

1 XAVIER BECERRA
 Attorney General of California
 2 BENJAMIN M. GLICKMAN
 Supervising Deputy Attorney General
 3 JACQUELYN YOUNG
 Deputy Attorney General
 4 ANTHONY P. O'BRIEN
 Deputy Attorney General
 5 State Bar No. 232650
 1300 I Street, Suite 125
 6 P.O. Box 944255
 Sacramento, CA 94244-2550
 7 Telephone: (916) 210-6002
 Fax: (916) 324-8835
 8 E-mail: Anthony.O'Brien@doj.ca.gov
*Attorneys for Defendants Gavin Newsom, in
 9 his official capacity as Governor of
 California, Xavier Becerra, in his official
 10 capacity as the Attorney General of
 California, and Sonia Y. Angell, M.D., in her
 11 official capacity as the State Public Health
 Officer and Director of the California
 12 Department of Public Health*

13 IN THE UNITED STATES DISTRICT COURT
 14 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

<p>16 JD BOLS, 17 18 Plaintiff, 19 20 GAVIN NEWSOM, in his official capacity as Governor of California, et al., 21 22 Defendants.</p>	<p>3:20-cv-00873-BEN-BLM DECLARATION OF JAMES WATT, MD, MPH, IN SUPPORT OF STATE DEFENDANTS' OPPOSITION TO PLAINTIFF'S EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER Dept: Courtroom 5A Judge: The Honorable Roger T. Benitez Trial Date: None Set Action Filed: May 8, 2020</p>
---	--

1 I, JAMES WATT, MD, MPH, declare as follows:

2 1. I am over the age of 18, a United States citizen, and a California resident.
3 I know the following facts of my own personal knowledge, and if called upon as a
4 witness, I could and would testify competently thereto.

5 2. I am employed as the Acting Deputy Director of the Center for Infectious
6 Diseases and Interim State Epidemiologist at the California Department of Public
7 Health (CDPH).

8 3. As the Acting Deputy Director of the Center for Infectious Diseases and
9 Interim State Epidemiologist at CDPH, I coordinate the CDPH's epidemiologic
10 response to disease outbreaks and emerging health threats.

11 4. Prior to my role as Acting Deputy Director of the Center for Infectious
12 Diseases, I was the Chief of the Division of Communicable Disease Control from
13 2010 until 2019, and Deputy State Epidemiologist from 2012 until 2019 at CDPH.

14 5. My background is in epidemiology. I completed my residency in
15 pediatrics in 1993 and obtained a Master of Public Health degree in Maternal and
16 Child Health in 1995. In 1996, I joined the California Department of Health
17 Services (CDHS) as a Public Health Medical Officer II. In 1999, I joined the
18 federal Centers for Disease Control and Prevention (CDC) as an Epidemic
19 Intelligence Service Officer in the Respiratory Diseases Branch. In 2001, I became
20 an Assistant Scientist in the School of Public Health at Johns Hopkins University.
21 In 2006, I joined the CDPH as a Public Health Medical Officer III (Epidemiology)
22 and became Chief of the Tuberculosis Control Branch in 2008 and Chief of the
23 Division of Communicable Disease Control in 2010. In 2012, I became Deputy
24 State Epidemiologist at the CDPH. In addition to my current role as Acting Deputy
25 Director of the Center for Infectious Diseases and Interim State Epidemiologist, I
26 am an Associate at the Johns Hopkins University School of Public Health and
27 Clinical Professor at the University of California, San Francisco, School of
28 Medicine. I have also served on a variety of advisory panels at, among others, the

1 CDHS, CDC, and World Health Organization.

2 6. CDPH is one of sixteen departments and offices within the California
3 Health and Human Services Agency and its fundamental responsibilities include
4 infectious disease control and prevention, food safety, environmental health,
5 laboratory services, patient safety, emergency preparedness, chronic disease
6 prevention and health promotion, family health, health equity and vital records and
7 statistics. Our mission is to advance the health and well-being of California's
8 diverse people and communities.

9 7. The Center for Infectious Diseases protects the people in California from
10 the threat of preventable infectious diseases and assists those living with an
11 infectious disease in securing prompt and appropriate access to healthcare,
12 medications and associated support services.

