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

15 **BEN STEIN**, an individual,

16 and

17 **DR. JUDY MIKOVITS, PH.D.**, an individual,

18 and

19 **MEMBERS OF THE CLASS SIMILARLY**  
20 **SITUATED,**

21 PETITIONERS

22 v.

23 **STATE OF CALIFORNIA**

24 Serve: Attorney General  
25 Office of the Attorney General  
26 300 South Spring Street  
Los Angeles, California 90013-1230

27 and

28 **GAVIN NEWSOM,**

CASE NO.: 34-2020-00278129-CU-CR-  
GDS

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

1 **in his official capacity as the**  
2 **GOVERNOR OF CALIFORNIA**  
3 1303 10th Street, Suite 1173  
4 Sacramento, California 95814

Trial Date:  
Time:  
Dept: (Courtroom )

5 and

6 **DR. SONIA Y. ANGELL, MD, MPH**  
7 Director & State Public Health Officer  
8 California Department of Public Health  
9 1616 Capitol Avenue  
10 Sacramento, California 95814

11 Respondents

12 COME NOW THE PETITIONERS, by the undersigned counsel, and allege as follows.

13 *(Note: Maintaining the original cause of action numbering and order, this Amended*  
14 *Complaint adds a Cause of Action relating to last week's order requiring the wearing of masks*  
15 *at the end of the complaint, and adds the new allegations relating thereto at the end of the*  
16 *common allegations section):*

### 17 **JURISDICTION AND VENUE**

18 1) The Superior Court has subject matter jurisdiction and over the case and personal  
19 jurisdiction over the Respondents because all parties are within the State of California, the  
20 effects of the actions complained of are within California, the Respondents are government  
21 officials and agencies of California, and the substance of the Petition is the governmental  
22 authority and actions of the California government over persons residing in California.

23 2) Venue is proper in this Court because the lead Petitioners of the class resides in  
24 Beverly Hills, California, within the County of Los Angeles.

### 25 **PARTIES AND CERTIFICATION OF A CLASS**

26 3) Petitioner BEN STEIN is a citizen of the State of California residing in Beverly  
27  
28

Hills, California, within the County of Los Angeles, California.

4) Petitioner DR. JUDY MIKOVITS, PH.D. is a citizen of the State of California, who has worked professionally for 40 years in immunology and virology. Dr. Judy Mikovits, co-authored the book *Plague of Cooperation: Restoring Faith in the Promise of Science*, published by Skyhorse Publishing. Judy Mikovits began as a protein chemist in 1980 for the National Cancer Institute working on a life-saving project to purify interferon. She was part of the team that developed immunotherapy interferon-alpha, which was on the cover of *Time Magazine*, March 31, 1980. Mikovits became a biochemist and molecular biologist who worked in top government laboratories on searching for treatments for Ebola, HIV, and coronaviruses like SARS. Her Ph.D. thesis in 1991 changed the treatment paradigm of HIV, focusing on immune cells known as monocyte macrophages and the development of peptide T. Her collaboration with other experts greatly improved scientific understanding of retrovirus behavior. Dr. Mikovits lives in California and cares for her husband whose health and COPD condition is also affected.

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

6) The Respondent State of California is the government of California in whose authority Executive Order N-33-20 has been issued and is being enforced, with the power to

1 prosecute the Petitioners members of the class for misdemeanor violations.

2 7) The Respondent Governor Gavin Newsom is the Governor of the State of  
3 California, head of the Executive branch of California, and the author of and authority issuing  
4 Executive Order N-33-20.

5 8) The Respondent Dr. Sonia Y. Angell, MD, MPH is the California State Public  
6 Health Officer who is singled out for specific empowerment and duties by the Governor's  
7 Executive Order N-33-20 and who also serves as the Director of California Department of Public  
8 Health, both positions being co-incident.  
9

10 9) PETITIONERS request the certification of a class pursuant to California Code of  
11 Civil Procedure [Chapter 7] §§ 382, 1048, California Rule 3.760 through 3.771.  
12

13 10) California Code of Civil Procedure § 382 provides that:

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

17 11) In the present case, those affected in exactly the same manner and extent are most  
18 of the approximately 39.5 million citizens and residents of the State of California, excluding only  
19 those who might be made explicitly exempt from Executive Order N-33-20 as essential  
20 governmental personnel or officials such as law enforcement, and those actually ill.  
21

22 12) All members of the class have exactly the same injury to their civil liberties and  
23 constitutional rights and exactly the same restrictions on their exercise of the right to travel,  
24 peaceably assemble, and pursue their economic well-being and occupation.  
25

26 13) The members of the class are too numerous to be joined individually.

27 14) Therefore certification of a class for the purposes of these legal questions is  
28 requested.



1 across the international border of the country).

2 21) Therefore, California's Legislature had sufficient time to pass legislation in the  
3 normal course of government which California might believe to be necessary and proper  
4 between January 31, 2020, and March 19, 2020.

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

6  
7 23) On March 19, 2020, the Governor of California, Gavin Newsom, issued  
8 Executive Order No. N-33-20, attached as Exhibit A, purporting to exercise authority under  
9 California Government Code sections 8567, 8627, and 8665, attached as Exhibits B, C, and D,  
10 and California Health and Safety Code 120125, 120140, 131080, 120130(c), 120135, 120145,  
11 120175 and 120150, attached as Exhibits E, F, G, H, I, J, K, and L.

