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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ALLIANCE OF LOS ANGELES COUNTY PARENTS, an unincorporated association

Petitioner and Plaintiff,

vs.

COUNTY OF LOS ANGELES COUNTY DEPARTMENT OF PUBLIC HEALTH; MUNTU DAVIS, in his official capacity as Health Officer for the County of Los Angeles; BARBARA FERRER, in her official capacity as Director of the County of Los Angeles Department of Public Health; and DOES 1 through 25, inclusive,

Respondents and Defendants.

Case No.: 22STCP02772

ALLIANCE OF LOS ANGELES COUNTY PARENTS' OPPOSITION TO COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH, MUNTU DAVIS, AND BARBARA FERRER'S MOTION FOR SUMMARY JUDGMENT; DECLARATIONS OF JULIE A. HAMILL, CYNTHIA ROJAS, REQUEST FOR JUDICIAL NOTICE, SEPARATE STATEMENT OF FACTS IN OPPOSITION AND COMPENDIUM OF EXHIBITS FILED CONCURRENTLY HEREWITH

Hearing Date: September 1, 2023
Time: 9:30 a.m.
Dept: 69
Judge: William F. Fahey

Complaint Filed: 7/26/2022
Trial Date: 10/16/2023

"Once a government is committed to the principle of silencing the voice of opposition, it has only one place to go, and that is down the path of increasingly repressive measures, until it becomes a source of terror to all its citizens and creates a country where everyone lives in fear."

Harry S. Truman

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This case is about a government agency censoring speech critical of its mandates on private digital platforms by leveraging backroom connections to congressional staff, media, and Twitter executives. Los Angeles County Department of Public Health ("LACDPH"), Barbara Ferrer ("Ferrer") and Muntu Davis (collectively, "County" or "Defendants") violated constitutionally protected free speech rights by closing a public forum for viewpoint discriminatory reasons and significantly encouraging private social media companies to silence their opponents. Defendants' actions prevent free and open discourse on issues of critical public importance.

An inherent corollary of the right to free speech is the right to receive information. *See Bd. of Educ., Island Trees Union Free Sch. Dist. No. 26 v. Pico* ("*Pico*")(1982) 457 U.S. 853, 867 . Defendants harmed Angelenos by maintaining an illusion of consensus about a virus. As a result, people remained frightened, treated fellow citizens with suspicion and disdain, and suffered physical, psychological and emotional harm as described in the First Amended Petition and Complaint ("FAP"). Plaintiff Alliance of Los Angeles County Parents ("Alliance") seeks injunctive relief to prevent Defendants from engaging in further violations of the constitutionally protected right to speak and receive information.

As the County attempted to impose a universal mask mandate in July 2022, it sought to limit public access to any information that conflicted with LACDPH Director Ferrer's guidance. Defendants attempted to remove truthful news articles from the Internet, disabled public comments on LACDPH's Facebook, Twitter and Instagram accounts ("Social Media Accounts"), and leveraged connections in the office of Congressman Adam Schiff to a Twitter executive to remove "anti-mask" content from Twitter. In response to the disabling of comments on the Social Media Accounts, an Alliance member created a Twitter account to quote tweet the County's content with comments open to allow public discussion ("Alt Account"). Afterward, the County repeatedly contacted Twitter to suspend the account. Following multiple emails from the County referencing Congressman Schiff's chief of staff, Twitter permanently suspended the Alt Account.

Defendants' motion fails for the following reasons: (1) there are triable issue of material fact

related to Defendants' viewpoint discrimination and censorship; (2) Defendants violated Alliance members' right to speak and receive information by closing the only accessible public forum for a viewpoint discriminatory purpose; and (3) Defendants violated Alliance members' right to speak and receive information by significantly encouraging Twitter to censor opposing viewpoints, including permanently suspending the Alt Account from Twitter.

II. STATEMENT OF FACTS

On July 7, 2022, Ferrer announced an intent to impose a new universal indoor mask mandate. (Plaintiff's Additional Material Facts ("PAMF"), #18). That announcement was followed by execution of a public relations strategy to eliminate dissenting views from public view. The strategy included a request to a news organization to remove an article written by medical doctors from the Internet, the disabling of public commentary on Social Media Accounts, and thinly veiled threats to a Twitter executive seeking "urgent action" to censor protected speech that deviated from Ferrer's messaging. (PAMF # 37, 38, 40).

On July 13, 2022, physicians at Los Angeles County + University of Southern California Medical Center ("LAC+USC") held their weekly town hall meeting, a recording of which was posted to YouTube (PAMF # 19, 20). The physicians made statements that deviated from Ferrer's messaging, including the following:

- "[W]e're just seeing nobody with severe COVID disease."
- "[W]e have no one in the hospital who had pulmonary disease due to COVID. Nobody in the hospital."
- "[C]ertainly there is no reason from a hospitalization due to COVID perspective, to be worried at this point,"
- "We're seeing a lot of people with mild disease in urgent care or ED who go home and do not get admitted."
- "A lot of people have bad colds, is what we're seeing."
- "It is just not the same pandemic as it was, despite all the media hype to the contrary." (PAMF #20).

The following day, Ferrer again discussed her intent to impose a new universal indoor mask mandate. (PAMF #21). Twitter users reacted by sharing LAC+USC videos and allegations of a conflict of interest involving Barbara Ferrer and her daughter in the comment section of the Social Media Accounts. (PAMF # 22, 23).

On July 19, 2022, the County's Environmental Health division notified team members they

were expected to work overtime "[i]n anticipation of the reinstatement of the indoor mask mandate on Friday, July 29th." (PAMF #24).

On July 20, 2022, LACDPH Communications Director Brett Morrow ("Morrow") asked Twitter's then-Director of U.S. Public Policy, Lauren Culbertson, for assistance dealing with "harassment" from "anti-maskers" as the County was "likely going to bring back indoor masking." (PAMF #25). This email led to an exchange of at least 15 messages between Morrow and Twitter ("Twitter Exchange"). Morrow led with his connection to Congressman Adam Schiff, stating, "I was referred to you by my friend Patrick Boland, who I used to work with in Congressman Schiff's office." (PAMF #29). Morrow included Patrick Boland's name in all capital letters in the subject line and copied Mr. Boland on the email. (PAMF #26, 28).

At the time of the Twitter Exchange, Mr. Schiff was Chair of the House Permanent Select Committee on Intelligence ("HPSCI"), and Mr. Boland was employed as Chief of Staff to Mr. Schiff and as a Staff Member with HPSCI. (PAMF #27). HPSCI has oversight and investigative authority over social media companies, including Twitter, and conducted investigations relating to content moderation on social media prior to the Twitter Exchange. (PAMF #33). Prior to the Twitter Exchange, Congressman Schiff and HPSCI publicly discussed amending Section 230 of the Communications Decency Act, which provides immunity to social media companies for content posted by their users. (PAMF #34). Further, prior to the Twitter Exchange, Congressman Schiff sent letters to social media companies demanding information about content moderation policies. (PAMF #35). Prior to the Twitter Exchange, REDACTED PER CRC 2.551(b)(3)(A)(ii) (PAMF #36). In other words, Twitter was under the regulatory thumb of HPSCI, and in particular, Schiff.

On July 22, 2022, the Southern California News Group published an opinion article entitled "Bringing back a mask mandate in Los Angeles County is unjustified," written by Scott Balsitis, PhD, Jeffrey Klausner, MD, MPH, Houman Hemmati, MD, PhD, and Neeraj Sood, PhD ("Opinion"). (PAMF #37). That same day, Morrow contacted opinion editor Sal Rodriguez and

asked him to remove the Opinion from Southern California News Group sites. (PAMF #38).

