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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE EASTERN DISTRICT OF CALIFORNIA
13 SACRAMENTO DIVISION

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| <p>15 RALPH COLEMAN, et al.,</p> <p>16</p> <p>17 Plaintiffs,</p> <p>18 v.</p> <p>19 GAVIN NEWSOM, et al.,</p> <p>20 Defendants.</p> | <p>2:90-cv-00520 KJM-DB (PC)</p> <p>REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' RESPONSE TO ORDER TO SHOW CAUSE</p> <p>Judge: The Honorable Kimberly J. Mueller</p> |
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22 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:**

23 **PLEASE TAKE NOTICE** that under Federal Rule of Evidence 201, Defendants request
24 the Court take judicial notice of these documents, true and correct copies of which are attached as
25 Exhibits:

- 26 1. Guidance from the Centers for Disease Control and Prevention (CDC) regarding
- 27 COVID-19 and social distancing (retrieved on April 8, 2020), attached as Exhibit A;

1 2. Executive Order N-33-20 issued by Governor Gavin Newsom (March 19, 2020),
2 attached as Exhibit B;

3 **LEGAL STANDARD**

4 Judicial notice may be taken of any “fact that is not subject to a reasonable dispute because
5 it... is generally known within the trial court's territorial jurisdiction [or] can be accurately and
6 readily determined from sources whose accuracy cannot be reasonably questioned.” Fed. R.
7 Evid. 201(b). The court may take judicial notice of "matters of public record," *Lee v. City of Los*
8 *Angeles*, 250 F.3d 668, 689 (9th Cir. 2001), including, for example, an executive order issued by
9 the executive branch of government. See, e.g., *S.A. v. Trump*, 363 F. Supp. 3d 1048, 1061 n. 36
10 (N.D. Cal. 2018) (“[t]he court can take judicial notice of the Executive Order . . . as a matter of
11 public record”); *Natural Res. Defense Council v. McCarthy*, 2016 WL 6520170, at *2 (N.D. Cal.
12 Nov. 3, 2016) (district court took judicial notice of Executive Order issued by former California
13 Governor Brown).

14 The Court may also take judicial notice of official statements and directives which are: (1)
15 statements of government officials or entities that are not subject to reasonable dispute; (2) bills
16 considered by Congress or other legislative history; or (3) other public records and government
17 documents available on reliable internet sources, such as government websites. *Sierra Club v.*
18 *Trump*, 379 F. Supp. 3d 883, 892 (N.D. Cal. 2019), citing *DeHoog v. Anheuser-Busch InBev*
19 *SA/NV*, 899 F.3d 758, 763 n.5 (9th Cir. 2018) (taking “judicial notice of government documents,
20 court filings, press releases, and undisputed matters of public record”.) Official government
21 agency or department policies can also be judicially noticed. They can be accurately determined
22 from other reliable sources, and are appropriate for judicial notice. See *Wood v. City of San*
23 *Diego*, No. 03-cv-1910-MMA (POR), 2010 WL 2382335, at *5 (S.D. Cal. June 10, 2010) (taking
24 judicial notice of sections of the San Diego Municipal Code relevant to the proceedings); see also
25 *Uriarte v. Bostic*, Case No.: 15-cv-1606-MMA (PCL), 2017 WL 2312084, at *3–4 (S.D. Cal.
26 May 26, 2017) (granting judicial notice of copies of the Calexico Police Dep’t Policy Manual);
27 *Foster v. City of Oakland*, 621 F. Supp. 2d 779, 795 (N.D. Cal. 2008) (taking judicial notice of
28 police strip search policies). Likewise, the court can take judicial notice of public health guidance

1 provided by state agencies. See *In re: JOSE URIBE-SOLTERO Debtor.*, No. 2:19-25136-RK,
2 2020 WL 1320641, at *1 (Bankr. C.D. Cal. Mar. 17, 2020) (court took judicial notice of
3 California Department of Public Health guidance related to COVID-19).

4 Here, each of the documents included in Defendants' request meet the standard for judicial
5 notice. These public records are not subject to reasonable dispute as they are generally known
6 within the Court's jurisdiction, and their accuracy cannot be reasonably questioned. Fed. R. Evid.
7 201(b). Each document is also relevant to this case as they relate to the COVID-19 pandemic and
8 the State's response to the pandemic.

9 For these reasons, Defendants respectfully request that the Court take judicial notice of the
10 above documents.

11 Dated: April 8, 2020

Respectfully Submitted,

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13 XAVIER BECERRA
14 Attorney General of California
15 ADRIANO HRVATIN
16 Supervising Deputy Attorney General

17 /s/ Tyler V. Heath

18 TYLER V. HEATH
19 Deputy Attorney General
20 *Attorneys for Defendants*

Exhibit A



Coronavirus Disease 2019

Social Distancing, Quarantine, and Isolation

Keep Your Distance to Slow the Spread

Limiting face-to-face contact with others is the best way to reduce the spread of coronavirus.

