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21 Attorneys for Plaintiff

22 **UNITED STATES DISTRICT COURT**
 23 **CENTRAL DISTRICT OF CALIFORNIA**
 24 **SOUTHERN DIVISION**

25 **KEVIN MULDOON**, in his individual
26 capacity

27 Plaintiff,

28 vs.

29 **GAVIN NEWSOM**, in his official
 30 capacity as the Governor of California;
 31 **XAVIER BECERRA**, in his official
 32 capacity as the Attorney General of

Case No.: _____

**VERIFIED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 California; **MARK GHILARDUCCI**,
2 in his official capacity as the Director,
3 Governor’s Office of Emergency
4 Services; and **WADE CROWFOOT**,
5 in his official capacity as the Secretary,
6 California Natural Resources Agency;

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Defendants.

Plaintiff Kevin Muldoon, through his attorneys, Dhillon Law Group, Inc. and Essayli & Brown LLP, brings claims against Gavin Newsom, in his official capacity as the Governor of California; Xavier Becerra, in his official capacity as the Attorney General of California; Mark Ghilarducci, in his official capacity as the Director, Governor’s Office of Emergency Services; and Wade Crowfoot, in his official capacity as the Secretary, California Natural Resources Agency. Plaintiff alleges and shows the Court as follows (this “Complaint”).

1. On April 27, 2020, Attorney General William Barr sent a memorandum to all United States Attorneys regarding civil rights violations occurring in various states during the coronavirus crisis.¹

2. Attorney General Barr stated that “the Constitution is not suspended in times of crisis.”

3. In his memorandum, Attorney General Barr directs all United States Attorneys to identify state directives that could be violating the Constitutional rights and civil liberties of individual citizens. Attorney General Barr then directs that:

¹ As of May 3, 2020, accessible at: https://cdn.cnsnews.com/attachment/ag_memo_-_balancing_public_safety_with_the_preservation_of_civil_rights_0.pdf

1 If a state or local ordinance crosses the line from an appropriate
2 exercise of authority to stop the spread of COVID-19 into an
3 overbearing infringement of constitutional and statutory protections, the
4 Department of Justice may have an obligation to address that overreach
5 in federal court.

6 4. This lawsuit is filed to challenge the very type of overbearing
7 infringement of constitutional and statutory protections identified by Attorney
8 General Barr.

9 NATURE OF ACTION

10 5. Defendants have abused their power by seizing on the coronavirus
11 pandemic to expand their authority to unprecedented lengths. On March 19, 2020,
12 Governor Gavin Newsom issued Executive Order N-33-20 (the “State Order”),
13 which directs all residents to heed current State public health directives. A copy of
14 the State Order is attached as Exhibit 1.

15 6. On April 30, 2020, Governor Newsom issued a letter through the
16 California Governor’s Office of Emergency Services directing all county and city
17 beaches within Orange County to close beginning May 1, 2020 (the “Governor’s
18 Directive”). The only legal authority cited in the letter was a reference to the State
19 Order. A copy of the Governor’s Directive is attached as Exhibit 2.

20 7. By depriving Plaintiff of his ability to access and enjoy the beach,
21 Defendants violate fundamental rights protected by the U.S. and California
22 Constitutions, including freedom to travel, freedom to assemble, and due process
23 and equal protection under the law, as well as constitutionally protected liberty
24 rights and rights to access California’s beaches. It is this Court’s duty to defend
25 these constitutional principles, by safeguarding the many rights and liberties of
26 Californians that Defendants violate.

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PARTIES

13. Plaintiff Kevin Muldoon is a resident of Newport Beach, California. He is the former Mayor and current Councilman for the City of Newport Beach. Muldoon is filing this suit in his individual capacity. He has been an active and vocal proponent of Orange County’s removing restrictions on the people and allowing the community to reopening due to a lack of scientific data that Orange County had any serious problem with COVID-19.

14. Defendant Gavin Newsom is made a party to this Action in his official capacity as the Governor of California. The California Constitution vests the “supreme executive power of the State” in the Governor, who “shall see that the law is faithfully executed.” Cal. Const. Art. V, § 1. Governor Newsom issued the directive to close all Orange County beaches.

15. Defendant Xavier Becerra is made a party to this Action in his official capacity as the Attorney General of California. Under California law he is the chief law enforcement officer with supervision over all sheriffs in the state. Cal. Const. Art. V, § 13.

16. Defendant Mark Ghilarducci is made a party to this Action in his official capacity as the Director of the Governor’s Office of Emergency Services. Director Ghilarducci issued the letter directing the closure of all Orange County beaches.

17. Wade Crowfoot is made a party to this Action in his official capacity as the Secretary of the California Natural Resources Agency.