12  
13 24) Thereby, the Respondents threaten the PETITIONERS with jail of up to 6 months  
14 by the operation of California Government Code section 8665:

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

21 25) This is a lawsuit about the exercise of standardless and unbridled power  
22 effectively imprisoning approximately 39.5 million citizens of the State of California in their  
23 own homes and to wear masks, under penalty of imprisonment and conviction for a criminal  
24 misdemeanor, almost all of whom are entirely healthy.

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

1 within the United States governmental system.

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

5 28) This lawsuit is about officials stripping the gears of our country's and our state's  
6 constitutional mechanisms so that long after the COVID-19 virus has faded into memory, still  
7 the protections of civil liberties and constitutional rights will remain torn.

8 29) Article I, Section 1, of the California Constitution requires that "All people are by  
9 nature free and independent and have inalienable rights. Among these are enjoying and  
10 defending life and liberty, acquiring, possessing, and protecting property, and pursuing and  
11 obtaining safety, happiness, and privacy."

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

19 31) Article I, Section 24, of the California Constitution requires that "Rights  
20 guaranteed by this Constitution are not dependent on those guaranteed by the United States  
21 Constitution. \* \* \*"

22 32) As applied in this case, California Government Code sections 8567, 8627, and  
23 8665 impose a misdemeanor criminal penalty for violation of any law, regulation, or rule as  
24  
25  
26  
27  
28

1 modified unilaterally by the Governor under a declared state of emergency, imposing up to 6  
2 months in jail and/or a \$1,000 fine.

3 33) Therefore, as applied, the interpretation of the statutes must be narrowly  
4 conducted under the rule of lenity.

5 34) “Under the rule of lenity, ‘California [courts] will ‘construe a penal statute as  
6 favorably to the defendant as its language and the circumstances of its application may  
7 reasonably permit ...’ [Citation.]” In re Michael D., 100 Cal.App.4th 115, 125 (2002).  
8 “However, application of the rule of lenity is inappropriate unless, after consideration of the  
9 intent of the statute, the canons of statutory construction, and an analysis of the legislative  
10 history, the statute is still ambiguous.” *Ibid.*

11 35) Recently, since this lawsuit was filed, on June 18, 2020, Respondent Sonia Y.  
12 Angell, M.D., M.P.H., as State Public Health Officer & Director at the California Department of  
13 Public Health, issued “Guidance for the Use of Face Coverings” which – despite the label of  
14 guidance – under penalty of criminal punishment “mandates that face coverings be worn state-  
15 wide in the circumstances and with the exceptions outlined...” See Exhibit M, attached.

16 36) This June 18, 2020, order by Angell purports to command that “the People in  
17 California must wear face coverings when they are in the high-risk situations listed below” in a  
18 list of circumstances that consist of most of the locations or activities of life outside of one’s own  
19 residence or vehicle or working alone in a work space not visited by the public.

20 37) This June 18, 2020, order by Angell includes a list of people, locations, and  
21 activities which are exempt, some of which render the order violative of a rational basis, such as  
22 the requirement to wear a masks in public businesses but not while sitting and eating in a  
23 restaurant, which would defeat the effectiveness of wearing masks.  
24  
25  
26  
27  
28

1           38)     This June 18, 2020, order admits that there is no actual scientific data that wearing  
2 masks work for preventing the spread of a virus throughout society, offering the noticeably weak  
3 statement: “*How well do cloth face coverings work to prevent spread of COVID-19?* There is  
4 scientific evidence to suggest that use of cloth face coverings by the public during a pandemic  
5 could help reduce disease transmission.” The claims that evidence “*suggests*” that masks  
6 “*could*” help effectively that there is no proof that the masks actually do work.  
7

8           39)     Although the June 18, 2020, order does not repeat the criminal penalties, the  
9 announcement of the new order was explained in the Los Angeles Times, attached as Exhibit N,  
10 that “Under state law, residents who violate the new requirement could be charged with a  
11 misdemeanor and potentially face a financial penalty, according to a representative for the  
12 Newsom administration.”  
13

14           40)     In fact, however, the universal wearing of masks has never been tried or proven as  
15 a technique for slowing much less stopping the progress of a virus through a society.  
16

17           41)     The widespread wearing of masks can actually be harmful to many people’s  
18 health, and the Petitioners allege that the long-term, universal use of masks is harmful to their  
19 health as California residents.

20           42)     As shown in the attached Exhibit O, Michael Klompas, M.D., M.P.H., Charles A.  
21 Morris, M.D., M.P.H., Julia Sinclair, M.B.A., Madelyn Pearson, D.N.P., R.N., and Erica S.  
22 Shenoy, M.D., Ph.D., **Universal Masking in Hospitals in the Covid-19 Era**, *The NEW*  
23 *ENGLAND JOURNAL of MEDICINE*, May 21, 2020, masks are of limited effectiveness in  
24 preventing the spread of the virus under these circumstances. The petitioners incorporate the  
25 contents of the attached article as if set forth herein.  
26

27           43)     The Occupational Health and Safety Administration (OSHA) publishes guidance  
28

1 warning that “Cloth face coverings ... Will not protect the wearer against airborne transmissible  
2 infectious agents due to loose fit and lack of seal or inadequate filtration.”<sup>1</sup>

3 44) As explained well by Dr. Jim Meehan, MD <sup>2</sup> [*cloth*] “Medical masks are **single**  
4 **use devices** designed to be worn for a relatively short period of time. Once the mask  
5 becomes **saturated with moisture** from breath, which, if properly fit, takes about an hour, they  
6 should be replaced. The more moisture-saturated the mask becomes, the more it blocks oxygen,  
7 increases re-breathing of carbon dioxide, re-breathing of viral particles, and becomes a breeding  
8 ground for other pathogens.”

