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6

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF LOS ANGELES**

9 ALLIANCE OF LOS ANGELES COUNTY
10 PARENTS, an unincorporated association

11 Petitioner and Plaintiff,

12 vs.

13 COUNTY OF LOS ANGELES DEPARTMENT
14 OF PUBLIC HEALTH; MUNTU DAVIS, in his
official capacity as Health Officer for the County
15 of Los Angeles; BARBARA FERRER, in her
16 official capacity as Director of the County of Los
Angeles Department of Public Health; and DOES
17 1 through 25, inclusive,

18 Respondents and Defendants.
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Case No.: 22STCP02772

PRETRIAL REPORT

Dept.: 69

Judge: William F. Fahey

COMPLAINT FILED: July 26, 2022

FSC: October 4, 2023

TRIAL DATE: October 16, 2023

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23 **REDACTED FOR PUBLIC FILING**
24 **PURSUANT TO PROTECTIVE ORDER**
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A. CAUSES OF ACTION AND AFFIRMATIVE DEFENSES

The remaining causes of action in this case are as follows:

1. Third Cause of Action – Violation of Free Speech Clause of California Constitution, Art. I, § 2.
2. Fifth Cause of Action for Declaratory Relief – The parties require a judicial declaration of rights in order to properly address Petitioner’s complaints about Respondents’ practices. Specifically, the parties require a declaration from the court regarding whether defendants practices, as alleged herein, violate the Free Speech Clause of the California Constitution.

B. STIPULATIONS TO ULTIMATE FACTS AND ISSUES

The parties stipulate to the following facts:

- LACDPH maintains accounts on Facebook, Instagram, and Twitter (“Social Media Accounts”)
- When LACDPH’s Social Media Accounts were initially created, they were open to written public commentary.
- On August 21, 2022, LACDPH added the following statement to each of its Social Media Accounts: “REGARDING PUBLIC COMMENTS 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.”
- 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.
- Since LACDPH closed public comments, 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.

- 1 • There is no evidence that any third party tagged on LACDPH’s Social Media Accounts
- 2 since July 2022, actually commented on any LACDPH post in which the third party was
- 3 tagged.
- 4 • Exhibit A to the Morrow Declaration is an authentic copy of an email exchange between
- 5 Morrow and Twitter
- 6 • Twitter is not a party to this lawsuit
- 7 • There is no evidence that LACDPH has the power to restore the @ALT_lacph Twitter
- 8 account.

9 In the event that LACDPH’s motion *in limine* is denied, LACDPH and Alliance stipulate as
10 to the following facts as undisputed:

- 11 • On July 13, 2022, Chief Medical Officer Dr. Brad Spellberg, Chief Executive Officer
- 12 Jorge Orozco, and Epidemiologist and Infectious Disease Division Service Chief Dr.
- 13 Paul Holtom of the Los Angeles County + University of Southern California Medical
- 14 Center (“LAC+USC”) held their weekly town hall meeting, a recording of which was
- 15 posted to Youtube.
- 16 • During the July 13, 2022 town hall, LAC + USC physicians stated:
 - 17 • “We’re seeing a lot of people with mild disease in urgent care or ED who go
 - 18 home and do not get admitted.” – Dr. Spellberg. (8:27 – 8:34).
 - 19 • “It is just not the same pandemic as it was, despite all the media hype to the
 - 20 contrary.” – Dr. Spellberg. (9:12 - 9:17).
 - 21 • “Yeah public health is scared.” – Jorge Orozco (9:18 – 9:19).
 - 22 • “A lot of people have bad colds, is what we’re seeing.” – Dr. Spellberg. (9:20 –
 - 23 9:23).
 - 24 • “[W]e’re just seeing nobody with severe COVID disease.” – Dr. Holtom. (10:11
 - 25 – 10:15).
 - 26 • “[W]e have no one in the hospital who had pulmonary disease due to COVID.
 - 27 Nobody in the hospital.” – Dr. Holtom. (10:17 – 10:24).
 - 28

1 • “[C]ertainly there is no reason from a hospitalization due to COVID perspective,
2 to be worried at this point.” – Dr. Holtom. (11:07 – 11:15).

