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11 CITY OF NEWPORT BEACH

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

14
15 THE CITY OF HUNTINGTON
BEACH, a California charter city;
16 THE CITY OF DANA POINT, a
California municipality; BALBOA
17 BAY CLUB VENTURES, LLC dba
as Balboa Bay Resort and Balboa
18 Bay Club, a California Limited
Liability Company; PACIFIC CITY
19 INVESTMENTS, LLC dba Pasea
Hotel, a California Limited
20 Liability Company; LIDO HOUSE,
LLC, a California Limited Liability
21 Company; LOUNGE GROUP,
INC., a California Corporation,

22 Plaintiffs,

23 vs.

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

26 Defendants.
27
28

Case No. 30-2020-01139512-CU-MC-CJC

Assigned to Honorable Nathan Scott
Department C25

**CITY OF NEWPORT BEACH'S
AMICUS BRIEF IN SUPPORT OF
APPLICATION BY THE CITY OF
HUNTINGTON BEACH, ET. AL. FOR
TRO, OR, EXPEDITED SETTING OF
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

(Declarations of John Lewis, Jeff Boyles,
Sean Levin, and Grace Leung attached
hereto)

I.

**This Is an Arbitrary and Unnecessary “Order” that
Undermines Local Control**

A virus, no matter how serious, cannot be an excuse to disregard the operation of law and trample the rights of citizens of the County of Orange and the rights of the residents of the City of Newport Beach.

The City of Newport Beach (the “City”), as *amicus*, fully supports the efforts of the plaintiffs, the City of Huntington Beach, the City of Dana Point, Balboa Bay Club Ventures, LLC, Pacific City Investments, LLC, and Lido House LLC (“Plaintiffs”) to challenge this arbitrary and unnecessary abuse of power that has led to the closure of all beaches in Newport Beach. And, although the state portrays the action as necessary, this decision was not well-reasoned but appears to be a response to sensationalized photos of people in Newport Beach last weekend.¹ These photos appear to have been taken in a way that misleadingly depicts the number of people on the beach and are directly contradicted by the photographs taken by the Newport Beach Police. *See J. Lewis Dec.* ¶5. Pictures in the media are *not* the basis for governmental regulation that overrides the City of Newport Beach’s local authority granted under the Constitution of the State of California.

The targeted and deliberate exercise of power against Orange County coastal cities shows this is not truly an issue of statewide concern which would warrant the infringement of these cities’ constitutionally guaranteed rights. Public beaches in San Diego, Ventura, Santa Cruz, and other counties in the State did *not* receive a similar edict directing them to close their beaches. If this were truly an issue of statewide concern, why aren’t the other beaches

¹ <https://www.ocregister.com/2020/04/27/gov-newsom-calls-out-newport-beach-other-beaches-over-crowd-concerns/> (visited May 1, 2020)

Continued on Next Page

1 throughout the state being ordered closed?

2 Despite the state acknowledging that exercise and outside activity is
3 necessary for physical and mental health,² closing the cities' beaches
4 effectively takes away the backyard of thousands of Newport Beach residents
5 who will have to now leave their community to exercise. This is an
6 unnecessarily extreme position given the City has more than 9 miles of
7 beachfront and 264.4 acres of beach available for recreation. *See S. Levin*
8 **Dec. at Paras. 3-5.**

9 The City requests this Court issue a TRO as requested by the Plaintiffs
10 restraining: (1) any State public officer or public safety officer from enforcing
11 the apparent "letter directive" of the State Office of Emergency Services (and
12 related California Natural Resources Agency) from precluding local
13 supervision and control of beaches located within the municipal jurisdiction of
14 Newport Beach; and (2) setting an OSC re: a preliminary injunction for Friday,
15 May 8, 2020 at 9:00 am or such time as is convenient with the Court
16 thereafter.

17 18 II.

19 **Authority Over Local Beaches Is Vested with the City of Newport** 20 **Beach Pursuant to the State Constitution**

21 The City of Newport Beach³ has, as its very name implies, been blessed
22 with beaches that include ocean water, waves, sun, surfing, water sports,

23 _____
24 ² <https://covid19.ca.gov/stay-home-except-for-essential-needs/#outdoor>

25 ³ The City requests amicus status to submit this brief in support of the Plaintiff's application
26 because: (a) It received the same letter directive that the plaintiff cities of Huntington Beach and
27 Dana Point received; (b) it, like those two cities, actively owns and manages beaches within its
28 jurisdiction; and (c) it, like both of those cities has a direct economic (and related non-economic)
harms that will flow from the complete cessation of beach rights for an indefinite period of time.