9  
10 45) This lawsuit does not oppose medical experts issuing guidance that the free  
11 citizens of California may voluntarily consider, in the same way that all other diseases and health  
12 issues have always been handled.

13  
14 46) This lawsuit is not intended to discourage those who want to take whatever  
15 precautions they are persuaded by medical officials are proper as a voluntary exercise of their  
16 liberty.

### 17 **AUTHORITY FOR DECLARATORY JUDGMENT**

18  
19 47) The Superior Court has authority to hear declaratory judgment of civil liberties  
20 and constitutional rights.

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

1 <https://www.osha.gov/SLTC/covid-19/covid-19-faq.html>

2 <https://www.meehanmd.com/blog/2020-06-12-healthy-people-should-not-wear-face-masks/>, See June 14, 2020, entry

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

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

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

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

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

50) 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 private citizens  
3 rather than to California state agencies and officials.

4 51) The PETITIONERS further request injunctive relief enjoining the Respondents  
5 from enforcing the provisions of California Government Code sections 8567, 8627, and 8665 as  
6 applied by California Governor Newsom's Executive Order No. N-33-20 to restrict the freedom  
7 to travel, liberty, freedom of assembly, freedom to engage in interstate commerce, without fear  
8 of imprisonment.  
9

10 52) The PETITIONERS further request injunctive relief enjoining the Respondents  
11 from enforcing the provisions of California Health and Safety Code 120125, 120140, 131080,  
12 120130(c), 120135, 120145, 120175 and 120150 as applied by California Governor Newsom's  
13 Executive Order No. N-33-20 to quarantine and/or isolate healthy persons for whom there is no  
14 evidence satisfying due process that an individual person has any communicable illness.  
15

16 53) The deprivation of civil liberties and constitutional rights, including as a  
17 precedent for the suspension of the Constitution and/or imposition of martial law, creates  
18 irreparable damage to the PETITIONERS who are citizens of this country.  
19

20 54) The fact that the Respondents took no such actions in response to the equally  
21 dangerous or more dangerous diseases of Swine Flu, SARS, MERS, tuberculosis, etc.  
22 demonstrates that the balance of the equities and the burdens upon the Respondents favor the  
23 issuance of an injunction for the preservation of the California Constitution and a free republic.  
24

25 55) The World Health Organization estimated that 1.5 million people died from  
26 Turbuclosis in one year, 2018, out of 10 million who fell ill. Key Facts, World Health  
27 Organization, October 17, 2019, accessible at: [www.who.int/news-room/fact-](http://www.who.int/news-room/fact-)  
28

1 [sheets/detail/tuberculosis.](#)

2 56) “Ending the TB epidemic by 2030 is among the health targets of the Sustainable  
3 Development Goals.” *Id.*

4 57) Ironically, like COVID-19, TB often kills by impairing respiratory health.

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

6 59) The so-called swine flu (H1N1pdm09 virus) started in the United States in the  
7 Spring of 2009 and infected 60.8 million people as estimated by the Centers for Disease Control,  
8 causing as many as 575,400 deaths including 12,469 in the United States.

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

13  
14 61) COVID-19 coronavirus has killed only 14,923 people worldwide.

15 62) Indeed, demonstrating that the balance of the equities enjoining California from  
16 restricting citizens to remain in their homes under penalty of 6 months in jail by misdemeanor  
17 conviction, it may be noted that out of the 50 States of the United States of America, only a small  
18 number of States have placed mandatory restrictions on the gathering and movement of free U.S.  
19 citizens. However, apparently to date only California has ordered that its citizens may not leave  
20 their homes at all. Therefore, California’s extreme order is not deemed necessary by the vast  
21 majority of U.S. States and this should weigh in issuing an injunction.

22  
23 63) It should be understood that such an injunction is not requested to prevent the  
24 quarantine of those who are actually ill with a communicable disease or who from  
25 individualized, credible facts have been exposed to a communicable disease to such an extent  
26 that infection is a near certainty.  
27  
28



1           70) For the reasons and upon the factual allegations set forth elsewhere in this  
2 Complaint, which are incorporated by reference herein, the PETITIONERS request that the  
3 Court enter declaratory relief that California Health and Safety Code 120125, 120140, 131080,  
4 120130(c), 120135, 120145, 120175 and 120150, as applied here in this case, cannot be  
5 constitutionally applied to those who are healthy and for whom there is no evidence satisfying  
6 individualized due process that an individual California resident has a communicable disease or  
7 has actually been exposed to a communicable disease to such an extent and under such  
8 circumstance as to make it a near certainty that the individual has become infected.  
9  
10

11           71) The Respondents rely upon California Health and Safety Code 120125, 120140,  
12 131080, 120130(c), 120135, 120145, 120175 and 120150 for the power to order quarantines or  
13 isolation to fight illness.  
14

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

18           73) California Health and Safety Code 120125, 120140, 131080, 120130(c), 120135,  
19 120145, 120175 and 120150 authorize the State Public Health Officer (the Director of the  
20 California Department of Public Health) to order the quarantine or isolation of persons actually  
21 infected by or ill with illnesses deemed by the Officer dangerous to the public.  
22

23           74) To avoid an unconstitutional result, which is a task of the courts in considering a  
24 constitutional challenge, California Health and Safety Code 120125, 120140, 131080, 120130(c),  
25 120135, 120145, 120175 and 120150 must be construed as authorizing the quarantine of only  
26 those who are actually sick, not those for whom there is no evidence to support due process that  
27 an individual is sick or even exposed to any illness.  
28

#### **FOURTH CAUSE OF ACTION**

1                   **(Declaratory Judgment – Executive Order Exceeds Powers Granted by Statute)**

2           75)     For the reasons and upon the factual allegations set forth elsewhere in this  
3 Complaint, which are incorporated by reference herein, the PETITIONERS request that the  
4 Court enter declaratory relief that the Governor's Executive Order No. N-33-20 exceeds the  
5 powers granted to the Governor from these statutes and the power devolved upon the Governor  
6 by the California Constitution and is *ultra vires*.  
7

8           76)     A declaration of an emergency cannot create new powers for a Governor,  
9 President or other leader, but can only make use of the powers provided by a statute.

