupon allege, that thousands of California residents are actively planning protests
22 and assemblies to specifically reject Governor Newsom’s Executive Order. Plaintiffs are informed
23 and believe, and thereupon allege, that such protests are already set for the weekend of May 1, May
24 2, and May 3, 2020. The protests and assemblies are expected to number in the thousands of people,
25 including thousands of people on the beaches closed by Governor Newsom’s Executive Order.

26 21. Plaintiffs are informed and believe, and thereupon allege, that the plans for protests
27 amount to and call for acts of civil disobedience aimed at defying the Executive Order.

28 22. The City Plaintiffs seek to enjoy their constitutionally protected right and authority

1 to make their own decisions regarding the status of their beaches. The Executive Order infringes
2 on that right and specifically targets the County of Orange in an unconstitutional manner.

3 23. Additionally, Defendants Bay Club, Pasea, Lounge Group, and Lido House operate
4 businesses in Newport Beach and Huntington Beach. Defendants businesses operate in close
5 physical distance to the beaches that are ordered to be closed due to the Executive Order.

6 24. The Executive Order prohibiting public access to the beach will cause significant
7 and appreciable damages to Defendants Bay Club, Pasea, Lounge Group, and Lido House. Sales of
8 hotel rooms, dining services, and services provided to beach goers, including renting equipment
9 and services for the public's use of the beach.

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF THE CALIFORNIA CONSTITUTION - DECLARATORY RELIEF**

12 **(On Behalf of All Party Plaintiffs)**

13 25. Plaintiffs incorporate the forgoing paragraphs as if fully set forth herein.

14 26. The California Constitution divides the State in legal subdivisions with distinct
15 powers and authorities. The City Plaintiffs have the authority to operate and control public access
16 to their respective beaches under the laws of California.

17 27. The People of the State of California, through the California Constitution, Article
18 XI, Section 7, proclaim "A county or city may make and enforce within its limits all local, police,
19 sanitary, and other ordinances and regulations not in conflict with general laws."

20 28. Further, the People of the State of California enacted Article XI, Section 5, grants
21 charter cities control over municipal matters within their city. "It shall be competent in any city
22 charter to provide that the city governed thereunder may make and enforce all ordinances and
23 regulations in respect to municipal affairs, subject only to restrictions and limitations provided in
24 their several charters and in respect to other matters they shall be subject to general laws. City
25 charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect
26 to municipal affairs shall supersede all laws inconsistent therewith." (Cal. Const. art. XI, § 5(a).)

27 29. Pursuant thereto, the City Plaintiffs, along with Cities across the State, have vested
28 in them the police power within their territorial boundaries, specifically as to matters affecting the

1 public health, moral, or safety.

2 30. Further, persons charged with the exercise of state governmental powers, including
3 executive powers, “may not exercise either of the others except as permitted by this Constitution.”
4 (Cal. Const. art. III, § 3.)

5 31. The 1976 California Coastal Act, section 30001.5 states: “The legislature further
6 finds and declares that the basic goals of the state for the coastal zone are to: . . . (c) Maximize
7 public access to and along the coast and maximize public recreational opportunities in the coastal
8 zone consistent with sound resources conservation principles and constitutionally protected rights
9 of private property owners.”

10 32. The Governor of the State of California enjoys specifically enumerated powers
11 pursuant the California Emergency Services Act. Specifically, “The Governor shall have the
12 powers granted by this article [3], which powers shall be in addition to any other powers granted to
13 him by this chapter [7 of the Government Code].” (Gov. Code § 8565.)

14 33. However, the Government Code, through the California Emergency Services Act,
15 expressly limits the powers of the Governor during the State of Emergency. Recognizing the
16 important constitutional limits approved by the People of the State of California, by and through
17 the California Constitution, the California Emergency Services Act, Government Code section
18 8668 acknowledges that “[n]othing in this chapter shall be construed to diminish or remove any
19 authority of any city, county, or city and county granted by Section 7 of Article XI of the California
20 Constitution.”

21 34. Only in accordance with the State Emergency Plan, the Governor may, among other
22 tangential powers, only:

23 (c) Use and employ any of the property, services, and resources of the state
24 as necessary to carry out the purposes of this chapter.

25 (d) Provide for the approval of local emergency plans.

26 (h) Make surveys of the industries, resources, and facilities, both public and
27 private, within the state, as are necessary to carry out the purposes of this
28 chapter.

1 (j) Take all other preparatory steps, including the partial or full mobilization
2 of emergency organizations in advance of an actual emergency; and order
3 those test exercises needed to insure the furnishing of adequately trained and
4 equipped personnel in time of need.

5 (Gov. Code § 8570.)

6 35. Governor Newsom’s Executive Order of April 30, 2020 violates the express will of
7 the People, the California Constitution, and exceeds the powers vested in him through the
8 Government Code and the California Emergency Services Act.

9 36. First, the Executive Order closing only the beaches of the County of Orange,
10 exceeds the Governor’s powers under Government Code section 8570. There is no enumerated
11 power in section 8570 that enables the Governor to close city beaches within the jurisdiction of the
12 Plaintiff Cities.

13 37. The Executive Order infringes upon and diminishes the authority of the City
14 Plaintiffs as granted by Section 7 of Article XI of the California Constitution. The City Plaintiffs
15 have the authority over their beaches, including the determination of whether to keep said beaches
16 open for public use and enjoyment. No City Plaintiff has voted, through their respective local
17 governmental authority, to close their respective beaches.

18 38. The Executive Order infringes on the municipal affairs of the City Plaintiffs in
19 closing the beaches of those Cities, secured by the Section 7 of Article XI of the California
20 Constitution.

21 39. There is now a present controversy that is ripe for judicial determination. The
22 Executive Order promulgated by the Governor, specifically targeting the beach communities in the
23 County of Orange, exceeds the powers of the executive branch of this state. Plaintiffs will be
24 collectively damaged, including the loss of revenue stemming from the closure of all affected
25 beaches.

