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12 *Pro Per*

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF SACRAMENTO**

15 **BEN STEIN**, an individual,

16 and

17 **MEMBERS OF THE CLASS SIMILARLY**
18 **SITUATED,**

19 Petitioners

20 v.

21 **STATE OF CALIFORNIA**

22 Serve: Attorney General
23 Office of the Attorney General
24 300 South Spring Street
25 Los Angeles, California 90013-1230

26 and

27 **GAVIN NEWSOM,**
28 **in his official capacity as the**
GOVERNOR OF CALIFORNIA

1303 10th Street, Suite 1173
Sacramento, California 95814

and

CASE NO.: _____

**CLASS ACTION COMPLAINT
FOR DECLARATORY
JUDGMENT AND INJUNCTIVE
RELIEF FOR DEPRIVATION
OF CIVIL LIBERTIES AND
CONSTITUTIONAL RIGHTS**

1 **DR. SONIA Y. ANGELL, MD, MPH**
2 Director & State Public Health Officer
3 California Department of Public Health
4 1616 Capitol Avenue
5 Sacramento, California 95814

Respondents

6 COME NOW THE PETITIONERS, by the undersigned counsel, and allege as follows:

7 **JURISDICTION AND VENUE**

8
9 1) The Superior Court has subject matter jurisdiction and over the case and personal
10 jurisdiction over the Respondents because all parties are within the State of California, the
11 effects of the actions complained of are within California, the Respondents are government
12 officials and agencies of California, and the substance of the Petition is the governmental
13 authority and actions of the California government over persons residing in California.

14
15 2) Venue is proper in this Court because the dispute arose in this judicial district.

16 **PARTIES AND CERTIFICATION OF A CLASS**

17 3) The Petitioner BEN STEIN is a citizen of the State of California residing in
18 Beverly Hills, California, within the County of Los Angeles, California. He is filing this class
19 action complaint with complete respect for the noble, just and important objective to prevent the
20 spread of the corona virus aka COVID-19, but sincerely believes, as set forth below, that the
21 Defendants do not have legal authority to impose a draconian mandatory quarantine on all
22 citizens of the state to be arrested if they do not comply with Defendants' edicts and
23 implementation. While Plaintiff Stein does not believe he is under house arrest and will adhere
24 to and respects non-binding guidelines concerning social distancing and responsible hygiene to
25 prevent the spread of COVID-19, no matter how well intentioned the Defendants may be, the
26 absolute dictatorial authority which they are seeking to exercise, invoking absolute and
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1 unbridled police powers which Plaintiff also respects when properly authorized and exercised,
2 cannot be permitted in this state or any other in our democratic republic. In sum, Plaintiff Stein a
3 has a high regard for and sincerely respects law enforcement, but the draconian orders of
4 Defendants have put the police in an untenable situation. As just one example among many, a
5 friend of Plaintiff Stein, Pastor Glen Miller Oyan , has been threatened with arrest if he holds
6 religious worship in his Los Angeles Filipino Baptist Church. This abridges and violates Pastor
7 Glen Miller Oyan's and his congregation's religious freedoms as guaranteed by both the
8 California and U.S. Constitutions.
9

10 4) The MEMBERS OF THE CLASS SIMILARLY SITUATED are all those citizens
11 and residents of the State of California who are subject to California Governor Gavin Newsom's
12 Executive Order N-33-20 which orders them as compulsion to remain in their homes under pain
13 of arrest, criminal prosecution for a misdemeanor (presumably for each offense), imprisonment
14 for up to 6 months, a \$1,000 fine, and a record of criminal conviction. The Executive Order
15 provides some exemptions for law enforcement and other essential government employees.
16

17 5) The Respondent State of California is the government of California in whose
18 authority Executive Order N-33-20 has been issued and is being enforced, with the power to
19 prosecute the Petitioner members of the class for misdemeanor violations.
20

21 6) The Respondent Governor Gavin Newsom is the Governor of the State of
22 California, head of the Executive branch of California, and the author of and authority issuing
23 Executive Order N-33-20.
24

25 7) The Respondent Dr. Sonia Y. Angell, MD, MPH is the California State Public
26 Health Officer who is singled out for specific empowerment and duties by the Governor's
27 Executive Order N-33-20 and who also serves as the Director of California Department of Public
28

1 Health, both positions being co-incident.

2 8) Petitioners request the certification of a class pursuant to California Code of Civil
3 Procedure [Chapter 7] §§ 382, 1048, California Rule 3.760 through 3.771.

4 9) California Code of Civil Procedure § 382 provides that:

5 When the question is one of a common or general interest, of many
6 persons, or when the parties are numerous, and it is impracticable
7 to bring them all before the court, one or more may sue or defend
8 for the benefit of all.