- 3 • Twitter users posted recordings of the LAC + USC town hall videos in the comment
4 section of the Social Media Accounts.
- 5 • Twitter users alleged a conflict of interest involving Ferrer and her daughter in the
6 comment section of the Social Media Accounts.
- 7 • On July 19, 2022, Liza E. Frias, Director of Environmental Health dispatched an
8 electronic communication to All Environmental Health Specialist Team Members
9 stating: “In anticipation of the reinstatement of the indoor mask mandate on Friday, July
10 29th, volunteers will be needed to work overtime on the weekends of July 30 and 31,
11 and August 6 and 7.”
- 12 • Morrow copied Patrick Boland (“Boland”) in his July 20, 2022 email to Twitter.
- 13 • At the time of Morrow’s July 20, 2022 email to Twitter, Congressman Schiff was
14 Chairman of the House Permanent Select Committee on Intelligence (“HPSCI”).
- 15 • The subject line of Morrow’s July 20, 2022 email to Twitter is “REFERRAL FROM
16 PATRICK BOLAND: LA County Department of Public Health/Staff Harassment on
17 Twitter.”
- 18 • The first line of Morrow’s July 20, 2022 email to Twitter says “I was referred to you by
19 my friend Patrick Boland, who I used to work with in Congressman Schiff’s office.”
- 20 • Before Morrow’s July 20, 2022 email to Twitter, Morrow used Twitter’s “report”
21 function to report Tweets.
- 22 • The HPSCI has oversight and investigative authority over social media companies,
23 including Twitter, and had been publicly involved in congressional investigations and
24 hearings relating to content moderation on social media and Section 230 reform prior to
25 the Twitter Exchange.
- 26 • On August 5, 2022, Cynthia Rojas created a Twitter account known as @ALT_lacph
27 (“Alt Account.”) The purpose of the account was to quote tweet all content posted by
28 LACDPH and leave comments open for public discussion.

- 1 • On August 5, 2022, Morrow asked Twitter if the Alt Account could “be shut down?”
- 2 • Twitter told Morrow to file an impersonation report, send Twitter the number, and then
- 3 Twitter would expedite the case.
- 4 • On August 10, 2022, Twitter thanked Morrow for providing the case number and stated
- 5 it was moving the case for further review.
- 6 • On August 10, 2022, Morrow for an update on the Alt Account, and Twitter responded
- 7 the same day that “[o]ur team has determined that the account is not compliant with our
- 8 policies and will look to solve this issue.”
- 9 • On August 10, 2022, Ms. Rojas received a violation notice from Twitter stating that the
- 10 profile name violated the rules against impersonation, and “should clearly indicate that
- 11 the user is not affiliated with the subject of the account.” Twitter explained that “non-
- 12 affiliation can be indicated by incorporating words such as ‘parody,’ ‘fake,’ ‘fan,’ or
- 13 ‘commentary.’” To unlock the account, Twitter stated: “[m]odify the content that
- 14 violates our rules... 1 profile name.”
- 15 • The Alt Account name was then changed from “ALT LA Public Health Account” to
- 16 “ALT LA Public Health Account – Commentary,” and Twitter unlocked the Alt
- 17 Account.
- 18 • Later on August 10, 2022, Morrow again emailed Twitter stating, “On first glance, it
- 19 looks like it’s already been unlocked and they just added “Commentary” to the name,
- 20 but they aren’t really posting commentary. They are just reposting our content.”
- 21 • On August 23, 2022, Twitter locked the Alt Account again. This time, Twitter stated that
- 22 the Alt Account violated the rules against impersonation, and could be unlocked if the
- 23 profile biography was modified.
- 24 • At 3:15 pm on August 23, 2022, Ms. Rojas changed the biography from “Unofficial
- 25 ALT account created for @lapublichealth that allows public debate. We will RT all LA
- 26 Public Health dept content with comments turned on” to “Commentary ALT account
- 27 created for @lapublichealth that allows public debate. We will RT all LA Public Health
- 28 dept content with comments turned on.”