18. Each and every Defendant acted under color of state law with respect to all acts or omissions herein alleged.

FACTUAL ALLEGATIONS

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2 19. On or about March 13, 2020, President Donald J. Trump proclaimed a
3 National State of Emergency as a result of the threat of the emergence of a novel
4 coronavirus, COVID-19.²

5 20. Since the initial outbreak of COVID-19 in the United States in
6 February and March 2020, the federal government's projections of the anticipated
7 national death toll related to the virus has decreased substantially, by an order of
8 magnitude. Despite such revisions, Defendants have increasingly restricted—where
9 not outright banned—Plaintiff's engagement in constitutionally-protected
10 activities.³

FACTUAL ALLEGATIONS AS TO THE STATE OF CALIFORNIA

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12 21. On or about March 4, 2020, California Governor Gavin Newsom
13 proclaimed a State of Emergency as a result of the threat of COVID-19.⁴

14 22. On or about March 19, 2020, California Governor Newsom issued
15 Executive Order N-33-20 in which he ordered "all residents are directed to
16 immediately heed the current State public health directives."
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21 ² As of the date of this filing, the Proclamation of a National Emergency can be
22 found online at: [https://www.whitehouse.gov/presidential-actions/proclamation-
23 declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-
outbreak/](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/).

24 ³ *See, e.g.*,
25 [https://www.usatoday.com/story/news/investigations/2020/04/09/coronavirus-
deaths-u-s-could-closer-60-k-new-model-shows/5122467002/](https://www.usatoday.com/story/news/investigations/2020/04/09/coronavirus-deaths-u-s-could-closer-60-k-new-model-shows/5122467002/)

26 ⁴ As of the date of this filing, the Proclamation of a State of Emergency can be
27 found online at: [https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-
28 Coronavirus-SOE-Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf).

1 23. The state public health directive requires “all individuals living in the
2 State of California to stay home or at their place of residence except as needed to
3 maintain continuity of operations of the federal critical infrastructure sectors ...”.⁵

4 **GOVERNOR NEWSOM CLOSES ORANGE COUNTY BEACHES**

5 24. Beginning on April 25, 2020, a string of newspapers published articles,
6 alleging that Southern California beaches were packed with large masses of
7 individuals flouting CDC guidelines.⁶ Photographs taken from a ground level
8 viewpoint, using zoom lenses that artificially compress perspective, seemingly
9 showed beachgoers tightly packed together on Newport Beach.⁷ These photographs
10 were misleading, at best.

11 25. On April 28, Plaintiff requested several aerial photographs taken on the
12 same day that the newspaper photographs were taken.⁸ The aerial photographs
13 showed far more space between beachgoers than the latter implied. Plaintiff also
14 showed testimonials from fire chief and police chief, expressing their praise at those
15 on Newport Beach for abiding by guidelines.⁹ Charts also were produced that
16 showed statistics comparing peak crowds at Newport Beach on July 4, 2019, with
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19 ⁵The State Public Health Directive was included in the text of Executive Order N-
20 33-20.

21 ⁶ See e.g., [https://www.ocregister.com/2020/04/25/eager-early-risers-hit-the-beach-](https://www.ocregister.com/2020/04/25/eager-early-risers-hit-the-beach-in-san-clemente-as-closure-lifts/)
22 [in-san-clemente-as-closure-lifts/](https://www.mercurynews.com/2020/04/26/eager-early-risers-hit-the-beach-in-san-clemente-as-closure-lifts/); and
23 [https://www.mercurynews.com/2020/04/26/eager-early-risers-hit-the-beach-in-san-](https://www.mercurynews.com/2020/04/26/eager-early-risers-hit-the-beach-in-san-clemente-as-closure-lifts/)
24 [clemente-as-closure-lifts/](https://www.mercurynews.com/2020/04/26/eager-early-risers-hit-the-beach-in-san-clemente-as-closure-lifts/).

25 ⁷ See, headline photograph at *supra*, n. 9, 10.

26 ⁸ Available as of May 3, 2020 at 1:23:46-1:28:48,
27 http://newportbeach.granicus.com/MediaPlayer.php?view_id=44&clip_id=3477.

28 ⁹ See *Official Statement of Newport Police Chief Jon Lewis*, accessible as of May 1,
2020 at:
<https://www.newportbeachca.gov/Home/Components/News/News/38170/2720>.

1 the number of people on the beaches on April 25, 2020, the day that was the subject
2 of the aforementioned articles.¹⁰ The recent beach numbers were less than one-third
3 what they were last Fourth of July.