Continued on Next Page

1 boating, and many other forms of recreation that are important to maintain
2 mental and physical health. As a charter city, courts have held that the City is
3 “free from legislative interference with respect to matters of local or internal
4 concern.”⁴ In general, under the Constitution Article XI, Section 5, charter
5 cities have plenary authority over their own affairs and are only subject to
6 constitutional limitations.⁵ In Newport Beach, the City’s beaches are part of
7 its park system and it is well-established that the use of park lands is a
8 municipal affair.⁶

9 Looking at the state’s directive, it is evident on its face that the edict is
10 not a matter of statewide concern which would justify the infringement on the
11 City’s local affairs. Indeed, the state has targeted Orange County – which
12 includes the City of Newport Beach - while declining to impose the same
13 conditions on all beaches in California.

14 Also, the directive is arbitrary and not reflective of the City’s diligence in
15 managing this crisis. Specifically, the City has been actively engaged in the
16 management of the COVID-19 outbreak issuing multiple emergency orders to
17 ensure social distancing is maintained.⁷ The City’s Police Chief and Fire Chief
18 have been actively engaged in all steps of managing this crisis and have
19 developed detailed plans to help stop the spread of COVID-19. *See J. Boyles*
20 *Dec.*, ¶4-5 (City Lifeguard enforcement efforts for social distancing); *J. Lewis*
21 *Dec.* ¶4 (City police enforcement efforts for social distancing). Although the

22 _____
23 ⁴ *Butterworth v. Boyd*, 12 Cal.2d 140, 147 (1938).

24 ⁵ *City of Redondo Beach v. Taxpayers, Property Owners, etc., City of Redondo Beach*, 54 Cal.2d
25 126, 137 (1960).

26 ⁶ *Wiley v. City of Berkeley*, 136 Cal.App.2d 10 (1955); *Mallon v. City of Long Beach*, 44 Cal.2d
27 199 (1955).

28 ⁷ *See* G. Leung Decl. Para. 3, Exhibit “C”

1 City has adhered to the state’s guidance, rather than treating the City as a
2 responsible partner, the state is now attempting to step in and improperly
3 take away all local rights related to the City’s beaches.

4 In fact, the directive from the state is unprecedented, and has the
5 potential to spread disease. Specifically, the directive states that:

6
7 “...beaches operated by local governments in Orange County are
8 directed to institute full closure starting tomorrow, May 1, to
9 restrict the gathering of visitors that create unsafe conditions.

10 Full closure means that there is no public access to these beaches
11 on a temporary basis to protect public health. All restrooms are
12 closed and there are no parking facilities open for visitors, or
13 recreational boats. No activities are permitted on the beach
14 (including sunbathing, walking or running or watersports).”

15
16 The sole factual “basis” for this is an assertion in the second paragraph of the
17 letter directive that: “Last weekend state and local beaches in Orange County
18 experienced exceptionally heavy visitation that generated a high concentration
19 of beach visitors in close proximity.” There is no foundation for this assertion
20 and is disputed by the City officials who were (unlike the signatories to the
21 letter directive) physically present in Newport Beach last week rather than
22 400 miles away. (**J. Lewis Decl. Paras. 4-5; J. Boyles Decl, Paras. 4-5**).

23 Reading the directive in the detail, one has to ask what possible matter
24 of statewide concern could there be to close City facilities such as bathrooms?
25 Bathrooms are regularly used by the homeless and citizens of Newport Beach
26 and closing these restrooms could lead to the spread of disease.

27 Similarly, what statewide concern could there possibly to prohibit
28 physical activities on beaches if social distancing is maintained? The state has

1 recognized that exercise is important for physical and mental health and the
2 City has specifically taken action to ensure social distancing is maintained by
3 closing areas where social distancing was not maintained. (**G. Leung Dec.**
4 **Para. 3, Ex. “C”**). As the City looks to control this crisis, its officials are
5 baffled by the fact that the state wants people to leave Newport Beach to
6 engage in outdoor activities rather than stay close to home and utilize facilities
7 in their own neighborhoods. This is contrary to the Governor’s prior directions
8 and, by the elimination of essentially all outdoor activities, unnecessarily
9 forces people to travel to other places to maintain physical and mental health.

