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9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **COUNTY OF RIVERSIDE**

11 ALLIANCE FOR CONSTITUTIONAL
12 SEX OFFENSE LAWS, INC.,
13 a California non-profit corporation;
14 JOHN DOE, an individual; and
15 JAMES ROES #1 through #20, inclusive;

16 Petitioners,

17 vs.

18 MURRIETA POLICE DEPARTMENT,

19 Respondent.

Case No.:

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(CAL. CIV. PROC. CODE §§ 1085, 1060)**

20 **INTRODUCTION**

21 1. This action challenges the discretionary, unnecessary, and harmful decision by Respondent
22 Murrieta Police Department (“Police Department”) to require persons required to register as a sex
23 offender (“Registrants”) who are vulnerable to the COVID-19 virus to leave their homes and to
24 appear in person at the Police Department for their 30-day, 90-day, or annual registration updates
25 (hereinafter, “**periodic updates**”). Consistent with the Sex Offender Registration Act, periodic
26 updates can be completed through means that do not require vulnerable persons to subject
27 themselves to a risk of harm during an in-person registration that is universally recognized by
28 national, state, and local government – in violation of orders issued by those same governments.

1 2. This issue warrants the Court’s attention at this time because the extraordinary measures
2 now being taken to slow the spread of the COVID-19 pandemic are undermined by requiring that
3 Registrants continue to appear in person for periodic updates. Specifically, as of March 19, 2020,
4 the Governor of California has ordered as follows: “Everyone is required to stay home except to
5 get food, care for a relative or friend, get necessary health care, or go to an essential job.”¹ The
6 Order contains no exception for registration updates.

7 3. Sex offender registration is governed by the California Sex Offender Registration Act,
8 codified at Penal Code section 290, *et seq.* (hereinafter, “Section 290” or “Act”). Contrary to
9 popular understanding, the text of the Act does not require Registrants to appear in person for
10 periodic updates. (See Cal. Penal Code § 290.11, subs. (a)-(c).) Instead, the Act merely requires
11 that Registrants be “Registered.” (*Ibid.*) In addition, there is no practical reason why Registrants
12 must appear in person for periodic updates because period updates are for the purpose of confirming
13 information that registering agencies already possess, or for the purpose providing information that
14 can be transmitted through alternative means which pose little or no risk of exposure of COVID-19,
15 such as the telephone or video conferencing apps and programs. Use of this widely available
16 technology provides law enforcement with methods to obtain the information necessary to complete
17 periodic updates without subjecting Registrants and the public at large to potentially harmful in-
18 person visits to locations where they could either contract or spread COVID-19. Requiring such in-
19 person visits to the Police Department during a pandemic, in contravention of state and local orders,
20 is an abuse of discretion as pled herein.

21 4. Petitioners include a civil rights organization that supports Registrations, as well as an
22 individual Registrant, Petitioner John Doe, who is deemed vulnerable to infection by COVID-19
23 because of his age. As pled more fully below, Respondent Murrieta Police Department has directed
24 Petitioner John Doe and all Registrants to appear in person for their periodic updates. Respondent’s
25 mandate that all Registrants, including those with high-risk COVID-19 factors, appear in person
26 forces Petitioner and all Registrants into a Catch-22. That is, they must either subject themselves to
27

28 ¹ <https://covid19.ca.gov/>, last visited March 23, 2020.

1 COVID-19 infection (in violation of a state order), or violate Section 290 by failing to appear in
2 person, thereby inviting arrest and custody in jail or prison (where the risk of COVID-19 infection is
3 much greater). Section 290 does not require Registrants to play Russian Roulette with their lives in
4 order to provide the information required for their periodic updates.

5 5. Accordingly, Petitioners seek a writ of mandate directing Respondent to process 30-day, 90-
6 day, and annual updates without the additional, non-statutory requirement to appear in person, as
7 well as an injunction and declaratory relief preventing Respondent from requiring Registrants to
8 appear in person for periodic updates until the threat of COVID-19 has ended.