10          77)     The California Constitution does not grant the California Legislature the power to  
11 grant the Governor unlimited power to order effectively the house arrest of all Californians, at  
12 least not as applied in this manner under these facts and circumstances.  
13

14          78)     California Government Code sections 8567, 8627, and 8665 exceed the power  
15 granted to the California Legislature such that the Legislature does not have the power to order  
16 the imprisonment of innocent and health Californians in their homes.  
17

18          79)     California Government Code sections 8567, 8627, and 8665 exceed the power  
19 granted to the California Legislature in that the Legislature does not have the power to transfer  
20 its raw legislative power to the Governor.  
21

22                                   **FIFTH CAUSE OF ACTION**  
23                   **(Declaratory Judgment – Statutes Unconstitutionally Delegate Legislative Power)**

24          80)     For the reasons and upon the factual allegations set forth elsewhere in this  
25 Complaint, which are incorporated by reference herein, the PETITIONERS request that the  
26 Court enter declaratory relief that California Government Code sections 8567, 8627, and 8665  
27 unconstitutionally delegate legislative power to the Governor without any standards or guidelines  
28

1 to comply with the requirements of legitimate, delegation to fill in gaps in a statute.

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

5 82) There is no other provision in the California Constitution which permits the  
6 Governor to exercise the legislative power of the California Legislature.  
7

8 83) Amendment to the Constitution is governed by the strict requirements of Article  
9 XVIII of the California Constitution.

10 84) The statutes California Government Code sections 8567, 8627, and 8665 do not  
11 provide any standards for what constitutes an emergency within the meanings of the application  
12 of the statutes, making the attempted delegation of authority unconstitutional and illegal (invalid)  
13 as based on nothing but the arbitrary and capricious whim of a California Governor.  
14

15 85) Furthermore, there does not appear to be a mechanism to over-rule the Governor  
16 or terminate the emergency as exists in federal law. This heightens the nature of an emergency  
17 unique to California law as being based on the complete unfettered, standardless whim of the  
18 Governor.  
19

20 86) The statutes California Government Code sections 8567, 8627, and 8665 do not  
21 provide any standards for what kind of orders or amendments to orders or regulations the  
22 California Governor the statutes authorize.  
23

24 87) Thus, the statutes violate the California Constitution by transferring to the  
25 Governor the entire legislative power of the California Legislature.

26 88) The delegation of legislative power to the executive branch violates the “non-  
27 delegation doctrine” when the legislative body “(1) leaves the resolution of fundamental policy  
28

1 issues to others or (2) fails to provide adequate direction for the implementation of that policy.”  
2 *Carson Mobilehome Park Owner’s Assn. v. City of Carson*, 35 Cal.3d 184, 190, 197 Cal.Rptr.  
3 284, 672 P.2d1297; *Samples v. Brown*, 53 Cal. Rptr.3d 216, 146 Cal.App.4th 787 (Cal. App.  
4 2007) (avoiding non-delegation by interpreting the statute narrowly to avoid constitutional  
5 issue).

6  
7 89) “There are as many cases in which the court recognizes the principle that,  
8 however exercised, even the police power is subject to the constitutional limitation that it may  
9 not be exerted arbitrarily or unreasonably. [Citations.]” *Vaquero Energy, Inc. v. County of Kern*  
10 (Cal. App. Record No. F079719, Fifth Appellate District, November 19, 2019).

11  
12 90) "As our Supreme Court recently recounted, where the fundamental policy issues  
13 have been resolved the further delegation of quasi-legislative power is generally constitutional  
14 provided there is adequate direction for implementation of the policy and sufficient safeguards to  
15 prevent arbitrary or abusive implementation of the policy. *Gerawan Farming, Inc. v. ALRB 3*  
16 Cal.5th 1118, 1146, 1148, 1150–1151, 225 Cal.Rptr.3d 517, 405 P.3d 1087 (2017).

17  
18 91) "The doctrine prohibiting delegations of legislative power does not invalidate  
19 reasonable grants of power to an administrative agency, when suitable safeguards are established  
20 to guide the power's use and to protect against misuse." *People v. Wright*, 30 Cal.3d 705, 712–  
21 713, 180 Cal.Rptr. 196, 639 P.2d 267. (1982); *See also Monsanto Co. v. Office of Env'tl. Health*  
22 *Hazard Assessment*, 231 Cal.Rptr.3d 537, 22 Cal.App.5th 534 (Cal. App. 2018)

23  
24 92) In this case, however, Government Code sections 8567, 8627, and 8665 provide  
25 no standards as to how the raw legislative power of the Legislature may be exercised by the  
26 Governor nor are there any “suitable safeguards ... to guide the power’s use and to protect  
27 against misuse.”  
28



**EIGHTH CAUSE OF ACTION**

(Injunctive Relief – No Authority to Mandate Wearing of Masks)

1  
2 98) For the reasons and upon the factual allegations set forth elsewhere in this  
3  
4 Complaint, which are incorporated by reference herein, the PETITIONERS request that the  
5  
6 Court enter declaratory relief that California Health and Safety Code 120125, 120140, 131080,  
7  
8 120130(c), 120135, 120145, 120175 and 120150, as applied here in this case, cannot be  
9  
10 constitutionally applied to require the affirmative act of wearing a face mask pursuant to the June  
11  
12 18, 2020, order of Respondent Angell attached hereto as Exhibit M by those who are healthy and  
13  
14 for whom there is no evidence satisfying individualized due process that an individual California  
15  
16 resident has a communicable disease or has actually been exposed to a communicable disease to  
17  
18 such an extent and under such circumstance as to make it a near certainty that the individual has  
19  
20 become infected.

