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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

ALLIANCE OF LOS ANGELES COUNTY PARENTS, an unincorporated association,

Petitioner and Plaintiff,

v.

COUNTY OF LOS ANGELES 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

Assigned for All Purposes to:
Hon. William F. Fahey, Dept. 69

DEFENDANTS COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH'S, MUNTU DAVIS, M.D.'S, AND BARBARA FERRER, PH.D., MPH, M.ED'S MOTION FOR SUMMARY JUDGMENT

[*Separate Statement of Undisputed Material Facts* and *Declaration of Brett Morrow* and *Declaration of Valerie E. Alter* filed concurrently herewith]

Reservation No. 863397943742

Hearing
Date: September 1, 2023
Time: 9:30 a.m.
Dep't: 69

Petition Filed: July 26, 2022
Verified FAP filed: January 13, 2023
FSC: October 4, 2023
Trial Date: October 16, 2023

TO THE ABOVE-CAPTIONED COURT AND TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

Please take notice that on September 1, 2023, at 9:30 a.m., or as soon thereafter as this matter can be heard in Department 69 of the above-captioned Court, located at 111 North Hill Street, Los Angeles, California 90012, defendants County of Los Angeles Department of Public Health, Muntu Davis, M.D., in his official capacity as Health Officer for the County of Los Angeles, and Barbara Ferrer, Ph.D., MPH, M.Ed, in her official capacity as the Director of the County of Los Angeles Department of Public Health (collectively "**LACDPH**") will and hereby do move for summary judgment on the ground that the sole remaining cause of action asserted by Plaintiff Alliance of Los Angeles County Parents ("**Plaintiff**"), for purported violation of the right to free speech under the California Constitution due to the closing of public commentary on LACDPH's Twitter, Facebook, and Instagram social media accounts, has no merit as a matter of law.

This Motion is based on this notice, the attached memorandum of points and authorities, the supporting *Separate Statement of Undisputed Material Facts* and *Declaration of Brett Morrow* and *Declaration of Valerie E. Alter*, and all other pleadings, records, and papers on file, deemed to be on file, or of which this Court may or must take judicial notice at the time this motion for summary judgment is heard, and upon such further evidence and arguments as may be presented at or before the time of the hearing of this Motion.

Dated: June 14, 2023

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By _____
KENT R. RAYGOR

Attorneys for Defendants
COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH, MUNTU DAVIS, M.D., and BARBARA FERRER, Ph.D., MPH, M.Ed

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I.

INTRODUCTION

The Court should grant summary judgment in favor of defendants County of Los Angeles Department of Public Health, Muntu Davis, M.D., and Barbara Ferrer, Ph.D., MPH, M.Ed (collectively "**LACDPH**") and against plaintiff Alliance of Los Angeles County Parents ("**Plaintiff**") on Plaintiff's sole remaining cause of action, for purported violation of the right to free speech under the California Constitution. Plaintiff contends that LACDPH violated Plaintiff's constitutional rights when LACDPH (1) closed public commentary on LACDPH's social media accounts (Twitter, Facebook, and Instagram), and (2) reported the Twitter account @ALT_lacph as an unlawful impersonation account, which ultimately resulted in Twitter – not LACDPH – suspending that account. Plaintiff is wrong on both counts.

First, as the undisputed evidence makes clear and as Plaintiff admits, LACDPH's "social media pages and posts served as a designated public forum." [*First Amended Petition* ("***FAP***") ¶ 144.] As a matter of law, LACDPH may close a designated public form at any time it chooses, or change the character of a designated public forum to a limited public forum, a subtype of designated public forum, at any time it chooses. That is exactly what LACDPH did here, and doing so violates no right to free speech under the California Constitution. The undisputed evidence demonstrates that LACDPH closed its social media accounts to public comment generally, and instead created a limited public forum in which it allowed public commentary only on "town hall" type events, and non-verbal reactions, such as "likes." LACDPH's reasons for closing public commentary [*see FAP* ¶ 145] on these designated social media public fora are irrelevant as a matter of law.

Second, the undisputed evidence demonstrates that LACDPH reported the @ALT_lacph Twitter account as an unlawful impersonation account, and that Twitter – not LACDPH – suspended that account based on *Twitter's* review of the account and *Twitter's* own user guidelines and policies. LACDPH cannot be held liable for Twitter's actions as a

matter of law. LACDPH's actions – merely reporting the impersonation @ALT_lacph account to Twitter – cannot give rise to liability, either, because LACDPH did not coerce Twitter into taking any action.