26 40. Plaintiffs seek a judicial determination that through the Executive Order issued on
27 April 30, 2020, Governor Newsom has violated the statutory and constitutional protections of
28 Plaintiffs. Plaintiffs seek a judicial order declaring the Executive Order null, void, and

1 unenforceable against Plaintiffs, including the issuance of any writ to carry out such order.

2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment
4 against Defendants as follows:

- 5 I. An order and judgment declaring that the Executive Order of April 30, 2020,
- 6 violates the California Constitution and Government Code sections, including but
- 7 not limited to, 8565, 8570, and 8668.
- 8 II. An order temporarily, preliminarily, and permanently enjoining and prohibiting
- 9 Defendants from enforcing the Executive Order and any other orders based thereon;
- 10 III. Such other and further relief as the Court deems appropriate and just.

11
12 DATED: May 1, 2020

BUCHALTER
A Professional Corporation

13
14
15 By: _____



MICHAEL W. CASPINO
MICHAEL WEILER
Attorneys for Plaintiffs

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael W. Caspino (SBN# 171906) BUCHALTER, A Professional Corporation 18400 Von Karman Avenue, Suite 800 Irvine, CA 92612 TELEPHONE NO.: (949) 760-1121 FAX NO.: (949) 720-0182 ATTORNEY FOR (Name): Plaintiffs	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of Orange 5/1/2020 Clerk of the Superior Court By Stephen Corona, Deputy Clerk			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: CITY AND ZIP CODE: Santa Ana, Ca 92701 BRANCH NAME: CENTRAL				
CASE NAME: The City of Huntington Beach a California charter city v. Gavin Newsom et al.,				
<table style="width:100%; border: none;"> <tr> <td style="width:33%; border: none;"> <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) </td> <td style="width:33%; border: none;"> <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> <td style="width:33%; border: none;"> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> </tr> </table>	<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 30-2020-01139512-CU-MC-CJC JUDGE: NATHAN SCOTT DEPT:
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000)	<input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	<input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input checked="" type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
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3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 1

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: May 1, 2020

Michael W. Caspino

► /s/ Michael W. Caspino

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36) Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (*non-harassment*)
 - Mechanics Lien
 - Other Commercial Complaint Case (*non-tort/non-complex*)
 - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:**(AVISO AL DEMANDADO):**

GAVIN NEWSOM, in his official capacity as Governor of California, and DOES
1-300

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE): THE CITY OF HUNTINGTON BEACH, a California charter city; THE CITY OF DANA POINT, a California municipality; BALBOA BAY CLUB VENTURES, LLC dba Balboa Bay Resort and Balboa Bay Club, a California Limited Liability Company; PACIFIC CITY INVESTMENTS, LLC dba Pasea Hotel, a California Limited Liability Company; LIDO HOUSE, LLC, a California Limited Liability Company; LOUNGE GROUP, INC., a California Corporation

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED

Superior Court of California,
County of Orange

5/1/2020

Clerk of the Superior Court
By Stephen Corona, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
700 Civic Center Drive
Santa Ana, CA 92701

CASE NUMBER:
(Número del Caso):

30-2020-01139512-CU-MC-CJC

JUDGE NATHAN SCOTT

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

MICHAEL W. CASPINO (SBN #171906) T: (949) 720-0182

BUCHALTER, A Professional Corporation

18400 Von Karman Avenue, Suite 800, Irvine, CA 92612

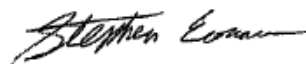
DATE:

5/1/2020

David H. Yamasaki, Clerk of the Court

Clerk, by

(Secretario)



, Deputy

S. Corona

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED:** You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under:

<input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

1 Michael E. Gates, City Attorney (SBN: 258446)
2 Brian L. Williams, Chief Trial Counsel (SBN: 227948)
3 OFFICE OF THE CITY ATTORNEY
4 CITY OF HUNTINGTON BEACH
5 2000 Main St., Fourth Floor
6 Huntington Beach, CA 92648
7 Ph: (714) 536-5538
8 Fx: (714) 374-1590
9 Attorney for the City of Huntington Beach

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

5/1/2020

Clerk of the Superior Court
By Stephen Corona, Deputy Clerk

6 A. Patrick Munoz, City Attorney, Dana Point (SBN 143901)
7 John A. Ramirez (SBN 184151)
8 Alan Fenstermacher (SBN 278171)
9 Rutan and Tucker
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15 jramirez@rutan.com
16 afenstermacher@rutan.com

17 BUCHALTER
18 A Professional Corporation
19 MICHAEL W. CASPINO (SBN: 171906)
20 MICHAEL J. WEILER (SBN: 308229)
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25 Fax: 213.896.0400
26 Email: mcaspino@buchalter.com
27 mweiler@buchalter.com

28 Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

23 THE CITY OF HUNTINGTON BEACH, a
24 California charter city; THE CITY OF DANA
25 POINT, a California municipality; BALBOA
26 BAY CLUB VENTURES, LLC dba as Balboa
27 Bay Resort and Balboa Bay Club, a California
28 Limited Liability Company; PACIFIC CITY
INVESTMENTS, LLC dba Pasea Hotel, a
California Limited Liability Company; LIDO
HOUSE, LLC, a California Limited Liability
Company;

CASE NO. 30-2020-01139512-CU-MC-CJC
Assigned to Honorable Nathan Scott
Department: C-25 5/1/2020 @ 230PM

VIA COURTCALL

**PLAINTIFFS' EX PARTE
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER AND AN
ORDER TO SHOW CAUSE RE
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND**

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AUTHORITIES IN SUPPORT THEREOF

Plaintiffs,
vs.

GAVIN NEWSOM, in his official capacity as
Governor of California, and DOES 1-300.

Defendants.

Date: May 1, 2020
Dept:
Res. No.:

Complaint filed on May 1, 2020.

TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs listed herein are **requesting a hearing on this *ex parte* application** for a temporary restraining **order as soon as possible on May 1, 2020**. The subject of this *ex parte* concerns Governor Newsom’s executive order to close Orange County beaches beginning, **TODAY**, May 1, 2020. The Governor is acting without Constitutional or Statutory authority and is infringing on the Cities’ right to control their own beaches. Plaintiffs are requesting a temporary restraining order restraining the Governor’s order and any enforcement of such order.

Accordingly, PLEASE TAKE NOTICE that on May 1, 2020 at 1:30 p.m., or as soon thereafter as the matter may be heard, in the above captioned court, located at 751 W. Santa Ana Blvd, Santa Ana, CA 92701, Plaintiffs The City of Huntington Beach, the City of Dana Point, Balboa Bay Club Ventures, LLC, Pacific City Investments, LLC, and Lido House, LLC, will apply for a temporary restraining order restraining Defendant Gavin Newsom, in his official capacity as the Governor of the State of California, and his agents (including the Office of Emergency Services) from ordering the closure of beaches within the territory of the City of Huntington Beach and the City of Dana Point and enforcing such order closing such beaches.

There is good cause of this *ex parte* application as Defendant Newsom, through the Office of Emergency Services, sent correspondence to various City Council members in various cities located in Orange County ordering the closure of the beaches in violation of both the California Constitution and the Government Code (hereinafter, sometimes referred to as the “Governor’s Order” or the “Order”). The California Constitution provides that cities “may make and enforce

1 with [their] limits all local, police, sanitary, and other ordinances and regulations not in conflict
2 with general laws.” (Cal. Const., Art. XI, Section 7.) Further, pursuant to Cal. Const. art. XI, §
3 5(a), the municipal affairs of charter cities supersede all laws inconsistent therewith.

4 The Governor’s emergency powers are not unlimited and the extent of such emergency
5 powers are enumerated. The California Emergency Services Act and Government Code section
6 8570 enumerates those powers and no such power can be construed to permit the current intrusion
7 in the affairs of the municipalities in controlling the status of their beaches. Further, the
8 Emergency Services Act acknowledges that the Act shall not be “construed to diminish or remove
9 any authority of any city, county, or city and county granted” under the California Constitution.

10 The issuance of a temporary restraining order **preserving the status quo** is warranted.
11 The Governor’s Order infringes on the Constitutional right of the City’s to manage their beaches
12 and the Order exceeds the limited powers conferred to the Governor under the Emergency
13 Services Act.

14 This Application is made on the grounds that the Plaintiffs are entitled to the relief
15 demanded consisting of the above described acts, either for a limited time period or perpetually,
16 and on the further ground that great and irreparable injury will result to Plaintiffs and their
17 business before the matter can be heard on notice and it would be extremely difficult to ascertain
18 the amount of compensation which would afford adequate relief.

19 Notice of this *ex parte* was given to Mr. Benjamin Glickman, Deputy Attorney General,
20 and Mr. Thomas Patterson, Senior Assistant Attorney General, on May 1, 2020, giving notice of
21 this instant application and the orders being sought. (See the Declaration of Michael Weiler.)

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This application is based on Plaintiffs' Complaint in this matter, declarations and exhibits in support of this *ex parte* application, and any other testimony or evidence presented at the time of hearing.

DATED: May 1, 2020

BUCHALTER
A Professional Corporation



By: _____
MICHAEL W. CASPINO
MICHAEL J. WEILER
Attorneys for Plaintiffs

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant and California Governor Gavin Newsom, through the Office of Emergency
4 Services, violated the California Constitution and the Government Code by ordering the closure
5 of beaches in Orange County. The California Constitution ensures cities “may make and enforce
6 within its limits all local, police, sanitary, and other ordinances and regulations not in conflict
7 with general laws.” (Cal. Const., Art. X1, Sec. 7.) The emergency powers of the executive in
8 California are specifically enumerated in and limited by Government Code Section 8570, and do
9 not include the power to close city beaches.

10 The facts are not in dispute. In the past months, the novel coronavirus (COVID-19) has
11 quickly spread to nearly all corners of the earth. On or about March 4, 2020, Governor Newsom
12 proclaimed a State of Emergency to exist in the State of California as a result of COVID-19. On
13 March 13, 2020, the Federal Government proclaimed a National State of Emergency due to
14 COVID-19.

15 On March 19, 2020, Governor Newsom signed Executive Order N-33-20. Therein,
16 Governor Newsom “in accordance with the authority vested in me by the State Constitution and
17 statutes of the State of California, and in particular, Government Code sections 8567, 8627, and
18 8665” ordered “order all individuals living in the State of California to stay home or at their place
19 of residence except as needed to maintain continuity of operations of the federal critical
20 infrastructure sectors.” Executive Order N-33-20 went “into effect immediately and shall stay in
21 effect until further notice.” The quoted Government Code sections enable the Governor to
22 effectuate the provisions of the California Emergency Services Act, Government Code section
23 8550 *et seq.*

24 Orange County’s efforts to contain the spread of COVID-19 have produced exceptional
25 results. The Orange County Health Care Agency, a governmental division of the County of
26 Orange, has reported that as of April 30, 2020, the cumulative number of cases was 2,393. For
27 reference, Los Angeles County, which has over three times the population of Orange County
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1 (10.04 million to 3.14 million people) has roughly ten times the number of cases at 23,182. By
2 any measure, the efforts of Orange County’s residents and local leaders’ compliance with social
3 distancing best practices have produced exceptional results in combating the spread of COVID-
4 19.

5 Despite those successes, on April 30, 2020 at 12:00 p.m. Pacific Standard Time, Governor
6 Newsom held a television conference. During the Conference, the Governor stated that he would
7 be ordering the closure of beaches in Orange County. In furtherance of that order, the Governor’s
8 Office of Emergency Services sent a letter to the City Councils for the cities of Huntington Beach
9 and Dana Point. Therein, the Governor “directed” the “beaches operated by local governments in
10 Orange County” to “institute full closure starting May 1, 2020.”