9 10) In the present case, those affected in exactly the same manner and extent are most
10 of the approximately 39.5 million citizens and residents of the State of California, excluding only
11 those who might be made explicitly exempt from Executive Order N-33-20 as essential
12 governmental personnel or officials such as law enforcement, and those actually ill.

13 11) All members of the class have exactly the same injury to their civil liberties and
14 constitutional rights and exactly the same restrictions on their exercise of the right to travel,
15 peaceably assemble, and pursue their economic well-being and occupation.
16

17 12) The members of the class are too numerous to be joined individually.

18 13) Therefore, certification of a class for the purposes of these legal questions is
19 requested.
20

21 **PETITION FOR DECLARATORY JUDGMENT**
22 **AND INJUNCTIVE RELIEF**

23
24 14) This is a petition for declaratory and injunctive relief against the deprivation of
25 the Petitioners' civil liberties and constitutional rights by the Governor of California as
26 embodying the executive branch of California's government, by the State of California, and by
27 the California State Public Health Officer.
28

1 15) The Petitioners wish to imminently and fully exercise their civil liberties and
2 constitutional rights by leaving the confines of their homes, exercising their constitutionally-
3 protected right to travel, exercising their constitutionally-protected right to peaceably assemble,
4 to pursue their careers and occupations, to engage in free enterprise, enjoying the outdoors
5 including parks and recreational areas created at taxpayer expense for the use of the general
6 public, and similar activities in non-compliance with the orders issued by the Governor, the State
7 and the State Public Health Officer.
8

9 16) However, the Petitioners are faced with threats to criminalize and punish their
10 exercise of those rights which they believe to be constitutionally infirm and legally invalid.
11

12 17) The petitioners wish to and intend to exercise the full extent of their rights, free of
13 any chilling effect, without incurring government retaliation, punishment, penalties, or restriction
14 from their exercise of their rights, while at the same time exercising recommended social
15 distancing and good and careful hygiene to prevent the spread of COVID-19.
16

17 18) Therefore, the Petitioners need a declaratory judgment to clarify their rights and
18 obligations in the exercise of their civil liberties and constitutional rights so that they may not
19 lose their rights without being prosecuted and/or threatened by the government of California.
20

21 19) On January 31, 2020, the President of the United States suspended international
22 travel from China (which the President does have the authority to do because it involves entry
23 across the international border of the country).
24

25 20) Therefore, California's Legislature had sufficient time to pass legislation in the
26 normal course of government which California might believe to be necessary and proper
27 between January 31, 2020, and March 19, 2020.
28

21) The Respondents could also put a referendum to the voters.

1 22) On March 19, 2020, the Governor of California, Gavin Newsom, issued
2 Executive Order No. N-33-20, attached as Exhibit A, purporting to exercise authority under
3 California Government Code sections 8567, 8627, and 8665, attached as Exhibits B, C, and D,
4 and California Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145,
5 120175 and 120150, attached as Exhibits E, F, G, H, I, J, K, and L.
6

7 23) Thereby, the Respondents threaten the Petitioners with jail of up to 6 months by
8 the operation of California Government Code section 8665:

9 Any person who violates any of the provisions of this chapter or who
10 refuses or willfully neglects to obey any lawful order or regulation
11 promulgated or issued as provided in this chapter, shall be guilty of a
12 misdemeanor and, upon conviction thereof, shall be punishable by a
13 one of not to exceed one thousand dollars (\$1,000) or by imprisonment
14 for not to exceed six months or by both such fine and imprisonment.

15 24) This is a lawsuit about the exercise of standardless and unbridled power largely
16 imprisoning approximately 39.5 million citizens of the State of California in their own homes,
17 under penalty of imprisonment and conviction for a criminal misdemeanor, the great majority of
18 whom are entirely healthy.

19 25) In the United States of America, neither the California nor U.S. Constitutions
20 provide for the power of imposing martial law, emergency powers, or the suspension of the
21 Constitution. Whereas other less-stable nations have experienced political turmoil including by
22 frequently suspending their constitution and/or imposing martial law, no such concepts exist
23 within the United States governmental system.

24 26) On the contrary, the U.S. Constitution guarantees to every State a "Republican"
25 form of government in Article IV, Section 4, which in 1788 meant not the Republican Party but a
26 constitutional democracy governed by "We the People" pursuant to constitutional rules.
27

28 27) This lawsuit is about officials stripping the gears of our country's and our state's

1 constitutional mechanisms so that long after the COVID-19 virus has faded into memory, still
2 the protections of civil liberties and constitutional rights will remain torn.