On July 26, 2022, in another Twitter Exchange email, Morrow complained about "misinformation going around LA County and upcoming mask requirements," adding "[o]pponents are spreading the following misinformation…

- Dr. Barbara Ferrer is 'a fake doctor'.
- LA County is lying about hospitalization numbers
- CDC is not recommending masks . . .
- Masks are not effective for adults or children." (PAMF #39).

Morrow said he "reported a few [Tweets] but have not heard back if action was taken." (PAMF #40). Morrow continued, "[i]s it possible I can send links or misleading info to expedite? Any other options?" (PAMF #40).

On July 30, 2022, Morrow disabled public comments on the Social Media Accounts, stating, "[l]et's do it for all posts. I'm over people rn. lol.". (PAMF #41). At that time, the County Board of Supervisors meetings were still closed to the public. (PAMF #46). The closure of public comments on the Social Media Accounts therefore eliminated the only centralized public square for discussion of the County's public health mandates.

On August 5, 2022, Alliance member Cynthia Rojas created the Alt Account, with the purpose of quote tweeting all content from the County's Twitter account with comments open to allow public discussion and debate. (PAMF #47). The Alt Account biography stated: "Unofficial ALT account created for @lapublichealth that allows public debate. We will RT all LA Public Health dept content with comments turned on." (PAMF #56).

On that same day, in another Twitter Exchange email, Morrow forwarded a link to the Alt Account's page and asked Twitter "[c]an this be shut down?" (PAMF #48). Twitter told Morrow to file an impersonation report, send Twitter the number, and then Twitter would expedite the case. (PAMF #49). In an August 10, 2022 email in the Twitter Exchange, Twitter thanked Morrow for providing the case number and stated they were moving the case for further review. (PAMF #50). In an August 10, 2022 email in the Twitter Exchange, Morrow asked Twitter for an update. (PAMF #51). Twitter responded the same day that "[o]ur team has determined that the account is not compliant with our policies and will look to solve this issue." (PAMF #51).

On August 10, 2022, Ms. Rojas received a violation notice from Twitter stating that the profile name violated the rules against impersonation, and "should clearly indicate that the user is not affiliated with the subject of the account." Twitter explained that "non-affiliation can be indicated by incorporating words such as 'parody,' 'fake,' 'fan,' or 'commentary.'" To unlock the account, Twitter stated: "[m]odify the content that violates our rules… 1 profile name." (PAMF, #52). The Alt Account name was then changed from "ALT LA Public Health Account" to "ALT LA Public Health Account – Commentary," and Twitter unlocked the Alt Account. (PAMF #53).

Later on August 10, 2022, Morrow again emailed Twitter stating, "On first glance, it looks like it's already been unlocked and they just added "Commentary" to the name, but they aren't really posting commentary. They are just reposting our content." (PAMF #54).

On August 23, 2022, Twitter locked the Alt Account again. This time, Twitter stated that the Alt Account violated the rules against impersonation, and could be unlocked if the profile biography was modified. (PAMF #55). At 3:15 pm on August 23, 2022, Ms. Rojas changed the biography from "Unofficial ALT account created for @lapublichealth that allows public debate. We will RT all LA Public Health dept content with comments turned on" to "Commentary ALT account created for @lapublichealth that allows public debate. We will RT all LA Public Health dept content with comments turned on." (PAMF #56). Twitter then unlocked the account. (PAMF #56).

Two minutes later, Twitter permanently suspended the Alt Account. (PAMF #57). Four subsequent appeals by the account owner were denied. (PAMF #57).

REDACTED PER CRC 2.551(b)(3)(A)(ii) (PAMF #58).

On August 21, 2022, Defendants posted a statement regarding closed public comments on the Social Media Accounts. (SUF # 4). Since then, contrary to their policy statement, Defendants have left dozens of comment sections open, dozens of direct messages have gone unanswered, and at least 172 Facebook reviews containing information about herpes cures, cryptocurrency, and other musings from the public remain on Facebook with no limit on the ability of users to continue posting. (PAMF #59-62). Further, while the general public is precluded from responding to the County's Twitter posts, Defendants' settings allow certain select individuals tagged in their Twitter

posts to respond in the comments. (PAMF #63).

III. LEGAL ARGUMENT

A. Free Speech, Generally

The freedom to speak is among our inalienable rights. The freedom of thought and speech is "indispensable to the discovery and spread of political truth." *Whitney v. California*, (1927) 274 U. S. 357, 375 (Brandeis, J., concurring). For these reasons, "[i]f there is any fixed star in our constitutional constellation," *West Virginia Bd. of Ed. v. Barnette* (1943) 319 U. S. 624, 642, it is the principle that the government may not interfere with "an uninhibited marketplace of ideas." *McCullen v. Coakley* (2014) 573 U. S. 464, 476 (internal quotation marks omitted).

The provisions of the free speech clause of the California Constitution have been construed as more protective, definitive, and inclusive of rights to expression of speech than their federal counterparts. *See, e.g., Blatty v. New York Times Co.* (Cal. 1986) 42 Cal.3d 1033, 1041; *Gerawan Farming v. Lyons* (2000) 24 Cal.4th 468, 485, 491, 509 (protection is afforded not only to one who speaks but also to those who listen.).

The First Amendment also protects the right to receive information. *See Martin v. EPA* (D.D.C. 2002) 271 F. Supp. 2d 38, 47 ("[W]here a speaker exists …, the protection afforded is to the communication, to its source and to its recipients both.") (quoting *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council* (1976) 425 U.S. 748, 756). This right is "an inherent corollary of the rights to free speech and press that are explicitly guaranteed by the Constitution" because "the right to receive ideas follows ineluctably from the sender's First Amendment right to send them." *Pico*, 457 U.S. at 867. The Constitution generally prevents the government from interfering with "the right to receive information and ideas." *Stanley v. Georgia* (1969) 394 U.S. 557, 564; *see, e.g., Martin v. Struthers* (1943) 319 U.S. 141, 143. "The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them*." Lamont v. Postmaster General*, (1965) 381 U.S. 301, 308 (Brennan, J., concurring) (citations omitted).

B. Standard of Review

Defendants bear the burden of persuasion that one or more elements of the cause of action in question "cannot be established," or that "there is a complete defense" thereto. *Aguilar v. Atlantic*

Richfield Co. (Cal. 2001) 25 Cal.4th 826, 850 ("*Aguilar*"). Although the same standards for admissibility govern supporting and opposing affidavits (CCP § 437c(d)), the opposition's declarations are liberally construed while the moving party's evidence is strictly scrutinized. *Saelzler v. Advanced Grp.* 400 (2001) 25 Cal.4th 763, 768. With respect to free speech issues, the benefit of any doubt must go to protecting rather than stifling speech. *Citizens United v. Fed. Election Comm'n* (2010) 558 U.S. 310, 327.

Defendants bear the initial burden of production to make a *prima facie* showing that there are no triable issues of material fact. *Aguilar*, 25 Cal.4th at 850. If a triable issue is raised as to any of the facts in a separate statement, a motion for summary judgment must be denied. *E.g. Insalaco v. Hope Lutheran Church of West Contra Costa County* (2020) 49 Cal.App.5th 506, 521.

Here, Defendants cannot show that no triable issues of material fact exist or that they are entitled to judgment in their favor as a matter of law. The Alliance's free speech claims are fact-bound inquiries requiring a trier of fact to weigh evidence. The question of state action is a "necessarily fact-bound inquiry," and "the criteria lack rigid simplicity." *Brentwood Acad. V. Tenn. Secondary Sch. Athletic Ass'n* ("*Brentwood*") (2001) 531 U.S. 288, 294 - 296, 298 ("There is no single test to identify state actions and state actors," and the Supreme Court's "cases have identified a host of facts that can bear on the fairness of such an attribution" of state action.) As set forth in the separate statement, five material facts alleged by Defendants are in dispute. There are 46 additional material facts supporting Alliance's free speech claims. (*See* PAMF). The motion should be denied on these grounds alone.