10 Since the beginning of the outbreak, the City has consistently and
11 responsibly exercised its municipal power granted by the Constitution and its
12 charter to manage its affairs and there is absolutely no basis for the state to
13 come in and seize local control. The City has direct evidence that it was taking
14 actions to abide by state social distancing guidelines and to issue a blanket
15 edict taking away all local rights is arbitrary and unwarranted.

16 17 **III.**

18 **The State Purports to Close Newport’s Beaches Through a** 19 **Unlawful “Directive *via* Letter” Issued Late Thursday by the** 20 **State Office of Emergency Services**

21 Despite claiming it has authority to direct the City to close its beaches,
22 the Office of Emergency Services is not authorized or empowered to issue or
23 enforce the “letter directive” requiring Newport Beach to close its beaches. As
24 set forth in Plaintiffs’ complaint, the Government Code, through the
25 Emergency Services Act (the “Act”), expressly limits Governor Newsome’s
26 powers during the COVID-19 emergency.

27 The letter cites no authority for this “directive.” There is no citation to a
28 particular code section, there is no regulatory reference, nothing. It is simply

1 an epistolary edict issued by two state agencies without *any* regulatory power
2 over local beaches—the Governor’s Office of Emergency Services and the
3 California Natural Resources Agency.

4 The sole factual “basis” for this is an assertion in the second paragraph
5 of the letter directive that: “Last weekend state *and local beaches* in Orange
6 County experienced exceptionally heavy visitation that generated a high
7 concentration of beach visitors in close proximity.”⁸ This assertion is disputed
8 by the City Officials who, again, were (unlike the signatories to the letter
9 directive) physically present in Newport Beach last week, the Newport Beach
10 Chief of Police and the Newport Beach Fire Department Chief. (**J. Lewis**
11 **Decl. Paras. 4-5; J. Boyles Decl, Paras. 4-5**).

12 The Act says nothing in it “shall be construed to diminish or remove any
13 city, county or city and county granted by Section 7 of Article XI of the
14 California Constitution.”⁹ The Act is explicit about the Governor’s
15 responsibility to support cities and counties in addressing an emergency. The
16 Act specifically prescribes the Governor’s authority as follows:

17 “(a) Ascertain the requirements of the state or its political
18 subdivisions for food, clothing, and other necessities of life in the
19 event of an emergency.

20 (b) Plan for, procure, and pre-position supplies, medicines,
21 materials, and equipment.

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

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

26 ⁸ **Exh. A** at p.1.

27 ⁹ Gov. Code § 8668.
28

- 1 (e) Provide for mobile support units.
2 (f) Provide for use of public airports.
3 (g) Institute training programs and public information programs.
4 (h) Make surveys of the industries, resources, and facilities, both
5 public and private, within the state, as are necessary to carry out
6 the purposes of this chapter.
7 (i) Plan for the use of any private facilities, services, and property
8 and, when necessary, and when in fact used, provide for payment
9 for that use under the terms and conditions as may be agreed
10 upon.
11 (j) Take all other preparatory steps, including the partial or full
12 mobilization of emergency organizations in advance of an actual
13 emergency; and order those test exercises needed to insure the
14 furnishing of adequately trained and equipped personnel in time of
15 need.”

16 The Governor may assist cities and counties in responding to a health
17 emergency, but no provision of the Act authorizes him to supplant or interfere
18 with cities’ and counties’ authority to develop, implement, and enforce
19 emergency protocols.¹⁰

20 IV.

21 **The State’s “Order” Will Irreparably Harm Newport Beach** 22 **and Should Be Enjoined**

23 The legal standards for a Temporary Restraining Order are well
24 established and exist in this case. “[A]s a general matter, the question whether
25 a preliminary injunction should be granted involves two interrelated factors:
26

27 _____
28 ¹⁰ Gov. Code, § 8570.

1 (1) the likelihood that the plaintiff will prevail on the merits, and (2) the
2 relative balance of harms that is likely to result from the granting or denial of
3 interim injunctive relief.”¹¹

4 The facts here clearly establish that: (1) by state law the authority to
5 regulate *local* beaches is left to cities, counties, and other regional authorities;
6 (2) the legislature has not acted to override such state laws; and (3) that the
7 alleged putative harm sought to be prevented—the non-observance of “social
8 distancing”—is not an actual harm shown in the facts before this Court.

9 The Declaration of Newport Beach Fire Chief Jeff Boyles at paragraph 6
10 states social distancing *was observed* by most beach goers. The Declaration of
11 Jon Lewis, Chief of Police for the City, further confirms enforcement efforts to
12 ensure social distancing and the attached photographs support this.