Thus, LACDPH is entitled to summary judgment as a matter of law, and this motion should be granted.

II.

STATEMENT OF FACTS

A. LACDPH's Social Media Accounts.

LACDPH maintains accounts on Twitter, Instagram, and Facebook (the "**Social Media Accounts**") where it provides public health-related information to Los Angeles County residents. [SUF #1; *Declaration of Brett Morrow* ("***Morrow Decl.***") ¶ 6.] When LACDPH's Social Media Accounts were initially created, they were open to written public commentary on LACDPH's posts. [SUF #2.] In July 2022, LACPH closed written public commentary on its Social Media Accounts. [SUF #3.] On August 21, 2022, LACDPH added the following statement to each of its Social Media Accounts:

> This account is now for information purposes only and, for that reason, public comments are limited to live "town hall"-type events it conducts wherein it solicits questions from the public during the live event. Once such events are concluded, the Department will then close the live event post to public comments. Other posts will remain closed to public comments.
>
> Residents who have questions or are looking for guidance can send a direct message and Public Health will respond as soon as possible.

[SUF #4.] Following the closure of general public commentary on its Social Media Accounts, the public still may comment on LACDPH's Social Media Accounts during town hall events. [SUF #5.] LACDPH does not restrict the written commentary on its Social Media Accounts during its live, "town hall"-type events based on the content or viewpoint of the commentary. [SUF #6.] The public can still share content from LACDPH's social media pages via retweeting on Twitter and sharing on their personal Facebook pages, and can also register non-verbal reactions to LACDPH's posts.[SUF #7.] Finally, the public can

still communicate with LACDPH by direct message on LACDPH's Social Media Accounts, by e-mail, by phone, and by written correspondence. [*Morrow Decl.* ¶ 8.]

Plaintiff alleges that "[o]n occasion, since August 21, 2022, DPH has forgotten to shut off public comments, and comments have sporadically been allowed on various posts." [*FAP* ¶ 143.] If at any time since closing written public commentary on its Social Media Accounts members of the public were able to post such commentary on LACDPH's Social Media Accounts at a time other than during a live "town hall"-type event, LACDPH simply made a mistake. [SUF #8.]

Plaintiff also alleges that following the closure of public commentary on its Social Media Accounts, LACDPH tagged third parties in posts on its Social Media Accounts, and "[a]nyone tagged in a post by DPH may comment." [*FAP* ¶ 143.][1] This, too, was a mistake: LACDPH was not aware that third parties tagged in posts on its Social Media Accounts could comment on the posts, even though LACDPH had otherwise closed public commentary. [SUF #9.] Furthermore, from July 2022 to the present, no third party inadvertently tagged in an LACDPH post commented on the posts in which they were tagged. [SUF #10.]

B. <u>The @ALT_lacph Twitter Account</u>.

On August 5, 2022, Brett Morrow, LACDPH's Chief Communications Officer, contacted Twitter about an unauthorized account with the handle @ALT_lacph that did not belong to LACDPH but that appeared to be a mirror copy of LACDPH's official account. [SUF #11; *Morrow Decl.* ¶ 12, Ex. A.] Morrow stated: "Please see this newly set up account that may confuse people. Can this be shut down? [¶] https://twitter.com/ALT_ lacph". (*Id.*) In response, Twitter's Government & Elections group asked Morrow to "file an impersonation report," which Morrow did. [SUF #12.] In response to Mr. Morrow's impersonation report, Twitter's Government & Politics group responded, "Our team has

[1] "Tagging" someone on social media means mentioning them by name, and with a link to their own social media account on the relevant platform.

determined that the account is not compliant with our policies and will look to solve the issue." [SUF #13.] Morrow responded: "Thank you. On first glance, it looks like it's already been unlocked and they just added 'Commmentary' to the name, but they aren't really providing commentary. They are just reposting our content." [*Morrow Decl*. ¶ 15, Ex. A.] Morrow did not receive any additional communications from Twitter. [*Id*.]

Twitter ultimately suspended the @ALT_lacph account. [SUF #14.] In Twitter's own words to the owner of the @ALT_lacph account, "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. [*Declaration of Valerie E. Alter* ("***Alter Decl.***") ¶ 4, Exhibit B at ALL000128.] There is no evidence that Morrow or any other person associated with LACDPH coerced Twitter to take any action with regard to the @ALT_lacph account. [SUF #15.]