C. While a Designated Public Forum may be Closed in Certain Circumstances, no Traditional Public Forum was Available, the County Disabled Public Comment for a Viewpoint Discriminatory Purpose, the County does not Exercise Clear and Consistent Control over the Forum, and the Forum Remains Open to Aligned Viewpoints

1. *Defendants' Social Media Accounts Were Vital Public Fora Because the Traditional Public Forum Was Closed*

This case raises the novel issue of whether a government entity may close a designated public forum where no traditional public forum is open. The dearth of case law on this subject is unsurprising given the unprecedented nature of a global pandemic in the age of social media.

No published case in California has decided whether a government-controlled social media account is a public forum, but Federal law is instructive on this point. (See MSJ, 11:6-8). The County relies on *Garnier*, which notes that social media sites allow users "to gain access to information and communicate with one another about it on any subject that might come to mind" and thereby "provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Garnier v. O'Connor-Ratcliff* ("*Garnier*") (9th Cir. 2022) 41 F.4th 1158, 1178, *cert. granted* 143 S. Ct. 1779 (citing *Packingham v. North Carolina* ("*Packingham*") (2017) 582 U.S. 98, 107).

Defendants contend "the government has an inherent right to control its property, which includes the right to close a previously open forum." (MSJ 12:4-5). However, the Social Media Accounts are not Defendants' property. They are a "public square" in a private digital space – and Defendants cut off the ability to speak and receive information in that public square. *See Packingham,* 582 U.S. at 107. Defendants contend the reasons for closing a public forum are irrelevant, but closing a public forum specifically to quash expression of a certain viewpoint is an unlawful form of viewpoint discrimination. *See, Perry Educ. Ass'n v. Perry Local Educators' Ass'n* ("*Perry*") (1983) 460 U.S. 37, 46. Further, Defendants did not completely close the public forum. Rather, Defendants specifically closed public comment on certain posts, while keeping public comments open on other posts deemed less controversial. (*E.g.,* PAMF # 61, 62). Defendants also allow *certain* people to post and respond to certain messages on this public forum, but exclude the general public from such speech and interaction. (PAMF # 63).

Further, Defendants did more than simply close a public forum. At the time of the incidents alleged in the FAP, County Board of Supervisors meetings were closed to the public. (PAMF # 46). Accordingly, there was no ability for the public to physically assemble and exchange ideas in a traditional public forum--the County's chambers. In other words, no traditional public forum was open or available to citizens for discussion of LACDPH decisions. Further, Defendants carefully controlled access to Ferrer's office, and questions from members of the public were curated by staff and Ferrer during town halls. (PAMF #65). The public had no physical access to LACDPH. The

only public forum in which to freely exchange ideas with the masses was Defendants' Social Media Accounts.

Defendants contend that because Alliance members can still post information on their own social media pages, Defendants have not violated their speech rights. This is tantamount to arguing the government could place *any* limitation on speech at its in-person meetings because citizens can still say whatever they want inside of their homes. The ability to post a public response on a centralized government account where citizens go to receive information differs significantly from posting on one's own personal account. People are unlikely to seek out strangers' social media feeds for divergent viewpoints on public health issues.

Days before Defendants closed public comment on the Social Media Accounts, videos depicting physicians employed by the County contradicting Ferrer were shared in the comment section of Defendants' Social Media Sites. (PAMF #20, 22). Defendants were concerned about statements made in comments on the Social Media Accounts that undermined Ferrer's credibility and spread "misinformation" about her ability to lead the Covid response. (PAMF # 42-45). For the public, that sharing of information was vital, constitutionally protected, and provided a pathway out of repressive public health mandates. For Defendants, however, that information threatened the power and the credibility of their leader. (PAMF # 45). Defendants only want the public to see information *they* deem credible or accurate. (PAMF# 42-45, 66). Defendants do not want any contradictory information shared, even if that means eliminating truthful protected speech from medical doctors from the Internet. (PAMF No. 38, 42-45, 66).

Further, the fact that the public can still communicate in limited ways with Defendants does not mean their free speech rights – which include the right to receive information – were not violated. The methods of communicating with Defendants presented in the Defendants' statement are illusory. (SUF # 4). At least eight messages from members of the public were left unanswered (PAMF # 60). Sporadically responding to direct messages does not solve the problem of eliminating a forum where ideas can be exchanged in public.

Finally, alternate access to traditional public fora was available in all of the cases cited by

Defendants, and those cases involved issues like advertisements on a baseball field, not citizens discussing public policy restricting civil liberties. *E.g. DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.* ("*DiLoreto*") (9th Cir. 1999) 196 F.3d 958, 962. The ability to communicate public policy issues with fellow citizens and the government in a public way is critical to a self-governing society.

Defendants may contend these arguments are moot now that traditional public fora have reopened, and Defendants can close designated public fora so long as they do not do so for a viewpoint discriminatory purpose. However, that is not what Defendants have done, and Defendants' actions are capable of repetition.

2. The County Cannot Demonstrate Clear and Consistent Control Over the Interactive Portions of its Social Media Pages

Exercise of clear and consistent control over the interactive portions of social media pages is required to maintain a limited public forum. *Garnier*, 41 F.4th at 1179. What matters in forum analysis "is what the government actually does—specifically, whether it consistently enforces the restrictions on use of the forum that it adopted." *Id.* at 1178. An "abstract policy statement purporting to restrict access to a forum is not enough." *Id.*

While Defendants are correct that "[o]ne or more instances of erratic enforcement of a policy does not itself defeat the government's intent not to create a public forum," *Ridley v. Mass. Bay Transp. Auth*. (1st Cir. 2004) 390 F.3d 65, 78, there are dozens of examples of erratic enforcement in this case. (PAMF # 59-63). Here, Defendants' enforcement of its policy is so erratic that Defendants cannot pretend to exercise clear and consistent control. The policy statement does not reflect Defendants' actual practice.

In *Garnier*, the addition of word filters that prohibit comments and restrict users to non-verbal reactions converted defendants' Facebook pages from designated to limited public fora. *Garnier*, 41 F.4th at 1179. Unlike Defendants' content-based approach in this case, the filters in *Garnier* were not manually added with each post, and they applied uniformly.

Defendants, on the other hand, fail to exercise clear and consistent control over the interactive portions of the Social Media Accounts. Defendants attribute their inconsistencies to "mistakes," but the open replies, public reviews containing information about herbal herpes cures

and cryptocurrency, and unanswered direct messages show that Defendants' "policy" is mere lip service. (PAMF # 59-63). Defendants' inconsistent enforcement of restrictions renders the Social Media Sites a "designated public forum" subject to a higher level of scrutiny.

Not only does this lack of consistency show the forum is not "limited," but it also shows that the designated public forum was not "closed." Defendants maintain the Social Media Accounts as viewpoint discriminatory designated public fora. Regardless of whether the Defendants' actions are "mistakes" or intentional – the forum has been used in a way that is not viewpoint neutral. "Mistakes" do not negate a free speech violation.