9 **JURISDICTION AND VENUE**

10 6. As a court of unlimited jurisdiction, the Riverside County Superior Court has jurisdiction
11 over this action for mandamus, declaratory, and injunctive relief pursuant to California Code of
12 Civil Procedure sections 1084, *et seq.* and 1060.

13 7. Venue is proper within this Court because Respondent Murrieta Police Department is
14 located in Riverside County.

15 **PARTIES**

16 8. Petitioners reallege and incorporate herein, as though fully set forth, all and inclusively,
17 paragraphs 1 through 7.

18 9. Petitioner Alliance for Constitutional Sex Offense Laws, Inc. (“ACSOL”) is a non-profit
19 corporation incorporated and headquartered in Los Angeles County, California. ACSOL is
20 dedicated to protecting the Constitution by restoring the civil rights of more than 109,000
21 Registrants in the State of California through advocacy, education, and litigation on behalf of them
22 and their families. ACSOL is beneficially interested in the outcome of these proceedings, as well as
23 in Respondent’s performance of its legal duties, and therefore seeks by this Petition to procure
24 enforcement of a public duty on a question of public right. (Cal. Civ. Proc. Code §1086.) In
25 addition, ACSOL’s membership includes Registrants residing in the City of Murrieta who are
26 required to register as sex offenders, who are injured by the discretionary decision challenged in this
27 action, and who are beneficially interested in the outcome of this proceeding.

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1 10. Petitioner John Doe is a Registrant residing in the City of Murrieta, County of Riverside.
2 Petitioner John Doe is required to update his registration with the Murrieta Police Department
3 within five working days of his birthday in early June 2020. Petitioner John Doe is currently 69
4 years old and will, in fact, turn 70 years old upon his birthday.

5 11. Petitioners James Roes #1 through #20, inclusive, are additional Registrants residing in the
6 City of Murrieta who are vulnerable to infection by the COVID-19 virus due to age or as otherwise
7 defined by healthcare officials, whom Respondent is currently requiring to appear in person for
8 periodic updates. The true names of Petitioners James Roe #1 through #20 are currently unknown,
9 but Petitioners will add those parties to this action when their names become known.

10 12. Respondent Murrieta Police Department is a local law enforcement agency responsible for
11 implementing the Act in the City of Murrieta, County of Riverside (Cal. Penal Code § 290, subd.
12 (b).) Respondent is responsible for facilitating the periodic updates for all Registrants residing in
13 the City of Murrieta, including Petitioner John Doe. On information and belief, Respondent is
14 responsible for the discretionary decision challenged in this action.

15 **FACTS**

16 13. Petitioners reallege and incorporate herein, as though fully set forth, each and every, all and
17 inclusively, paragraphs 1 through 12.

18 **The Coronavirus Pandemic and State and Local Orders to Remain at Home**

19 14. The COVID-19 pandemic is a global emergency that is unprecedented in modern history.
20 Extraordinary measures have been implemented by governments at every level. Most notably, on
21 March 19, 2020, the Governor of California issued an order calling upon all 40 million residents of
22 the state to remain in their homes, with limited exceptions for essential travel (hereinafter, the
23 “Order”).² Specifically, the Governor’s Order directs “all individuals living in the State of
24 California to stay home or at their place of residence except as needed to maintain continuity of
25 operations of the federal critical infrastructure sectors, as outlined at

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27 _____
28 ² <https://covid19.ca.gov/stay-home-except-for-essential-needs/>

1 <https://www.cisa.gov/identifying-critical-infrastructure-during-covid-19>.”³ Sex offender
2 registration is not listed among the exceptions to the Order, and violation of the Order can result in
3 penalties and punishment.