13 8. I have been intimately involved with the statewide COVID-19 response
14 since January 2020. My role is to oversee analysis of statewide data on COVID-19
15 cases and trends in disease activity. Since January, I have been working full time
16 for approximately 60-70 hours per week to address the pandemic. I am familiar
17 with the guidance issued by the CDPH and the State of California Executive Orders
18 N-33-20 and N-60-20, which are attached as Exhibits A and B, respectively.

19 9. The virus that causes COVID-19 is thought to spread mainly from person
20 to person, mainly through respiratory droplets produced when an infected person
21 coughs or sneezes. These droplets can land in the mouths or noses of people who
22 are nearby or possibly be inhaled into the lungs. The role of other transmission
23 pathways such as through aerosols that may travel long distances or through
24 contaminated surfaces has been suggested and is still being researched.

25 10. COVID-19 can spread quickly. A person with COVID-19, on average,
26 infects approximately two people. Unchecked, COVID-19 spreads exponentially
27 and over 10 transmission cycles, one person could be responsible for 1,024 other
28 people contracting the virus. Physical distancing interventions have been

1 successful in reducing the number of persons infected by each case and changing
2 the exponential pattern of case increases. That is why these interventions are so
3 important for controlling COVID-19 in California. Physical distancing measures
4 include staying home and remaining at least six feet away from others when outside
5 the home.

6 11. Individuals who leave their homes are at an increased risk of contracting
7 the disease. The more people interact outside the home, the more likely they will
8 be to increase the spread of COVID-19 in their communities and any other
9 communities they visit. When an individual is exposed to and contracts the novel
10 coronavirus, there is a high likelihood that he or she will spread COVID-19 to other
11 individuals in his/her community, and in some cases perpetuate the infection rates
12 across county lines. This spread could fan out into different parts of the state,
13 jeopardizing the hard work to contain COVID-19 that is going on in many
14 communities and placing a further strain on hospitals and other resources across the
15 state.

16 12. Spread is more likely when people are in close contact with one another
17 (within about six feet). COVID-19 is currently spreading in the community
18 (community spread) in many affected geographic areas. An area is experiencing
19 community spread when residents are becoming infected with the virus in
20 community settings, and it is not possible to identify the source of exposure in some
21 cases.

22 13. In light of evidence of widespread COVID-19 transmission in
23 communities across the country, CDC recommends that people wear a cloth face
24 covering to cover their nose and mouth in the community setting. This is an
25 additional public health measure people should take to reduce the spread of
26 COVID-19 in addition to, not instead of, physical distancing, frequent hand
27 cleaning, and other everyday preventive actions. A cloth face covering is not
28 intended to protect the wearer but may prevent the spread of virus from the wearer

1 to others. This would be especially important in the event that someone is infected
2 but is not aware of their illness and is not self-isolating. A cloth face covering
3 should be worn when people must go into public settings and especially if they
4 expect to have difficulty maintaining physical distancing, such as when going to the
5 grocery store. However, wearing a mask or frequently washing one's hands, will
6 not prevent completely the spread of the disease. Those measures are only designed
7 to reduce the risk of transmission when distancing is not possible.

8 14. People with COVID-19 have had a wide range of symptoms reported –
9 ranging from mild symptoms to severe illness. A large number of people with
10 COVID-19 have no symptoms. People who have no symptoms can, however, still
11 spread COVID-19. COVID-19 can cause severe disease, including death. Older
12 adults and people of any age who have serious underlying medical conditions are at
13 higher risk for severe illness from COVID-19. As of May 27, 2020, there have
14 been: (1) 101,697 confirmed COVID-19 cases in the state, (2) 3,091 hospitalized
15 patients (currently admitted), and (3) 3,973 fatalities.¹

16 15. The purpose of the state's current health and safety rules is to protect
17 vulnerable people from infection with the coronavirus that causes COVID-19
18 (SARS-CoV-2) and to reduce the spread of that virus in the community. By
19 reducing community spread, we can protect persons at increased risk of severe
20 disease and prevent critical infrastructure, particularly health care facilities, from
21 being overwhelmed. As geographical areas become less susceptible to being
22 overwhelmed by a potential community spread and areas demonstrate the ability to
23 test and trace consistent with relevant guidelines, other health and safety rules may
24 be promulgated to allow more sectors of the economy to operate.