4 26. Data was produced that showed a comparison of the per-capita number
5 of COVID-19 cases in surrounding beach communities that had closed their public
6 beaches versus the ones that had stayed open, such as Newport Beach.¹¹ The cities
7 with closed beaches—Malibu, Manhattan Beach, Santa Monica, Redondo Beach,
8 Venice Beach, Long Beach, Hermosa Beach, Marina Del Ray—had higher
9 confirmed COVID-19 cases (all more than 116 per 100,000, some more than 200
10 per 100,000) than the ones with open beaches—Dana Point, 68.22 per 100,000, San
11 Clemente, 68.80 per 100,000, Huntington Beach, 88.93 per 100,000, Newport
12 Beach, 107.82 per 100,000.¹²

13 27. On the evening of April 29, 2020, a memorandum—stating that
14 Governor Newsom would shut down all state beaches and state parks throughout the
15 entire state of California—was sent to all the police chiefs in California, and
16 subsequently leaked to the media. Eric Nunez, president of the California Police
17 Chiefs Association, said it was sent to give chiefs time to plan ahead of Newsom’s
18 expected announcement April 30.¹³

19 28. On information and belief, Governor Newsom’s office did not send a
20 similar memo to a single mayor, city council member or supervisor of a California
21 city, township, or municipality. The communique effectively bypassed all local
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23 ¹⁰ *Id.* at 15:01-29.

24 ¹¹ *Id.* 18:28-19:57.

25 ¹² *Id.*

26 ¹³ This article was accessible, as of May 3, 2020, at:

27 [https://www.kpbs.org/news/2020/apr/29/gov-newsom-order-all-beaches-closed-](https://www.kpbs.org/news/2020/apr/29/gov-newsom-order-all-beaches-closed-memo-police-ch/)
28 [memo-police-ch/](https://www.kpbs.org/news/2020/apr/29/gov-newsom-order-all-beaches-closed-memo-police-ch/).

1 authorities. It reached out to local law enforcement only to ready a closure of public
2 spaces while not conferring with or obtaining the blessing of local authorities.

3 29. On April 30, 2020, Governor Newsom stated that he was unaware of
4 the memorandum, and claimed that he had “never saw it.”¹⁴ The same day,
5 Governor Newsom ordered that all beaches in Orange County be shut down, banned
6 to the public. Beaches in other coastal communities that have chosen to allow them
7 to stay open, were not similarly ordered to be shut down.

8 **NO RATIONAL SCIENTIFIC BASIS FOR THE BEACH CLOSURES**

9 30. On April 27, 2020, a revised study released by a team at Stanford
10 University estimated that, based on antibody tests of 3,300 people, as much as
11 4.16% of Santa Clara County’s population (81,000 people), had already contracted
12 COVID-19 by April 3 and 4, 2020.¹⁵ Santa Clara had 39 deaths as of April 4, 2020¹⁶
13 out of a county population of 1,927,852.¹⁷ This means that the death rate of those
14 who had COVID-19 is .048%.

15 31. On April 10, 2020, Los Angeles County had 8,430 confirmed cases 241
16 deaths;¹⁸ on April 11, 2020, Los Angeles County had 8,873 cases and 265 deaths,
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20 ¹⁴ Available as of May 3, 2020 at: <https://www.cnn.com/travel/article/california-newsom-close-beaches-parks/index.html>.

21 ¹⁵ As of May 3, 2020, accessible at:
22 <https://www.medrxiv.org/content/10.1101/2020.04.14.20062463v2.full.pdf>.

23 ¹⁶ As of May 3, 2020, accessible at: <https://www.santaclaraca.gov/i-want-to/stay-informed/newsroom/coronavirus-updates/archived-covid-19-news-updates>.

24 ¹⁷
25 <https://www.census.gov/quickfacts/fact/table/santaclaracountycalifornia/PST045219>

26 ¹⁸ As of May 3, 2020, accessible at:
27 <http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=media&ou=ph&prog=media&prid=2309>.

1 for an approximate death rate of 2.98 percent.¹⁹ On April 20, 2020, the preliminary
2 results of a collaborative antibody study done between the University of South
3 California and the Public Health Department of Los Angeles County were released.
4 Based on 863 tests, researchers estimated that as many as 5.6 percent of the L.A.
5 County’s population, or 442,000, already had COVID-19 on April 10 and 11.²⁰

6 32. A similar antibody test in and by New York City showed that 21
7 percent of the population (1,763,737) were infected with COVID-19.²¹ With the
8 current number of confirmed deaths (12,571),²² the putative death rate is 0.71
9 percent.