3 28) Article I, Section 1, of the California Constitution requires that “All people are by
4 nature free and independent and have inalienable rights. Among these are enjoying and
5 defending life and liberty, acquiring, possessing, and protecting property, and pursuing and
6 obtaining safety, happiness, and privacy.”
7

8 29) Article I, Section 7, of the California Constitution requires that “(a) A person may
9 not be deprived of life, liberty, or property without due process of law or denied equal protection
10 of the laws; provided that nothing contained herein or elsewhere in this Constitution imposes
11 upon the State of California or any public entity, board, or official any obligations or
12 responsibilities which exceed those imposed by the Equal Protection Clause of the 14th
13 Amendment to the United States Constitution with respect to the use of pupil school assignment
14 or pupil transportation. * * *”
15

16 30) Article I, Section 24, of the California Constitution requires that “Rights
17 guaranteed by this Constitution are not dependent on those guaranteed by the United States
18 Constitution. * * *”
19

20 31) As applied in this case, California Government Code sections 8567, 8627, and
21 8665 impose a misdemeanor criminal penalty for violation of any law, regulation, or rule as
22 modified unilaterally by the Governor under a declared state of emergency, imposing up to 6
23 months in jail and/or a \$1,000 fine.
24

25 32) Therefore, as applied, the interpretation of the statutes must be narrowly
26 conducted under the rule of lenity.

27 33) “Under the rule of lenity, ‘California [courts] will ‘construe a penal statute as
28

1 favorably to the defendant as its language and the circumstances of its application may
2 reasonably permit” [Citation.]” *In re Michael D.*, 100 Cal.App.4th 115, 125 (2002).
3 “However, application of the rule of lenity is inappropriate unless, after consideration of the intent
4 of the statute, the canons of statutory construction, and an analysis of the legislative history, the
5 statute is still ambiguous.” *Ibid.*

6
7 34) This lawsuit does not oppose medical experts issuing guidance that the free
8 citizens of California may and should voluntarily adhere to, in the same way that all other
9 diseases and health issues have always been handled.

10 35) This lawsuit is not intended to discourage those who want to take whatever
11 precautions they are persuaded by medical officials are proper as a voluntary exercise of their
12 freedoms and liberties.
13

14 **AUTHORITY FOR DECLARATORY JUDGMENT**

15 36) The Superior Court has authority to hear declaratory judgment of civil liberties
16 and constitutional rights.

17
18 In *Columbia Pictures Corp. v. DeToth*, 26 Cal.2d 753, 760-761, 161 P.2d
19 217, 220, 162 A.L.R. 747, it was held that a complaint for declaratory relief
20 is legally sufficient if it sets forth facts showing the existence of an actual
21 controversy relating to the legal rights and duties of the respective parties
22 under a contract and requests that these rights and duties be adjudged by the
23 court; that it is not essential, to entitle a plaintiff to seek declaratory relief,
24 that he should establish his right to a favorable declaration; that the purpose
25 of the declaratory judgment is to "serve some practical end in quieting or
26 stabilizing an uncertain or disputed jural relation"; that the court is
27 empowered to determine disputed questions of fact and hence the remedy is
28 not limited to cases involving a written instrument and that a disputed oral
contract may properly be the subject of a declaratory judgment. It was further
held:

"That a cause of action otherwise may have accrued and that other adequate
relief may be available to plaintiff at the time are also factors to be
considered by the court. The remedies provided by the statute are cumulative
and declaratory relief may be asked alone or with other relief, Code

1 Civ.Proc., §§ 1060-1062. Hence a plaintiff's right to proceed is not barred by
2 the fact that the contract sued upon may have already been breached and that
3 traditional or statutory (see Civ.Code, § 3423(5); Code Civ.Proc., § 526)
4 alternative remedies are available. In *Maguire v. Hibernia S. & L. Soc.*,
5 *supra*, 23 Cal.2d , at page 732, 146 P.2d , at page 680, 151 A.L.R. 1062, this
6 court, in reversing judgments entered on demurrers to complaints sustained
7 without leave to amend, stressed the point that before declaratory relief may
8 be denied on the ground of the existence of other remedies, 'it must clearly
9 appear that the asserted alternative remedies are available to the plaintiff and
10 that they are speedy and adequate or as well suited to the plaintiff's needs as
11 declaratory relief. See *Ermolieff v. R.K.O. Radio Pictures*, 19 Cal.2d 543,
12 549, 122 P.2d 3; *Henderson v. Oroville-Wyandotte Irr. Dist.*, 207 Cal. 215,
13 216, 277 P. 487; *Welfare Investment Co. v. Stowell*, 132 Cal.App. 275, 278,
14 22 P.2d 529; Borchard, *Declaratory Judgments*, p. 293 et seq."

15 *Herrmann v. Fireman's Fund Ins. Co.*, 274 P.2d 501, 506, 127 Cal.App.2d 560 (Cal. App. 1954)

16 37) Declaratory Judgment is also California Code of Civil Procedure §§ 1060, 1061,
17 1062, and 1062.3.

18 **FIRST CAUSE OF ACTION**
19 **(Injunctive Relief)**

20 38) For the reasons and upon the factual allegations set forth elsewhere in this
21 Complaint, which are incorporated by reference herein, the PETITIONERS request that the
22 Court issue injunctive relief consistent with the California Constitution's mandate in Article I,
23 Section 26, that the requirements of the Constituion are mandatory and prohbitory because the
24 Governor has not issued a Declaration of Emergency to support Executive Order No. N-33-20,
25 but has previously proclaimed only directions to State agencies and officials.