- At 3:17 pm on August 23, 2022, Twitter permanently suspended the Alt Account.
- Twitter denied four appeals by the Alt Account owner following the suspension.

C. EVIDENTIARY ISSUES

1. *DiLoreto* and Relevance of Evidence of Viewpoint Discrimination in Closing a Forum

Defendants contend all evidence of viewpoint discrimination in Defendants’ decision to close public comments is irrelevant as a matter of law based on their interpretation of *DiLoreto v. Downey Unified School Dist. Bd. of Edu,c* (1999) 196 F.3d 958 (“*DiLoreto*”). *DiLoreto* does not say *anywhere* that a motive for closing a forum is irrelevant.

On the contrary, our United States Supreme Court says *Perry Educ. Ass'n v. Perry Local Educators' Ass'n* (1983) 460 U.S. 37 (“*Perry*”) that **closing a public forum specifically to quash expression of a certain viewpoint is an unlawful form of viewpoint discrimination.** (*Perry* at 46). In *Perry*, the Court found no indication that the school board intended to discourage one viewpoint and advance another in their decision to limit access to school district mailboxes to the teachers’ union acting as bargaining representative for district teachers. (*Id.* at p. 49).

DiLoreto involves a school district’s decision to close a baseball field fence to all advertising following an attempt by Mr. DiLoreto to post a paid ad displaying the Ten Commandments. **The Ninth Circuit did not say closing a forum is never viewpoint discriminatory.** Based on the facts in that case, the court determined there was **not** evidence of viewpoint discrimination—the District had *always* excluded s “certain subjects from the advertising forum as sensitive or too controversial for the forum's high school context”--and therefore closing the public forum was not viewpoint discriminatory and was constitutionally permissible. *DiLoreto* at 966-970.

The court found that “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” (*DiLoreto* at 970.) There was **no evidence in the *DiLoreto* case that the school district was trying to shut down only Christian or religious speech.** If there had been, and the court determined that closing the forum was not viewpoint discriminatory and

1 was constitutional, then maybe Defendants would have a point. But that is not what happened in
2 that case.

3 In *DiLoreto*, it was not just religious messages the district refused to allow. The evidence
4 showed that the district had similarly refused to permit political, religious, and controversial public
5 issue advertising. *DiLoreto* at 967. The district’s policy was to prohibit signs that might cause
6 disruption and potential controversy – not to prohibit only religious signs, or only signs expressing
7 one viewpoint. The Court stated:

8 “We recognized that a public secondary school has legitimate concerns “such as respecting
9 audience maturity, disassociating itself from speech inconsistent with its educational
10 mission, and avoiding the appearance of endorsing views” that render a school's restriction
11 on advertising reasonable. Therefore, we concluded that a public secondary school could
12 restrict advertising of controversial topics in programs for high school athletic events, even
13 where the school has created a limited public forum for other advertisements.” *DiLoreto* at
14 968.

15 Here, we have evidence of a history of the government trying to silence anti-mask,
16 opponent speech. REDACTED PER PROT. ORDER

17 There is substantial evidence in the record showing persistent attempts
18 by Defendants to silence any voice, even the voices of County physicians and experts, that deviated
19 from Defendants’ official pronouncements. This evidence is reflected in Morrow’s emails, the
20 sealed X corp. production, and the sealed text messages produced by Defendants.

21 Defendants sought to eliminate speech that was critical of the department or conflicted with
22 Ferrer’s statements. In Morrow’s own words, the county targeted “opponent” and “anti-mask”
23 speech in the lead up to the disabling public comments.