10 33. A similar antibody study by Miami-Dade County told a similar story:
11 the confirmed number of deaths (1,268)²³ divided by the estimated number of
12 infections (221,000)²⁴ gave a putative death rate of .57 percent. Each of these studies
13 indicates that the COVID-19 mortality rate falls significantly short of those
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16 ¹⁹ As of May 3, 2020, accessible at:
17 [http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=](http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=media&ou=ph&prog=media&prid=2311)
18 [media&ou=ph&prog=media&prid=2311](http://publichealth.lacounty.gov/phcommon/public/media/mediapubdetail.cfm?unit=media&ou=ph&prog=media&prid=2311).

19 ²⁰ As of May 3, 2020, accessible at:
20 [http://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?](http://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2328)
21 [prid=2328](http://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=2328).

22 ²¹ As of May 3, 2020, accessible at:
23 <https://www.nytimes.com/2020/04/23/nyregion/coronavirus-antibodies-test-ny.html>.
24 The estimated population of NYC is 8,398,748 as of July 1, 2018 per
25 <https://www.census.gov/quickfacts/newyorkcitynewyork>.

26 ²² As of May 3, 2020, accessible at: [https://www1.nyc.gov/site/doh/covid/covid-19-](https://www1.nyc.gov/site/doh/covid/covid-19-data.page)
27 [data.page](https://www1.nyc.gov/site/doh/covid/covid-19-data.page).

28 ²³ As of May 3, 2020, accessible at:
<https://www.miamiherald.com/news/coronavirus/article242395581.html>.

²⁴ As of May 3, 2020, accessible at: [https://www.miamidade.gov/releases/2020-04-](https://www.miamidade.gov/releases/2020-04-24-sample-testing-results.asp)
[24-sample-testing-results.asp](https://www.miamidade.gov/releases/2020-04-24-sample-testing-results.asp).

1 associated with other epidemics, including the 1917-1918 Spanish Flu, believed to
2 have caused at least 2.5 percent of the infected to die.²⁵

3 34. Studies and health data show that the closure of public beaches would
4 not only be of no benefit to preventing the transmission of COVID-19 or death from
5 it—it could actually be detrimental to such efforts.

6 35. First, open air and sunlight (whether the mechanism of action is UV
7 radiation or thermal energy) reduce the likelihood of transmission; the open air
8 seemingly dissipates viruses to a negligible amount,²⁶ while sunlight lessens the
9 lifetime of an infectious, viral particle.^{27 28} A study, conducted by Chinese scientists
10 on COVID-19 clusters in Wuhan, showed that outdoor transmissions were few and
11 rare.²⁹ A study on the physical-chemical structure of the SARS virus, a virus in the
12 same family of coronaviruses as COVID-19 virus, showed that prolonged exposure
13 to UV radiation resulted in the destruction of viral particles.³⁰ A Department of
14 Homeland Security official revealed that the preliminary results from a study
15 showed that sunlight and high temperatures could destroy a COVID-19 viral particle
16 within minutes.³¹

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18 ²⁵ As of May 3, 2020, accessible at:
19 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3291398/>.

20 ²⁶ As of May 3, 2020, accessible at:
21 <https://www.medrxiv.org/content/10.1101/2020.04.04.20053058v1>.

22 ²⁷ As of May 3, 2020, accessible at:
23 <https://www.sciencedirect.com/science/article/pii/S016609340400179X> (similar
24 coronavirus, the one that causes the SARS outbreak, is vulnerable to UV radiation).

25 ²⁸ As of May 3, 2020, accessible at: [https://www.newsweek.com/sunlight-kills-
26 coronavirus-scientist-1500012](https://www.newsweek.com/sunlight-kills-coronavirus-scientist-1500012).

27 ²⁹ *See, supra*, n.35.

28 ³⁰ *See, supra*, n.36.

³¹ As of May 3, 2020, accessible at: [https://www.reuters.com/article/us-health-
\(footnote continued\)](https://www.reuters.com/article/us-health-)

1 36. Second, COVID-19 seems to most severely affect those with
2 underlying medical issues. The lack of access to fresh air, sunlight, exercise and
3 social companionship (even from six feet away) can be detrimental, if not downright
4 deadly, to the physical and psychological health of people.³² Substance abuse
5 relapse, lower immune system response, and higher risks for other medical
6 conditions leaves one more vulnerable to COVID-19 transmission, infection, and
7 death.³³

8 37. Third, Southern California cities with closed beaches—Malibu,
9 Manhattan Beach, Santa Monica, Redondo Beach, Venice Beach, Long Beach,
10 Hermosa Beach, Marina Del Ray—had *higher* confirmed COVID-19 cases (all
11 more than 116 per 100,000, some more than 200 per 100,000) than the ones with
12 open beaches—Dana Point, 68.22 per 100,000, San Clemente, 68.80 per 100,000,
13 Huntington Beach, 88.93 per 100,000, Newport Beach, 107.82 per 100,000.³⁴

14 38. Finally, official health bodies do not recommend the closure of public
15 spaces and or the implementation of major, internal travel restrictions. For example,
16 the CDC’s official mitigation guidelines for COVID-19 make no mention of closing
17 public parks or beaches.³⁵ WHO and European CDC guidelines also advise against
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19 _____
20 [coronavirus-trump/sunlight-heat-and-humidity-weaken-coronavirus-u-s-official-says-idUSKCN2253SA](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html).