11 The “full closure” is a complete prohibition on the use of the Cities’ beaches, regardless
12 of whether users are practicing social distancing. The order specifically prohibits “public access
13 to these beaches” and states that all restrooms shall be closed. Parking facilities for both motor
14 vehicles and recreational boats will be closed. No “activities”, including sunbathing, walking,
15 running, or participation in watersports, will be permitted.

16 The Governor’s television address specifically targeted Orange County and its beaches.
17 The Governor made no statement or order directing *other* municipalities or local governments
18 across the state to close their beaches, and in fact, the Governor acknowledged that beaches in
19 other counties such as San Diego may remain open.

20 The State of California’s official COVID-19 online resource currently manages a list of
21 “healthy activities”. The State deems these activities to be safe if physical distancing is practiced.
22 These healthy activities include “Crabbing”, “Exploring Rock Pools, “Jogging and running”,
23 “Kite Boarding and Kitesurfing”, “Rowing”, “Outdoor Photography”, and “Watch[ing] the
24 sunrise or sunset” among others.¹ Such activities are commonly, if not exclusively, enjoyed either
25 on the beach or by using the beach consistent with social distancing concepts.

26 As of May 1, 2020, the Governor has singled out Orange County beaches and ordered
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28 ¹ <https://covid19.ca.gov/stay-home-except-for-essential-needs/#outdoor>

1 local governments to close beaches they operate. The Cities of Dana Point and Huntington Beach
2 desire to keep the beaches in their jurisdiction open for public use, subject to any municipal level
3 restrictions these cities may implement.

4 **II. THE COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER TO**
5 **PRESERVE THE STATUS QUO**

6 **a. THE COURT MAY GRANT A TEMPORARY RESTRAINING ORDER *EX PARTE***

7 A temporary restraining order may be obtained on an *ex parte* basis where “[i]t appears
8 from facts shown by affidavit or by the verified complaint that great or irreparable injury will
9 result to the applicant before the matter can be heard on notice.” (Code Civ. Proc., § 527(c)(1).)

10 In determining whether to issue a temporary restraining order, the trial court considers two
11 related factors: (1) the likelihood that the moving party will prevail on the merits of its case at
12 trial, and (2) the interim harm that the moving party is likely to sustain if the restraining order is
13 denied as compared to the harm that the non-moving party is likely to suffer if the court grants a
14 preliminary injunction. (*Church of Christ in Hollywood v. Superior Ct.* (2002) 99 Cal.App.4th
15 1244, 1251; Cal. Code Civ. Proc., §§ 526, 527.) “The latter factor involves consideration of such
16 things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of
17 preserving the status quo.’ [Citation.]” (*14859 Moorpark Homeowner’s Assn. v. VRT Corp.*
18 (1998) 63 Cal.App.4th 1396, 1402, quoting *Abrams v. St. John’s Hospital & Health Center*
19 (1994) 25 Cal.App.4th 628, 636.)

20 The general purpose of a temporary restraining order and preliminary injunction is to
21 **preserve the status quo.** (*Harbor Chevrolet Corp. v. Machinist’s Local Union 1484* (1959) 173
22 Cal.App.2d 380, 384; *Grothe v. Cortlandt Corp.* (1992) 11 Cal.App.4th 1313, 1316.) The “status
23 quo” for purposes of a temporary restraining order or preliminary injunction means the “last
24 actual peaceable, **uncontested status** which preceded the pending controversy.” (*United*
25 *Railroads of San Francisco v. Super. Ct.* (1916) 172 Cal. 80, 87 (emphasis added); *Voorhies v.*
26 *Greene* (1983) 139 Cal.App.3d 989, 995.)

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1 **b. THE GOVERNOR’S ORDER VIOLATES THE CALIFORNIA CONSTITUTION AND**
2 **EXCEEDS HIS EMERGENCY POWERS**

3 “A county or city may make and enforce within its limits all local, police, sanitary, and
4 other ordinances and regulations not in conflict with general laws.” (Cal. Const. Art. XI, Sec. 7.)
5 The police power is an exercise of the sovereign right of the government to protect the lives,
6 health, morals, comfort, and general welfare of the people. **A city's police power under this**
7 **constitutional provision is as broad as that of the state Legislature itself.”** (*Richeson v. Helal*
8 (2007) 158 Cal.App.4th 268, 277, emphasis added.)

9 A city's police power “is not a circumscribed prerogative,” but rather a broad power
10 necessary to “keep pace with the social, economic, moral, and intellectual evolution of the human
11 race.” (*Miller v. Board of Public Works* (1925) 195 Cal. 477, 485.)

12 The police power provides the authority for municipalities to control their parks and
13 beaches. “It is beyond dispute that a local entity has exclusive jurisdiction over the management
14 and control of its parks and may enact and enforce such regulations and rules that are necessary or
15 appropriate to promote park purposes and to ensure the public's health, safety and welfare in the
16 usage of its parks.” (*People v. Trantham* (1984) 161 Cal.App.3d Supp. 1, 13.)

17 A charter city has inherent authority to control, govern, and supervise its own parks. The
18 disposition and use of park lands is a municipal affair. (*Wiley v. City of Berkeley* (1955) 136
19 Cal.App.2d 10, 228 P.2d 123; *Mallon v. City of Long Beach* (1955) 44 Cal.2d 199, 282 P.2d 481.)
20 A charter city, such as Huntington Beach, ‘has plenary powers with respect to municipal affairs
21 not expressly forbidden to it by the state Constitution or the terms of the charter.’ (*City of*
22 *Redondo Beach v. Taxpayers, Property Owners, etc., City of Redondo Beach* (1960) 54 Cal.2d
23 126, 137.) Not only must any limitations on municipal power be express, they must be clear and
24 explicit, and no restriction on the exercise of municipal power may be implied. ‘The former
25 guide—that municipalities have only the powers conferred and those necessarily incident thereto
26 [citation]—is inapplicable.’ (*City of Grass Valley v. Walkinshaw* (1949) 34 Cal.2d 595, 598-599.)
27 Indeed, the Attorney General has acknowledged that “[t]he regulation of other matters affecting
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1 the public health, morals, or safety, such as noises; speed, depositing of sewage in the bay, etc.”
2 falls within the “exercise of the local police power of [a] City which is vested in the City by
3 Section 11 of Article XI of the State Constitution.” (4 Op.Atty.Gen. 36, 38-39 (1944).)

