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7 GREGORY J. AHERN,
and NICHOLAS MOSS
8

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

12 JANICE ALTMAN et al.,
13 Plaintiffs,
14 v.
15 COUNTY OF SANTA CLARA et al.,
16 Defendants.

Case No. 4:20-cv-02180

**DEFENDANTS COUNTY OF
ALAMEDA, GREGORY J.
AHERN, AND NICHOLAS
MOSS'S ANSWER TO FIRST
AMENDED COMPLAINT**

The Hon. Jon S. Tigar

1 Defendants County of Alameda, Gregory J. Ahern, and Nicholas Moss¹
2 (collectively “County”) answer the First Amended Complaint for Injunctive and
3 Declaratory Relief (“Complaint”) filed by Plaintiffs on April 10, 2020 as follows:

4 1. In response to Paragraph 1, that Paragraph includes only legal
5 arguments or conclusions, which do not require a response. To the extent a response
6 is required, the County denies the allegations in Paragraph 1.

7 2. In response to Paragraph 2, that Paragraph includes only legal
8 arguments or conclusions, which do not require a response. To the extent a response
9 is required, the County denies the allegations in Paragraph 2.

10 3. In response to Paragraph 3, the first sentence contains legal arguments
11 and conclusions, which do not require a response. To the extent a response is
12 required, the County admits that paper, pens, ink, and technology products
13 purchased online may generally be delivered to the purchaser’s doorstep but denies
14 any remaining allegations in the first sentence. The second sentence includes only
15 legal arguments or conclusions, which do not require a response. To the extent a
16 response is required, the County denies the allegations in the second sentence.

17 4. In response to Paragraph 4, that Paragraph includes only legal
18 arguments or conclusions, which do not require a response. To the extent a response
19 is required, the County denies the allegations in Paragraph 4.

20 5. In response to Paragraph 5, that Paragraph includes only legal
21 arguments or conclusions, which do not require a response. To the extent a response
22 is required, the County denies the allegations in Paragraph 5.

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25 ¹ Plaintiffs sued Erica Pan, Health Officer for the County of Alameda, in her official
26 capacity. Erica Pan is no longer the Health Officer for the County and has been
27 replaced in that role by Nicholas Moss. Under Federal Rule of Civil Procedure Rule
28 25(d), Nicholas Moss has been automatically substituted for Erica Pan in this
litigation.

Institutional Plaintiffs

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2 22. In response to Paragraph 22, the County lacks sufficient knowledge or
3 information to admit or deny the allegations in Paragraph 22, and on that basis
4 denies them.

5 23. In response to Paragraph 23, the County lacks sufficient knowledge or
6 information to admit or deny the allegations in Paragraph 23, and on that basis
7 denies them.

8 24. In response to Paragraph 24, the County lacks sufficient knowledge or
9 information to admit or deny the allegations in Paragraph 24, and on that basis
10 denies them.

11 25. In response to Paragraph 25, the County lacks sufficient knowledge or
12 information to admit or deny the allegations in Paragraph 25, and on that basis
13 denies them.

14 26. In response to Paragraph 26, the County lacks sufficient knowledge or
15 information to admit or deny the allegations in Paragraph 26, and on that basis
16 denies them.

Santa Clara Defendants

17
18 27. In response to Paragraph 27, the County asserts that the Court
19 dismissed Defendant County of Santa Clara, California from this action on June 18,
20 2020.

21 28. In response to Paragraph 28, the County asserts that the Court
22 dismissed Defendant Laurie Smith from this action on June 18, 2020.

23 29. In response to Paragraph 29, the County asserts that the Court
24 dismissed Defendant Jeffrey Rosen from this action on June 18, 2020.

25 30. In response to Paragraph 30, the County asserts that the Court
26 dismissed Defendant Sara Cody from this action on June 18, 2020.

27 31. In response to Paragraph 31, the County asserts that the Court
28 dismissed Defendant City of San Jose, California from this action on June 18, 2020.

1 32. In response to Paragraph 32, the County asserts that the Court
2 dismissed Defendant Sam Liccardo from this action on June 18, 2020.