25 16. To reduce the incidence of community spread, the state adopted a staged
26 reopening plan, starting first with opening lower-risk businesses and activities,

27 _____
28 ¹ "COVID-19 Statewide Update (as of May 28, 2020)," available at
<https://update.covid19.ca.gov/#top> (last accessed May 28, 2020).

1 based on what is known about the transmission of the virus. Such an approach
2 reduces the chance that the state and local capacity that has been developed to
3 respond to outbreaks is not overwhelmed as the state moves to reopening all sectors
4 and activities, with modifications. By contrast, a plan in which the state reopens all
5 business at once—as opposed to this progressive plan—would expose the state to
6 severe risks of outbreak and limit the state’s ability to ensure that testing and
7 medical capacity keeps pace with the risk of exposure.

8 17. This staged reopening can vary between different regions and counties
9 depending on their rates of infection and medical capacity. Regions with low
10 infection rates may move through the various reopening stages more rapidly than
11 regions with higher infection rates. If a region reopens and its infection rate
12 increases, the reopening will be reassessed and possibly slowed or stopped.

13 18. Whenever a number of people interact outside the home, there is an
14 increased risk that COVID-19 may be transmitted. The disease may also be
15 transmitted in smaller settings, for example, where individuals are in close
16 proximity for extended periods of time in enclosed spaces.

17 19. Based on my experience with infectious disease prevention, measures
18 that depend on individual behavior, such as mask wearing, are difficult to sustain
19 and less effective than systematic measures, such as canceling gatherings and
20 curtailing activities that increase the risk of transmission.

21 20. In gatherings of large numbers of people it may be very hard to maintain
22 physical distancing. As noted earlier, the virus can be spread by people who are not
23 showing symptoms. Thus, people who gather in groups or near others (other than
24 those with whom they live) will not be able to know whether other individuals who
25 are in close proximity are carrying the virus. By gathering in large groups, and in
26 close proximity to others, individuals put themselves and others at risk.

27 21. The risk appears to be increased where groups of individuals are in close
28 proximity for extended periods. When an individual is exposed to and contracts the

1 novel coronavirus at a large gathering, there is a high likelihood that he or she will
2 spread COVID-19 to other individuals in his/her community, and in some cases
3 perpetuate the infection rates across county lines.

4 22. For certain activities or settings, physical distancing may be difficult or
5 impossible to maintain. By their nature, these pose a higher risk for transmission
6 than activities where physical distancing can generally be maintained. Relevant to
7 this case, barbershops and salons are examples of settings where it is not possible to
8 provide services while maintaining physical distancing. And, as noted earlier, the
9 virus can be spread by people who are not showing symptoms, because people will
10 not be able to know whether other individuals who are in close proximity are
11 carrying the virus. The more clients or customers a practitioner serves face-to-face
12 in his or her business, the greater the risk that the practitioner themselves will
13 become infected. If the practitioner does become infected, the practitioner then
14 risks transmitting to multiple clients that they serve.

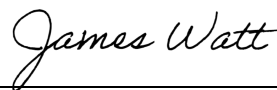
15 I declare under the penalty of perjury under the laws of the United States that
16 the foregoing is true and correct to my personal knowledge.

17 Executed on May 29, 2020, in Richmond, California.

18

19

20



James Watt, MD, MPH

21

22

23

24

25 SA2020301135

26 34095324.docx

27

28

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

EXECUTIVE ORDER N-60-20

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 on March 19, 2020, I issued Executive Order N-33-20, which directed all California residents to immediately heed current State public health directives; and

WHEREAS State public health directives, available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/>, have ordered all California residents stay home except for essential needs, as defined in State public health directives; and

WHEREAS COVID-19 continues to menace public health throughout California; and

WHEREAS the extent to which COVID-19 menaces public health throughout California is expected to continue to evolve, and may vary from place to place within the State; and

WHEREAS California law promotes the preservation of public health by providing for local health officers—appointed by county boards of supervisors and other local authorities—in addition to providing for statewide authority by a State Public Health Officer; and

WHEREAS these local health officers, working in consultation with county boards of supervisors and other local authorities, are well positioned to understand the local needs of their communities; and

WHEREAS local governments are encouraged to coordinate with federally recognized California tribes located within or immediately adjacent to the external geographical boundaries of such local government jurisdiction; and