26 39) The PETITIONERS further request injunctive relief enjoining the Respondents
27 from enforcing the provisions of California Government Code sections 8567, 8627, and 8665 as
28 applied by California Governor Newsom's Executive Order No. N-33-20 to private citizens
rather than to California state agencies and officials.

39) The PETITIONERS further request injunctive relief enjoining the Respondents

1 from enforcing the provisions of California Government Code sections 8567, 8627, and 8665 as
2 applied by California Governor Newsom’s Executive Order No. N-33-20 to restrict the freedom
3 to travel, liberty, freedom of assembly, freedom of religion, freedom of association, freedom to
4 engage in interstate commerce, without fear of imprisonment.

5 41) The PETITIONERS further request injunctive relief enjoining the Respondents
6 from enforcing the provisions of California Health and Safety Code 120125, 120140, 131080,
7 120130(c), 120135, 120145, 120175 and 120150 as applied by California Governor Newsom’s
8 Executive Order No. N-33-20 to quarantine and/or isolate healthy persons for whom there is no
9 evidence satisfying due process that an individual person has any communicable illness.
10

11 42) The deprivation of civil liberties and constitutional rights, including as a
12 precedent for the suspension of the California and U.S. Constitutions and/or imposition of
13 martial law, creates irreparable damage to the PETITIONERS who are citizens of this country.
14

15 43) The fact that the Respondents took no such actions in response to the equally
16 dangerous or more dangerous diseases of Swine Flu, SARS, MERS, tuberculosis, etc.
17 demonstrates that the balance of the equities and the burdens upon the Respondents favor the
18 issuance of an injunction for the preservation of the California Constitution and a free republic.
19

20 44) The World Health Organization estimated that 1.5 million people died from
21 Turbuclosis in one year, 2018, out of 10 million who fell ill. Key Facts, World Health
22 Organization, October 17, 2019, accessible at: [www.who.int/news-room/fact-](http://www.who.int/news-room/fact-sheets/detail/tuberculosis)
23 [sheets/detail/tuberculosis](http://www.who.int/news-room/fact-sheets/detail/tuberculosis).
24

25 45) “Ending the TB epidemic by 2030 is among the health targtets of the Sustainable
26 Development Goals.” *Id.*

27 46) Ironically, like COVID-19, TB often kills by impairing respiratory health.
28

1 47) Annual epidemics of “ordinary” influenza kills 290,000 to 650,000 each year.

2 48) The so-called swine flu (H1N1pdm09 virus) started in the United States in the
3 Spring of 2009 and infected 60.8 million people as estimated by the Centers for Disease Control,
4 causing as many as 575,400 deaths including 12,469 in the United States, including fewer than
5 1000 in the United States. While this is far too many, it is much small than in previous epidemics
6 which did not call forth similar restrictions on civil liberties.
7

8 49) And yet the Governor of California and State of California has not suspended
9 constitutional rights or civil liberties to fight the long-running, persistent, deadly tuberculosis
10 disease or for any of those other diseases.
11

12 50) As of the date of this Complaint COVID-19 coronavirus has killed only 14,923
13 people worldwide. While this is tragic and far too many, it is far less than other influenzas that
14 have occurred of the last many years. In addition, as President Donald Trump has pointed out, far
15 more people die each year from cigarette smoking and car accidents.
16

17 51) Indeed, demonstrating that the balance of the equities enjoining California from
18 restricting citizens to remain in their homes under penalty of 6 months in jail by misdemeanor
19 conviction, it may be noted that out of the 50 States of the United States of America, only a small
20 number of States have placed mandatory restrictions on the gathering and movement of free U.S.
21 citizens. However, apparently to date only California and a few other copy cat states have
22 placed such strict limitations on civil liberties. Therefore, California’s extreme order is not
23 deemed necessary by the vast majority of U.S. States and this should weigh in issuing an
24 injunction.
25

26 52) It should be understood that such an injunction is not requested to prevent the
27 quarantine of those who are actually ill with a communicable disease or who from
28

1 individualized, credible facts have been exposed to a communicable disease to such an extent
2 that infection is a near certainty.