21 99) The PETITIONERS further request injunctive relief enjoining the  
22  
23 RESPONDENTS from enforcing the provisions of California Health and Safety Code 120125,  
24  
25 120140, 131080, 120130(c), 120135, 120145, 120175 and 120150 as applied by Respondent  
26  
27 Angell’s June 18, 2020, order to mandate healthy persons to take any action including wearing  
28  
any face masks for whom there is no evidence satisfying due process that the individual person has  
any communicable illness.

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

Dated this 22<sup>ND</sup> day of June, 2020

RESPECTFULLY SUBMITTED,

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/s/ Ben Stein  
Ben Stein  
Pro Per

/s/ Judy Mikovitz  
Judy Mikovitz  
Pro Per

Larry Klayman, Esq.  
Chairman & Chief Counsel  
Freedom Watch, Inc.  
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Suite 345  
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**OF COUNSEL**

# **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.

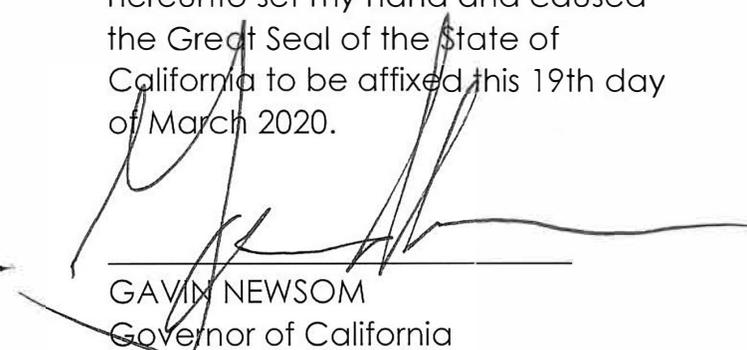
The supply chain must continue, and Californians must have access to such necessities as food, prescriptions, and health care. When people need to leave their homes or places of residence, whether to obtain or perform the functions above, or to otherwise facilitate authorized necessary activities, they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

# **EXHIBIT B**

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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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# **EXHIBIT E**

# JUSTIA

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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 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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**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 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.)*

# **EXHIBIT G**

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# 2011 California Code

## 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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## HEALTH AND SAFETY CODE - HSC

**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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**PREVENTION AND CONTROL**  
**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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# **EXHIBIT M**



SONIA Y. ANGELL, MD, MPH  
State Public Health Officer & Director

State of California—Health and Human Services Agency  
**California Department of Public Health**



GAVIN NEWSOM  
Governor

June 18, 2020

## **GUIDANCE FOR THE USE OF FACE COVERINGS**

Because of our collective actions, California has limited the spread of COVID-19 and associated hospitalizations and deaths in our state. Still, the risk for COVID-19 remains and the increasing number of Californians who are leaving their homes for work and other needs, increases the risk for COVID-19 exposure and infection.

Over the last four months, we have learned a lot about COVID-19 transmission, most notably that people who are infected but are asymptomatic or pre-symptomatic play an important part in community spread. The use of face coverings by everyone can limit the release of infected droplets when talking, coughing, and/or sneezing, as well as reinforce physical distancing.

This document updates existing [CDPH guidance](#) for the use of cloth face coverings by the general public when outside the home. It mandates that face coverings be worn state-wide in the circumstances and with the exceptions outlined below. It does not substitute for existing guidance about social distancing and handwashing.

### **Guidance**

People in California must wear face coverings when they are in the high-risk situations listed below:

- Inside of, or in line to enter, any indoor public space;<sup>1</sup>
- Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank;<sup>2</sup>
- Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle;
- Engaged in work, whether at the workplace or performing work off-site, when:
  - Interacting in-person with any member of the public;
  - Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time;

<sup>1</sup> Unless exempted by state guidelines for specific public settings

<sup>2</sup> Unless directed otherwise by an employee or healthcare provider



- Working in any space where food is prepared or packaged for sale or distribution to others;
- Working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
- In any room or enclosed area where other people (except for members of the person's own household or residence) are present when unable to physically distance.
- Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present. When no passengers are present, face coverings are strongly recommended.
- While outdoors in public spaces when maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible.

*The following individuals are exempt from wearing a face covering:*

- Persons age two years or under. These very young children must not wear a face covering because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
- Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.
- Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence.
- Persons who are engaged in outdoor work or recreation such as swimming, walking, hiking, bicycling, or running, when alone or with household members, and when they are able to maintain a distance of at least six feet from others.

- Persons who are incarcerated. Prisons and jails, as part of their mitigation plans, will have specific guidance on the wearing of face coverings or masks for both inmates and staff.

**Note:** Persons exempted from wearing a face covering due to a medical condition who are employed in a job involving regular contact with others should wear a non-restrictive alternative, such as a face shield with a drape on the bottom edge, as long as their condition permits it.

