

## TENTATIVE RULINGS

DEPT C28

Judge Thomas S. McConville

April 16, 2024 at 9:00 a.m.

**Court Reporters:** Official court reporters (i.e., court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- [Civil Court Reporter Pooling](#); and
- For additional information, please see the court's website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

**Tentative rulings:** The court endeavors to post tentative rulings on the court's website in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

**Submitting on tentative rulings:** If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5228. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

**Non-appearances:** If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

**Appearances:** Department C28 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C28 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at <https://www.occourts.org/media-relations/civil.html> before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at <https://www.occourts.org/media-relations/aci.html>. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at <https://www.occourts.org/media-relations/aci.html>. Those procedures and guidelines will be strictly enforced.

**Public Access:** The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5228 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

**Arguments:** The court will allow arguments on the pending motions, but those arguments must not repeat arguments previously made in each parties' applicable briefs.

**No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.**

#	Case Name	Tentative
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55.	<p>Hall v. County of Orange 2021-01220678</p>	<p>Respondents County of Orange and Orange County Board of Supervisors' demurrer to Petitioners' Third Amended Verified Petition for Writ of Mandate and Complaint [TAVP] is SUSTAINED, on grounds of failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).)</p> <p>On its own motion, the court takes judicial notice of Petitioners' 11-13-23 "cease and desist" letter (Ex. A to Opposition). (Evid. Code, § 452, subd. (c) ["official acts"]; <i>Commercial Union Assurance Co. v. City of San Jose</i> (1982) 127 Cal.App.3d 730, 740, citing <i>Chas. L. Harney, Inc. v. State of California</i> (1963) 217 Cal.App.2d 77, 85-86 [court may take judicial notice of government claims and any response as "official acts"].)</p> <p><u>4<sup>th</sup> cause of action: declaratory relief.</u></p> <p>Petitioners' 4<sup>th</sup> cause of action seeks a declaration that the emergency laws and orders that were in effect during the COVID-19 pandemic require Respondent Board to "(1) periodically review local County conditions at a reasonable interval to determine whether there is a continued need for a declaration of either a local or local health emergency; (2) terminate the local and/or local health emergency at the earliest possible date conditions warrant, regardless of the time intervals at which these reviews and declarations might occur and (3) conduct both the reviews and discuss the termination of the declared local emergencies in an open and public meeting subject to the requirements of the Brown Act." (TAVP, ¶ 135; see also ¶¶ 10-12, 51, 53, 54, 68 [Governor Newsom's 3-4-20 emergency Proclamation suspending</p>

30- and 60-day review requirements of Health & Saf. Code, § 101080, and Gov. Code, § 8630, and Respondents' subsequent 6-22-21 vote to approve "immediate termination" of local emergency orders "upon the Governor's termination of the state of emergency and without further action of the Board".)

However, the TAVP acknowledges that both the state and local emergency orders ended on 2-28-23. (TAVP, ¶¶ 93, 94.) Thus, Respondents' duties are no longer subject to the Governor's prior 3-4-20 Proclamation suspending the 30-day and 60-day review requirements of Health & Saf. Code, § 101080, and Gov. Code, § 8630, subd. (c). Respondents are now subject to the express terms of the foregoing code sections.

Events have occurred which render it impossible for the court to grant any effectual relief as to Petitioners' claims that Respondents are not complying with their obligations under Health & Saf. Code, § 101080, and Gov. Code, § 8630, with respect to the 3-4-20 Proclamation. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1574 ["the duty of ... every ... judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or ... to declare principles or rules of law which cannot affect the matter in issue in the case before it".]) Accordingly, the 4<sup>th</sup> cause of action is MOOT in this respect.

The TAVP also fails to adequately allege any exception to mootness. While Petitioners generally allege that future violations of the Ralph M. Brown Open Meetings Act, Gov. Code §§ 54950 et seq. ["Brown Act"] are likely to recur (TAVP, ¶¶134, 135), these are conclusions without any supporting facts. (See *Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 966-967 [on demurrer, the court is required to treat the pleading as admitting all material facts properly pleaded, but is not required to assume the truth of contentions, deductions, or conclusions of law]; see also *Lopez v. Southern California Rapid Transit District*

(1985) 40 Cal.3d 780, 795 [specific pleading required against governmental entities].)

The 4<sup>th</sup> cause of action (and the TAVP generally) also alleges that Respondents have not and will not conduct reviews of local emergency conditions in accordance with the Brown Act.

Assuming that these newly-added claims are within the scope of this court's 10-16-23 order granting Respondents' motion for judgment on the pleadings with leave to amend, Petitioners' Brown Act claims fail. First, these claims are also moot, as both the statewide state of emergency and local emergency orders have expired. (TAVP, ¶¶ 83, 94.) Thus, Respondents have no ongoing duty to review local conditions and/or terminate the local emergency orders, whether in a public hearing or not.

Second, as to Respondents' alleged prior Brown Act violations, the TAVP fails to allege compliance with the "cease and desist" notice requirements of Gov. Code, § 54960.2. (See *Dujardin v. Ventura County Gen. Hosp.* (1977) 69 Cal. App. 3d 350, 355 [complaint against government entity must allege compliance with prelitigation notice requirements].)

Respondents' Opposition includes a copy of an 11-13-23 "cease and desist" notice (Ex. A), of which the court takes judicial notice as stated above. However, Ex. A is insufficient to show compliance with Gov. Code, § 54960.2, because it is dated 11-13-23, the same date the TAVP was filed, and thus shows that Petitioners failed to provide Respondents 30 days to respond. (Gov. Code, § 54960.2, subds. (a)(3), (c).) Moreover, Gov. Code, § 54960.2(a)(4) has a 60-day waiting period before commencing an such an action. Petitioners have either filed their action too early (i.e. filing the TAVP the date of the letter), or have waited too long (i.e. beyond 60 days) without initiating their post-exhaustion action. (Gov. Code, § 54960.2, subd. (a)(4).) Even assuming the authenticity of the

		<p>unsigned Ex. A, Petitioners have failed to comply with these procedural requirements.</p> <p>Finally, while Gov. Code, § 54960.2 does not apply to ongoing or future Brown Act violations (<i>Center for Local Government Accountability v. City of San Diego</i> (2016) 247 Cal.App.4th 1146, 1154), the TAVP does not sufficiently allege ongoing and future Brown Act violations, for the same reasons discussed above as to mootness. The TAVP fails to allege any facts, as opposed to conclusions, that Respondents will not comply with the Brown Act regarding some potential future local emergency declarations tied to a state-level emergency declaration.</p> <p><u>5<sup>th</sup> cause of action: declaratory relief; 6<sup>th</sup> cause of action: injunctive relief:</u></p> <p>Both the 5<sup>th</sup> C/A for declaratory relief and 6<sup>th</sup> C/A for injunctive relief are specifically limited to allegations that Respondents have not and will not comply with the Brown Act, both regarding the expired Local Emergency Orders (TAVP, ¶¶ 151, 152, 166), and potential “future emergencies” (TAVP, ¶¶153, 154, 158-160, 168, 172). Accordingly, these causes of action fail for the same reasons discussed above in connection with the 4<sup>th</sup> cause of action.</p> <p><u>Amendment:</u></p> <p>Petitioners have not shown how the foregoing defects are capable of amendment. (<i>Goodman v. Kennedy</i> (1976) 18 Cal.3d 335, 349 [plaintiff’s burden to show how pleading defects can be cured by amendment].) Accordingly, leave to amend is DENIED.</p> <p>Respondents shall give notice.</p>
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