3. Defendants' Decision to Close Public Forum was Viewpoint Discriminatory

Regardless of this Court's determination regarding what sort of forum the County's Social Media Accounts are, if the Account is a forum—public or otherwise—viewpoint discrimination is not permitted. *Int'l Soc. For Krishna Consciousness, Inc. v. Lee* (1992) 505 U.S. 672, 679; *see also Pleasant Grove v. Summum* (2009) 555 U.S. 460, 469–70 (viewpoint discrimination prohibited in traditional, designated, and limited public forums); *Cornelius v. NAACP Legal Def. & Educ. Fund., Inc*. (1985) 473 U.S. 788, 806 (viewpoint discrimination prohibited in nonpublic forums).

A government agency may reserve the forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view. *Perry*, 460 U.S. at 46. The government must abstain from regulating speech when the specific motivating ideology or the perspective of the speaker is the rationale for the restriction. *Rosenberger v. Rectors & Visitors of Univ. of Virginia* (1995) 515 U.S. 819, 829. If there is a bedrock principal underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. *Matal v. Tam* (2017) 582 U.S. 218, 243-44.

Under the First Amendment, the "government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views." *Police Dep't of Chicago. v. Mosley* (1972) 408 U.S. 92, 96. In the realm of protected speech, the government is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue. *First Nat'l Bank of*

Boston v. Bellotti (1978) 435 U.S. 765, 784–786. Where the government's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended. *Id.*

That is exactly what happened here. Defendants' decision to disable public comments was motivated by desire to suppress expression of viewpoints by "opponents" and "anti-maskers." (PAMF # 30, 39). Defendants attempted to censor truthful statements to maintain control over public behavior, to sell another mandate to the public, and to protect Ferrer's reputation and legitimacy. (PAMF # 42-45). Before disabling comments on July 30, 2022, Defendants sent multiple emails to Twitter complaining about "anti-maskers" and "opponents" and attempted to remove an article written by four physicians criticizing Ferrer's decisions. (PAMF # 25-30, 39). Defendants had lost control of their message and were desperate to drown out dissent.

Further, excluding speech based on "an anticipated disorderly or violent reaction of the audience" is a form of content discrimination generally forbidden in a traditional or designated public forum. *Rosenbaum v. City & Cnty. of San Francisco* (9th Cir. 2007) 484 F.3d 1142, 1158. "A claimed fear of hostile audience reaction could be used as a mere pretext for suppressing expression because public officials oppose the speaker's point of view. That might be the case… where the asserted fears of a hostile audience reaction are speculative and lack substance, or where speech on only one side of a contentious debate is suppressed." *Seattle Mideast Awareness Campaign v. King Cnty.* (9th Cir. 2015) 781 F.3d 489, 502–503.

In other words, even when violent or disorderly reactions are anticipated, the government cannot impose a prior restraint on or shut down speech. Here, Defendants' goal was to exclude threats, harassment, and misinformation. (PAMF #42). If the government cannot silence speech to avoid a violent reaction, it cannot to do so to exclude threats, harassment, and misinformation.

Virtually all of the speech Defendants sought to suppress immediately prior to the disabling of public comments was "anti-mask" and "opponent" free speech. (PAMF #25, 30, 39). The targeting of anti-mask and opponent speech indicates that Defendants engaged in "viewpoint discrimination," a sort of discrimination beyond the power of the government. *See Simon &*

Schuster, Inc. (1991) 505 U.S. 105, 116.

Further, the particularity of the County's demands places the County squarely in the category of actions the government cannot lawfully accomplish. The government cannot lawfully silence opponents, and it cannot dispatch a private entity to do so. Defendants did not just disable comments. They engaged in a simultaneous effort to silence critics in all other aspects. Defendants wanted the Alt Account suspended because it created an uncensored avenue to allow public comment on the County's posts, and therefore, Morrow insisted upon its removal from Twitter.

D. Defendants Significantly Encouraged and/or Coerced Twitter To Censor Content And Viewpoints That Contradicted Ferrer

1. *LACDPH Leveraged Political Relationships to Censor Opposing Viewpoints, Including Having the Alt Account Removed from Twitter*

It is "axiomatic" that the government may not "induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish." *Norwood v. Harrison* (1973) 413 U.S. 455, 465. State action may be found when: (1) a challenged activity results from the State's exercise of coercive power; (2) the state has provided significant encouragement, either overt or covert, to private conduct; (3) a private actor operates as a willful participant in joint activity with the State or its agents; or (4) the private action is entwined with governmental policies, or when government is entwined in its management or control. *Brentwood*, 531 U.S. at 296. Further, specific features of the government's action may combine to create a compelling case for state action, especially where a federal statute has immunized private conduct. *Skinner v. Railway Lab. Execs. Ass'n* ("*Skinner*") (1989) 489 U.S. 602, 615.

It does not matter whether government action is "the real motivating force behind" the suppression of speech—that question is "immaterial." *Carlin Commc'ns, Inc. v. Mountain States Tel. & Tel. Co.* (9th Cir. 1987) 827 F.2d 1291, 1295; *see also Peterson v. City of Greenville* (1963) 373 U.S. 244, 248 (finding state action even assuming that the private party would have acted as he did independently). The government actor need not have direct power to take adverse action over a targeted entity for comments to constitute a threat, provided the government actor has the power to direct or encourage others to take such action. *Nat'l Rifle Ass'n of Am. v. Cuomo* ("*Cuomo*") (N.D.N.Y. 2018) 350 F. Supp. 3d 94, 115 (citing *Bantam Books, Inc., v. Sullivan*, (1963) 372 U.S.

58, 66-68, (government lacked power to apply legal sanctions, but had authority to initiate investigations and recommend prosecutions, thereby imbuing "advisory notices" with extra weight) and *Okwedy v. Molinari* ("*Okwedy*"), (2d. Cir. 2003) 333 F.3d 339, 344 (government lacked direct regulatory control, but company could reasonably fear interference with economic benefits.)). Where the government encourages and pressures private actors into adopting their preferred policy, there is significant encouragement, overt or covert, constituting government action. *Mathis v. Pacific Gas & Elec. Co*. (9th Cir. 1989) 891 F.2d 1429, 1431.

2. State Action Analysis Requires a Fact-Based Inquiry That is Not Appropriate for Summary Judgment, and no Single Rigid Test Applies

Determining whether Defendants engaged in significant encouragement or coercion of private social media platforms to censor disfavored speech requires an evaluation of facts that, in this case, remain in dispute. *See Brentwood,* 531 U.S. at 295; *Jackson v. Metropolitan Edison Co.* (1974) 419 U.S. 345, 349-50 ("[T]he question whether particular conduct is 'private' on the one hand or 'state action' on the other, frequently admits of no easy answer."). This area of the law is far from a "model of consistency," *O'Handley v. Weber* ("*O'Handley*") (9th Cir. 2023) 62 F.4th 1145, 1156, due in no small measure to the fact that "[w]hat is fairly attributable [to the State] is a matter of normative judgment." *Brentwood,* 531 U.S. at 295.

3. Defendants Significantly Encouraged Or Coerced Social Media Platforms To Remove The Alt Account And Censor Protected Speech By "Anti-Maskers" And "Opponents"

Where comments of a government official can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow from the failure to accede to the official's request, a valid claim can be stated. *Hammerhead Enterprises v. Brezenoff* ("*Brezenoff*") (2d Cir. 1983) 707 F.2d 33, 39; *Cuomo*, 350 F. Supp. 3d at 114. In evaluating "significant encouragement," a state may not induce, encourage, or promote private persons to accomplish what it is constitutionally forbidden to accomplish. *Norwood*, 413 U.S. at 465. Further, a public official's threat to stifle protected speech is actionable under the First Amendment and can be enjoined, even if the threat turns out to be empty. *Backpage.com, LLC v. Dart* ("*Backpage.com*") (7th Cir. 2015) 807 F.3d 229, 230–31.