III.

LEGAL ARGUMENT

A. Legal Standard

"A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit." CAL. CODE CIV. PROC. § 437c(a)(1). The motion shall be granted if "there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Id*. § 437c(c). A defendant can meet its burden of proving that a cause of action has no merit if it demonstrates that one or more elements of the cause of action cannot be established. *Id.* § 437c(p)(2). That said, "a moving defendant need not support his motion with affirmative evidence negating an essential element of the responding party's case. Instead, the moving defendant may (through factually vague discovery responses or otherwise) point to the absence of evidence to support the plaintiff's case." *Leslie G. v. Perry & Assocs.* (1996) 43 Cal.App.4th 472, 482.

Once the defendant meets its burden of proof, the burden then shifts to the plaintiff to prove that a triable issue of material fact exists. CAL. CODE CIV. PROC. § 437c(p)(2). The plaintiff must "set forth the specific facts showing that a triable issue of material fact exists

. . . ." *Id.* § 437c(p)(1). A non-moving party "shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." *Ibid.*; *Oldcastle Precast, Inc. v. Lumbermens Mutual Casualty Co.* (2001) 170 Cal.App.4th 554, 562. That said, a plaintiff is bound by the allegations in its complaint: "The function of the pleadings in a motion for summary judgment is to delimit the scope of the issues: the function of the affidavits or declarations is to disclose whether there is any triable issue of fact within the issues delimited by the pleadings." *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381.

B. LACDPH Did Not Infringe Plaintiff's Free Speech Rights When LACDPH Closed Public Commentary On Its Social Media Accounts.

1. LACDPH Can Close Or Change The Character Of A Designated Public Forum For Any Reason And The Reason For Such Closure Is Irrelevant As A Matter Of Law.

There are two types of public fora. Traditional public fora are "those areas of public property that traditionally have been held open to the public for expressive activities," such as parks and public sidewalks. *Prigmore v. City of Redding* (2012) 211 Cal.App.4th 1322. *See also L. F. v. Lake Wash. Sch. Dist. #414* (9th Cir. 2020) 947 F.3d 621, 627 n.7 (rejecting that a school district's e-mail system is a public forum because "[t]raditional public fora are those places, such as public streets and parks, which by long tradition or by government fiat have been devoted to assembly and debate." (cleaned up)). By contrast, a "designated public forum exists where the government intentionally opens up a nontraditional forum for public discourse." *Garnier v. O'Connor-Ratcliff* (9th Cir. 2022) 41 F.4th 1158, 1177 (citations omitted), *cert, granted* April 23, 2023.

The California "Supreme Court's approach to identifying public forums has been to analyze the similarity of the area at issue to areas that have traditionally been deemed public forums." *Prigmore*, 211 Cal.App.4th at 1337. The Court first defines the forum, and then "decide[s] whether the area thus defined is a traditional 'public forum.'" *Id.* at 1339 (citing

Clark v. Burleigh (1992) 4 Cal.4th 474, 484). California courts have considered this issue in connection with physical fora, looking at factors such as "status as a public thoroughfare" and "physical characteristics, including its location." *Id.* (considering whether the area outside a library was a public forum, and quoting *ACLU of Nevada v. City of Las Vegas* (9th Cir. 2003) 333 F.3d 1092, 1100-01).

No published case in California, however, has decided whether a government-controlled social media account is a public forum. Federal law, however, is instructive on this point. In *Garnier*, *supra*, the Ninth Circuit held that social media pages belonging to members of a school board acting in their official capacities constituted a designated public forum. It explained: "Where, as here, the government has made a forum available for use by the public and has no policy or practice of regulating the content posted to that forum, it has created a designated public forum." 41 F.4th at 1179.

