

HAMILL LAW & CONSULTING

March 27, 2023

VIA EMAIL

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Re: Alliance of Los Angeles County Parents v. County Of Los Angeles Department Of Public Health, et al., Los Angeles County Case No. 22STCP02772 – Settlement Proposal

Dear Mr. Raygor, Ms. Alter, Ms. Barger, Ms. Horvath, Ms. Hahn, Ms. Mitchell and Ms. Solis:

My office represents the Alliance of Los Angeles County Parents in the above-referenced case.

During the Case Management Conference in this matter held on March 27, 2023, the parties discussed possible settlement of the case. This letter restates the offer made by the Alliance of Los Angeles County Parents (“Alliance”) on the record.

We would appreciate a written response to this offer no later than April 3, 2023. If the Alliance is forced to continue litigating this matter, the demand for fees will increase. The Alliance’s offer is to enter into a settlement agreement encompassing the following:

- Los Angeles County Department of Public Health (“DPH”) will reopen public comments and replies on all of its social media accounts, including Facebook, Instagram, and Twitter. DPH will refrain from blocking, hiding, and restricting comments from the public.
- The Alliance will dismiss the remaining causes of action and forego appeal of the first, second, and fourth causes of action.
- The County will pay to counsel for Alliance \$10,000, representing deeply discounted attorneys’ fees and costs of litigating this matter to date.

If this matter proceeds without resolution, the Alliance intends to raise issues on appeal that have sweeping impact on public health officer discretion, the proper level of judicial scrutiny applied to public agencies, and the rights of citizens in California. Those issues include but are not limited to the following:

1. The Petition challenges future mandates, not merely the 10-day exposure mandate.
 - With respect to mootness, the United States Supreme Court rejected a similar argument made by the State of New York in *Roman Catholic Diocese of Brooklyn v. Cuomo* (2020) 141 S.Ct. 63. In that case, petitioner's claims were not moot because the petitioner remained under constant threat of reimposition of restrictions, and the Governor regularly changed classifications of particular areas without prior notice. Similarly, children in Los Angeles County are under constant threat of mandates from Defendants, and Defendants regularly change classifications, orders, criteria and benchmarks without prior notice. As the Supreme Court stated in the *Roman Catholic Diocese* case, there is no reason why petitioner should bear the risk of suffering further irreparable harm in the event of another reclassification. Here, Alliance members should not bear the risk of suffering further irreparable harm in the event of another mandate.
 - This is critical because DPH continues to rely on inflated data to implement public health orders, unlike the 10-day exposure mandate which, according to DPH, is not based on community levels.

2. The CDC recommendation is NOT a mandate.
 - A mandate removes all choice and autonomy.
 - Under a mandate, as opposed to a recommendation, there is no consideration for intolerance by children or harm to children. CDC guidelines did not consider these issues because they did not impose a mandate. Under CDC guidance, parents have choice of whether to force their own children to mask.
 - While children can arguably obtain an exemption, the Medical Board of California investigates physicians who issue exemptions, and they are accordingly limited and difficult to obtain.
 - For low-income families, obtaining an exemption requires time, money, access and knowledge not readily available.
 - While it might arguably be *per se* rational to implement a recommendation mirroring a CDC recommendation, that is not what we have here. DPH's mandate is far more severe and requires a different analysis.
 - The CDC recommendation was framed in a way that minimizes harm to those who *choose* to continue masking.
 - The DPH mandate removes all choice.

3. Reliance on a CDC recommendation to implement a mandate does not render a mandate *per se* rational and immune from judicial review.
 - Trial courts have a duty to review differences in implementation and impacts on the community, among other factors.
 - The ruling issued by the trial court here renders the CDC and DPH *de facto* legislative bodies
 - There has been no evaluation of whether a rational relationship to a legitimate government interest exists. Petitioners must be afforded the opportunity to evaluate whether a legitimate government interest still exists following a material change in circumstances.

- While one could argue a rational relationship, DPH failed to demonstrate it considered all relevant factors, harms, the seriousness of pandemic, and accurate data, among other things.

4. Whether implementing a mandate based on a CDC recommendation is *per se* rational and not subject to challenge.

- A public health order is not legislation. While it may be rational *per se* to rely on a CDC recommendation, the CDC is relying on data from LADPH, and that reliance is not rational.

5. Whether the Court applied the appropriate standard on demurrer.

- If the Court's order stands, public agency decisions are essentially immune from judicial review.

If DPH is not amenable to the Alliance's proposal, we would appreciate a reasonable proposed compromise.

We would very much like to avoid incurring attorney's fees and wasting taxpayer resources to litigate this matter. We would strongly prefer that such resources be allocated to programs that help restore full normalcy to children.

Very Truly Yours,

Julie Hamill
Counsel for Alliance of Los Angeles County Parents