4 The Governor’s Order violates a city and charter city’s right to control and govern its
5 parks and directly conflicts with the decisions of the Cities of Dana Point and Huntington Beach
6 to keep their beaches open. The Governor is explicitly ordering the closure of the beaches in
7 Orange County while the Cities intend to keep their beaches open. The Cities have made their
8 decisions regarding their beaches and Governor Newsom’s Order infringes on the Constitutional
9 guarantees granting the Cities the independence to control their beaches.

10 Further, the Order exceeds even the emergency powers granted to the Governor. The
11 California Emergency Services Act, Government Code Section 8550 *et seq.* (the “Act”), was
12 enacted “[t]o ensure that preparations within the state will be adequate to deal with such
13 emergencies....” (Gov. Code § 8550.) The Act confers upon the Governor and political
14 subdivisions the “emergency powers **provided herein...**” Specifically, “[t]he Governor shall
15 have the powers granted by this article [3], which powers shall be in addition to any other powers
16 granted to him by this chapter [7 of the Government Code].” (Gov. Code § 8565.)

17 However, the Act itself **expressly limits** the power of the Governor. Government Code
18 section 8668 acknowledges that “[n]othing in this chapter shall be construed to diminish or
19 remove any authority of **any city**, county, or city and county granted by Section 7 of Article XI of
20 the California Constitution.” (emphasis added.)

21 Therefore, despite the broad powers conferred to the Governor, any order made pursuant
22 to the Act cannot violate the powers reserved for the Cities under the California Constitution. The
23 Constitution grants the Cities control over their beaches and parks. The Governor’s limited
24 authority must therefore yield to exclusive authority of the Cities in their decision regarding the
25 beaches in Orange County.

26 The Governor’s Order to close the beaches in Orange County, specifically in Huntington
27 Beach and Dana Point, infringes on the City’s police power.

1 **c. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF THEIR BEACHES ARE CLOSED**
2 **BY THE STATE GOVERNMENT**

3 The phrase “irreparable harm” is “used in expressing the rule that an injunction may issue
4 to prevent wrongs of a repeated and continuing character, or which occasion damages estimable
5 only by conjecture and not by any accurate standard.” (*People ex rel. Gow. V. Mitchell Brothers’*
6 *Santa Ana Theater* (1981) 118 Cal.App.3d 863, 871.) The more likely it is that the party seeking a
7 preliminary injunction will ultimately prevail, the **less severe must be the harm** that they allege
8 will occur if the injunction does not issue. (*Integrated Dynamic Solutions, Inc. v. VitaVet Labs,*
9 *Inc.* (2016) 211 Cal.Rptr.3d 873.)

10 Plaintiffs will suffer irreparable injury if a temporary restraining order is not granted.
11 Orange County residents are precluded from the right to access the beach guaranteed by Article X
12 Section 4 of the State Constitution (unless they drive to a nearby county where the Governor
13 inexplicably has permitted beach access to continue). Moreover, the Governor’s Order is an
14 unconstitutional interference with the City Plaintiffs’ rights to control their beach property and
15 prevents their exclusive right to control the beach for the public benefit. Usurping the authority of
16 a municipality’s power to control and operate their own lands and impermissibly violating the
17 rights of Orange County residents is a violation of a public duty that simply cannot be monetarily
18 compensated and is the very definition of irreparable harm. (See *Jauregui v. City of Palmdale*
19 (2014) 226 Cal.App.4th 781, 809, 172 Cal.Rptr.3d 333, 353 [“It has been said that an
20 unconstitutional statute or a statute valid upon its face but unconstitutionally applied may be
21 enjoined.”] [conc. opn. by Mosk, J.]; citing *Financial Indem. Co. v. Superior Court* (1955) 45
22 Cal.2d 395, 402; *Downing v. Cal. State Board of Pharmacy* (1948) 85 Cal.App.2d 30, 36.; see
23 also Cal. Admin. Mandamus (CEB 2014) §§ 1.18-1.19 at pp. 1-17 to 1-18 [injunction and
24 declaratory relief, and similar equitable remedies available in a mandamus action to preserve the
25 status quo, and prevent harm to the public pending final judgment].)

26 In addition to the Governor’s interference with the Cities’ beaches, the beaches will
27 remain closed over this weekend of May 2 and 3, 2020 and the foreseeable future unless this *ex*
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1 *parte* application is granted. The beaches could never be retroactively reopened and a subsequent
2 money judgment cannot compensate the Cities and their residents for the unconstitutional
3 deprivation of the right to access the beached. Moreover, each City will suffer extreme decreases
4 in tax revenue from such limited businesses that are currently permitted to be open if the public is
5 prohibited from using the beaches that would otherwise be open. It would be impossible to
6 calculate the losses in tax revenue and associated sales of goods and services directly resulting
7 from the unconstitutional Order to close the beaches. Additionally, the Governor will likely
8 contend that he is immune from an award of money damages based on any unconstitutional act
9 related to his Order.

10 Similarly, since the Governor's Order only targeted Orange County, visitors to Orange
11 County beaches will still be permitted to visit and enjoy other beaches in southern California.
12 Keeping Orange County beaches closed while allowing neighboring counties to keep their
13 beaches open will drive away visitors who may decide to never come back. Huntington Beach is
14 universally known as "Surf City USA" and the harm to its reputation stemming from the
15 Governor's unconstitutional order would constitute irreparable harm.

16 The Governor's infringement on local government will cause harm to the cities, its
17 residents, and the beach property that both the city and residents enjoy. Only a temporary
18 restraining order will halt this ongoing and continuing intrusion into the each City's constitutional
19 authority.