3 **SECOND CAUSE OF ACTION**
4 **(Declaratory Judgment – Statutes are Applicable Only to State Agencies)**

5 53) For the reasons and upon the factual allegations set forth elsewhere in this
6 Complaint, which are incorporated by reference herein, the PETITIONERS request that the
7 Court enter declaratory relief that Code sections 8567, 8627, and 8665 as applied by California
8 Governor Newsom’s Executive Order No. N-33-20 apply only to the Governor’s orders to State
9 agencies.
10

11 54) The Respondents rely upon California Government Code sections 8567, 8627,
12 and 8665 as purportedly empowering the Governor to invent new laws or modify existing laws
13 after declaring an emergency.
14

15 55) However, California Government Code sections 8567, 8627, and 8665 empower
16 the Governor only to make orders to the state government and to adjust rules and regulations
17 governing the operations of California government agencies and officials. This is a limitation
18 that the Defendants appear to have ignored.
19

20 56) In the alternative, upon California Government Code sections 8567, 8627, and
21 8665 must be construed by the courts as applying only to the Governor issuing orders to or
22 adjusting rules and regulations concerning state government agencies to avoid what would
23 otherwise be constitutional violations.
24

25 57) Applying California Government Code sections 8567, 8627, and 8665 to change
26 the law, rules, and regulations applying to private citizens is a radically different concept from
27 the Governor giving orders to his own employees within the state agencies and officials.
28

58) The distinction between applying the statutes to private citizens instead of state

1 agencies requires an exacting and searching constitutional evaluation, which it in fact fails.

2
3 **THIRD CAUSE OF ACTION**
4 **(Declaratory Judgment – Quarantine Statutes Apply to Those Who are Ill)**

5 59) For the reasons and upon the factual allegations set forth elsewhere in this
6 Complaint, which are incorporated by reference herein, the PETITIONERS request that the
7 Court enter declaratory relief that California Health and Safety Code 120125, 120140, 131080,
8 120130(c), 120135, 120145, 120175 and 120150, as applied here in this case, cannot be
9 constitutionally applied to those who are healthy and for whom there is no evidence satisfying
10 individualized due process that an individual California resident has a communicable disease or
11 has actually been exposed to a communicable disease to such an extent and under such
12 circumstance as to make it a near certainty that the individual has become infected.

13
14 60) The Respondents rely upon California Health and Safety Code 120125, 120140,
15 131080, 120130(c), 120135, 120145, 120175 and 120150 for the power to order quarantines or
16 isolation to fight illness.

17
18 61) However, these statutes do not authorize the imprisonment, house arrest, or
19 detention of healthy persons who have not been infected by any disease.

20 62) California Health and Safety Code 120125, 120140, 131080, 120130(c), 120135,
21 120145, 120175 and 120150 authorize the State Public Health Officer (the Director of the
22 California Department of Public Health) to order the quarantine or isolation of persons actually
23 infected by or ill with illnesses deemed by the Officer dangerous to the public.

24
25 63) To avoid an unconstitutional result, which is a task of the courts in considering a
26 constitutional challenge, California Health and Safety Code 120125, 120140, 131080, 120130(c),
27 120135, 120145, 120175 and 120150 must be construed as authorizing the quarantine of only
28

1 those who are actually sick, not those for whom there is no evidence to support due process that
2 an individual is sick or even exposed to any illness.

3
4 **FOURTH CAUSE OF ACTION**
5 **(Declaratory Judgment – Statutes Unconstitutionally Delegate Legislative Power)**

6 64) For the reasons and upon the factual allegations set forth elsewhere in this
7 Complaint, which are incorporated by reference herein, the PETITIONERS request that the
8 Court enter declaratory relief that California Government Code sections 8567, 8627, and 8665
9 unconstitutionally delegate legislative power to the Governor without any standards or guidelines
10 to comply with the requirements of legitimate, delegation to fill in gaps in a statute.

11 65) Article III, Section 3, of the California Constitution requires that “The powers of
12 state government are legislative, executive, and judicial. Persons charged with the exercise of
13 one power may not exercise either of the others except as permitted by this Constitution.”

14 66) There is no other provision in the California Constitution which permits the
15 Governor to exercise the legislative power of the California Legislature.

16 67) Amendment to the Constitution is governed by the strict requirements of Article
17 XVIII of the California Constitution.

18 68) The statutes California Government Code sections 8567, 8627, and 8665 do not
19 provide any standards for what constitutes an emergency within the meanings of the application
20 of the statutes, making the attempted delegation of authority unconstitutional and illegal (invalid)
21 as based on nothing but the arbitrary and capricious whim of a California Governor.

22 69) Furthermore, there does not appear to be a mechanism to over-rule the Governor
23 or terminate the emergency as exists in federal law. This heightens the nature of an emergency
24 unique to California law as being based on the complete unfettered, standardless whim of the
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1 Governor.

2 70) The statutes California Government Code sections 8567, 8627, and 8665 do not
3 provide any standards for what kind of orders or amendments to orders or regulations the
4 California Governor the statutes authorize.

5 71) Thus, the statutes violate the California Constitution by transferring to the
6 Governor the entire legislative power of the California Legislature.