All that is required is that the government's words or actions "could reasonably be interpreted as an implied threat." *Cuomo*, 350 F. Supp. 3d at 114 (*citing Bantam Books*, 372 U.S. at 67 (First Amendment requires the Court to "look through forms to the substance") and *Okwedy*, 333 F.3d at 344 (precise language is not the only relevant factor in determining whether a public official has crossed the line between attempts to convince and attempts to coerce). The First Amendment is implicated "if the government coerces or induces [a private entity] to take action the government itself would not be permitted to do, such as censor expression of a lawful viewpoint." *Biden v. Knight First Amend. Inst. At Columbia Univ.* (2021) 141 S. Ct. 1220, 1226 (Thomas, J., concurring). Coercion includes "the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation." *Bantam Books*, 372 U.S. at 67.

Simply put, the government "is not permitted to employ threats to squelch the free speech of private citizens." *Backpage.com*, 807 F.3d at 235. "The mere fact that [the private party] might have been willing to act without coercion makes no difference if the government did coerce." *Mathis*, 891 F.2d at 1434. Further, even a vaguely worded threat can constitute government coercion. *See Okwedy*, 333 F.3d at 341-42.

Missouri v Biden, currently pending appeal in the Fifth Circuit, is squarely on point on the issue of significant encouragement and coercion by the government. In *Missouri v Biden*, federal agency defendants used meetings and communications with social media companies to pressure those companies to take down, reduce, and suppress the free speech of American citizens. *Missouri v. Biden* (W.D.L.A. July 4, 2023) No. 3:22-CV-01213 at 2, 75. They flagged posts and provided information on the type of posts they wanted suppressed. *Id.* at 94. The unrelenting pressure by defendants had the intended result of suppressing protected free speech postings by Americans. *Id.* The court accordingly issued an injunction prohibiting government defendants from urging, encouraging, pressuring, inducing in any manner removal, deletion, suppression or reduction of content containing protected free speech posted on social media platforms. *Id.*, Doc. # 294. That injunction is pending appeal as of this writing.

Defendants here argue they innocently flagged content for social media companies, and that

the decision to suspend the Alt Account was Twitter's independent decision. We know Twitter would not have acted on its own, however, because Morrow admits that he used the report function in the Twitter application and nothing happened. (PAMF # 31, 40).

Further, "government speech" has its limits. While the government may advocate for its policy preferences, it may not use its own speech to indirectly regulate private speech that it could not regulate directly. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (holding government may not influence distribution of books by private booksellers); *Wandering Dago, Inc. v. Destito* (2d Cir. 2018) 879 F.3d 20, 30 (observing "government speech" is often more "properly characterized as viewpoint-based regulation of private speech"). Flagging speech for suppression based on content and viewpoint, which Defendants did here, is not constitutionally protected government speech.

Defendants executed a coordinated campaign to silence dissent in its quest to impose a universal mask mandate in July 2022. Defendants attempted to remove truthful news articles from the Internet (PAMF # 38), disabled public comment on Social Media Accounts (PAMF # 41), and leveraged connections in the office of Congressman Adam Schiff, Chair of the House of Representatives Permanent Select Committee on Intelligence at the time, in communications with a Twitter executive for removal of "anti-mask" content from Twitter (PAMF # 25-35, 39). Morrow persistently followed up with Twitter to shut down centralized public debate by having the Alt Account suspended. (PAMF #47-58).

If Defendants did not intend to threaten or coerce Twitter to censor protected speech, Morrow would have stopped after using the report function in Twitter. (PAMF # 31, 40). Morrow would not have gone directly to a Twitter executive, citing his relationship to a member of Congress who had been involved in demanding content moderation from social media companies. (PAMF # 25-36). Using the standard "report" feature in Twitter is one thing, but leveraging a government position for special access to an executive, while invoking the name of a congressman with regulatory authority, crosses over into a violation of free speech protections. While the government speech doctrine provides some cover for government officials to implement policy and convey the government's position, it does not serve as an excuse to regulate private expression. *Shurtleff v. City*

of Bos., Massachusetts (2022) 142 S. Ct. 1583, 1589.

At the time of the Twitter Exchange, Congressman Schiff and HPSCI had oversight and investigative authority over social media companies, including Twitter, and had been involved in congressional investigations and hearings relating to content moderation on social media and Section 230 reform. (PAMF # 32-36). While Morrow personally had no personal enforcement authority over Twitter (and does not need it under *Cuomo, Bantam Books, Okwedy* and *Backpage.com*), threats were implied by his reference to Schiff, who had authority at the time and still has authority to investigate social media companies introduce legislation to amend Section 230, REDACTED PER CRC 2.551(b)(3)(A)(ii) (PAMF #25-36). This can reasonably be interpreted as intimating that some form of punishment or adverse regulatory action will follow the failure to accede to Morrow's request, and therefore a valid claim can be stated. *See Brezenoff* 707 F.2d at 39.

Social media platforms value Section 230 because it shields them from legal responsibility for what their users post. *See Gonzalez v. Google LLC* (2023) 143 S. Ct. 1191, 1192. Defendants' emails to Twitter invoking Congressman Schiff, Chair of a committee with investigative authority over social media companies and the ability to introduce legislation to amend Section 230, were an implied threat by the Defendants, amounting to coercion. (PAMF # 25-36).

Taken together, the facts show Morrow implicitly threatened Twitter with adverse regulatory action by invoking Congressman Schiff in his persistent communications regarding "opponents" and "anti-maskers," thereby significantly encouraging Twitter to interfere with Alliance's constitutionally protected rights. At the same time, Morrow disabled comments on the Social Media Sites to stifle discussion in a public forum. (PAMF # 41). While the Alliance contends Defendants clearly intended to threaten or coerce Twitter to censor certain speech, such an inquiry is a disputed fact-based inquiry and triable issues of material fact exist to defeat the instant motion.

4. Jurisprudence on Censorship Via Private Digital Platforms is Developing

Jurisprudence on government censorship of speech on private digital platforms is just beginning to develop. Justice Clarence Thomas telegraphed impending United States Supreme Court guidance on these issues, noting the principal legal difficulty that surrounds digital platforms

is "that applying old doctrines to new digital platforms is rarely straightforward." *Biden v. Knight First Amend. Inst. At Columbia Univ.* (2021) 141 S. Ct. 1220, 1221 (Thomas, J., concurring). According to Justice Thomas, "[t]oday's digital platforms provide avenues for historically unprecedented amounts of speech, including speech by government actors. Also unprecedented, however, is the concentrated control of so much speech in the hands of a few private parties. We will soon have no choice but to address how our legal doctrines apply to highly concentrated, privately owned information infrastructure such as digital platforms." *Id.*

Multiple cases involving government censorship of speech on private digital platforms are advancing through the courts as of this writing. Two cases relied upon by Defendants, *Garnier v. O'Connor-Ratcliff* and *O'Handley v. Weber*, are not settled law. Certiorari was granted in *Garnier v. O'Connor-Ratcliff* (9th Cir. 2022) 41 F.4th 1158, 1177 on April 23, 2023. A petition for writ of certiorari is pending review in *O'Handley*, 62 F.4th 1145. Further, two analogous cases, *Missouri v. Biden* (W.D.L.A. July 4, 2023) No. 3:22-CV-01213[1] and *Changizi v. HHS* (S.D.O.H. Oct. 18, 2022) No. 2:22-cv-1776 are awaiting decision at the Circuit Court level. Accordingly, rigid adherence to any one test, especially one used in a case pending review by the United States Supreme Court, would be improper. Likewise, granting summary judgment when the law is unsettled would also be improper.