A governmental entity is not required to maintain a designated public forum in perpetuity. Rather, "the government may close a designated public forum whenever it chooses." *Seattle Mideast Awareness Campaign v. King Cnty.* (9th Cir. 2015) 781 F.3d 489, 496. *See also Danskin v. San Diego Unified Sch. Dist* (1946) 28 Cal.2d 536, 547 ("It is true that the state need not open the doors of a school building as a forum and may at any time choose to close them."); *Sanctity of Human Life Network v. Cal. Highway Patrol* (2003) 105 Cal.App.4th 858, 885 (noting that "the government is not required to retain the open character of such property [designated public forum] indefinitely . . . ." [citing *Perry Ed. Assn. v. Perry Local Ed. Assn.* (1983) 460 U.S. 37, 46]). The government also can change the character of a designated public forum to a limited public forum, "a sub-category of a designated public forum that refer[s] to a type of nonpublic forum that the government has intentionally opened to certain groups or to certain topics." *Garnier*, 41 F.4th at 1178 (internal quotations omitted and alterations in original).

DiLoreto v. Downey Unified School District Board of Education (9th Cir. 1999) 196 F.3d 958 is instructive. The plaintiff wanted to advertise the Ten Commandments on a school baseball field fence on which the school district sold advertising. The school district

rejected the advertisement, and then stopped permitting advertisements altogether. The Ninth Circuit affirmed the district court's order granting summary judgment in favor of the school district. It explained: "Nor do we believe that the Constitution prohibited the school from closing the forum in response to appellant's ad. ***The government has an inherent right to control its property, which includes the right to close a previously open forum.***" *Id.* at p. 970 (emphasis added). This was true even though the school district acted in response to the religious content of the proposed advertisement: "Closing the forum is a constitutionally permissible solution to the dilemma caused by concerns about providing equal access while avoiding the appearance of government endorsement of religion." *Id.* *See also Karras v. Gore* (S.D. Cal. Jan. 5, 2015) Case No. 14CV2564 BEN (KSC), 2015 WL 74143, at *1 (Sheriff's Department could permanently close its Facebook page to "avoid the time, expense, and hassle necessary to enforce the Department's policies regarding comments to its Facebook page").

LACDPH's social media accounts, like the accounts at issue in *Garnier*, were designated public fora. [SUF ##1, 2.] LACDPH was not required to maintain those designated public fora, and was entitled to close them whenever it chooses. This is exactly what LACDPH did when it made the decision to close its Social Media Accounts to public commentary, allowing public commentary only in connection with "town hall"-type events, and non-verbal reactions, such as "likes." [SUF ## 3, 4.] As in *DiLoreto* and *Karras*, LACDPH's reasons for changing the character of the forum are irrelevant, and LACDPH is entitled to summary judgment.

2. <u>LACDPH'S Resulting Limited Public Forum Passes Constitutional Muster</u>.

When LACDPH closed its Social Media Accounts to written public commentary, those accounts changed their character from designated public fora to limited public fora. *Garnier*, 41 F.4th at 1179. "In a limited public forum, restrictions on speech and speakers are permissible so long as they are viewpoint neutral and reasonable in light of the purpose served by the forum," and the "[s]tandards for inclusion and exclusion" must be

"unambiguous and definite". *Garnier*, 41 F.4th at 1178 (cleaned up). *See also Ctr. For Bio-Ethical Reform, Inc. v. Irvine Co.* (2019) 37 Cal.App.5th 97, 105 ("The scrutiny and content-based and content-neutral regulations under the liberty of speech clause in the California Constitution is the same as that applied in the First Amendment context."). "Whether a speech restriction in a limited public forum is reasonable in light of the forum's purpose depends on whether the limitation is consistent with preserving the property for the purpose to which it is dedicated." *Garnier*, 41 F.4th at 1182-1183 (cleaned up). Applying this rule, one court has held, for example, that a policy of deleting "off topic" comments in a limited public forum was viewpoint neutral and reasonable in light of the objective purpose served by the forum. *See*, *e.g.*, *Davison v. Plowman* (E.D. Va. 2017) 247 F. Supp. 3d 767.

Garnier is instructive. There, two members of the board of trustees of a local school board blocked two members of the public from their Facebook pages, and subsequently began using "a Facebook feature that allows the administrators of public pages to create a list of words and then filter out any comments that use any word on that list." 41 F.4th at 1179. The trustees contended that the filtering closed the designated public forum that consisted of their Facebook pages. The Ninth Circuit explained:

> [B]efore adding word filters to their Facebook pages, the Trustees had no policy or practice of regulating the content posted to the fora. They have since restricted public interaction with their Facebook pages to the use of Facebook's non-verbal reaction icons. In so doing, the Trustees now exercise the clear and consistent control over the interactive portions of their Facebook pages that our cases require to maintain a limited public forum.