4 15. The Order emphasizes that persons within specified vulnerable populations must self-isolate
5 and remain in their homes. As reflected in the Order, the Center for Disease Control and the
6 California Department of Health Care Services declare the following persons at “higher risk” for
7 contractive COVID-19:^{4, 5}

- 8 a. “Persons aged 65 and older”;
- 9 b. Persons with HIV/AIDS or “compromised immune systems”; and
- 10 c. Persons with “chronic serious medical conditions” or asthma;

11 16. On March 19, 2020, the Murrieta City Council also declared a Local Emergency throughout
12 the City of Murrieta, finding “that conditions of extreme peril to the safety of persons and property
13 have arisen within the City of Murrieta caused by the COVID-19 (Coronavirus) pandemic event of
14 2020.”⁶ The City of Murrieta has declared that “It’s essential to follow recommendations that will
15 help us minimize local impact” of COVID-19.⁷

16 **The California Sex Offender Registration Act Does Not Require In-person Periodic Updates**

17 17. In general, the Act requires persons convicted of the offenses described in Section 290,
18 subdivision (c) who reside in California to complete their initial registration with local law
19 enforcement within specified time frames when they: (1) are release from custody or supervision,
20 (2) establish residency in the state, (3) change their residence address, or (4) cease residing in
21 California.

22 18. The Act further requires Registrants to periodically update their registration with local law
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24 ³ <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

25 ⁴ <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>

26 ⁵ <https://covid19.ca.gov/what-you-can-do/#symptoms-risks>

27 ⁶ <https://www.murrietaca.gov/DocumentCenter/View/3649/Declaration-of-Local-Emergency?bidId=>

28 ⁷ <https://www.murrietaca.gov/955/4767/Coronavirus>

1 enforcement at specified intervals, as follows:

- 2 a. All Registrants must provide an “annual update” within five working days of
3 their birthday, beginning on his or her first birthday after the initial
4 registration. (Penal Code § 290.012, subd. (a).)
- 5 b. Registrants designated “sexually violent predators” must update their
6 registration every 90 days. (Penal Code § 290.012, subd. (b).)
- 7 c. Transient Registrants (*i.e.*, those with no fixed residence address), must
8 update their registration every 30 days. (Penal Code § 290.012, subd. (c).)

9 19. Contrary to popular understanding, the Act does not require initial registration, annual
10 updates, 90-day updates, or 30-day updates (*i.e.*, “periodic updates”) to be in person. Instead, the
11 Act only requires that periodic updates occur, without specifying how the Registrant is to provide
12 the required information to the registering agency. (E.g., Penal Code § 290.012, subd. (a)
13 [“Beginning on his or her first birthday following registration or change of address, the person shall
14 be required to register annually, within five working days of his or her birthday, to update his or her
15 registration with the entities described in subdivision (b) of Section 290. At the annual update, the
16 person shall provide current information as required on the Department of Justice annual update
17 form, including the information described in paragraphs (1) to (4), inclusive, of subdivision (a) of
18 Section 290.015. The registering agency shall give the registrant a copy of the registration
19 requirements from the Department of Justice form.”].)

20 20. Notably, the Act specifies only three occasions on which in-person registration or in-person
21 updates are required. Specifically, in-person registration and updates are required only for:

- 22 a. **Transient Registrants “who move[] of out state.”** (Penal Code § 290.011,
23 subd. (f) [“A transient who moves out of state shall inform, in person, the
24 chief of police in the city in which he or she is physically present, or the
25 sheriff of the county if he or she is physically present in an unincorporated
26 area or city that has no police department, within five working days, of his or
27 her move out of state.”].)

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1 b. **Registrants who change their residence address**, whether within the
2 jurisdiction in which they are currently registered or to a new jurisdiction
3 outside California. (Penal Code § 290.013, subd. (a) [“A person who was
4 last registered at a residence address pursuant to the Act who changes his or
5 her residence address, whether within the jurisdiction in which he or she is
6 currently registered or to a new jurisdiction inside or outside the state, shall,
7 in person, within five working days of the move, inform the law enforcement
8 agency or agencies with which he or she last registered of the move, the new
9 address or transient location, if known, and any plans he or she has to return
10 to California.”].)

11 c. **Registrants who legally change their names**. (Penal Code § 290.014, subd.
12 (a) [“If any person who is required to register pursuant to the Act changes his
13 or her name, the person shall inform, in person, the law enforcement agency
14 or agencies with which he or she is currently registered within five working
15 days”].)