21 ³² City Council meeting with video showing discussions with doctors at Hoag
22 Hospital about observing increase in at 11:55-12:10, available as of May 3, 2020 at:
23 http://newportbeach.granicus.com/MediaPlayer.php?view_id=44&clip_id=3477.

24 ³³ As of May 3, 2020, accessible at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>.

25 ³⁴ See chart, available as of May 3, 2020 at 18:28-19:57,
26 http://newportbeach.granicus.com/MediaPlayer.php?view_id=44&clip_id=3477.

27 ³⁵ As of May 1, 2020, accessible at: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>.

1 “internal travel restrictions” during a pandemic because they have little effect on
2 reducing transmission, while imposing huge social and economic costs.³⁶

3 **ORANGE COUNTY HAS A LOWER COVID-19 DEATH RATE THAN**
4 **COUNTIES THAT WERE NOT REQUIRED**
5 **TO SHUT DOWN THEIR BEACHES**

6 39. As of May 3, 2020, there were a total of 65,735 deaths³⁷ in the United
7 States out of a total population of 328,239,523. Based on these numbers, the United
8 States’ actual death rate due to COVID-19 is approximately .0200 percent (or 1 for
9 every 4,993).

10 40. As of May 3, 2020, there were a total of 1,229 deaths in Los Angeles
11 County³⁸ out of a total population of 10,039,107. Based on these numbers, the Los
12 Angeles County’s actual death rate due to COVID-19 is approximately .0122
13 percent (or 1 for every 8,168).

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17 ³⁶ “There is limited evidence for the effectiveness of internal travel restrictions, and
18 it has legal, ethical and economic implications. Although 37% of national pandemic
19 preparedness plans of Member States have travel restriction plans as a component of
20 NPIs (65), the acceptability is still undetermined.” World Health Organization, *Non-*
21 *pharmaceutical public health measures for mitigating the risk and impact of*
22 *epidemic and pandemic influenza*, at p. 71, accessible as of May 1, 2020 at:
23 [https://apps.who.int/iris/bitstream/handle/10665/329438/9789241516839-](https://apps.who.int/iris/bitstream/handle/10665/329438/9789241516839-eng.pdf?ua=1)
24 [eng.pdf?ua=1](https://apps.who.int/iris/bitstream/handle/10665/329438/9789241516839-eng.pdf?ua=1); see also European Centre for Disease Prevention and Control, *Public*
25 *Health Measures for Influenza Pandemics*, p. 9, § 12 (“Internal travel restrictions
26 [have] minor delaying effect[s and] [m]assive [costs and risks], including social
27 disruption.”).

25 ³⁷ As of May 3, 2020, accessible at: [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html)
26 [ncov/cases-updates/cases-in-us.html](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html)

27 ³⁸ As of May 3, 2020, accessible at:
28 <http://www.publichealth.lacounty.gov/media/Coronavirus/>

1 41. As of May 3, 2020, there were a total of 2,215 deaths³⁹ in California
2 out of a total population of 39,512,223. Based on these numbers, the California’s
3 actual death rate due to COVID-19 is approximately .0056 percent (or 1 for every
4 17,838).

5 42. As of May 3, 2020, there was a total of 138 coronavirus deaths in San
6 Diego County⁴⁰ out of a total population of 3,338,330. Based on these numbers, the
7 San Diego County’s actual death rate as a result of COVID-19 is approximately
8 .0041 percent (or 1 for every 24,190).

9 43. As of May 3, 2020, there was a total of 19 coronavirus deaths⁴¹ in
10 Ventura County out of a total population of 846,006. Based on these numbers, the
11 Ventura County’s actual death rate as a result of COVID-19 is approximately .0022
12 percent (or 1 for every 44,527).

13 44. As of May 3, 2020, there was a total of 52 deaths in Orange County⁴²
14 out of a total population of 3,175,692. Based on these numbers, the Orange
15 County’s actual death rate as a result of COVID-19 is approximately .0016 percent
16 (or 1 for every 61,071).