Id. Liability in *Garnier* arose because the trustees continued to block two members of the public from their Facebook pages, such that those two individuals could not react at all, *not* because the trustees closed their Facebook pages to written public commentary. *Id.* at 1183 ("We conclude that the Trustees violated the Garniers' First Amendment rights by blocking them from the Trustees' social media accounts . . . .").

LACDPH's Social Media Accounts have a clear "policy or practice of regulating the content posted" thereto. *See Garnier*, 41 F.4th at p. 1179. There is a pinned or equivalent post on each of its social media pages that states:

> REGARDING PUBLIC COMMENTS
>
> This account is now for informational purposes only and, for that reason, public comments are limited to live "town hall"-type events it conducts wherein it solicits questions from the public during the live event. Once such events are concluded, the Department will then close the live event post to public comments. Other posts remain closed to public comments.
>
> Residents who have questions or are looking for guidance can send a direct message and Public Health will response as soon as possible.

[SUF #4.] This pinned post provides clear and unambiguous standards for use of LACDPH's Social Media Accounts. Members of the public can comment in writing on LACDPH's Social Media Accounts during live, town hall events, at which time LACDPH does not restrict the written commentary based on the content or viewpoint of the commentary. [SUF ##5, 6.] Moreover, members of the public can still "like" or register non-verbal reactions to LACDPH's posts on its Social Media Accounts. [SUF #7.] This is a reasonable and viewpoint-neutral policy that serves the stated purpose of the fora: providing information to the public and interacting with the public during "town hall" events. [SUF #4.] Thus, LACDPH's Social Media Accounts are constitutional limited public fora.

Plaintiff's allegation that "[o]n occasion, since August 21, 2022, DPH has forgotten to shut off public comments, and comments have sporadically been allowed on various posts" does not change this conclusion. [*FAP* ¶ 143.] LACDPH, as Plaintiff alleges, forgot to close public comments sporadically, *i.e.*, it simply made a mistake. [SUF #8.] The same is true of Plaintiff's allegation that "[a]nyone tagged in a post by DPH may comment." [*FAP* ¶ 143.] This, too, was an error, as LACDPH did not intend for those tagged to be able to comment, and did not even know that tagging someone would allow them to comment. [SUF #9.] In fact, there is no evidence that anyone that LACDPH tagged ever even commented. [SUF #10; *Morrow Decl.* ¶ 11.] These mistakes do not render LACDPH's

policy constitutionally infirm. "One 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. *See also New England Reg. Council of Carpenters v. Kinton* (1st Cir. 2002) 284 F.3d 9, 22 (tolerance of some activities inconsistent with a nonpublic, *i.e.*, limited, nature of the forum is not tantamount to the affirmative act required to support finding of designated public forum). Thus, LACDPH's decision to close comments created a reasonable limited public forum, and LACDPH is entitled to summary judgment.

C. LACDPH Did Not Infringe Plaintiff's Free Speech Rights In Connection With The @ALT_lacph Twitter Account.

The law used to determine whether "a private entity will be treated as a state actor for constitutional purposes" is "far from a model of consistency" with multiple potentially applicable tests. *O'Handley v. Weber* (9th Cir. 2023) 62 F.4th 1145, 1155-56. In this case, however, the undisputed facts greatly simplify that question. Just as in *O'Handley*, "Twitter did not exercise a state-created right when it limited access to" particular "posts or suspended [an] account. Twitter's right to take those actions when enforcing its content moderation policy was derived from its user agreement . . ., not from any right conferred by the State." *Id.* at 1156. *See also id.* at 1160 ("we conclude that Twitter's content-moderation decisions did not constitute state action because (1) Twitter did not exercise a state-conferred right or enforce a state-imposed rule . . ., and (2) the interactions between Twitter and the OEC do not satisfy either the nexus or the joint action tests . . . ."). Thus, the County cannot be held "responsible for Twitter's content-moderation decisions" with regard to the @ALT_lacph Twitter account. *Id.* at 1161. *See also id.* at 1162 ("we agree with the district court that Secretary Weber is not responsible for any of Twitter's content-moderation decisions with respect to O'Handley. This fact precludes O'Handley from bringing his claim" that "arises solely out of Twitter's decisions to limit access to his posts and to suspend his account.").