24 Further – in *DiLoreto* the court found the intent of the district in opening the fence to
25 advertising was to raise funds, not to create a forum for unlimited public expression. *Id.* at 966.
26 Here, the posting on social media where members of the public can respond was absolutely
27 intended to create a forum for unlimited public expression, and when the county didn’t like the
28 content and viewpoint that opponents and anti-maskers shared, they shut it down.

2. Defendants Motion in Limine re: Relevance

1 Defendants' moved to exclude evidence of Defendants' mask policies and evidence of the
2 conduct of Adam Schiff and Patrick Boland. Alliance filed an opposition brief on September 20,
3 2023. The issues are as follows:

4 **A. Relevance of Mask Policy Evidence**

5 Defendants seek to exclude the following evidence of Defendants' mask policies:

- 6 1. Transcript of excerpts from a July 7, 2022 Public Health Virtual Media Briefing. Video
7 available at <https://www.youtube.com/watch?v=DJ4M8cfNi6g&t=278s>. [Alliance's
8 Opposition to LACDPH's Motion for Summary Judgment ("MSJ Oppo."), Alliance's
9 Compendium of Exhibits in Opposition to LACDPH Motion for Summary Judgment
10 ("ACE"), Exh. 1.]; Transcript of excerpts from a July 14, 2022 Public Health Virtual
11 Media Briefing. Video available at <https://www.youtube.com/watch?v=uzHGjm8FIOs>.
12 [MSJ Oppo., ACE, Exh. 3.]; July 19, 2022 Internal Memorandum from Liza E. Frias,
13 Director of Environmental Health, asking employees to sign up for overtime shifts in
14 anticipation of a possible reinstatement of an indoor mask mandate on Friday, July 29,
15 2022. [MSJ Oppo., ACE, Exh. 4.]

16 These documents are relevant to Alliance's free speech claims because they tend to prove
17 that Defendants engaged in viewpoint discrimination, and provide context for the significant
18 encouragement and/or coercion by the County of Twitter to silence dissent. These documents show
19 that Defendants were planning to reimplement a universal mask mandate in July 2022. Defendants'
20 stated intent to reimpose a mask mandate immediately preceded the County's move to eliminate
21 "opposition" and "anti-mask" content from its social media sites in July 2022. *See Alliance*
22 *Opposition to Defendants' MSJ*, 12:4-27. This evidence will be used to support Alliance's claim
23 that Defendants closed a public forum for viewpoint discriminatory purpose, (*see Perry Educ. Ass'n*
24 *v. Perry Local Educators' Ass'n* (1983) 460 U.S. 37 (finding no indication that the school board
25 intended to discourage one viewpoint and advance another); *DiLoreto v. Downey Unified School*
26 *Dist. Bd. of Educ.* (1999) 196 F.3d 958 (finding that closing the forum was a constitutionally
27 permissible solution where no evidence of viewpoint discrimination was present); and provides the
28 necessary context for evaluating the issue of significant encouragement and/or coercion by

1 Defendants of a private digital platform to censor dissent. *See Missouri v. Biden*, No. 23-30445 (5th
2 Circ. Sept. 8, 2023) at p. 45 (when evaluating whether coercion exists for purposes of a First
3 Amendment violation, courts do not take speaker’s communications in isolation, but look to the
4 **tenor of the parties’ relationship** and the **conduct of the government in context**) (citing *Kennedy*
5 *v. Warren* (9th Cir. 2023) 66 F.4th 1199).

6 This evidence also tends to prove that Defendants were not engaging in protected
7 government speech when they contacted Twitter, but were seeking to censor opponents and to take
8 down accounts that criticized Defendants and provided an open forum for discussion. *See Missouri*
9 *v. Biden*, No. 23-30445 (5th Cir. Sept. 8, 2023) at 64 (“the government is not permitted to use the
10 government-speech doctrine to “silence or muffle the expression of disfavored viewpoints” (citing
11 *Matal v. Tan* (2017) 582 U.S. 218, 235). Government officials have an interest in engaging with
12 social media companies, including on issues such as misinformation and election interference, but
13 the government is not permitted to advance these interests to the extent that it engages in viewpoint
14 suppression. *Missouri v. Biden*, No. 23-30445 (5th Cir. Sept. 8, 2023) at 64.