5. Even if it Were Proper to Rigidly Apply the O'Handley Test, the Facts Are Distinct

Defendants cite *O'Handley* in support of the assertion that no free speech violation occurs where a private party intermediary is free to disagree with the government. (MSJ 16:9-12). *O'Handley* is distinct from the instant case in a number of critical ways, and admits "[t]his area of the law is far from a "model of consistency." *O'Handley,* 62 F.4th at 1156.

In *O'Handley*, the court evaluated whether to hold Twitter liable as a government actor for a Section 1983 violation. Here, Twitter is not named as a defendant. Alliance sued government defendants to enforce a constitutional right violated by Defendants' repeated requests to censor citizens, and for Defendants' engagement in viewpoint discrimination in the closure of a public

[1] The Fifth Circuit heard oral argument on August 10, 2023.

forum. Alliance seeks to enjoin continued interference with free speech rights and does not seek any damages. *O'Handley*, on the other hand, sought to hold Twitter accountable for monetary damages resulting from Twitter's involvement in stifling speech at the government's behest.

E. Harm And Relief

Defendants contend they are entitled to summary judgment because the court cannot order a remedy. (MSJ, 17:6-11) Direct causation is often impossible to prove in First Amendment cases. *See Sec'y of State of Md. v. Joseph H. Munson Co.* (1984) 467 U.S. 947, 956. "[C]hilling a plaintiff's speech is a constitutional harm adequate to satisfy the injury-in-fact requirement." *See Speech First, Inc. v. Fenves* (5th Cir. 2020) 979 F.3d 319, 330-31.

Defendants caused direct injury to Alliance members and the public at large by significantly encouraging and/or coercing social media companies to censor posts by "anti-maskers" and "opponents" on social media and to suspend the Alt Account, and by disabling public comments so that no person can post or receive critical information that conflicts with Ferrer's guidance. By silencing dissenting voices, Defendants maintained an illusion of consensus to justify prolonged Covid measures. There exists a very real danger that the County will continue to censor opposing viewpoints on future issues. When the next emergency comes, the County should not be permitted to eliminate evidence of dissent to portray an illusion of consensus.

Alliance's request for injunctive relief is not solely aimed at reopening public comment but at preventing continued censorship attempts through backchannels with social media companies. While Defendants do not have authority to reinstate the Alt Account, that account existed solely to retweet LACDPH with open comments to allow public debate. Accordingly, reinstatement of the Alt Account is unnecessary if Defendants reopen public comments on the Social Media Accounts.

It is not the government's role to be the arbiter of truth, or to police bullying and harassment on social media. Like the District Court in *Missouri v Biden*, this court should order Defendants to stop seeking censorship of protected speech through private digital platforms. *Missouri v. Biden* at 154. Defendants may use the report function just like any other user, but pressuring social media executives to remove content and accounts that deviate from Defendants' views using implied threats via back-channel communications is an attack on free speech.

Alliance asks this court to hold Defendants accountable for their censorship scheme to dissuade them from similar acts going forward. As long as LACDPH holds the power to control the lives of over ten million people, it must act responsibly in the exercise of that power–including not infringing the right to speak and receive information.

IV. CONCLUSION

For the reasons set forth above, Alliance requests this court deny Defendants' motion for summary judgment. Alternatively, if the court is inclined to grant summary judgment, Alliance seeks relief pursuant to California Code of Civil Procedure section 437c(h).

Alliance received a confidential production of thousands of documents from X Corp. (formerly known as Twitter) two days prior to its filing deadline and is attempting to resolve issues relating to X Corp.'s request to seal. (Hamill Decl., ¶¶ 22-26). Alliance is also still awaiting testimony from the Southern California News Group. (Hamill Decl., ¶¶ 28-29). Pursuant to Cal. Code Civ. Proc. Section 437c(h), facts essential to justify Alliance's opposition may exist but cannot, for reasons stated above, be presented, and Alliance accordingly asks the court to deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just.

Dated: August 18, 2023

Hamill Law & Consulting

By: _/s/ Julie A. Hamill_____
Julie A. Hamill
Attorney for Petitioner
Alliance of Los Angeles County Parents

DECLARATION OF JULIE A. HAMILL

I, Julie A. Hamill, declare as follows:

1. I am a sole practitioner with Hamill Law & Consulting, attorney of record for Plaintiff and Petitioner Alliance of Los Angeles County Parents ("Alliance") in this action. If called as a witness, I could and would competently testify to all facts stated herein.

2. On or about April 13, 2023, I visited the Twitter timeline for Los Angeles County Department of Public Health ("LACDPH"), by navigating to https://twitter.com/lapublichealth on my web browser.

3. During my review of the LACDPH Twitter timeline, I noticed that all content prior to September of 2022 was missing from the Twitter timeline.

4. I immediately sent an email to counsel for LACDPH regarding the missing evidence, and asked that LACDPH request and preserve archived data from Twitter. A true and correct copy of my email to counsel for LACDPH is attached to the Compendium of Exhibits as **Exhibit 11**.

5. Counsel for LACDPH subsequently provided me with an archived copy of LACDPH's Twitter data in discovery responses, but the Twitter timeline content has not been publicly restored.

6. As of the date of this writing, the oldest post visible on LACDPH's Twitter timeline is dated November 22, 2022. Accordingly, none of the dissenting commentary from July 2022, discussed in Alliance's opposition to Defendants' motion for summary judgment, is visible to the public on LACDPH's Twitter timeline.

7. LACDPH maintains a page on its website called "PUBLIC HEALTH COVID-19 MEDIA BRIEFINGS," located at http://publichealth.lacounty.gov/media/coronavirus/media-briefings.htm ("LACDPH Media Briefings Site"). On July 30, 2023, I visited the LACDPH Media Briefings Site and clicked "video" under "July 7, 2022." This opened to a Youtube page showing a video recording of LACDPH's July 7, 2022 media briefing. I transcribed relevant portions of the July 7, 2022 briefing, a true and correct copy of which is attached to the Compendium of Exhibits and Request for Judicial Notice as **Exhibit 1.**

8. Los Angeles General Medical Center, formerly known as Los Angeles County + USC Medical Center ("LAC+USC"), posts videos of its weekly town halls on YouTube. On July 13, 2022, LAC+USC posted a town hall video, during which Chief Executive Officer Jorge Orozco, Chief Medical Officer Brad Spellberg, MD, and Chief Epidemiologist Dr. Paul Holtom, MD, responded to the messaging from LACDPH.

9. On July 30, 2023, I visited the YouTube Link to the LAC+USC July 13, 2022 town hall, available at https://www.youtube.com/watch?app=desktop&v=_fGuA-nU7EI&t=469s. I transcribed relevant portions of the video, a true and correct copy of which is attached to the Compendium of Exhibits and Request for Judicial Notice as **Exhibit 2.**

10. On July 30, 2023, I visited the LACDPH Media Briefings Site and clicked "video" under "July 14, 2022." The LACDPH Media Briefings Site opened to a Youtube page showing a video recording of LACDPH's July 14, 2022 media briefing. I transcribed relevant portions of the July 14, 2022 briefing, a true and correct copy of which is attached to the Compendium of Exhibits and Request for Judicial Notice as **Exhibit 3.**

11. On July 30, 2023, I visited United States Senator Diane Feinstein's website and downloaded a letter dated January 31, 2018 from Senator Feinstein and Representative Adam Schiff to Twitter, Inc. and Facebook Inc. A true and correct copy of the letter, available at https://www.feinstein.senate.gov/public/_cache/files/f/3/f36602e9-c8b1-40bd-8a96-c16132f46c52/7F053B22AA13FB07E55F4BE903018FF7.2018-1-31-feinstein-schiff-letter.pdf, is attached to the Compendium of Exhibits and Request for Judicial Notice as **Exhibit 5.**

12. On July 30, 2023, I visited the United States Congress' webpage for the June 13, 2019 hearing before the House Permanent Select Committee on Intelligence ("HPSCI") entitled "Challenges of Artificial Intelligence, Manipulated Media, and 'Deepfakes'", available at https://www.congress.gov/event/116th-congress/house-event/109620. I downloaded excerpts from the hearing transcript, available at https://www.congress.gov/116/meeting/house/109620/documents/HHRG-116-IG00-Transcript-20190613.pdf. A true and correct copy of the hearing transcript excerpts is attached to the Compendium of Exhibits and Request for Judicial Notice as **Exhibit 6**.