WHEREAS the global COVID-19 pandemic threatens the entire State, and coordination between state and local public health officials is therefore, and will continue to be, necessary to curb the spread of COVID-19 throughout the State; and

WHEREAS State public health officials have worked, and will continue to work, in consultation with their federal, state, and tribal government partners; and

WHEREAS the State Public Health Officer has articulated a four-stage framework—which includes provisions for the reopening of lower-risk businesses and spaces ("Stage Two"), to be followed by the reopening of higher-risk businesses and spaces ("Stage Three")—to allow Californians to gradually resume various activities while continuing to preserve public health in the face of COVID-19; and

WHEREAS the threat posed by COVID-19 is dynamic and ever-changing, and the State's response to COVID-19 (including implementation of the four-stage framework) should likewise retain the ability to be dynamic and flexible; and

WHEREAS to preserve this flexibility, and under the provisions of Government Code section 8571, I find that strict compliance with the Administrative Procedure Act, Government Code section 11340 et seq., would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

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, 8571, 8627, and 8665; and also in accordance with the authority vested in the State Public Health Officer by the laws of the State of California, including but not limited to Health and Safety Code sections 120125, 120130, 120135, 120140, 120145, 120150, 120175, and 131080; do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) All residents are directed to continue to obey State public health directives, as made available at <https://covid19.ca.gov/stay-home-except-for-essential-needs/> and elsewhere as the State Public Health Officer may provide.
- 2) As the State moves to allow reopening of lower-risk businesses and spaces ("Stage Two"), and then to allow reopening of higher-risk businesses and spaces ("Stage Three"), the State Public Health Officer is directed to establish criteria and procedures—as set forth in this Paragraph 2—to determine whether and how particular local jurisdictions may implement public health measures that depart from the statewide directives of the State Public Health Officer.

In particular, the State Public Health Officer is directed to establish criteria to determine whether and how, in light of the extent to which the public health is menaced by COVID-19 from place to place within the State, local health officers may (during the relevant stages of reopening) issue directives to establish and implement public health measures less restrictive than any public health measures implemented on a statewide basis pursuant to the statewide directives of the State Public Health Officer.

The State Public Health Officer is further directed to establish procedures through which local health officers may (during the relevant stages of reopening) certify that, if their respective jurisdictions are subject to proposed public health measures (which they shall specify to the extent such specification may be required by the State Public Health Officer) that are less restrictive than public health measures implemented on a statewide basis pursuant to the statewide directives of the State Public Health Officer, the public health will not be menaced. The State Public Health Officer shall additionally establish procedures to permit, in a manner consistent with public health and

safety, local health officers who submit such certifications to establish and implement such less restrictive public health measures within their respective jurisdictions.

The State Public Health Officer may, from time to time and as she deems necessary to respond to the dynamic threat posed by COVID-19, revise the criteria and procedures set forth in this Paragraph 2. Nothing related to the establishment or implementation of such criteria or procedures, or any other aspect of this Order, shall be subject to the Administrative Procedure Act, Government Code section 11340 et seq. Nothing in this Paragraph 2 shall limit the authority of the State Public Health Officer to take any action she deems necessary to protect public health in the face of the threat posed by COVID-19, including (but not limited to) any necessary revision to the four-stage framework previously articulated by the State Public Health Officer.

- 3) Nothing in this Order shall be construed to limit the existing authority of local health officers to establish and implement public health measures within their respective jurisdictions that are more restrictive than, or that otherwise exist in addition to, the public health measures imposed on a statewide basis pursuant to the statewide directives of the State Public Health Officer.

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 4th day of May 2020.

GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State

CERTIFICATE OF SERVICE

Case Name: **Bols, JD v. Gavin Newsom, et al.** No. **3:20-cv-00873-BEN-BLM**

I hereby certify that on May 29, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**DECLARATION OF JAMES WATT, MD, MPH, IN SUPPORT OF
STATE DEFENDANTS' OPPOSITION TO PLAINTIFF'S EX PARTE
APPLICATION FOR A TEMPORARY RESTRAINING ORDER**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 29, 2020, at Sacramento, California.

Eileen A. Ennis
Declarant


Signature

SA2020301135
34112524.docx