20 **d. AN INJUNCTION IS PERMITTED WHERE A VALID STATUTE IS**
21 **UNCONSTITUTIONALLY APPLIED**

22 If a statute is both valid and the challenged action is authorized by such statute, then an
23 injunction is not proper. However, as is here, when a valid statute is unconstitutionally *applied*, an
24 injunction is proper despite Civil Code section 3423(d) and Code of Civil Procedure section
25 526(b)(4). (*Robbins v. Superior Court* (1985) 38 C.3d 199, 212, 213.)

26 An injunction is proper here as the Governor's Order exceeds his powers under the
27 Constitution and Emergency Services Act. The validity of the Act is not at issue. The arbitrary
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1 nature of the Order as *applied* to the City of Dana Point and Huntington Beach, in exceeding the
2 Governor’s power, is the proper subject for an injunction.

3 **III. AN ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION SHOULD**
4 **ALSO ISSUE**

5 Importantly, the TRO requested is for a temporary period only until such time as a hearing
6 on a preliminary injunction can occur. A party requesting a preliminary injunction may give
7 notice of the request to the opposing or responding party either by serving a noticed motion under
8 Code of Civil Procedure section 1005 or by obtaining and serving an order to show cause
9 (“OSC”). An OSC must be used when a temporary restraining order (“TRO”) is sought.
10 (California Rules of Court, Rule 3.1150.)

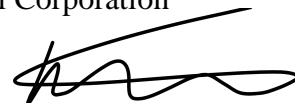
11 Plaintiffs further request a full hearing on a Preliminary Injunction for the same reasons
12 and under the same authorities as set forth herein, and requests that an Order to Show Cause be
13 issued along with the TRO to afford Defendant the opportunity to show why they should not be
14 restrained and enjoined in the same manner for the remainder of this litigation.

15 **IV. CONCLUSION**

16 Governor Newsom’s Order closing the beaches in Orange County clearly violates the
17 rights of the City of Dana Point and City of Huntington Beach’s right to control their beaches
18 protected under the California Constitution. The Court should keep the status quo where the
19 Cities control their respective parks as provided by the California Constitution. The Court should
20 issue a temporary restraining order and issue an order to show cause regarding a preliminary
21 injunction regarding Governor Newsom’s order closing Orange County beaches.

23 DATED: May 1, 2020

BUCHALTER
A Professional Corporation



25 By: _____
26 MICHAEL W. CASPINO
27 MICHAEL WEILER
28 Attorneys for Plaintiff

5/1/2020

Clerk of the Superior Court
By Stephen Corona, Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

THE CITY OF HUNTINGTON BEACH, a California charter city; THE CITY OF DANA POINT, a California municipality; BALBOA BAY CLUB VENTURES, LLC dba as Balboa Bay Resort and Balboa Bay Club, a California Limited Liability Company; PACIFIC CITY INVESTMENTS, LLC dba Pasea Hotel, a California Limited Liability Company; LIDO HOUSE, LLC, a California Limited Liability Company; LOUNGE GROUP, INC., a California Corporation;

Plaintiffs,

vs.

GAVIN NEWSOM, in his official capacity as Governor of California, and DOES 1-300.

Defendants.

CASE NO. 30-2020-01139512-CU-MC-CJC
Assigned to Honorable Judge Nathan Scott
Department:

**[PROPOSED] ORDER ON PLAINTIFFS’
EX PARTE APPLICATION FOR A
TEMPORARY RESTRAINING ORDER**

Date: May 1, 2020
Dept:
Res. No.:

Complaint filed on May 1, 2020.

The hearing on Plaintiffs City of Huntington Beach (hereinafter “Huntington Beach”), the City of Dana Point (hereinafter “Dana Point”; collectively Huntington Beach and Dana Point shall be referred to as the “Cities” or “City Plaintiffs”), Balboa Bay Club Ventures, LLC, dba as Balboa Bay Resort and Balboa Bay Club (hereinafter the “Bay Club”) and Pacific City Investments, LLC

1 dba Pasea Hotel (“Pasea”), Lido House, LLC, and Lounge Group, Inc.’s *ex parte* application for a
2 temporary restraining order, and OSC re a preliminary injunction, having come in on May 1, 2020
3 at the above-entitled Court, and the Court, having considered the pleadings in this action, the
4 memorandum of points and authorities, declarations filed and argument of counsel, and good cause
5 appearing:

6 **ORDER TO SHOW CAUSE**

7 To Defendant GAVIN NEWSOM, Governor of the State of California:

8 Based upon the *ex parte* application filed in this action, you are ordered to appear on
9 _____ 2020, at _____ in Department _____ of this Court to show cause
10 why a preliminary injunction pending trial in this action should not be ordered restraining and
11 enjoining you, your officers, agents, or any other persons acting with you or on your behalf from:

12 1. Restraining Defendant from ordering the closure of beaches in the City of Dana
13 Point and the City of Huntington Beach;

14 2. Enforcing any order closing the beaches of the City of Dana Point and the City of
15 Huntington Beach

16 This Order to Show Cause and supporting papers shall be served on Defendants no later
17 than _____, 2020, by _____. Proof of such service shall be filed and
18 delivered to the court hearing the Order to Show Cause no later than _____,2020.

19 Any reply papers shall be filed and served by Defendants on Plaintiffs by _____, no
20 later than _____ a.m./pm. on _____ 2020.