7 72) The delegation of legislative power to the executive branch violates the “non-
8 delegation doctrine” when the legislative body “(1) leaves the resolution of fundamental policy
9 issues to others or (2) fails to provide adequate direction for the implementation of that policy.”
10 *Carson Mobilehome Park Owner’s Assn. v. City of Carson*, 35 Cal.3d 184, 190, 197 Cal.Rptr.
11 284, 672 P.2d1297; *Samples v. Brown*, 53 Cal. Rptr.3d 216, 146 Cal.App.4th 787 (Cal. App.
12 2007) (avoiding non-delegation by interpreting the statute narrowly to avoid constitutional
13 issue).

14 73) “There are as many cases in which the court recognizes the principle that,
15 however exercised, even the police power is subject to the constitutional limitation that it may
16 not be exerted arbitrarily or unreasonably. [Citations.]” *Vaquero Energy, Inc. v. County of Kern*
17 (Cal. App. Record No. F079719, Fifth Appellate District, November 19, 2019).

18 74) "As our Supreme Court recently recounted, where the fundamental policy issues
19 have been resolved the further delegation of quasi-legislative power is generally constitutional
20 provided there is adequate direction for implementation of the policy and sufficient safeguards to
21 prevent arbitrary or abusive implementation of the policy. *Gerawan Farming, Inc. v. ALRB 3*
22 Cal.5th 1118, 1146, 1148, 1150–1151, 225 Cal.Rptr.3d 517, 405 P.3d 1087 (2017).

23 75) "The doctrine prohibiting delegations of legislative power does not invalidate
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1 reasonable grants of power to an administrative agency, when suitable safeguards are established
2 to guide the power's use and to protect against misuse." *People v. Wright*, 30 Cal.3d 705, 712–
3 713, 180 Cal.Rptr. 196, 639 P.2d 267. (1982); *See also Monsanto Co. v. Office of Env'tl. Health*
4 *Hazard Assessment*, 231 Cal.Rptr.3d 537, 22 Cal.App.5th 534 (Cal. App. 2018)

5 76) In this case, however, Government Code sections 8567, 8627, and 8665 provide
6 no standards as to how the raw legislative power of the Legislature may be exercised by the
7 Governor nor are there any “suitable safeguards ... to guide the power’s use and to protect
8 against misuse.”
9

10 **FIFTH CAUSE OF ACTION**
11 **(Declaratory Judgment – No Valid Declaration of an Emergency)**

12 77) For the reasons and upon the factual allegations set forth elsewhere in this
13 Complaint, which are incorporated by reference herein, the PETITIONERS request that the
14 Court enter declaratory relief that the Governor has not issued a Declaration of Emergency
15 relevant to and sufficient to support the use of California Government Code sections 8567, 8627,
16 and 8665 to deprive California citizens who are not infected of the constitutionally-recognized
17 rights to travel, to peaceably assemble, and to pursue their economic interests.
18

19 78) Here, the California Governor has issued a proclamation of an emergency on
20 March 4, 2020, applying only to the operations of government agencies.
21

22 79) The Governor has not issued a declaration of emergency to support or relevant to
23 ordering what approximates the house arrest of 39.5 million healthy and uninfected California
24 citizens confining them to their homes with exceptions for essential services.
25

26 **SIXTH CAUSE OF ACTION**
27 **(Declaratory Judgment – Exercise of Statutes Unconstitutional)**

28 80) For the reasons and upon the factual allegations set forth elsewhere in this

1 Complaint, which are incorporated by reference herein, the PETITIONERS request that the
2 Court enter declaratory relief that even if all of these statutes mentioned were sufficient to
3 support Executive Order N-33-20, the exercise of powers under Executive Order N-33-20 would
4 affirmatively violate the constitutional rights of California citizens.

5 81) As applied to these circumstances and exercised in this manner, the Governor's
6 Executive Order No. N-33-20 violates the constitutional rights of the Petitioner's under either the
7 California Constitution or U.S. Constitution, including the right to travel, the right of free
8 assembly, the right of worship, liberty and the pursuit of happiness.
9

10 WHEREFORE, the PETITIONERS pray for Judgment against the Respondents by
11 issuing the injunctive relief and declaratory judgment described in detail above.
12

13 Dated this 26th day of March, 2020

RESPECTFULLY SUBMITTED,

14
15
16 /s/ Ben Stein

17 Larry Klayman, Esq.
18 Chairman & Chief Counsel
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28 Email: benstein99@aol.com

Pro Per

EXHIBIT A

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-33-20

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

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

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

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

IT IS HEREBY ORDERED THAT:

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

ORDER OF THE STATE PUBLIC HEALTH OFFICER
March 19, 2020

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

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

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

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

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

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

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

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

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

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



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

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(a) The Governor may make, amend, and rescind orders and regulations necessary to carry out the provisions of this chapter. The orders and regulations shall have the force and effect of law. Due consideration shall be given to the plans of the federal government in preparing the orders and regulations. The Governor shall cause widespread publicity and notice to be given to all such orders and regulations, or amendments or rescissions thereof.