13 Whatever might be said about expansive executive powers during an
14 actual emergency, the “need” for social distancing at the beach is being met
15 and the City is acting responsibly. Executive power is at a low ebb (and should
16 be swept aside like an outgoing tide) when in fact the need or “harm” that it
17 seeks to remedy does not exist.

18 Moreover, the City (like Plaintiff cities) has just implemented further
19 measures to protect the public. As re-affirmed by the City Council in a press
20 release:

21 All City parking lots in the beach areas will be *closed* to limit the
22 number of visitors. Popular gathering spots such as the
23 Oceanfront Boardwalk, Newport and Balboa piers, and the
24 Wedge beach area will remain *closed*. Based on previous Council
25 action, short-term rentals are prohibited through May 20.

26
27 _____
28 ¹¹ *White v. Davis*, 30 Cal.4th 528, 554 (2003).

1 **G. Leung Dec. Para. 2, Exh. “B”.**

2 In considering the “likely to prevail” standard, this Court should also
3 carefully scrutinize the stated justifications contained in the April 30, 2020
4 letter directive. First, there is *no* legal authority or citation supporting any
5 directive as to local beaches in Orange County. Second, there is *no* competent
6 evidence of serious violations of social distancing contained in the letter
7 directive. Third, the letter directive ignores all other counties in this State that
8 still have beaches open, including San Diego and Ventura County.

9 The “letter directive” speaks of a temporary closure of orange County
10 beaches as assisting in the “critical moment in California’s battle against
11 COVID-19” it cannot explain why temporary closure of beaches in *other*
12 counties (including relatively populated and adjacent counties such as San
13 Diego) also will not assist in passing this “critical moment.” Government
14 actions that single out particular entities without explanation are explained in
15 judicial terminology— “arbitrary and capricious.”

16 Dated: May 1, 2020

Respectfully submitted,

17
18 AARON A. HARP
OFFICE OF THE CITY ATTORNEY
FOR NEWPORT BEACH

19
20 RING BENDER LLP
PATRICK K. BOBKO
NORMAN A. DUPONT
JAY A. TUFANO

21
22
23 By: 

24 Patrick K. Bobko
25 Attorneys for Amicus on behalf of
26 Plaintiffs,
27 CITY OF NEWPORT BEACH
28

DECLARATION OF JON LEWIS

I, JON LEWIS, hereby declare:

1. I am the Chief of Police for the City of Newport Beach and by reason of my position am authorized and qualified to make this declaration. If called as a witness I could and would testify competently to the following:

2. The Newport Beach Police Department (“NBPD”) is committed to acting in a safe and responsible manner and has gone to great lengths to ensure members of the public are doing the same in accordance with the Governor’s Orders. To date, the City of Newport Beach and its police department have been complying with the Governor’s Orders by partnering with local residents and businesses to ensure compliance with the closure of non-essential businesses. To that end, the Newport Beach Police Department has been promptly responding to calls for service, thereby addressing non-compliant businesses on a case-by-case basis in conformance with the Governor’s Orders. Furthermore, when our Dispatch Center receives calls regarding crowds on the beach that are not maintaining social distancing, our officers have responded and gained voluntary compliance.

3. On April 24th, 25th, and 26th, the NBPD patrolled the City’s seven miles of ocean beaches to supervise and educate residents and visitors.

4. I am aware that the overwhelming majority of Newport Beach residents and visitors were practicing social distancing measures on the City’s beaches over the April 24-26 weekend. NBPD observed residents and visitors to our beaches both land and by air.

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1 5. Below are true and correct aerial photographs taken from a police
2 helicopter on Saturday, April 25 at approximately 2:30, which is often the
3 period of peak attendance at Newport’s beaches.
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18 The photographs show, the vast majority of residents and visitors properly
19 practiced social distancing on the beach. NBPD Officers and lifeguards stopped
20 and educated the few individuals that failed to practice proper social
21 distancing measures.

22 6. The NBPD has policies in place to handle crowd at various levels
23 as well as policies to ensure social distancing measures are maintained when
24 crowds of individuals reach various levels.

25 7. The NBPD is accustomed to dealing with large-scale annual
26 events, such as the July 4th celebration, when crowds in the tens of thousands
27 visit our City nearly quadrupling our population. An event of such size
28

1 requires utilization of the Incident Command System, as well as additional
2 outside agency resources to manage the large population visiting our beaches.
3 In contrast, the current crowd size on the beaches of Newport Beach is minor
4 to moderate and is completely manageable using the City's resources.