13. On July 30, 2023, I downloaded the Member Statement for The Honorable Adam B. Schiff from the June 13, 2019 HPSCI hearing, available at https://www.congress.gov/116/meeting/house/109620/documents/HHRG-116-IG00-MState-S001150-20190613.pdf. A copy of Mr. Schiff's Member Statement is attached to the Compendium of Exhibits and Request for Judicial Notice as **Exhibit 7**.

14. On July 30, 2023, I visited the United States Senate Judiciary Committee webpage and downloaded Lauren Culbertson's April 27, 2021 testimony to the Subcommittee on Privacy, Technology, and the Law, available at https://www.judiciary.senate.gov/imo/media/doc/Culbertson%20Testimony.pdf. A copy Ms. Culbertson's testimony is attached to the Compendium of Exhibits and Request for Judicial Notice as **Exhibit 8.**

15. On July 30, 2023, I visited Congressman Adam Schiff's website and downloaded his April 29, 2020 letter to Twitter, Inc., available at https://schiff.house.gov/imo/media/doc/20200429toTwitterrecoronavirusmisinformation.pdf. A copy of Mr. Schiff's letter is attached to the Compendium of Exhibits and Request for Judicial Notice as **Exhibit 9.**

16. On July 30, 2023, I visited Congressman Adam Schiff's website and downloaded his December 8, 2022 letter to Twitter, Inc., available at https://schiff.house.gov/imo/media/doc/letter_to_twitter.pdf. A copy of Mr. Schiff's letter is attached to the Compendium of Exhibits and Request for Judicial Notice as **Exhibit 10**.

17. On or about July 19, 2022, I received a message from an employee of the Los Angeles County Department of Public Health. The employee desires to remain anonymous due to fear of retaliation. The employee forwarded to me an internal message from Liza Frias, Director of Environmental Health, asking employees to sign up for overtime shifts "[i]n anticipation of the reinstatement of the indoor mask mandate on Friday, July 29th…" A true and correct copy of this message is attached to the Compendium of Exhibits as **Exhibit 4**.

18. Attached to the Compendium of Exhibits as **Exhibit 12** is a true and correct copy of excerpts from the transcript of the Deposition of Brett Morrow, which I took on July 7, 2023 in this case.

19. Attached to the Compendium of Exhibits as **Exhibit 13** is a true and correct copy of excerpts from the transcript of the Deposition of Barbara Ferrer, which I took on May 3, 2023 in this case.

20. On August 9, 2023, I visited the LACDPH Twitter timeline. Below each post on LACDPH's timeline is a message that states "Who can reply? People @lapublichealth mentioned can reply." This message appears on every post in LACDPH's timeline. A true and correct copy of a screenshot from LACDPH's timeline is attached to the Compendium of Exhibits as **Exhibit 14**.

21. On August 14, 2023, I visited LACDPH Facebook page. As of August 14, 2023, there are 176 public reviews, and no restriction on posting a new review or comments on existing reviews on the LACDPH Facebook page. The most recent review is from August 9, 2023, and is an advertisement for herbal herpes cures. A copy of the most recent review found on the LACDPH Facebook page is attached to the Compendium of Exhibits as **Exhibit 15**.

22. On May 12, 2023, I served X Corp., formerly known as Twitter, with a deposition subpoena for documents relevant to this matter with a production date of June 1, 2023. Following months of exchanges with counsel for X Corp. in attempts to meet and confer, X Corp. stated that they would be providing responsive documents beginning on August 7, 2023. As of August 15, 2023, I had received no documents from X Corp, and counsel for X Corp. has provided a variety of excuses and justifications, always leading me to believe that the production would be imminent. I am attaching an email exchange with counsel for X Corp. to the Compendium of Exhibits as **Exhibit 16.**

23. On August 15, I received an email from counsel for X Corp. stating:

> "Julie, we should be ready to produce today. It's taken some time to finalize the production with our review / production tool. You have not been strung along. Our correspondence shows that, including that we even had to devise and propose search terms. Regarding the lack of a protective order, we'll have documents marked "confidential." Those should not be publicly disseminated, including not on your website. The only potentially valid use for the documents would be in direct connection with the litigation, i.e., filing them with the court.

> Can we agree that you would only potentially use those documents to file them with the court -- and that if you intend to file any of those documents, you first discuss with me as to whether X Corp. will agree to lift the "confidential" tag on those specified documents so they can be publicly filed or, if we will not agree to that, you will request to file them under seal?"

I responded "Yes, agreed." A true and correct copy of this exchange is included in **Exhibit 16.**

24. On August 16, 2023, I received 11,194 pages of documents from X Corp., all of which are marked "Confidential." I reviewed the California Rules of Court, Rule California Rules of Court, Rule 2.551(a) and 2.550(d), which require a court order for sealing documents and do not allow parties to file documents under seal pursuant to an agreement of the parties. I explained to counsel for X Corp., a partner with White & Case LLP, that I do not believe sufficient grounds exist to ask the Court to seal the X Corp. documents I intend to file as part of the opposition to the motion for summary judgment. Counsel for X Corp. accused me of violating an agreement and stated a reservation of rights against me and my client. A true and correct copy of this exchange is attached as **Exhibit 20.**

25. I request the documents described in paragraph marked as **Exhibit 21** in the compendium of exhibits be filed under seal pursuant to request of counsel for X Corp. I am providing a copy of the Statement of Jonathan Hawk in support of a request to seal these exhibits as **Exhibit 22** to the Compendium of Exhibits.

26. The documents produced by X Corp. identified in this declaration were not produced by LACDPH in discovery and are redacted in this filing due to X Corp.'s claim of confidentiality. Descriptions of the documents and their relevance are as follows:

- X_CORP_004627- X_CORP_004628, X_CORP_009394- X_CORP_009395, X_CORP_005807- X_CORP_005809, and X_CORP_003037 - X_CORP_003038
  REDACTED PER CRC 2.551(b)(3)(A)(ii)
- X_CORP_010894 - X_CORP_010969 and X_CORP_010993 – 010998
  REDACTED PER CRC 2.551(b)(3)(A)(ii)
- X_CORP_010970
  REDACTED PER CRC 2.551(b)(3)(A)(ii)

27. I was informed by an anonymous source that Mr. Morrow sought to have Sal Rodriguez, opinion editor for Southern California News Group, remove the July 22, 2022 opinion article entitled "Bringing back a mask mandate in Los Angeles County is unjustified," written by

Scott Balsitis, PhD, Jeffrey Klausner, MD, MPH, Houman Hemmati, MD, PhD, and Neeraj Sood, PhD ("Opinion") removed from the Internet. A true and correct copy of the Opinion is included in the Compendium of Exhibits at **Comp. Exh. 087-090**, marked as internal Exhibit 2 to the Declaration of Brett Morrow.