## **Background**

*What is a cloth face covering?*

A cloth face covering is a material that covers the nose and mouth. It can be secured to the head with ties or straps or simply wrapped around the lower face. It can be made of a variety of materials, such as cotton, silk, or linen. A cloth face covering may be factory-made or sewn by hand or can be improvised from household items such as scarfs, T-shirts, sweatshirts, or towels.

*How well do cloth face coverings work to prevent spread of COVID-19?*

There is scientific evidence to suggest that use of cloth face coverings by the public during a pandemic could help reduce disease transmission. Their primary role is to reduce the release of infectious particles into the air when someone speaks, coughs, or sneezes, including someone who has COVID-19 but feels well. Cloth face coverings are not a substitute for physical distancing, washing hands, and staying home when ill, but they may be helpful when combined with these primary interventions.

*When should I wear a cloth face covering?*

You should wear face coverings when in public places, particularly when those locations are indoors or in other areas where physical distancing is not possible

*How should I care for a cloth face covering?*

It's a good idea to wash your cloth face covering frequently, ideally after each use, or at least daily. Have a bag or bin to keep cloth face coverings in until they can be laundered with detergent and hot water and dried on a hot cycle. If you must re-wear your cloth face covering before washing, wash your hands immediately after putting it back on and avoid touching your face. Discard cloth face coverings that:

- No longer cover the nose and mouth
- Have stretched out or damaged ties or straps
- Cannot stay on the face
- Have holes or tears in the fabric

# **EXHIBIT N**

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## Californians must wear face masks in public under coronavirus order issued by Newsom

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# Los Angeles Times

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By PHIL WILLON, HANNAH FRY, LUKE MONEY

JUNE 18, 2020 | 12:02 PM **UPDATED** 4:27 PM

SACRAMENTO — Gov. Gavin Newsom on Thursday ordered all Californians to wear face coverings while in public or high-risk settings, including when shopping, taking public transit or seeking medical care, after growing concerns that an increase in coronavirus cases has been caused by residents failing to voluntarily take that precaution.

[Newsom's order](#) came a week after [Orange County rescinded a requirement](#) for residents to wear masks and as other counties across California were debating whether to join local jurisdictions that had

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# Los Angeles Times

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“Simply put, we are seeing too many people with faces uncovered — putting at risk the real progress we have made in fighting the disease,” Newsom said in a statement. “California’s strategy to restart the economy and get people back to work will only be successful if people act safely and follow health recommendations. That means wearing a face covering, washing your hands and practicing physical distancing.”

Under state law, residents who violate the new requirement could be charged with a misdemeanor and potentially face a financial penalty, according to a representative for the Newsom administration. However, officials have shied away from enforcing other statewide coronavirus mandates with similar actions, choosing instead to encourage compliance and educate residents about the benefits of safeguards against spread of the virus.

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# Los Angeles Times

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**1/50** Jair Guido, 36, a veterinarian visiting from Durango, Mexico, right, wearing a sombrero with an American flag draped over his shoulders, walks with other pedestrians along Hollywood Boulevard in Hollywood. Guido said that he wore this outfit to show people that he is proud to be a Mexican and that he loves America. Gov. Gavin Newsom on Thursday ordered all Californians to wear face coverings while in public. (Mel Melcon / Los Angeles Times)

which enforces workplace safety requirements, could take action, an administration official said.

The mask requirement comes as California and Los Angeles County [saw single-day highs in coronavirus cases](#) Wednesday, a clear sign that the COVID-19 pandemic shows no signs of waning in the state. [More than 5,300 COVID-19 deaths](#) have been reported in California thus far, including more than 3,000 in L.A. County.

Until now, state public health officials had only recommended that Californians wear face coverings, which, if worn by someone with the virus, have been shown to decrease the chances of spreading COVID-19.

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The state mandate exempts children 2 years old and younger, and people with a medical, mental health or developmental disability that prevents them from wearing a face covering. Restaurant customers are also exempt when eating and drinking, as are residents engaged in outdoor recreation as long as they are able to keep distance from others.

or who may need to temporarily remove a mask to perform a task or service.

Masks must be worn by Californians in their workplaces when serving customers or any member of the public, by all food service workers, when walking through parking facilities and hallways at work, and when riding on elevators, according to the order. People who drive buses, taxis, ride-hailing vehicles or any other service that accepts passengers also must wear masks.

Newsom in mid-March issued the nation's first stay-at-home order, arguing at the time that the restrictions were necessary to slow the spread of the virus. Since that time, the Democratic governor has made it clear that enforcing the order, as well as deciding when to ease the restrictions, is up to counties and cities to decide.

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“This is a statewide requirement and flows from the same legal authority as all of the other state orders,” Kate Folmar, spokeswoman for the California Health and Human Services Agency, said of the mask

## Which California counties are reopening?

State Public Health Officer Dr. Sonia Angell said wearing face coverings is an effective way to decrease the spread of the coronavirus.

“As Californians venture into our communities more,” she said, “wearing face coverings is another important way we can help protect one another.”

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A [recent study](#) from Germany found that masks reduced the daily growth rate of reported infections by around 40%. [Another study](#), published recently in the Proceedings of the National Academy of Sciences, concluded that “wearing of face masks in public corresponds to the most effective means to prevent interhuman transmission.”