(b) Orders and regulations, or amendments or rescissions thereof, issued during a state of war emergency or state of emergency shall be in writing and shall take effect immediately upon their issuance. Whenever the state of war emergency or state of emergency has been terminated, the orders and regulations shall be of no further force or effect.

(c) All orders and regulations relating to the use of funds pursuant to Article 16 (commencing with [Section 8645 \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Id9cdd9001b0a11e98092c7d0d8a02\)](#)) shall be prepared in advance of any commitment or expenditure of the funds. Other orders and regulations needed to carry out the provisions of this chapter shall, whenever practicable, be prepared in advance of a state of war emergency or state of emergency.

(d) All orders and regulations made in advance of a state of war emergency or state of emergency shall be in writing, shall be exempt from Chapter 3.5 (commencing with [Section 11340 \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=Id9cdd9011b0a11e98092c7d0d8a02\)](#)) of Part 1 of Division 3 of Title 2. As soon thereafter as possible they shall be filed in the office of the Secretary of State and with the county clerk of each county.

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During a state of emergency the Governor shall, to the extent he deems necessary, have complete authority over all agencies of the state government and the right to exercise within the area designated all police power vested in the state by the Constitution and laws of the State of California in order to effectuate the purposes of this chapter. In exercise thereof, he shall promulgate, issue, and enforce such orders and regulations as he deems necessary, in accordance with the provisions of [Section 8567 \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb29fcab01aff11e98092c7d0d8a021cf\)](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=lb29fcab01aff11e98092c7d0d8a021cf)

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Any person who violates any of the provisions of this chapter or who refuses or willfully neglects to obey any lawful order or regulation promulgated or issued as provided in this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not to exceed one thousand dollars (\$1,000) or by imprisonment for not to exceed six months or by both such fine and imprisonment.

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Health and Safety Code - HSC

DIVISION 105 - COMMUNICABLE

DISEASE PREVENTION AND

CONTROL

PART 1 - ADMINISTRATION OF

COMMUNICABLE DISEASE

PREVENTION AND CONTROL

CHAPTER 2 -

Functions and Duties of the State Depart

Section 120125.

Universal Citation: CA Health & Safety Code § 120125 (2018)

120125.

The department shall examine into the causes of communicable disease in man and domestic animals occurring or likely to occur in this state.

(Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.)

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DIVISION 105 - COMMUNICABLE
DISEASE PREVENTION AND
CONTROL
PART 1 - ADMINISTRATION OF
COMMUNICABLE DISEASE
PREVENTION AND CONTROL
CHAPTER 2 -
Functions and Duties of the State Depart
Section 120140.

Universal Citation: CA Health & Safety Code § 120140 (2018)

120140.

Upon being informed by a health officer of any contagious, infectious, or communicable disease the department may take measures as are necessary to ascertain the nature of the disease and prevent its spread. To that end, the department may, if it considers it proper, take possession or control of the body of any living person, or the corpse of any deceased person.

(Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.)

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Health and Safety Code

DIVISION 112. PUBLIC HEALTH

[131000 - 131225]

ARTICLE 1. General Provisions

Section 131080

Universal Citation: CA Health & Safety Code § 131080 (through 2012 Leg Sess)

The department may advise all local health authorities, and, when in its judgment the public health is menaced, it shall control and regulate their action.

(Added by renumbering Section 100180 by Stats. 2006, Ch. 241, Sec. 20. Effective January 1, 2007. Operative July 1, 2007, by Sec. 37 of Ch. 241.)

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(a) The department shall establish a list of reportable diseases and conditions. For each reportable disease and condition, the department shall specify the timeliness requirements related to the reporting of each disease and condition, and the mechanisms required for, and the content to be included in, reports made pursuant to this section. The list of reportable diseases and conditions may include both communicable and noncommunicable diseases. The list may include those diseases that are either known to be, or suspected of being, transmitted by milk or milk-based products. The list may be modified at any time by the department, after consultation with the California Conference of Local Health Officers. Modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with [Section 11340](#)) of Part 1 of Division 3 of Title 2 of the Government Code (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=12eef79013fc11e9b4c6da0c45fbc3e>), and shall be implemented without being adopted as a regulation, except that the revised list shall be filed with the Secretary of State and printed in the California Code of Regulations as required pursuant to subdivision (e). Those diseases listed as reportable shall be properly reported as required to the department by the health officer.

(b) The department shall establish a list of communicable diseases and conditions for which clinical laboratories shall submit a culture or a specimen to the local public health laboratory. The list shall set forth the conditions under which the culture and specimen shall also be submitted to the State Public Health Laboratory. The list may be modified at any time by the department, in consultation with appropriate local public health stakeholders, including, but not limited to, local health officers and public health laboratory directors. Both establishment and modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with [Section 11340](#)) of Part 1 of Division 3 of Title 2 of the Government Code (<https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000211&refType=LQ&originatingDoc=12eef1ea013fc11e9b4c6da0c45fbc3e>), and shall be implemented without being adopted as a regulation, except that the initial list and any modifications shall be filed with the Secretary of State and printed in the California Code of Regulations as required pursuant to subdivision (e).