- 15 2. Transcript of excerpts from a July 13, 2022 LAC+USC Virtual Town Hall Meeting -
16 LAC+USC Medical Center Video available at:
17 https://www.youtube.com/watch?app=desktop&v=_fGuA-nU7EI&t=469s. [MSJ Oppo.,
18 ACE, Exh. 2.]

19 This video shows medical doctors employed by the County of Los Angeles making
20 statements that conflict with Defendants’ mandates and statements. Social media users posted this
21 and other similar videos in the comment section of Defendants’ social media posts before
22 Defendants disabled public comments. Defendants were concerned about this video being shared in
23 comments on the Social Media Accounts because it undermined Ferrer’s credibility, spread
24 “misinformation” about her ability to lead the response to covid, and Defendants believed it was a
25 “mischaracterization” of the pandemic. Morrow Dep. 113:10-15; 127:23-24. This video,
26 Defendants’ concerns about it, and Defendants’ closure of public comments within two weeks of its
27 release tends to show that Defendants closed public comments to avoid members of the public
28 seeing information like this.

1 This evidence will be used to support Alliance’s claim that Defendants closed a public
2 forum for viewpoint discriminatory purpose, (*see Perry Educ. Ass'n v. Perry Local Educators' Ass'n*
3 (1983) 460 U.S. 37 (finding no indication that the school board intended to discourage one
4 viewpoint and advance another); *DiLoreto v. Downey Unified School Dist. Bd. of Educ.* (1999) 196
5 F.3d 958 (finding that closing the forum was a constitutionally permissible solution where no
6 evidence of viewpoint discrimination was present); and provides the necessary context for
7 evaluating the issue of significant encouragement and/or coercion by Defendants of a private digital
8 platform to censor dissent. *See Missouri v. Biden*, No. 23-30445 (5th Cir. Sept. 8, 2023) at p. 45
9 (when evaluating whether coercion exists for purposes of a First Amendment violation, courts do
10 not take speaker’s communications in isolation, but look to the **tenor of the parties’ relationship**
11 and the **conduct of the government in context**) (citing *Kennedy v. Warren* (9th Cir. 2023) 66 F.4th
12 1199).

13 This evidence also tends to prove that Defendants were not engaging in protected
14 government speech when they contacted Twitter, but were seeking to censor opponents and to take
15 down accounts that criticized Defendants and provided an open forum for discussion. *See Missouri*
16 *v. Biden*, No. 23-30445 (5th Cir. Sept. 8, 2023) at 64 (“the government is not permitted to use the
17 government-speech doctrine to “silence or muffle the expression of disfavored viewpoints” (citing
18 *Matal v. Tan* (2017) 582 U.S. 218, 235). Government officials have an interest in engaging with
19 social media companies, including on issues such as misinformation and election interference, but
20 the government is not permitted to advance these interests to the extent that it engages in viewpoint
21 suppression. *Missouri v. Biden*, No. 23-30445 (5th Cir. Sept. 8, 2023) at 64.

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23 **B. Relevance of Congressman Schiff’s and Mr. Boland’s Conduct**

24 Defendants seek to exclude the following evidence:

- 25 1. January 31, 2018 Letter from Congressman Adam Schiff and Senator Dianne
26 Feinstein to Twitter and Facebook, available at
27 <https://www.feinstein.senate.gov/public/cache/files/f/3/f36602e9-c8b1-40bd-8a96->
28

1 c16132f46c52/7F053B22AA13FB07E55F4BE903018FF7.2018-1-31-feinstein-schiff-
2 letter.pdf. [MSJ Oppo., ACE, Exh. 5.]