21
22 **TEMPORARY RESTRAINING ORDER**

23 Pending hearing on the above Order to Show Cause, Defendant, his officers, agents, and/or
24 any other persons acting with them or on their behalf, are restrained and enjoined from:

25 1. Ordering the beaches of the City of Dana Point and City of Huntington Beach be
26 closed;

1 2. Enforcing any order closing the beaches of the City of Dana Point and the City of
2 Huntington Beach;

3 **IT IS SO ORDERED.**

4 Dated: _____

5 _____

6 Judge of the Orange County Superior Court

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1 Michael E. Gates, City Attorney (SBN: 258446)
2 Brian L. Williams, Chief Trial Counsel (SBN: 227948)
3 OFFICE OF THE CITY ATTORNEY
4 CITY OF HUNTINGTON BEACH
5 2000 Main St., Fourth Floor
6 Huntington Beach, CA 92648
7 Ph: (714) 536-5538
8 Fx: (714) 374-1590
9 Attorney for the City of Huntington Beach

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

5/1/2020

Clerk of the Superior Court
By Stephen Corona, Deputy Clerk

6 A. Patrick Munoz, City Attorney, Dana Point (SBN 143901)
7 John A. Ramirez (SBN 184151)
8 Alan Fenstermacher (SBN 278171)
9 Rutan and Tucker
10 611 Anton Blvd. Ste 1400,
11 Costa Mesa, CA 92626
12 Ph. 714-641-5100
13 Fx: 714-546-9035
14 Email; pmunoz@rutan.com
15 jramirez@rutan.com
16 afenstermacher@rutan.com

17 BUCHALTER
18 A Professional Corporation
19 MICHAEL W. CASPINO (SBN: 171906)
20 MICHAEL J. WEILER (SBN: 308229)
21 18400 Von Karman Avenue, Suite 800
22 Irvine, CA 92612-0514
23 Telephone: 949.760.1121
24 Fax: 949.720.0182
25 Fax: 213.896.0400
26 Email: mcaspino@buchalter.com
27 mweiler@buchalter.com

28 Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

23 THE CITY OF HUNTINGTON BEACH, a
24 California charter city; THE CITY OF DANA
25 POINT, a California municipality; BALBOA
26 BAY CLUB VENTURES, LLC dba as Balboa
27 Bay Resort and Balboa Bay Club, a California
28 Limited Liability Company; PACIFIC CITY
INVESTMENTS, LLC dba Pasea Hotel, a
California Limited Liability Company; LIDO
HOUSE, LLC, a California Limited Liability
Company;

CASE NO. 30-2020-01139512-CU-MC-CJC
Assigned to Honorable
Department:

**DECLARATION OF MICHAEL
WEILER IN SUPPORT OF
PLAINTIFFS' *EX PARTE*
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER**

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Date: May 1, 2020
Dept:
Res. No.:

Complaint filed on May 1, 2020.

Plaintiffs,

vs.

GAVIN NEWSOM, in his official capacity as
Governor of California, and DOES 1-300.

Defendants.

I, Michael Weiler, do hereby declare as follows:

- 1. I am over the age of 18. All of the facts herein attested are of my personal knowledge. If called upon to testify in their regard, I could and would do so competently.
- 2. I am an attorney with Buchalter, APC, attorney of record for Plaintiffs in this action.
- 3. On May 1, 2020, at 10:53 a.m., I gave notice of this *ex parte* application to Benjamin Glickman and Thomas Patterson from the California Department of Justice, as well as the general Department of Justice email account.
- 4. Benjamin Glickman is a deputy attorney general for the state of California. Thomas Patterson is a Senior Assistant Attorney General.
- 5. I notified Mr. Glickman and Mr. Patterson that Plaintiffs are filing the instant *ex parte* application and requesting a temporary restraining order restraining the Governor's order closing the beaches in Orange County. I stated that the Plaintiffs are awaiting further orders from the Court regarding the time, place, and manner in which the *ex parte* will be heard.
- 6. Attached hereto as **Exhibit 1** is a true and correct copy of the email notice I sent to the Attorney General's office, including Mr. Glickman and Mr. Patterson.
- 7. At 11:00 a.m. I contacted the Los Angeles office for the California Attorney general in an additional attempt to give notice of this *ex parte* application. I was unable to speak to someone with authority to give such notice.

///
///

1 I declare under the penalty of perjury under the laws of the state of California that the foregoing is
2 true and correct. Executed May 1, 2020.

3
4 Date: May 1, 2020.



5 _____
6 Michael J. Weiler
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Exhibit 1

Weiler, Michael

From: Weiler, Michael
Sent: Friday, May 1, 2020 10:53 AM
To: Benjamin.glickman@doj.ca.gov
Cc: Thomas.patterson@doj.ca.gov; govlegalunit@gov.ca.gov
Subject: Urgent; Ex Parte Notice; GOVERNOR BEACH CLOSURE; Huntington Beach v. Newsom, case number not yet assigned.

Mssrs;

Please to notice that the Cities of Huntington Beach and Dana Point have filed a Complaint in the Orange County Superior Court against Gavin Newsom, Governor. Plaintiffs are currently filing an ex parte application for a temporary restraining order restraining the promulgation of the Order to close the beaches in these cities with requests to have the application heard today. A case number has not yet been assigned.

We are waiting further instructions from the Court concerning the time, place, and manner for how the ex parte application will be heard.

We will be forwarding the papers when filed.

Please let me know if other persons need to be notified for the ex parte application and of any plans to oppose the application.

Please call my cell phone or email me with any questions or concerns.

Buchalter

Michael Weiler

Associate

T (949) 224-6451

mweiler@buchalter.com

18400 Von Karman Avenue, Suite 800

Irvine, CA 92612-0514

www.buchalter.com

1 Michael E. Gates, City Attorney (SBN: 258446)
Brian L. Williams, Chief Trial Counsel (SBN: 227948)
2 OFFICE OF THE CITY ATTORNEY
CITY OF HUNTINGTON BEACH
3 2000 Main St., Fourth Floor
Huntington Beach, CA 92648
4 Ph: (714) 536-5538
Fx: (714) 374-1590
5 Email: Michael.Gates@surfcity-hb.org
Email: Brian.Williams@surfcity-hb.org
6 Attorneys for the City of Huntington Beach

ELECTRONICALLY FILED
Superior Court of California,
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18 Email: mcaspino@buchalter.com
mweiler@buchalter.com

19 Attorneys for Plaintiffs
20

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **COUNTY OF ORANGE**

23
24 THE CITY OF HUNTINGTON BEACH, a
California charter city; THE CITY OF DANA
25 POINT, a California municipality; BALBOA
BAY CLUB VENTURES, LLC dba as Balboa
26 Bay Resort and Balboa Bay Club, a California
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27 INVESTMENTS, LLC dba Pasea Hotel, a
California Limited Liability Company; LIDO
28 HOUSE, LLC, a California Limited Liability

CASE NO. 30-2020-01139512-CU-MC-CJC
Assigned to Honorable
Department:

**DECLARATION OF MICHAEL E.
GATES IN SUPPORT OF PLAINTIFFS'
EX PARTE APPLICATION FOR A
TEMPORARY RESTRAINING ORDER**

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Company;

Plaintiffs,

vs.
GAVIN NEWSOM, in his official capacity as
Governor of California, and DOES 1-300.