17 **CLAIMS**

18 **FIRST CLAIM FOR RELIEF**

19 **Violation of the Right to Travel**

20 **(42 U.S.C. § 1983)**

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23 ³⁹ As of May 3, 2020, accessible at: <https://covid19.ca.gov/>

24 ⁴⁰ As of May 3, 2020, accessible at:
25 [https://www.arcgis.com/apps/opsdashboard/index.html#/96feda77f12f46638b984fc
b1d17bd24](https://www.arcgis.com/apps/opsdashboard/index.html#/96feda77f12f46638b984fc b1d17bd24)

26 ⁴¹ As of May 3, 2020, accessible at: <https://www.vcemergency.com/>

27 ⁴² As of May 3, 2020, accessible at:
28 <https://occovid19.ochealthinfo.com/coronavirus-in-oc>

1 **(Against all Defendants)**

2 45. Plaintiff incorporates by reference the allegations in the preceding
3 paragraphs, as if fully set forth herein.

4 46. Under the Due Process Clause of the Fourteenth Amendment, no State
5 shall “deprive any person of life, liberty, or property, without due process of law.”
6 The fundamental liberties protected by this Clause include most of the rights
7 enumerated in the Bill of Rights.” *Obergefell v. Hodges*, 135 S. Ct. 2584, 2597
8 (2015). In addition, these liberties extend to certain personal choices central to
9 individual dignity and autonomy, including intimate choices that define personal
10 identity and beliefs. *Id.* at 2597.

11 47. The Supreme Court has acknowledged the right to travel as a
12 fundamental constitutional liberty protected by the Due Process Clause. The “right
13 to travel is a part of the liberty of which the citizen cannot be deprived without the
14 due process of law under the Fifth Amendment.” *Kent v. Dulles*, 357 U.S. 116,
15 126(1958). “It may be as close to the heart of the individual as choice of what he
16 eats, or wears, or reads. Freedom of movement is basic in our scheme of values.”
17 *Kent*, 357 U.S. at 126. The “right to travel is an unconditional personal right, a right
18 whose exercise may not be conditioned.” *Dunn v. Blumstein*, 405 U.S. 330, 341
19 (1972). The “[f]reedom of movement is kin to the right of assembly and to the right
20 of association. These rights may not be abridged.” *Aptheker v. Secretary of State*,
21 378 U.S. 500, 520 (1964).

22 48. The Governor’s Directive and Defendants’ enforcement thereof
23 violates Plaintiff’s right to freely travel to and at the beach in violation of his
24 fundamental right to move freely, in violation of the Due Process Clause of the
25 Fourteenth Amendment.

26 49. When a government practice restricts fundamental rights, it is subject to
27 “strict scrutiny” and can be justified only if it furthers a compelling government
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1 purpose and, even then, only if no less restrictive alternative is available. *See, e.g.,*
2 *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973); *Dunn v.*
3 *Blumstein*, 405 U.S. 330 (1972).

4 50. Defendants cannot satisfy strict scrutiny, because their arbitrary
5 classifications are not narrowly tailored measures that further compelling
6 government interests, for the reasons stated above, and because less restrictive
7 measures are available to the Defendants to accomplish their stated objectives.

8 51. Plaintiff has no adequate remedy at law and will suffer serious and
9 irreparable harm to his constitutional rights unless Defendants are enjoined from
10 implementing and enforcing the Governor's Directive.

11 52. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
12 declaratory relief and temporary, preliminary, and permanent injunctive relief
13 invalidating and restraining enforcement of the Governor's Directive.

14 53. Plaintiff found it necessary to engage the services of private counsel to
15 vindicate their rights under the law. Plaintiff is therefore entitled to an award of
16 attorneys' fees pursuant to 42 U.S.C. § 1988.

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22 **SECOND CLAIM FOR RELIEF**

23 **Equal Protection Clause of Fourteenth Amendment to U.S. Constitution**

24 **(42 U.S.C. § 1983)**

25 **(Against all Defendants)**

26 54. Plaintiff incorporates by reference the allegations in the preceding
27 paragraphs, as if fully set forth herein.

1 55. The Governor’s Directive and Defendants’ enforcement thereof violate
2 the Fourteenth Amendment, both facially and as-applied to Plaintiff. The Fourteenth
3 Amendment of the Constitution provides that “[n]o State shall ...deny to any person
4 within its jurisdiction the equal protection of the laws.” Equal protection requires the
5 state to govern impartially—not draw arbitrary distinctions between individuals
6 based solely on differences that are irrelevant to a legitimate governmental objection
7 – such as whether they reside in one county or an adjoining county with similar
8 characteristics.

9 56. Defendants intentionally and arbitrarily singled out Orange County
10 beaches for complete state government mandated closure, thereby depriving
11 Plaintiff, a resident of Orange County, access to the beach, a unique and valued
12 place for travel, recreation, assembly and leisure.