16 21. The Legislature’s decision to expressly require in-person updates in certain limited situations
17 but not other situations confirms that the Legislature did not intend to require personal appearance at
18 initial registration, annual updates, 90-day updates, or 30-day updates. (*See Wilson v. City of*
19 *Laguna Beach* (1992) 6 Cal. App. 4th 543, 554.) On information and belief, the California
20 Department of Justice and various local registering agencies are able to, and do in fact, process
21 registrations when the Registrant does not appear in person, such as when a Registrant is
22 hospitalized or otherwise incapacitated. Accordingly, Respondent Murrieta Police Department has,
23 but unlawfully refuses to exercise, discretion to process periodic updates without requiring
24 Registrants to appear in person.

25 **Respondent’s Discretionary In-person Registration Requirement Threatens Vulnerable**
26 **Registrants and Forces Them to Violate State and Local COVID-19-Related Orders**

27 22. In addition to being discretionary and not required by Section 290, Respondent’s ongoing
28 decision to require in-person registration for periodic updates forces Registrants to contravene the

1 public safety measures imposed by state and local government upon all residents of California,
2 including Registrants, including the current Order by the Governor of California. (*Helling v.*
3 *McKinney* (1994) 509 U.S. 25, 33 [“It would be odd to deny an injunction to inmates who plainly
4 proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had
5 happened to them.”].) Respondent’s decisions therefore threaten both vulnerable Registrants and
6 the larger population with which those Registrants interact.

7 23. On information and belief, the locations in which Registrants are required to register in
8 person are often unsanitary, crowded, and do not allow for “social distancing” and other
9 preventative measures mandated by state and local government. For example, many of the police
10 stations to which Registrants are summoned to register are located in areas with large homeless
11 populations. In addition, Registrants are forced to enter, sit in, touch, and otherwise interact with
12 unsanitary physical environments while registering. Those environments include repeated and
13 prolonged contact with potentially virus-ridden surfaces and objects such as countertops, clip
14 boards, various papers, pens, pen chains, ink pads, chairs, door handles, water fountains, and
15 Livescan and other fingerprinting machine. These unsanitary surfaces are touched by innumerable
16 other Registrants, as well as other visitors to the station and employees of the registering agencies.

17 24. Petitioner John Doe is currently over 65 years of age, and is therefore vulnerable to
18 contracting COVID-19 as confirmed by state and local authorities, including the City of Murrieta.
19 In addition, Petitioner John Doe is currently subject to the Governor of California’s Order, which
20 requires him to remain at home except for “essential” travel pursuant to the terms of that order. On
21 or about March 19, 2020, Petitioner telephoned the Murrieta Police Department to inquire whether
22 he and other Registrants are required to appear in person for periodic updates despite the Governor’s
23 Order as well as the common-sense directives of health care authorities, including the directive of
24 the City of Murrieta itself, to remain at home. The Murrieta registration official with whom he
25 spoke told Petitioner John Doe that he and other Registrants are required to appear in person for
26 their annual updates.

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EQUITY AND IRREPARABLE INJURY

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2 25. Petitioner realleges and incorporates herein, as though fully set forth, each and every, all and
3 inclusively, paragraphs 1 through 24.

4 26. Risk of infection and death are irreparable injuries remediable by injunction. (*E.g., Harris v.*
5 *Bd. of Supervisors* (9th Cir. 2004) 366 F.3d 754 759, 766.)

6 27. Respondent’s discretionary decision to require that periodic updates occur in-person, rather
7 than through telephone or videoconferencing or other means, subjects Registrants and the general
8 public to an unreasonable and untenable risk of harm, as confirmed by state and local authorities
9 who have ordered such Registrants to remain at home. There are alternative effective means to
10 achieve the purposes of Section 290, such as providing the necessary information over the telephone
11 or through videoconference, or by delaying the collection of certain information until the COVID-
12 19 pandemic has ended. On information and belief, certain state and federal agencies, including but
13 not limited to the California courts and the California Department of Motor Vehicle, have
14 suspended numerous statutory or regulatory requirements to appear in person, and/or have tolled
15 deadlines associated with appearing in person, due to COVID-19. In addition, on information and
16 belief, some registering agencies within the State of California have suspended their requirement
17 that Registrants appear in person for periodic updates. The equities in this case demand that
18 Respondent extend similar accommodation to Petitioners and other Registrants in light of the
19 extraordinary needs and measures involved in the current pandemic.