Because LACDPH cannot be held liable for what Twitter decides to do in enforcing Twitter's own policies regarding the presence of Twitter accounts impersonating someone else, the question then becomes whether the County can be held liable for violating Plaintiff's free speech rights based on the County's own conduct. *See O'Handley*, 62 F.4th at 1162 ("our state action analysis does not preclude O'Handley from challenging the Secretary's own conduct in directing the OEC because those acts are, by definition, acts of the State."). "In deciding whether the government may urge a private party to remove (or refrain from engaging in) protected speech," courts "have drawn a sharp distinction between attempts to convince and attempts to coerce. Particularly relevant here," courts "have held that government officials do not violate the First Amendment when they ***request*** that a private intermediary not carry a third party's speech ***so long as the officials do not threaten adverse consequences*** if the intermediary refuses to comply." *Id.* at 1158 (emphasis added); *see also id.* at 1163 (noting a distinction "between coercion and persuasion: The former is unconstitutional intimidation while the latter is permissible government speech."). This distinction "holds even when government officials ask an intermediary not to carry content they find disagreeable." *Id.* at 1163. Moreover, merely "[f]lagging a post that potentially violates a private company's content-moderation policy does not" constitute adverse action by the government. *Id.* "Rather, it is a form of government speech that" courts "have refused to construe as 'adverse action' because doing so would prevent government officials from exercising their own First Amendment rights." *Id.*; *see also Hart v. Facebook, Inc.* (N.D. Cal. May 9, 2023) No. 22-CV-737-CRB, 2023 WL 3362592, at *3 (finding allegations that "government officials asked Facebook and Twitter to generally be on the lookout for COVID-related misinformation and contacted the platforms about the prevalence of misinformation" did "not show that the government exercised dominant control over the social media companies' action").

Applying *O'Handley* here, the County's mere flagging of the @ALT_lacph Twitter account as a potential impersonation account cannot give rise to liability unless the County accompanied its flagging with coercion, intimidation, or threats directed at Twitter if it did

not close the impersonating account. There is no evidence at all that the County attempted to coerce Twitter into taking action with regard to the @ALT_lacph Twitter account. [SUF #15.] On the contrary, the County, just like the State in *O'Handley*, merely reported the @ALT_lacph Twitter account to Twitter, and Twitter took action pursuant to Twitter's own policies. [SUF ##11-14.]

Finally, even assuming *arguendo* that the County's reporting of the @ALT_lacph account to Twitter violated Plaintiff's free speech rights in the abstract (it did not), LACDPH is entitled to summary judgment because the Court cannot order a remedy for any alleged wrong.[2] LACDPH does not have the power to restore the @ALT_lacph Twitter account—the account never belonged to LACDPH—and Twitter itself is not a party to this lawsuit. [SUF ##16-17.] "[A]n injunction is binding only on the parties to an action or those acting in concert with them." *People ex rel. Gwinn v. Kothari* (2000) 83 Cal.App.4th 759, 769. "[C]ourts may not grant an injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law." *Id.* (quotation and citation omitted). Thus, the Court cannot issue an order requiring non-party Twitter to restore the @ALT_lacph account. LACDPH is entitled to summary judgment on Plaintiff's speech claim to the extent it is based on the @ALT_lacph Twitter account.

IV.

CONCLUSION

For the reasons explained above, LACDPH is entitled to summary judgment as a matter of law on Plaintiff's sole remaining cause of action in this lawsuit, for purported violation of their free speech rights under the California Constitution.

[2] LACDPH notes that Plaintiff's *FAP*, as currently pled, does not seek any relief related to the @ALT_lacph Twitter account.

Dated: June 14, 2023

SHEPPARD MULLIN RICHTER & HAMPTON LLP

By _____
KENT R. RAYGOR

Attorneys for Defendants
COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH, MUNTU DAVIS, M.D., and BARBARA FERRER, Ph.D., MPH, M.Ed

PROOF OF SERVICE

Alliance of Los Angeles County Parents v. County of Los Angeles, et al.
Case No. 22STCP02772

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067-6055.

On June 14, 2023, I served true copies of the following document(s) described as **DEFENDANTS COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH'S, MUNTU DAVIS, M.D.'S, AND BARBARA FERRER, PH.D., MPH, M.ED'S MOTION FOR SUMMARY JUDGMENT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address lchu@sheppardmullin.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on June 14, 2023, at Los Angeles, California.

Lily Young Chu

SERVICE LIST

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