13 57. Orange County has an effective COVID-19 death rate of 1 per 61,071
14 yet their beaches have been closed starting May 1, 2020 due to Governor Newsom’s
15 Order, yet just across the county boundary, there are open public beaches in San
16 Diego County where the COVID-19 death rate is 1 per 24,190, or 2.5 times greater
17 death rate.

18 58. While Orange County Beaches are closed, beaches in Ventura County
19 are open even though Ventura County has a slightly higher COVID-19 death rate
20 than Orange County.

21 59. Defendants’ beach shutdown order cannot satisfy strict scrutiny,
22 because their arbitrary classifications are not narrowly tailored measures that further
23 compelling government interests, for the reasons stated above.

24 60. Plaintiff has no adequate remedy at law and will suffer serious and
25 irreparable harm to his constitutional rights unless Defendants are enjoined from
26 implementing and enforcing the Governor’s Directive.

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1 61. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
2 declaratory relief and temporary, preliminary, and permanent injunctive relief
3 invalidating and restraining enforcement of the Governor’s Directive.

4 62. Plaintiff found it necessary to engage the services of private counsel to
5 vindicate their rights under the law. Plaintiff is therefore entitled to an award of
6 attorneys’ fees pursuant to 42 U.S.C. § 1988.

7 **THIRD CLAIM FOR RELIEF**

8 **Violation of First Amendment Freedom of Assembly Clause**

9 **(42 U.S.C. § 1983)**

10 **(Against all Defendants)**

11 63. Plaintiff incorporates by reference the allegations in the preceding
12 paragraphs, as if fully set forth herein.

13 64. The Governor’s Directive and Defendants’ enforcement thereof violate
14 the First Amendment, both facially and as-applied to Plaintiff. The First
15 Amendment of the Constitution protects the “right of the people peaceably to
16 assemble.” The Freedom of Assembly Clause was incorporated against the states in
17 *De Jonge v. Oregon*, 299 U.S. 353 (1937).

18 65. By denying Plaintiff and all citizens of California the right to peaceably
19 assemble on the beaches of Orange County, whether to protest or otherwise express
20 themselves, Defendants are infringing on the Freedom of Assembly Clause.

21 66. Plaintiff has no adequate remedy at law and will suffer serious and
22 irreparable harm to his constitutional rights unless Defendants are enjoined from
23 implementing and enforcing the Governor’s Directive.

24 67. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
25 declaratory relief and temporary, preliminary, and permanent injunctive relief
26 invalidating and restraining enforcement of the Governor’s Directive.

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1 68. Plaintiff found it necessary to engage the services of private counsel to
2 vindicate their rights under the law. Plaintiff is therefore entitled to an award of
3 attorneys' fees pursuant to 42 U.S.C. § 1988.

4 **FOURTH CLAIM FOR RELIEF**

5 **Right to Access Navigable Waters**

6 **(Cal. Const. Art. 10, §§ 4, 5)**

7 **(Against all Defendants)**

8 69. Plaintiff incorporates by reference the allegations in the preceding
9 paragraphs, as if fully set forth herein.

10 70. Californians have a state constitutional interest in the use and
11 enjoyment of the coastline. Courts have recognized the California Constitution
12 expresses a strong public policy of encouraging public use of shoreline recreational
13 areas. *Gion v. Santa Cruz*, 2 Cal.3d 29, 42 (1970). The California Supreme Court
14 has acknowledged several legislative enactments that indicate the strong public
15 policy in favor of according public access to the coast. *Id.*

16 71. Preventing Plaintiff from accessing and enjoying the beach, despite the
17 availability of less restrictive measures to satisfy the public health interests at stake,
18 violates his California Constitutional right to access the states navigable waters.

19 72. Plaintiff has no adequate remedy at law and will suffer serious and
20 irreparable harm to his constitutional rights unless Defendants are enjoined from
21 implementing and enforcing the Governor's Directive.

22 73. Plaintiff has found it necessary to engage the services of private
23 counsel to vindicate his rights under the law. Plaintiff is therefore entitled to an
24 award of attorney fees and costs pursuant to California Code of Civil Procedure
25 Section 1021.5.

26 **FIFTH CLAIM FOR RELIEF**

27 **Right to Liberty**

1 (Cal. Const. Art. 1, § 1)
2 (Against all Defendants)

3 74. Plaintiff incorporates by reference the allegations in the preceding
4 paragraphs, as if fully set forth herein.

5 75. In California, “[a]ll people are by nature free and independent and have
6 inalienable rights. Among these are enjoying and defending life and liberty,
7 acquiring, possessing, and protecting property, and pursuing and obtaining safety,
8 happiness, and privacy. Cal. Const. Art. 1, §1.