20 28. Mandamus, declaratory, and injunctive relief are warranted in this action because
21 Respondent’s unlawful activity has caused, is causing, and will continue to cause immediate and
22 irreparable harm to Petitioners, other Registrants, as well as the public at large by exposing
23 Petitioner and other Registrants to increased risk of infection by the COVID-19 virus. In fact, the
24 purpose of the stay-at-home order issued by the Governor of California is to prevent precisely the
25 risks imposed by Respondent upon Registrants when Registrants are needlessly forced to appear in
26 person at the Police Department. Yet, Respondent persists in requiring that Registrants appear in
27 person for periodic updates.

28 29. There are no plain, adequate, complete, or speedy alternative remedies available to redress

1 the violations of law committed by Respondent in this action, nor are there any available and non-
2 futile administrative remedies available to redress the violations of law committed by Respondent.
3 Damages are not adequate to protect Petitioners from the continuing effects of Respondent's
4 violations of the law and from Respondent's failure to carry out its duty under the law in
5 compliance with the law. (Cal. Civ. Proc. Code § 1086.)

6 **FIRST CLAIM FOR RELIEF**

7 **(Mandamus – Cal. Civ. Proc. Code § 1085)**

8 30. Petitioners reallege and incorporate herein, as though fully set forth, each and every, all and
9 inclusively, paragraphs 1 through 29.

10 31. As recognized by state and local government, COVID-19 is transmittable in the community
11 through person-to-person contact, or by contact with surfaces that host the virus. In order to
12 minimize the risk to individuals as well as to society at large, the Governor of California has ordered
13 all persons to stay at home unless departing for "essential" trips that do not include sex offender
14 registration.

15 32. The California Sex Offender Registration Act does not require 30-day, 90-day, or annual
16 registration updates to be completed in person. Yet, Respondent has forced, and continues to force,
17 Registrants to appear in person, even during the COVID-19 pandemic, and despite the Governor's
18 Order that such persons remain at home. Forcing Registrants to appear at the Police Station, which
19 poses risk of exposure to COVID-19, for the purpose of period updates exposes Petitioners, other
20 Registrants, and thus the public at large, to increased risk of infection.

21 33. The state violates the rights of individuals when it subjects them to risk of physical harm and
22 disease during required interactions with law enforcement. (*See Helling v. McKinney* (1994) 509
23 U.S. 25, 33.)

24 34. The information required for 30-day, 90-day, and annual updates can be effectively obtained
25 by Respondent without requiring Registrants to appear in person. In the alternative, Respondent has
26 the discretion to permit and process periodic updates without requiring Registrants to appear in
27 person, but unlawfully refuses to exercise that discretion.

28 35. By requiring Registrants to appear in person for periodic updates pursuant to Penal Code

1 sections 290.11 and 290.12, Respondent has effectively added a requirement that is not contained in
2 those statutes or any other applicable statute, in violation of the law, thereby abusing its discretion.

3 36. Respondent has abused its discretion by requiring Petitioners and other Registrants in
4 vulnerable populations, as defined by state and national health care agencies, to violate the
5 Governor's Order and to appear in person for periodic updates, thereby subjecting themselves and
6 the public at large to increased risk of infection by COVID-19.

7 37. Petitioners are beneficially interested in the outcome of this mandamus action because
8 Petitioners are adversely impacted by Respondent's failure to perform its duty in compliance with
9 the law, as well as by Respondent's abuse of discretion, and because Petitioners' rights are infringed
10 by Respondent's failure to perform its duty in compliance with the law, as well as by Respondent's
11 abuse of discretion.