What is social distancing?

Social distancing, also called “physical distancing,” means keeping space between you and others outside your home. To practice social or physical distancing:

- Stay at least 6 feet (2 meters) from other people
- Do not gather in groups
- Stay out of crowded places and avoid mass gatherings

In addition to [everyday steps to prevent COVID-19](#), keeping space between you and others outside your home helps you have to avoid being exposed to this virus and slowing its spread locally and across the country.

When COVID-19 is spreading in your area, everyone should limit close contact with others in indoor and outdoor spaces. Since people can spread the virus before they know they are infected from others when possible, even if you have no symptoms. Social distancing is especially important for people at a [higher risk of getting very sick](#).

Why practice social distancing?

COVID-19 spreads mainly among people who are in close contact (within about 6 feet) with others. This happens when an infected person coughs, sneezes, or talks, and droplets from their mouth or nose go into the air and land in the mouths or noses of people nearby. The droplets can also be inhaled. Studies indicate that people who are infected but do not have symptoms likely also play a role in spreading the virus.

It may be possible that a person can get COVID-19 by touching a surface or object that someone has touched and then touching their own mouth, nose, or eyes. However, this is not thought to be the main way people get COVID-19. The virus can live for hours or days on a surface, depending on factors such as sunlight and humidity. Avoiding contact with infected people and contaminated surfaces.

Although the risk of severe illness may be different for everyone, anyone can get an infection. Everyone has a role to play in slowing the spread and protecting themselves, their family, and their community.

Tips for social distancing

- Follow guidance from authorities where you live.
- If you need to shop for food or medicine at the grocery store or pharmacy, stay at least 6 feet away from others.
 - Use mail-order for medications, if possible.
 - Consider a grocery delivery service.
 - Cover your mouth and nose with a [cloth face cover](#) when around others, especially in public places, for example to the grocery store.
 - Stay at least 6 feet between yourself and others, even when you wear a face cover.
- Avoid large and small gatherings in private places and public spaces, such as restaurants, bars, shopping malls, or any other place. This advice applies to people of any age, including teenagers. Children and teens should not have in-person playdates while school is out. To help maintain social distancing, learn [tips to keep children healthy while school's out](#).
- Work from home when possible.
- If possible, avoid using any kind of public transportation, ridesharing, or taxis.
- If you are a student or parent, talk to your school about options for digital/distance learning.

Stay connected while staying away. It is very important to stay in touch with friends and family while staying away from home. Call, video chat, or stay connected using social media. Everyone reacts differently to social distancing. Staying connected to socially distance yourself from someone you love can be difficult. [Read tips for staying connected](#)

What is the difference between quarantine and isolation?

Quarantine

Quarantine is used to **keep someone who *might* have been exposed to COVID-19** quarantine stays separated from others, and they limit movement outside of their home. People who have been exposed to the virus without knowing it (for example, when traveling or in a public place) may have the virus without feeling symptoms. Quarantine helps limit further spread of COVID-19.

Isolation

Isolation is used to **separate sick people from healthy people**. People who are in isolation should stay at home, anyone sick should separate themselves from others by staying in a specific room and using a different bathroom (if possible).

What should I do if I might have been exposed to COVID-19? Or have confirmed COVID-19?

If you think you have been exposed to COVID-19, [read about symptoms](#).

If you...

If you or someone in your home might have been exposed

Steps to take...

Self-Monitor

Be alert for symptoms. Watch for **fever,* cough, or shortness of breath**.

- Take your temperature if symptoms develop.
- Practice social distancing. Maintain 6 feet of distance from others, and stay at home.
- Follow [CDC guidance](#) if symptoms develop.

If you...

If you feel healthy but:

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- [Recently had close contact](#) with a person with COVID-19, or
- Recently [traveled](#) from somewhere outside the U.S. or on a cruise ship or river
- Check your temperature twice a day and watch for symptoms.
- Stay home for 14 days **and** self-monitor.
- If possible, stay away from people who are [high-risk](#) for getting very sick from COVID-19.

If you...

If you:

- Have been diagnosed with COVID-19, or
- Are waiting for test results, or
- Have symptoms such as cough, fever, or shortness of breath

Steps to take...

Self-Isolate

- **Stay in a specific “sick room” or area** and away from other people. If possible, use a separate bathroom.
- Read important information about [caring for yourself](#) or [someone else who is sick](#).

More Information

- [How to Protect Yourself](#)
- [Cleaning and Disinfecting Your Home](#)
- [Gatherings and Community Events](#)

Exhibit B

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