3 This evidence provides necessary context for evaluating the issue of significant
4 encouragement and/or coercion by Defendants of a private digital platform to censor dissent. *See*
5 *Missouri v. Biden*, No. 23-30445 (5th Cir. Sept. 8, 2023) at p. 45 (when evaluating whether
6 coercion exists for purposes of a First Amendment violation, courts do not take speaker’s
7 communications in isolation, but look to the **tenor of the parties’ relationship** and the **conduct of**
8 **the government in context**) (citing *Kennedy v. Warren* (9th Cir. 2023) 66 F.4th 1199).

9 It demonstrates Mr. Schiff’s regulatory authority over social media companies, specifically
10 to demand that social media companies conduct “in-depth forensic” examinations and report to
11 Congress at his request. Alliance does not intend to discuss Ms. Feinstein’s conduct to prove its
12 case, but her name is on the letter, which Alliance intends to use as evidence.

13 This letter provides necessary context for evaluating significant encouragement and/or
14 coercion because when Defendants reached out to Twitter executives, they went through Mr.
15 Schiff’s chief of staff Patrick Boland, referenced Boland in the subject line, referenced Mr. Schiff in
16 the email, and presented an implied threat of adverse action by doing so. (*See* Defendants’ Exhibit
17 A to Motion for Summary Judgment, pp. 7-13).

18 The four factors evaluated to distinguish between attempts to coerce and attempts to
19 convince are (1) word choice and tone, (2) whether speech was perceived as a threat, (3) existence
20 of regulatory authority, and (4) whether adverse consequences are mentioned. *See Missouri v.*
21 *Biden*, No. 23-30445 (5th Cir. Sept. 8, 2023) at p. 36 (citing *National Rifle Ass’n v. Vullo* (2d Cir.
22 2022) 49 F.4th 700, 715 and *Kennedy v. Warren* (9th Cir. 2023) 66 F.4th 1199).

23 Given the context of Mr. Schiff’s regulatory authority and history of requiring social media
24 companies to report to Congress, the use of Mr. Schiff’s and his staffer’s names by Defendants in
25 their emails shows that Defendants’ word choice was coercive, that Defendants’ emails to Twitter
26 could reasonably be perceived as a threat, that there was an appearance of the existence of
27 regulatory authority because of the connection to Mr. Schiff, and that Defendants conveyed an
28 unspoken message that can reasonably be construed as intimating a threat.

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2. Excerpts from Transcript of June 13, 2019 hearing of House Permanent Select Committee on Intelligence. Retrieved from <https://www.congress.gov/event/116th-congress/house-event/109620>. [MSJ Oppo., ACE, Exh. 6.]; Statement of Chairman Schiff testimony from June 13, 2019 House Permanent Select Committee on Intelligence hearing. Retrieved from: <https://www.congress.gov/116/meeting/house/109620/documents/HHRG-116-IG00-MState-S001150-20190613.pdf>. [MSJ Oppo., ACE, Exh. 7.]

This evidence provides necessary context for evaluating the issue of significant encouragement and/or coercion by Defendants of a private digital platform to censor dissent. *See Missouri v. Biden*, No. 23-30445 (5th Cir. Sept. 8, 2023) at p. 45 (when evaluating whether coercion exists for purposes of a First Amendment violation, courts do not take speaker’s communications in isolation, but look to the **tenor of the parties’ relationship** and the **conduct of the government in context**) (citing *Kennedy v. Warren* (9th Cir. 2023) 66 F.4th 1199).

These document demonstrate Mr. Schiff’s regulatory authority in his capacity as Chair of the House Permanent Select Committee on Intelligence (“HPSCI”). During this Committee hearing, panelists and committee members discussed revisions to Section 230 of the Communications Decency Act. The Committee discussed the need for social media companies to put in place policies to “protect users” from misinformation, and how to mitigate potential harms from social media platforms.

This provides important context for the emails sent by Defendants to Twitter. Twitter executives knew Mr. Schiff as a person with regulatory authority who held a position of great power (including subpoena power) as Chairman of HPSCI. Twitter executives knew Mr. Boland as Mr. Schiff’s chief of staff, and they knew that amendment to Section 230, Congressional investigation, and Congressional testimony were a possible consequence of failing to appease demands from Mr. Schiff and chief of staff Boland. This document supports the contention that, when Defendants used Mr. Boland and referenced Mr. Schiff in their communications with Twitter, Defendants did so to coerce or significantly encourage Twitter to censor dissent.