Dr. Shruti Gohil, associate medical director of epidemiology and infection prevention at UC Irvine, said face coverings, in addition to frequent hand

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# Los Angeles Times

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“In my opinion, if we want to reengage we have to put all of our energy into figuring out how to shave off every piece of risk that we can, reasonably, without crippling our society,” she said. “I do think it’s hard for the public to digest what the right steps are, and I think in a time of pandemic it is nice to have authorities steer the ship as stably as possible. I do think that perhaps the governor’s move allows for that at some level.”

Dr. Peter N. Bretan, president of the California Medical Assn., said Newsom’s order was a reminder that the “COVID-19 crisis is not over.”

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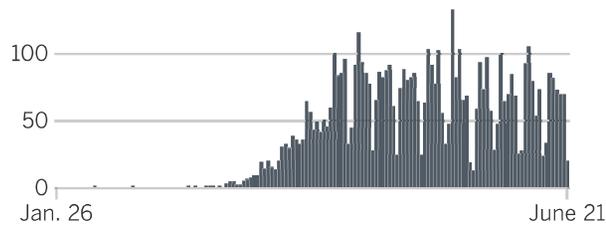
# Los Angeles Times

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**178,520**  
confirmed

**5,512**  
deaths

Statewide deaths by day



[California](#) » [L.A. County](#) » [Orange County](#) »

We are moving into [Stage 3 of reopening the state](#). Lower-risk businesses can now reopen with social distancing guidelines.

“We hope this order will offer some support and protection for local public health officers who have been placed in untenable situations in counties across California, coming under attack for only trying to do what science tells us is necessary to protect public health,” Bretan said in a written statement.

California joins New York, Illinois, Michigan, Virginia, Massachusetts, Maine, Maryland, Delaware, Rhode Island and New Mexico in implementing a mandatory face-covering requirement, [according to the National Governors Assn.](#) The Sacramento Bee on Wednesday [first](#)

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# Los Angeles Times

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Some Californians have openly rebelled against directives to wear face coverings, which they consider to be government overreach and an infringement on their personal freedom.

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Last week, the Orange County public health officer resigned after weeks of verbal attacks, including a death threat, over her mandatory mask rules. Her replacement rescinded the rules amid intense pressure from the Board of Supervisors, and now the county only “strongly recommends” wearing masks in public settings.

Board of Supervisors Chairwoman Michelle Steel said she was surprised by the governor’s statewide mandate, noting that Orange County’s infection rate and hospitalization numbers are below the state thresholds for reopening. Steel had previously advocated for the county health officer to loosen the requirement that all residents wear masks when in public.

“A mandatory order was too strong,” she said. “I think our residents in Orange County are very smart. If they feel sick, they’re going to wear a

Orange County Sheriff Don Barnes indicated that he believes it's not the responsibility of law enforcement to ensure compliance with the state's mask order. Instead, "it is each person's responsibility to wear a face covering, and follow other recommended safeguards, in order to stop the spread of COVID-19," he said.

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"I expect that Orange County residents will continue to use common sense approaches for the benefit of their own health, as well as the collective health of other county residents," he said in a statement. "We must do what is necessary to stop the transmission of COVID-19, enabling us to further open remaining businesses, places of recreation, and the hospitality industry."

Officials in Riverside County, which previously rescinded a face-covering requirement, urged residents to follow the state's new rules.

"Social distancing, washing our hands and wearing facial coverings are all simple measures that we can all abide by to protect ourselves and our fellow neighbors," Riverside County Board of Supervisors Chairman V.

Though he declined to comment specifically on Newsom’s mandate, saying officials hadn’t yet had time to review it in detail, San Bernardino County spokesman David Wert said “the county is a big believer in face coverings.”

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“The county’s position has been that face coverings do reduce the risk of spreading the virus, and we have strongly recommended that everyone wear them when they go out in public, and we’ve provided incentives to businesses that require them,” he said.

Fresno and San Bernardino counties have also [rescinded face-covering requirements](#) due to public opposition.

Many of California’s other most populous counties, including Los Angeles, San Diego, Santa Clara, Alameda, Sacramento, Contra Costa, San Francisco and San Mateo, require mask wearing in public.

*Times staff writers Stephanie Lai and Rong Gong Lin II contributed to this report.*

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# Los Angeles Times

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where she covered education, Newport Beach city hall, crime and courts. She is a native of Orange County and attended Chapman University, where she was the editor-in-chief of the college newspaper, the Panther.



Luke Money



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Luke Money is a Metro reporter covering breaking news at the Los Angeles Times. He previously was a reporter and assistant city editor for the Daily Pilot, a Times Community News publication in Orange County, and before that wrote for the Santa Clarita Valley Signal. He earned his bachelor's degree in journalism from the University of Arizona.

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# **EXHIBIT O**



## Universal Masking in Hospitals in the Covid-19 Era

Michael Klompas, M.D., M.P.H., Charles A. Morris, M.D., M.P.H., Julia Sinclair, M.B.A., Madelyn Pearson, D.N.P., R.N., and Erica S. Shenoy, M.D., Ph.D.

**A**s the SARS-CoV-2 pandemic continues to explode, hospital systems are scrambling to intensify their measures for protecting patients and health care workers from the virus. An

increasing number of frontline providers are wondering whether this effort should include universal use of masks by all health care workers. Universal masking is already standard practice in Hong Kong, Singapore, and other parts of Asia and has recently been adopted by a handful of U.S. hospitals.

We know that wearing a mask outside health care facilities offers little, if any, protection from infection. Public health authorities define a significant exposure to Covid-19 as face-to-face contact within 6 feet with a patient with symptomatic Covid-19 that is sustained for at least a few minutes (and some say more than 10 minutes or even 30 minutes). The chance of catching Covid-19 from

a passing interaction in a public space is therefore minimal. In many cases, the desire for widespread masking is a reflexive reaction to anxiety over the pandemic.