5 8. While still utilizing the Incident Command System, the NBPD is
6 confident it can manage the minor to moderate-sized groups currently visiting
7 our beaches in a safe and responsible manner. In addition to our normal
8 deployment of patrol officers, motorcycle officers, bike patrol officers, and
9 mounted patrol officers, the NBPD has also has the ability to deploy additional
10 resources as they are required. Currently, these resources are being utilized to
11 comply with the Governor's Order closing access to the City's beaches.

12 9. Additionally, the City has issued a great deal of educational social
13 media and erected comprehensive signage and barricades throughout the
14 beach area, thereby encouraging social distancing and preventing small groups
15 from congregating as they approach and navigate the beach. It is my
16 understanding that majority of those visiting the beach have been practicing
17 social distancing, with the exception of family/household units. Those few who
18 are not practicing appropriate social distancing are approached by our staff,
19 educated, and have cooperatively complied.

20
21 I declare under penalty of perjury of the laws of the State of California
22 that the foregoing is true and correct.

23
24 Signed this 1st day of May in Newport Beach, California.

25
26 

27 Jon Lewis
28 Chief of Police
City of Newport Beach

DECLARATION OF JEFF BOYLES

I, JEFF BOYLES, hereby declare:

1. I am the Fire Chief for the City of Newport Beach and by reason of my position am authorized and qualified to make this declaration. I have served in this position since July 23, 2019. Prior to that I was the Assistant Fire Chief for the City of Newport Beach. I have been with the Newport Beach Fire Department since 2000. I have been a professional firefighter for 26 years. If called as a witness I could and would testify competently to the following:

2. The Newport Beach Fire Department, in addition to its firefighting services, also employs 15 full-time lifeguard officers and approximately 200 seasonal lifeguard officers. The lifeguards are posted along the city’s beaches.

3. On April 24th, 25th, and 26th, the Newport Beach Fire Department’s Lifeguard Operations Division patrolled the City’s seven miles of ocean beaches to supervise and educate residents and visitors. I was out on the beach over each of days that weekend.

4. The lifeguard officers of the Newport Beach Fire Department personally observed that the overwhelming majority of Newport Beach residents and visitors were practicing social distancing measures. Residents and visitors were observed from both land and by air. It was my experience that the public was receptive to instructions to “social distance” and were voluntarily compliant with the lifeguard officers’ instructions. The situation I observed was manageable with the City’s available resources.

5. Officers and lifeguards stopped and educated the few individuals that failed to practice proper social distancing measures. For example, at “the Wedge,” a central portion of the Newport Beach coastline, lifeguard officers used “black ball” flags to notify surfers and body-boarders to eliminate

1 flotation devices in the water between the hours to 10:00 a.m. and 5:00 p.m.
2 We initiated this procedure a month earlier than usual to achieve more
3 separation between people in the water.

4 6. Lifeguard officers also used the public address systems in their
5 vehicles to educate beachgoers on proper “social distancing.” All of the City’s
6 lifeguard vehicles were in use on April 24th, 25th, and 26th patrolling the
7 beaches. The City also increased staffing of on-duty lifeguards. A typical
8 staffing during the months of April and May includes 18 to 25 lifeguard
9 officers, depending on weather conditions.

10 7. Typically, lifeguard officers are focused on the water and insuring
11 people are safe and perform rescues when needed. The increased staffing
12 allows the lifeguard officers to continue to perform this important function,
13 while providing other officers to educate and manage beachgoers about the
14 importance of “social distancing.”

15 8. The lifeguard officers were provided increased personal protective
16 equipment for dealing with the public (gloves and masks), along with
17 specialized training concerning techniques and methods to reduce their
18 potential exposure to the public.

19 9. Our staffing plan for the weekend of May 1st, 2nd, and 3rd
20 includes 42 lifeguards per day. An additional five or ten lifeguard officers could
21 be staffed, if needed.


22 10. If the City’s ocean beaches are closed on the weekend of May 1st,
23 2nd, and 3rd, the Newport Beach Fire Department will not staff the stationary
24 lifeguard towers to watch the waterline. Instead, these 42 lifeguard officers
25 will be deployed in vehicles and on foot to patrol and enforce the closure of the
26 ocean beaches.

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I declare under penalty of perjury of the laws of the State of California
that the foregoing is true and correct.

Signed this 1st day of May in Newport Beach, California.