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3. April 29, 2020 Letter from Congressman Adam Schiff to Twitter. Retrieved from: <https://schiff.house.gov/imo/media/doc/20200429toTwitterreconavirusmisinformati> on.pdf. [MSJ Oppo., ACE, Exh. 9.]

This evidence provides necessary context for evaluating the issue of significant encouragement and/or coercion by Defendants of a private digital platform to censor dissent. *See Missouri v. Biden*, No. 23-30445 (5th Circ. Sept. 8, 2023) at p. 45 (when evaluating whether coercion exists for purposes of a First Amendment violation, courts do not take speaker’s communications in isolation, but look to the **tenor of the parties’ relationship** and the **conduct of the government in context**) (citing *Kennedy v. Warren* (9th Cir. 2023) 66 F.4th 1199).

This document was sent by Mr. Schiff one day after [REDACTED]

REDACTED PER PROT. ORDER

[REDACTED]

[REDACTED]. This document shows that

[REDACTED]

[REDACTED]. This is the context in which Defendants’ emails at issue in this case were sent to Twitter.

4. December 8, 2022 Schiff Letter to Twitter, retrieved from <https://schiff.house.gov/news/press-releases/schiff-takano-call-on-elon-musk-totamp-down-hate-speech-on-twitter>. [MSJ Oppo., ACE, Exh. 10.]

This evidence provides necessary context for evaluating the issue of significant encouragement and/or coercion by Defendants of a private digital platform to censor dissent. *See Missouri v. Biden*, No. 23-30445 (5th Circ. Sept. 8, 2023) at p. 45 (when evaluating whether coercion exists for purposes of a First Amendment violation, courts do not take speaker’s

1 communications in isolation, but look to the **tenor of the parties’ relationship** and the **conduct of**
2 **the government in context**) (citing *Kennedy v. Warren* (9th Cir. 2023) 66 F.4th 1199).

3 This letter is a demand for information from Mr. Schiff and Mr. Takano (both former
4 employers of Defendants’ Director of Communications, Brett Morrow) to Twitter as part of
5 “ongoing oversight efforts.”

6 Given the context of Mr. Schiff’s regulatory authority and history of requiring social media
7 companies to report to Congress, the use of Mr. Schiff’s and his staffer’s names by Defendants in
8 their emails shows that Defendants’ word choice was coercive, that Defendants’ emails to Twitter
9 could reasonably be perceived as a threat, that there was an appearance of the existence of
10 regulatory authority because of the connection to Mr. Schiff, and that Defendants conveyed an
11 unspoken message that can reasonably be construed as intimating a threat.

12
13 5. Documents produced by X Corp. marked as confidential and requested to file under
14 seal. X_CORP_004627-X_CORP_004628, X_CORP_009394 - X_CORP_009395,
15 X_CORP_005807- X_CORP_005809, and X_CORP_003037 - X_CORP_003038.

16 REDACTED PER PROT. ORDER

17 [MSJ Oppo., ACE,

18 Exh. 21.]

19 This evidence provides necessary context for evaluating the issue of significant
20 encouragement and/or coercion by Defendants of a private digital platform to censor dissent. *See*
21 *Missouri v. Biden*, No. 23-30445 (5th Cir. Sept. 8, 2023) at p. 45 (when evaluating whether
22 coercion exists for purposes of a First Amendment violation, courts do not take speaker’s
23 communications in isolation, but look to the **tenor of the parties’ relationship** and the **conduct of**
24 **the government in context**) (citing *Kennedy v. Warren* (9th Cir. 2023) 66 F.4th 1199).