The calculus may be different, however, in health care settings. First and foremost, a mask is a core component of the personal protective equipment (PPE) clinicians need when caring for symptomatic patients with respiratory viral infections, in conjunction with gown, gloves, and eye protection. Masking in this context is already part of routine operations for most hospitals. What is less clear is whether a mask offers any further protection in health care settings in which the wearer has no direct interactions with symptomatic pa-

tients. There are two scenarios in which there may be possible benefits.

The first is during the care of a patient with unrecognized Covid-19. A mask alone in this setting will reduce risk only slightly, however, since it does not provide protection from droplets that may enter the eyes or from fomites on the patient or in the environment that providers may pick up on their hands and carry to their mucous membranes (particularly given the concern that mask wearers may have an increased tendency to touch their faces).

More compelling is the possibility that wearing a mask may reduce the likelihood of transmission from asymptomatic and minimally symptomatic health care workers with Covid-19 to other providers and patients. This concern increases as Covid-19 becomes more widespread in the community. We face a constant risk that a health care worker with

early infection may bring the virus into our facilities and transmit it to others. Transmission from people with asymptomatic infection has been well documented, although it is unclear to what extent such transmission contributes to the overall spread of infection.<sup>1-3</sup>

More insidious may be the health care worker who comes to work with mild and ambiguous symptoms, such as fatigue or muscle aches, or a scratchy throat and mild nasal congestion, that they attribute to working long hours or stress or seasonal allergies, rather than recognizing that they may have early or mild Covid-19. In our hospitals, we have already seen a number of instances in which staff members either came to work well but developed symptoms of Covid-19 partway through their shifts or worked with mild and ambiguous symptoms that were subsequently diagnosed as Covid-19. These cases have led to large numbers of our patients and staff members being exposed to the virus and a handful of potentially linked infections in health care workers. Masking all providers might limit transmission from these sources by stopping asymptomatic and minimally symptomatic health care workers from spreading virus-laden oral and nasal droplets.

What is clear, however, is that universal masking alone is not a panacea. A mask will not protect providers caring for a patient with active Covid-19 if it's not accompanied by meticulous hand hygiene, eye protection, gloves, and a gown. A mask alone will not prevent health care workers with early Covid-19 from contaminating their hands and spreading the virus to patients and colleagues. Focusing on universal masking alone may,

paradoxically, lead to more transmission of Covid-19 if it diverts attention from implementing more fundamental infection-control measures.

Such measures include vigorous screening of all patients coming to a facility for symptoms of Covid-19 and immediately getting them masked and into a room; early implementation of contact and droplet precautions, including eye protection, for all symptomatic patients and erring on the side of caution when in doubt; rescreening all admitted patients daily for signs and symptoms of Covid-19 in case an infection was incubating on admission or they were exposed to the virus in the hospital; having a low threshold for testing patients with even mild symptoms potentially attributable to a viral respiratory infection (this includes patients with pneumonia, given that a third or more of pneumonias are caused by viruses rather than bacteria); requiring employees to attest that they have no symptoms before starting work each day; being attentive to physical distancing between staff members in all settings (including potentially neglected settings such as elevators, hospital shuttle buses, clinical rounds, and work rooms); restricting and screening visitors; and increasing the frequency and reliability of hand hygiene.

The extent of marginal benefit of universal masking over and above these foundational measures is debatable. It depends on the prevalence of health care workers with asymptomatic and minimally symptomatic infections as well as the relative contribution of this population to the spread of infection. It is informative, in this regard, that the prevalence of Covid-19 among asymptomatic

evacuees from Wuhan during the height of the epidemic there was only 1 to 3%.<sup>4,5</sup> Modelers assessing the spread of infection in Wuhan have noted the importance of undiagnosed infections in fueling the spread of Covid-19 while also acknowledging that the transmission risk from this population is likely to be lower than the risk of spread from symptomatic patients.<sup>3</sup> And then the potential benefits of universal masking need to be balanced against the future risk of running out of masks and thereby exposing clinicians to the much greater risk of caring for symptomatic patients without a mask. Providing each health care worker with one mask per day for extended use, however, may paradoxically improve inventory control by reducing one-time uses and facilitating centralized workflows for allocating masks without risk assessments at the individual-employee level.

There may be additional benefits to broad masking policies that extend beyond their technical contribution to reducing pathogen transmission. Masks are visible reminders of an otherwise invisible yet widely prevalent pathogen and may remind people of the importance of social distancing and other infection-control measures.

It is also clear that masks serve symbolic roles. Masks are not only tools, they are also talismans that may help increase health care workers' perceived sense of safety, well-being, and trust in their hospitals. Although such reactions may not be strictly logical, we are all subject to fear and anxiety, especially during times of crisis. One might argue that fear and anxiety are better countered with data and education than with a marginally beneficial mask, par-

ticularly in light of the worldwide mask shortage, but it is difficult to get clinicians to hear this message in the heat of the current crisis. Expanded masking protocols' greatest contribution may be to reduce the transmission of anxiety, over and above whatever role they may play in reducing transmission of Covid-19. The potential value of universal masking in giving health care workers the confidence to absorb and implement the more foundational infection-prevention practices de-

scribed above may be its greatest contribution.

Disclosure forms provided by the authors are available at NEJM.org.

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This article was published on April 1, 2020, at NEJM.org.

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DOI: 10.1056/NEJMp2006372

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