Jeff Boyles
Chief of Fire
City of Newport Beach

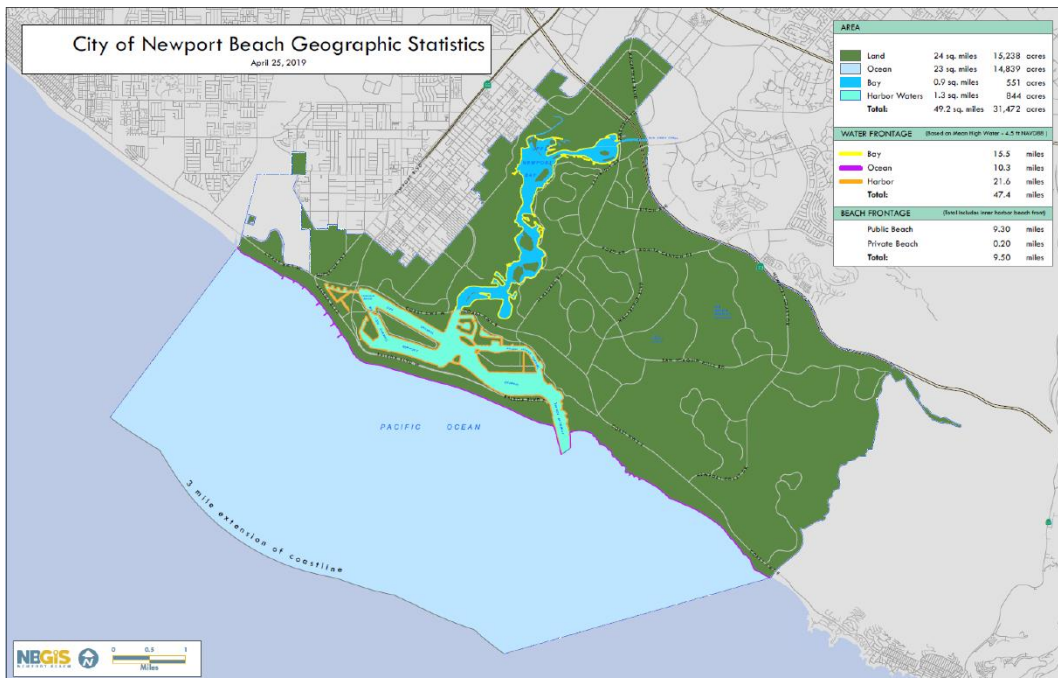
RING BENDER LLP
3150 Bristol Street, Suite 220
Costa Mesa, California 92626

1 **DECLARATION OF SEAN LEVIN**

2 I, SEAN LEVIN, hereby declare:

3
4 1. I am the Recreation & Senior Services Deputy Director for the City
5 of Newport Beach. I have served as the Recreation & Senior Services Deputy
6 Director for the City of Newport Beach for the past ten years. In that position,
7 I am responsible for the City’s recreation department and senior services. My
8 immediate supervisor is the Laura Detweiler, the Director of Recreation and
9 Senior Services for the City. I am responsible for the operation of the
10 recreation department and in that capacity, I am responsible for use of the
11 City’s beaches and parks. I am familiar with the City’s beaches. If called as a
12 witness I could and would testify competently to the following:

13 2. I have reviewed the publicly accessible Geographic Information
14 System (“GIS”) maps on the City of Newport Beach’s website located at
15 http://nbgis.newportbeachca.gov/gispub/MapCatalog/pdf_maps/GeographicStat
16 [Area_11X17.pdf](#) on April 30, 2020. The map below is a true and correct copy of
17 the geographic map on the City’ website.



AREA			
Land	24 sq. miles	15,238	acres
Ocean	23 sq. miles	14,839	acres
Bay	0.9 sq. miles	551	acres
Harbor Waters	1.3 sq. miles	844	acres
Total:	49.2 sq. miles	31,472	acres

WATER FRONTAGE (Based on Mean High Water - 4.5 ft NAVD88)			
Bay	15.5	miles	
Ocean	10.3	miles	
Harbor	21.6	miles	
Total:	47.4	miles	

BEACH FRONTAGE (Total includes inner harbor beach front)			
Public Beach	9.30	miles	
Private Beach	0.20	miles	
Total:	9.50	miles	

3. The legend on the GIS map shows there are 9.30 miles of public beachfront and .20 miles of private beachfront in Newport. There are a total of 9.5 miles of beachfront in Newport Beach.

4. I have also reviewed the City's General Plan which shows the combined total amount of park, beach, and other recreational area in the City of Newport Beach.