25 These documents contain

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27 REDACTED PER PROT. ORDER

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4 Given the context of Mr. Schiff's regulatory authority and history of requiring social media
5 companies to report to Congress, the use of Mr. Schiff's and his staffer's names by Defendants in
6 their emails shows that Defendants' word choice was coercive, that Defendants' emails to Twitter
7 could reasonably be perceived as a threat, that there was an appearance of the existence of
8 regulatory authority because of the connection to Mr. Schiff, and that Defendants conveyed an
9 unspoken message that can reasonably be construed as intimating a threat.

10
11 6. Mr. Boland's salary records and employment history, specifically the dates when Mr.
12 Boland worked for Congressman Schiff. [Hamill Decl. (MSJ Oppo.) ¶ 30.]

13
14 This evidence provides necessary context for evaluating the issue of significant
15 encouragement and/or coercion by Defendants of a private digital platform to censor dissent. *See*
16 *Missouri v. Biden*, No. 23-30445 (5th Cir. Sept. 8, 2023) at p. 45 (when evaluating whether
17 coercion exists for purposes of a First Amendment violation, courts do not take speaker's
18 communications in isolation, but look to the **tenor of the parties' relationship** and the **conduct of**
19 **the government in context**) (citing *Kennedy v. Warren* (9th Cir. 2023) 66 F.4th 1199).

20 Evidence pertaining to Mr. Boland's employment with Mr. Schiff and HPSCI provides
21 context for Defendants' communications. Had Defendants not cc'd Mr. Boland, included his name
22 in the subject line of all communications, and referenced their connection to Mr. Schiff in their
23 emails to Twitter, then such documents would not be relevant. But here, Defendants leaned heavily
24 on their connection to Mr. Boland and Mr. Schiff and went directly to the top of Twitter with their
25 censorship demands as a result of Mr. Boland's connections and perceived position of authority.

26 Mr. Boland's status as chief of staff to Adam Schiff and as staffer for HPSCI is relevant
27 because it provides context for the communications between Defendants and Twitter. Given the
28 regulatory authority held by HPSCI and Mr. Schiff and the extensive communications between

1 Boland and Twitter regarding requests to censor material and accounts critical of Schiff, followed
2 by calls to the carpet when twitter did not do what Schiff wanted, provides important context for
3 these communications.

4 Mr. Boland's *salary* is not relevant, but Mr. Boland's employment history, including the
5 dates when Mr. Boland served as chief of staff to Congressman Schiff and as a staffer with HPSCI,
6 are relevant to the issues of significant encouragement and coercion. If Defendants will stipulate to
7 the timeline of Mr. Boland's employment as chief of staff for Adam Schiff, then it will not be
8 necessary to bring in the public salary documents.

9 **D. TIME ESTIMATE OF OPENING STATEMENT**

10 15 minutes

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14 Dated: September 27, 2022

Hamill Law & Consulting

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16 By: /s/ Julie A. Hamill
17 Julie A. Hamill
18 Attorney for Petitioner
19 Alliance of Los Angeles County Parents
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1 **PROOF OF SERVICE**

2 I am employed in the County of Los Angeles, State of California, I am over the age of
3 18 and not a party to the within action. My business address is 904 Silver Spur Road, #287, Rolling
4 Hills Estates, California 90274. My e-service address is julie@juliehamill-law.com..

5 On September 27, 2023 I served the foregoing document: **PRETRIAL REPORT** on the
6 interested parties in this action.

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

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

9 Valerie Alter, VAlter@sheppardmullin.com
10 Kent Raygor, KRaygor@sheppardmullin.com
11 Zachary Golda, zgolda@sheppardmullin.com
12 Sheppard Mullin
13 1901 Avenue of the Stars, Suite 1600
14 Los Angeles, California 90067-6055
15 Attorneys for Respondents and Defendants
16 County of Los Angeles Department of Public Health
17 Barbara Ferrer
18 Muntu Davis

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

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

28 **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).

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(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 September 19, 2023 at Rancho Palos Verdes, California.

/s/

Julie A. Hamill