(c) The department may from time to time adopt and enforce regulations requiring strict or modified isolation, or quarantine, for any of the contagious, infectious, or communicable diseases, if in the opinion of the department the action is necessary for the protection of the public health.

(d) The health officer may require strict or modified isolation, or quarantine, for any case of contagious, infectious, or communicable disease, when this action is necessary for the protection of the public health.

(e) The department may from time to time adopt and enforce regulations requiring strict or modified isolation, or quarantine, for any of the contagious, infectious, or communicable diseases, if in the opinion of the department the action is necessary for the protection of the public health.

(d) The health officer may require strict or modified isolation, or quarantine, for any case of contagious, infectious, or communicable disease, when this action is necessary for the protection of the public health.

(e) The lists established pursuant to subdivisions (a) and (b) and any subsequent modifications shall be published in Title 17 of the California Code of Regulations.

(f) Notwithstanding any other provision of law, no civil or criminal penalty, fine, sanction, or finding, or denial, suspension, or revocation of licensure for any person or facility may be imposed based upon a failure to provide the notification of a reportable disease or condition or to provide the submission of a culture or specimen that is required under this section, unless the name of the disease or condition that is required to be reported, or for which a culture or specimen is required to be submitted, was printed in the California Code of Regulations and the department notified the person or facility of the disease or condition at least six months prior to the date of the claimed failure to report or submit.

(g) Commencing July 1, 2009, or within one year of the establishment of a state electronic laboratory reporting system, whichever is later, a report generated pursuant to this section, or [Section 121022 \(https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000213&refType=LQ&originatingDoc=12eef6cc013fc11e9b4c6da0c45fbc3a](https://1.next.westlaw.com/Link/Document/FullText?findType=L&originatingContext=document&transitionType=DocumentItem&pubNum=1000213&refType=LQ&originatingDoc=12eef6cc013fc11e9b4c6da0c45fbc3a)), by a laboratory shall be submitted electronically in a manner specified by the department. The department shall allow laboratories that receive incomplete patient information to report the name of the provider who submitted the request to the local health officer.

(h) The department may, through its Internet Web site and via electronic mail, advise out-of-state laboratories that are known to the department to test specimens from California residents of the new reporting requirements.

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2011 California Code

Health and Safety Code

DIVISION 105. COMMUNICABLE DISEASE PREVENTION AND CONTROL [120100 - 122420]

CHAPTER 2. Functions and Duties of the State Department of Health Services

Section 120135

Universal Citation: CA Health & Safety Code § 120135 (through 2012 Leg Sess)

The department may establish and maintain places of quarantine or isolation.

(Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.)

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EXHIBIT J

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2018 California Code
Health and Safety Code - HSC
DIVISION 105 - COMMUNICABLE
DISEASE PREVENTION AND
CONTROL
PART 1 - ADMINISTRATION OF
COMMUNICABLE DISEASE
PREVENTION AND CONTROL
CHAPTER 2 -
Functions and Duties of the State Depart
Section 120145.

Universal Citation: CA Health & Safety Code § 120145 (2018)

120145.

The department may quarantine, isolate, inspect, and disinfect persons, animals, houses, rooms, other property, places, cities, or localities, whenever in its judgment the action is necessary to protect or preserve the public health.

(Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.)

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DIVISION 105. COMMUNICABLE DISEASE PREVENTION AND CONTROL [120100 - 122477] (*Division 105 added by Stats. 1995, Ch. 415, Sec. 7.*)

PART 1. ADMINISTRATION OF COMMUNICABLE DISEASE PREVENTION AND CONTROL [120100 - 120305] (*Part 1 added by Stats. 1995, Ch. 415, Sec. 7.*)

CHAPTER 3. Functions and Duties of Local Health Officers [120175 - 120250] (*Chapter 3 added by Stats. 1995, Ch. 415, Sec. 7.*)

120175. Each health officer knowing or having reason to believe that any case of the diseases made reportable by regulation of the department, or any other contagious, infectious or communicable disease exists, or has recently existed, within the territory under his or her jurisdiction, shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases.

(*Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.*)

EXHIBIT L

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2018 California Code
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DIVISION 105 - COMMUNICABLE
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CHAPTER 2 -
Functions and Duties of the State Depart
Section 120150.

Universal Citation: CA Health & Safety Code § 120150 (2018)

120150.

The department may destroy such objects as bedding, carpets, household goods, furnishings, materials, clothing, or animals, when ordinary means of disinfection are considered unsafe, and when the property is in its judgment, an imminent menace to the public health.

(Added by Stats. 1995, Ch. 415, Sec. 7. Effective January 1, 1996.)

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