14 According to Table R 1 of the General Plan, these uses collectively constitute
 15 376.8 acres.

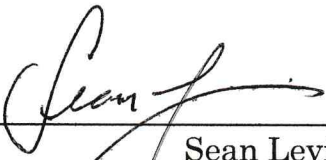
16 5. According to footnote b in that same table, the 376.8 acres includes
 17 only beach areas where "active" recreation takes place which is within 100 feet
 18 of the water. This "active" area represents 90.4 acres. In addition to the
 19 acreage within 100 feet of the water there are also 174 acres of "passive" beach
 20 open space along the 9.5 miles of beachfront in the City. Adding the "active"
 21 and "passive" spaces means there are 264.4 acres of recreational beach area
 22 available to the public to spread out and enjoy in Newport Beach.

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I declare under penalty of perjury of the laws of the State of California
that the foregoing is true and correct.

Signed this 1st day of May in Newport Beach, California.



Sean Levin
Recreation & Senior Services Deputy Director
City of Newport Beach

RING BENDER LLP
3150 Bristol Street, Suite 220
Costa Mesa, California 92626

1 DECLARATION OF GRACE LEUNG

2
3 I, GRACE LEUNG, hereby declare:
4

5 1. I am the City Manager for the City of Newport Beach. I have
6 served as Newport Beach’s City Manager since September 2018. I also serve as
7 the Director of Emergency Services for the City of Newport Beach. In my
8 capacity as City Manager I am responsible for day-to-day operations in
9 Newport Beach and oversee a staff of approximately 730 full-time employees
10 and 450 part-time employees in 11 departments. I also serve as the City’s
11 Director of Emergency Services. I am immediately responsible to the elected
12 City Council of the City of Newport Beach. I am familiar with the City’s efforts
13 concerning COVID-19 and if called as witness I could and would testify
14 competently to the following:

15 2. Attached hereto as **Attachment B** is a true and correct copy of a
16 press release issued by the City of Newport Beach, which provided, in part:
17 “All City parking lots in the beach areas will be closed to limit the number of
18 visitors. Popular gathering spots such as the Oceanfront Boardwalk, Newport
19 and Balboa piers, and the Wedge beach area will remain closed. Based on
20 previous Council action, short-term rentals are prohibited through May 20.”

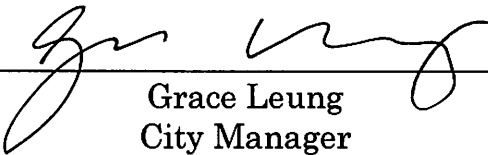
21 3. Attached hereto as **Attachment C** is a true and correct copy of the
22 Proclamation of Local Emergency, which I issued on March 15, 2020 in
23 response to the COVID-19 outbreak in my capacity as the Director of
24 Emergency Services of the City of Newport Beach.
25

26 I declare under penalty of perjury of the laws of the State of California
27 that the foregoing is true and correct.
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RING BENDER LLP
3150 Bristol Street, Suite 220
Costa Mesa, California 92626

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Signed this 1st day of May in Newport Beach, California.



Grace Leung
City Manager
City of Newport Beach

RING BENDER LLP
3150 Bristol Street, Suite 220
Costa Mesa, California 92626

News

Council Advises Staff to Maintain Beach Access with Additional Enforcement of Social Distancing

The City Council has advised staff to maintain accessibility to the Newport Beach coastline for exercise and recreation, with a greater police and lifeguard presence to more actively enforce social distancing directives. The Council action followed a busy Friday and Saturday in Newport Beach as thousands of visitors sought to escape the Southern California heatwave. The vast majority of the beach visitors this weekend were practicing social distancing, but many were not.

The Council majority expressed a strong desire to keep most public beaches, parks and open spaces accessible for the mental health and physical wellbeing of residents. Council members supported having City staff manage the beaches at a level similar to the crowded 4th of July weekend, and issue citations for those in violation of the social distancing order.

All City parking lots in the beach areas will be closed to limit the number of visitors. Popular gathering spots such as the Oceanfront Boardwalk, Newport and Balboa piers, and the Wedge beach area will remain closed. Based on previous Council action, short-term rentals are prohibited through May 20.

The Council's action aligns with guidance of the State and County public health agencies, as well as the California Coastal Commission's admonition that "recreational beach and coastal access also play important roles in maintaining mental and emotional health, especially during times of stress."