28. I prepared a declaration for Mr. Rodriguez regarding this request and sent it to Mr. Rodriguez for his signature. I received a response from Mr. Rodriguez stating: "Thanks Julie, just need checking with my higher up to get the OK on this since it involves an attempt by the government to get us to do something." A true and correct copy of this email exchange is attached here as **Exhibit 17,** and the draft declaration is attached as **Exhibit 18.**

29. I followed up several times with Mr. Rodriguez and the executive editor for Southern California News Group and have not received any response. I intend to subpoena Mr. Rodriguez to compel his testimony on this matter.

30. On July 24, 2023, I conducted a search for Patrick Boland's salary records on Legistorm, which is a non-partisan, for-profit company that researches, verifies and publishes information about Members of Congress and congressional staff. I found Mr. Boland's records at https://www.legistorm.com/person/Patrick_Morrow_Boland/143419.html, and have included a request that the court take judicial notice of his dates of employment and title with Congressman Adam Schiff in the attached Request for Judicial Notice.

31. On July 24, 2023, I conducted a search for the dates that Congressman Schiff acted as Chairman for the House Permanent Select Committee on Intelligence. Biographical Directory of the United States Congress, available at https://bioguide.congress.gov/search/bio/S001150, shows Mr. Schiff served as Chair in the 116th and 117th congress, which spanned from January 3, 2019 through January 3, 2023 according to https://www.senate.gov/legislative/DatesofSessionsofCongress.htm. I have included a request that the court take judicial notice of Mr. Schiff's dates of service as Chairman of the House Permanent Select Committee on Intelligence in the attached Request for Judicial Notice.

32. Pursuant to Cal. Code Civ. Proc. Section 437c(h), facts identified in paragraphs 21 – 28 essential to justify Alliance's opposition may exist but cannot, for reasons stated above, be

presented, and Alliance accordingly asks the court to deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just. This includes an order regarding the sealing of records requested by X Corp., review and analysis of a forthcoming privilege log from X Corp. that may reveal additional evidence, and a subpoena to Mr. Rodriguez regarding testimony relating to requests made by Brett Morrow to remove content from Southern California News Group websites.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Executed on August 18, 2023, at Beulah, Michigan

_____/S/_____

Julie A. Hamill

DECLARATION OF CYNTHIA ROJAS

I, Cynthia Rojas, declare as follows:

1. I am a member of the Alliance of Los Angeles County Parents. I have personal knowledge of the facts contained in this declaration. If called as a witness, I am competent to testify to these facts.

2. On or about July 30, 2022, Los Angeles County Department of Public Health ("LACPH") disabled public comments on their Twitter account, identified as @lapublichealth.

3. LACPH's disabling of public comments eliminated my ability to post and receive information that called into question LACPH's guidance in the comment section below official LACPH announcements.

4. On August 5, 2022, I created a Twitter account with the handle "@ALT_lacph" called "ALT LA Public Health Account" ("Alt Account"). I modeled the account after other alt accounts I had seen on Twitter, including @Alt_CDC. I documented my experience with the Alt Account in notes attached here as **Exhibit** 19 .

5. The purpose of the Alt Account was to Quote Tweet content from @lapublichealth with comments open to allow public debate. The "Quote Tweet" feature allows you to Tweet another person's Tweet with your own comment added.

6. The Alt Account only followed @lapublichealth and did not comment on or like any Tweets.

7. The Alt Account biography stated "Unofficial ALT account created for @lapublichealth that allows public debate. We will RT all LA Public Health dept content with comments turned on."

8. On August 10, 2022, Twitter locked the Alt Account. Twitter stated in the violation notice that the profile name violated the rules against impersonation, and "should clearly indicate that the user is not affiliated with the subject of the account." Twitter explained that "non-affiliation can be indicated by incorporating words such as 'parody,' 'fake,' 'fan,' or 'commentary.'" To unlock the account, Twitter stated: "Modify the content that violates our rules… 1 profile name." A screenshot of Twitter's message to me is on page 173 of the document attached as **Exhibit** 19.

9. The account name was then changed from "ALT LA Public Health Account" to "ALT LA Public Health Account – Commentary," and Twitter unlocked the Alt Account.

10. On August 23, 2022, Twitter locked the Alt Account again. This time, Twitter stated that the Alt Account violated the rules against impersonation, and could be unlocked if I modified the profile biography.

11. At 3:15 pm on August 23, 2022, I changed the biography from "Unofficial ALT account created for @lapublichealth that allows public debate. We will RT all LA Public Health dept content with comments turned on" to "Commentary ALT account created for @lapublichealth that allows public debate. We will RT all LA Public Health dept content with comments turned on." Twitter then unlocked the account.

12. Two minutes later, at 3:17 pm on August 23, 2022, Twitter permanently suspended the Alt Account. I received an email from Twitter stating "[y]our account has been suspended for violation(s) of Twitter's rules, specifically our policy regarding parody, newsfeed, commentary, and fan accounts."

13. I appealed the suspension to Twitter. On August 24, 2022, Twitter Support emailed me stating: "We've reviewed your appeal, and determined that your account will remain suspended for violation(s) of our parody, newsfeed, commentary, and fan account policy."

14. Twitter denied three additional appeals on October 27, December 10, and December 12, 2022.

15. I am aware of many other "alt" accounts, including the @Alt_CDC account, that continue to exist on Twitter without permanent suspension.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

Executed on August 9, 2023, at Laguna Niguel, California

DocuSigned by:
Cynthia Rojas
CD3907E3B2D7468...

Cynthia Rojas

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California, I am over the age of 18 and not a party to the within action. My business address is 904 Silver Spur Road, #287, Rolling Hills Estates, California 90274. My e-service address is julie@juliehamill-law.com..

On August 18, 2023 I served the foregoing document: **ALLIANCE OF LOS ANGELES COUNTY PARENTS' OPPOSITION TO COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH, MUNTU DAVIS, AND BARBARA FERRER'S MOTION FOR SUMMARY JUDGMENT; DECLARATIONS OF JULIE A. HAMILL AND CYNTHIA ROJAS IN SUPPORT THEREOF; REQUEST FOR JUDICIAL NOTICE; SEPARATE STATEMENT OF FACTS IN OPPOSITION; AND COMPENDIUM OF EXHIBITS** on the interested parties in this action.

☐ By placing a true copy thereof enclosed in a sealed envelope addressed as follows:

☒ By attaching a true copy via electronic transmission addressed as follows:

Valerie Alter, VAlter@sheppardmullin.com
Kent Raygor, KRaygor@sheppardmullin.com
Zachary Golda, zgolda@sheppardmullin.com
Sheppard Mullin
1901 Avenue of the Stars, Suite 1600
Los Angeles, California 90067-6055
Attorneys for Respondents and Defendants
County of Los Angeles Department of Public Health
Barbara Ferrer
Muntu Davis

☐ ONLY BY ELECTRONIC TRANSMISSION. Only by emailing the document(s) to the persons at the e-mail address(es). This is necessitated during the declared National Emergency due to the Coronavirus (COVID-19) pandemic because this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission. We will provide a physical copy, upon request only, when we return to the office at the conclusion of the national emergency.

☒ BY ELECTRONIC MAIL: I caused said document to be delivered by electronic mail to the e-mail address(es) as listed on the attached service list.

☐ By FACSIMILE TRANSMISSION: I caused all pages of the above-entitled document to be sent to the recipients by facsimile at the respective telephone numbers as indicated.

☐ (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Rancho Palos Verdes, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

☐ (BY OVERNIGHT DELIVERY) By: Federal Express, to be delivered on next business day.

☐ (BY PERSONAL SERVICE) I delivered such envelope by hand to the office of the addressee(s).

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 18, 2023 at Beulah, Michigan.

/s/

Julie A. Hamill