Defendants.

Date: May 1, 2020
Dept:
Res. No.:

Complaint filed on May 1, 2020.

I, Michael E. Gates, do hereby declare as follows:

- 1. I am over the age of 18. All of the facts herein attested are of my personal knowledge. If called upon to testify in their regard, I could and would do so competently.
- 2. Attached hereto as **Exhibit 1** is a true and correct copy of a letter received by the City from the Governor’s Office of Emergency Services on April 30, 2020.
- 3. The contents of Exhibit 1 include an order directing the City of Huntington Beach to immediately close the beaches within the City limits.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 1, 2020 at Huntington Beach, CA.

DATE: May 1, 2020

Michael E. Gates

1 Company;

Date: May 1, 2020
Dept:
Res. No.:

2 Plaintiffs,

3 vs.

Complaint filed on May 1, 2020.

4 GAVIN NEWSOM, in his official capacity as
5 Governor of California, and DOES 1-300.

6 Defendants.

7
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17
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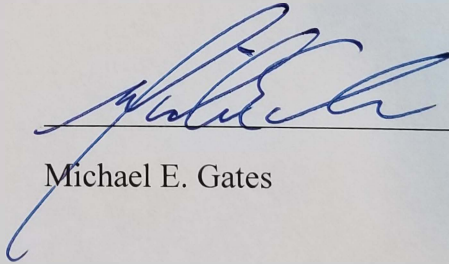
19 
Michael E. Gates

Exhibit 1



April 30, 2020

Lyn Semeta, Mayor
Jill Hardy, Mayor Pro Tem
Patrick Brenden, Council Member
Kim Carr, Council Member
Barbara Delgleize, Council Member
Erik Peterson, Council Member
Mike Posey, Council Member
Huntington Beach City Council

2000 Main Street
Huntington Beach, CA 92648

City Council Members:

Thank you for your ongoing leadership protecting Orange County communities amidst the COVID-19 pandemic.

The Governor's March 19, 2020 Executive Order EO-N-33 directs all residents to heed current State public health directives to preserve public health and safety. Current State public health directives prohibit gatherings of any size and direct residents to stay home unless participating in essential workforce activities or authorized necessary activities. As explained [here](#), among other things: "Californians can walk, run, hike and bike in their local neighborhoods as long as they continue to practice social distancing of 6 feet." These restrictions are in place and are necessary to protect all Californians from the spread of COVID-19.

Last weekend, state and local beaches in Orange County experienced exceptionally heavy visitation that generated a high concentration of beach visitors in close physical proximity. State public health leadership reviewed conditions on these beaches and determined that this beach visitation created unsafe conditions. These conditions threaten the health of both beach visitors and community members who did not visit the beach but are threatened by worsening spread of the virus, including first responders and health care providers.

In response, our State Department of Parks and Recreation is shifting to full closure of all Orange County State Beaches on a temporary basis. These beach

closures will take effect tomorrow morning, May 1. Additionally, beaches operated by local governments in Orange County are directed to institute full closure starting tomorrow, May 1, to restrict the gathering of visitors that create unsafe conditions. Full closure means that there is no public access to these beaches on a temporary basis to protect public health. All restrooms are closed, and there are no parking facilities open for visitors, or recreational boats. No activities are permitted on the beach (including sunbathing, walking or running or watersports).

We understand that many Californians are eager to spend time and recreate outdoors given the public health crisis necessitating the state's Stay-at-Home Order. We continue to encourage residents to spend time outdoors in their neighborhoods and local parks that remain open for activities while maintaining safe physical distance. Additionally, we are hopeful and confident that we can collaborate with local Orange County leaders to identify measures that can restore safe beach access as soon as possible. But until such time as those measures are in place, this additional step to preserve public health and safety has proven essential.

This is a critical moment in California's battle against COVID-19, and Californians have stepped up to limit the spread of the virus. Temporary beach closures in Orange County will help to ensure continued progress on limiting spread of the virus, which will expedite our process to restore important activities within our economy and communities.

Thank you very much for your ongoing collaboration and leadership during this critical time.

Sincerely,



MARK S. GHILARDUCCI
Director, Governor's Office of Emergency Services



WADE CROWFOOT
Secretary, California Natural Resources Agency

Huntington Beach City Council

April 30, 2020

Page 3

cc: Don Barnes, Orange County Sheriff-Coroner
Kirsten Monteleone, Dana Point Chief of Police
Robert Handy, Huntington Beach Chief of Police
Laura Farinella, Laguna Beach Chief of Police
Jon T. Lewis, Newport Beach Chief of Police
Edward Manhart, San Clemente Chief of Police
Philip L. Gonshak, Seal Beach Chief of Police
Senator Patricia Bates
Senator John Moorlach
Senator Tom Umberg
Assemblymember William Brough
Assemblymember Cottie Petrie Norris
California Coastal Commission



3650 SCHRIEVER AVENUE, MATHER, CA 95655
(916) 845-8506 TELEPHONE (916) 845-8511 FAX
www.CalOES.ca.gov

GAVIN NEWSOM
GOVERNOR



MARK S. GHILARDUCCI
DIRECTOR