While most of the beachgoers last weekend were practicing responsible social distancing, the volume of visitors generated significant neighborhood impacts and ran counter to guidance from California State Parks to "stay close to home when you get outdoors. This is not the time for a road trip to a destination park or beach."

The City will continue to communicate the critical importance of responsible social distancing and adherence to the Governor's "stay at home" order during the upcoming weekends.

[Return to full list >>](#)

**PROCLAMATION OF THE EXISTENCE OF A LOCAL EMERGENCY
BY THE DIRECTOR OF EMERGENCY SERVICES
OF THE CITY OF NEWPORT BEACH**

WHEREAS, Section 2.20.060 of the Newport Beach Municipal Code empowers the Director of Emergency Services of the City of Newport Beach to proclaim the existence of a local emergency due to the existence of conditions of disaster or extreme peril to the safety of persons or property within the City of Newport Beach, and the City Council is not in session; and

WHEREAS, the Emergency Services Director of the City of Newport Beach does hereby find:

1. As part of the state's response to address the global COVID-19 outbreak, on March 4, 2020, Governor Gavin Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare for broader spread of COVID-19;

2. On March 15, 2020, Governor Newsom called for all bars, wineries, nightclubs and brewpubs to close throughout the state, urged all seniors and people with chronic health conditions to isolate themselves at home, and for restaurants to reduce occupancy by half to keep people farther away from each other;

3. The City of Newport Beach has a significant number of bars, restaurants and, based on the most recent demographic information available, a significant number of residents who are age 65 and over;

4. The safety of persons within the territorial limits of the City of Newport Beach is in extreme peril based on the existence or threatened existence of COVID-19, within and/or around the City of Newport Beach;

5. The response to the declared State of Emergency and guidance from Governor Newsom, may be beyond the control of the services, personnel, equipment, and facilities of the City of Newport Beach and may require the combined forces of other political subdivisions and other agencies to combat; and

6. That the City Council of the City of Newport Beach is not in session.

NOW, THEREFORE, BE IT PROCLAIMED that a local emergency now exists within the City of Newport Beach.

PURSUANT TO THE AFORESAID PROCLAMATION, THE DIRECTOR OF EMERGENCY SERVICES OF THE CITY OF NEWPORT BEACH HEREBY PROMULGATES AND ISSUES THE FOLLOWING ORDER AND REGULATION:

1. No person shall enter, be within, or remain within, any building or area within the

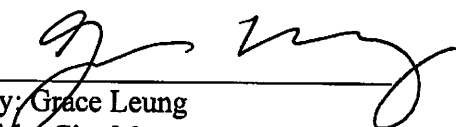
City of Newport Beach after receiving a written or oral order to either not enter or to leave such building or area from a peace officer.

2. A violation of Section 1 of this emergency order and regulation shall be a misdemeanor punishable pursuant to Section 2.20.100 and/or Section 1.04.010 of the Newport Beach Municipal Code.

3. All peace officers are hereby authorized to enforce the above emergency order and regulation and to arrest any persons who do not obey said order and regulation.

This proclamation is in effect beginning at 4:00 p.m. on March 15, 2020 and shall continue in full force and effect until rescinded or amended, or until the local emergency is proclaimed terminated.

Dated: March 15, 2020


By: Grace Leung
Title: City Manager

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PROOF OF SERVICE - ELECTRONIC TRANSMISSION

THE CITY OF HUNTINGTON BEACH, et al. v. GAVIN NEWSOM, et al.
Superior Court for the State of California – County of Orange
Civil Complex Center
Case Number: 30-2020-01139512-CU-MC-CJC

I declare that I am over the age of eighteen (18) and not a party to this action. My electronic notification address is ljuarez@ringbenderlaw.com. My business address is 3150 Bristol Street, Suite 220, Costa Mesa, CA 92626.

On May 1, 2020, at Foothill Ranch, California, I served the following documents(s):

**CITY OF NEWPORT BEACH'S
AMICUS CURIAE BRIEF**

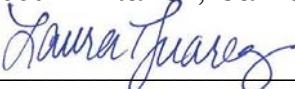
On the interested parties in the action as indicated below or on the attached service list, together with this declaration, as follows:

SEE ATTACHED SERVICE LIST

(X) (By Electronic): Only by emailing the document(s) to the persons at the e-mail address(es). This is necessitated during the declared National Emergency due to the Coronavirus (COVID-19) pandemic because this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. We will provide a physical copy, upon request only, when we return to the office at the conclusion of the national emergency

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 1, 2020, at Foothill Ranch, California.



LAURA T. JUAREZ

SERVICE LIST

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