9 76. California courts have held that Public Health Officials’ authority over
10 the rights of personal liberty is limited. Before exercising their full powers to
11 quarantine, there must be “reasonable grounds [] to support the belief that the person
12 so held is infected.” *Ex parte Martin*, 83 Cal. App. 2d 164 (1948). Public Health
13 Officials must be able to show “probable cause to believe the person so held has an
14 infectious disease ...” *Id.*

15 77. California courts found that Public Health Officials could not
16 quarantine 12 blocks of San Francisco Chinatown because of nine (9) deaths due to
17 bubonic plague. See *Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900), and *Wong*
18 *Wai v. Williamson*, 103 F. 1 (C.C. Cal. 1900).

19 78. The court found it “purely arbitrary, unreasonable, unwarranted,
20 wrongful, and oppressive interference with the personal liberty of complainant” who
21 had “never had or contracted said bubonic plague; that he has never been at any time
22 exposed to the danger of contracting it, and has never been in any locality where
23 said bubonic plague, or any germs of bacteria thereof, has or have existed”. *Jew Ho*,
24 103 F. 10 (C.C. Cal. 1900).

25 79. California courts have found that “a mere suspicion [of a contagious
26 disease], unsupported by facts giving rise to reasonable or probable cause, will
27 afford no justification at all for depriving persons of their liberty and subjecting
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1 them to virtual imprisonment under a purported order of quarantine.” *Ex parte Arta*,
2 52 Cal. App. 380, 383 (1921) (emphasis added).

3 80. In *Jew Ho v. Williamson*, 103 F. 10 (C.C. Cal. 1900), and *Wong Wai v.*
4 *Williamson*, 103 F. 1 (CC Cal. 1900), the California courts found that there were
5 more than 15,000 people living in the twelve blocks of San Francisco Chinatown
6 who were to be quarantined. The courts found it unreasonable to shut down the
7 ability of over 15,000 people to make a living because of nine deaths. This was one
8 death for every 1,666 inhabitants of Chinatown.

9 81. Plaintiff has never had or contracted said coronavirus; he has never
10 been at any time exposed to the danger of contracting it, and has never been in any
11 locality where said coronavirus, or any germs of bacteria thereof, has or have
12 existed. Plaintiff may not be presumed to be infectious on the basis of the evidence
13 available to Defendants, who bear the burden of proving a basis for restricting
14 liberty rights.

15 82. Preventing Plaintiff from accessing and enjoying the beach, despite the
16 availability of less restrictive measures to satisfy the public health interests at stake,
17 violates his California Constitutional right to liberty.

18 83. Plaintiff has no adequate remedy at law and will suffer serious and
19 irreparable harm to their constitutional rights unless Defendants are enjoined from
20 implementing and enforcing the Governor’s Directive.

21 84. Plaintiff has found it necessary to engage the services of private
22 counsel to vindicate his rights under the law. Plaintiff is therefore entitled to an
23 award of attorney fees and costs pursuant to California Code of Civil Procedure
24 Section 1021.5.

25 **WHEREFORE**, Plaintiff respectfully request that this Court enter judgment
26 against Defendants as follows:

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1 A. An order and judgment declaring that the State Order, facially and as-
2 applied to Plaintiff, violates the First and Fourteenth Amendments to the U.S.
3 Constitution and Article 1, Sections 1, 4, and 5 of the California Constitution;

4 B. An order temporarily, preliminarily, and permanently enjoining and
5 prohibiting Defendants from enforcing the State Order or otherwise interfering with
6 Plaintiff’s ability to access and enjoy the beach;

7 C. For attorneys’ fees and costs pursuant to 42 U.S.C. § 1988, California
8 Code of Civil Procedure Section 1021.5, and any other legal basis for such fees and
9 costs as may apply;

10 D. Such other and further relief as the Court deems appropriate and just.

11
12 Respectfully submitted,
13 Date: May 3, 2020 DHILLON LAW GROUP INC.

14
15 By: /s/ Harmeet K. Dhillon
16 Harmeet K. Dhillon
17 Mark P. Meuser
Gregory R. Michael

18 ESSAYLI & BROWN LLP
19 Bilal A. Essayli
20 D. Andrew Brown

21 Attorneys for Plaintiff

22 **VERIFICATION OF COMPLAINT**

23 I, the undersigned, declare as follows:

- 24 1. I am a plaintiff in this matter.
25 2. I have read the foregoing complaint and know the contents thereof.

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1 3. The same is true of my own knowledge, except as to those matters
2 which are therein state on information and belief, and, as to those matters, I believe
3 it to be true.

4 I declare under penalty of perjury under the laws of the United States of
5 America that the foregoing is true and correct.

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7 Date: May 3, 2020

DocuSigned by:
Kevin Muldoon
BFC0BA45F0194A7...

Kevin Muldoon

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