12 38. The injuries that Petitioners are suffering and will suffer as a result of the actions of
13 Respondent, as well as its deputies, officials, officers, agents, and employees, are severe,
14 irreparable, and ongoing, and there is no plain, adequate, complete, or speedy alternative remedies
15 available to redress the violations of law committed by Respondent in this action, nor are there any
16 available and non-futile administrative remedies available to redress the violations of law committed
17 by Respondent. Damages are not adequate to protect Petitioners from the continuing effects of
18 Respondent's violations of the law, from Respondent's abuse of their discretion under the law, and
19 from Respondent's failure to carry out its duty as required by law. Therefore, immediate mandamus
20 relief is necessary to halt and prevent further occurrence of these ongoing unlawful acts and the
21 infliction of irreparable harm to Petitioners and all Registrants.

22 **SECOND CLAIM FOR RELIEF**

23 **(Declaratory Judgment – Cal. Civ. Proc. Code § 1060)**

24 39. Petitioners reallege and incorporate herein, as though fully set forth, each and every, all and
25 inclusively, paragraphs 1 through 38.

26 40. There is an actual controversy as set forth in this Petition.

27 41. Petitioners are informed and believe and thereon allege that Respondent, as well as its
28 deputies, officials, officers, agents, and employees, have failed to comply with the law, and are

1 abusing their discretion under the law, by requiring Registrants in vulnerable populations as defined
2 by national and state health care authorities to appear in person for their periodic registration
3 updates amidst the COVID-19 pandemic, as pled herein.

4 42. Petitioners therefore seek a declaration of their rights under California law, as well as a
5 declaration of Respondent's duties under the Sex Offender Registration Act, California Penal Code
6 section 290, *et seq.*, and of the scope of Respondent's discretion under that Act.

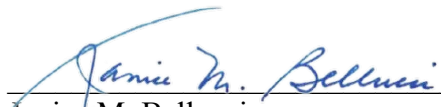
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Petitioners pray for judgment against Respondent as follows:

- 9 A. That the Court issue a peremptory writ of mandate directing Respondent to cease
10 requiring persons required to register as a sex offender from appearing in person for 30-
11 day, 90-day, and annual updates ("periodic updates") pursuant to California Penal Code
12 sections 290.11 and 290.12 until the threat of COVID-19 has ended;
- 13 B. For a judgment declaring that California Penal Code sections 290.11 and 290.12 and
14 other applicable law do not require persons required to register as a sex offender to
15 appear in person to complete periodic updates;
- 16 C. For a judgment declaring that Respondent has abused its discretion under California
17 Penal Code sections 290.11 and 290.12 and other applicable law by requiring persons
18 required to register as a sex offender to appear in person to complete periodic updates;
- 19 D. For an injunction restraining Respondent from requiring persons required to register as a
20 sex offender from appearing in person for periodic updates pursuant to California Penal
21 Code sections 290.11 and 290.12 until the threat of COVID-19 has ended;
- 22 E. That Petitioners recover from Respondent all of the Petitioners' reasonable attorneys'
23 fees, costs, and expenses of this litigation; and
- 24 F. For such other and further relief as the Court deems just and proper.

25 Dated: March 23, 2020

LAW OFFICE OF JANICE M. BELLUCCI

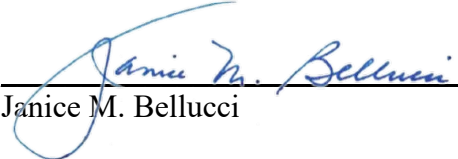
26
27 By: 
28 Janice M. Bellucci
Attorney for Petitioners

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VERIFICATION

I, Janice M. Bellucci, have read this PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF in the matter of *Alliance for Constitutional Sex Offense Laws, Inc., et al. v. California Department of Justice, et al.* I am the Executive Director of Petitioner Alliance for Constitutional Sex Offense Laws, Inc. and make this declaration on behalf of that entity. In addition, I am counsel of record for Petitioner John Doe in this action. Pursuant to Code of Civil Procedure section 446, I make this verification on behalf of Petitioner John Doe because he resides in Los Angeles County, while my office is in Sacramento County. Unless otherwise noted, the facts alleged therein are within my personal knowledge and I know these facts to be true. As to the remainder of the Petition, I am informed, and do believe, that the matters therein are true, and on that ground allege that the matters stated therein are true.

Executed March 23, 2020, at Sacramento County, California. I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

By: 
Janice M. Bellucci