3 33. In response to Paragraph 33, the County asserts that the Court
4 dismissed Defendant Edgardo Garcia from this action on June 18, 2020.

5 34. In response to Paragraph 34, the County asserts that the Court
6 dismissed Defendant City of Mountain View, California from this action on June 18,
7 2020.

8 35. In response to Paragraph 35, the County asserts that the Court
9 dismissed Defendant Max Bosel from this action on June 18, 2020.

10 ***Alameda Defendants***

11 36. In response to Paragraph 36, the County admits the allegations in the
12 first sentence of that Paragraph. The County asserts that the remainder of
13 Paragraph 36 contains only legal arguments and conclusions, which require no
14 response.

15 37. In response to Paragraph 37, the County admits the allegations in the
16 first sentence of that Paragraph. The County asserts that the remainder of
17 Paragraph 37 contains only legal arguments and conclusions, which require no
18 response.

19 38. In response to Paragraph 38, the County denies the allegations in the
20 first sentence. The County asserts that Erica Pan was sworn in as the California
21 State Epidemiologist in or about July 2020. The County further asserts that the
22 current Health Officer for the County of Alameda is Nicholas Moss. The County
23 asserts that the remainder of Paragraph 38 contains only legal arguments and
24 conclusions, which require no response.

25 ***San Mateo Defendants***

26 39. In response to Paragraph 39, the County asserts that the Court
27 dismissed Defendant County of San Mateo, California from this action on June 18,
28 2020.

1 40. In response to Paragraph 40, the County asserts that the Court
2 dismissed Defendant Carlos Bolanos from this action on June 18, 2020.

3 41. In response to Paragraph 41, the County asserts that the Court
4 dismissed Defendant Scott Morrow from this action on June 18, 2020.

5 42. In response to Paragraph 42, the County asserts that the Court
6 dismissed Defendant City of Pacifica, California from this action on June 18, 2020.

7 43. In response to Paragraph 43, the County asserts that the Court
8 dismissed Defendant Dan Steidle from this action on June 18, 2020.

9 ***Contra Costa Defendants***

10 44. In response to Paragraph 44, the County asserts that the Court
11 dismissed Defendant County of Contra Costa, California from this action on June 18,
12 2020.

13 45. In response to Paragraph 45, the County asserts that the Court
14 dismissed Defendant David Livingston from this action on June 18, 2020.

15 46. In response to Paragraph 46, the County asserts that the Court
16 dismissed Defendant Chris Farnitano from this action on June 18, 2020.

17 47. In response to Paragraph 47, the County asserts that the Court
18 dismissed Defendant City of Pleasant Hill, California from this action on June 18,
19 2020.

20 48. In response to Paragraph 48, the County asserts that the Court
21 dismissed Defendant Max Bryan Hill from this action on June 18, 2020.

22 **JURISDICTION AND VENUE**

23 49. In response to Paragraph 49, that Paragraph includes only legal
24 arguments or conclusions, which require no response. To the extent a response is
25 required, the County denies the allegations in Paragraph 49.

26 50. In response to Paragraph 50, that Paragraph includes only legal
27 arguments or conclusions, which require no response. To the extent a response is
28 required, the County denies the allegations in Paragraph 50.

1 **STATEMENT OF FACTS COMMON TO ALL CLAIMS**

2 ***Constitutional Background***

3 51. In response to Paragraph 51, the County denies the allegation in that
4 Paragraph. The County further asserts the Second Amendment to the United States
5 Constitution provides, “A well regulated Militia, being necessary to the security of a
6 free State, the right of the people to keep and bear Arms, shall not be infringed.”

7 52. In response to Paragraph 52, that Paragraph includes only legal
8 arguments or conclusions, which do not require a response.

9 53. In response to Paragraph 53, that Paragraph includes only legal
10 arguments or conclusions, which do not require a response.

11 54. In response to Paragraph 54, that Paragraph includes only legal
12 arguments or conclusions, which do not require a response. The County further
13 asserts that the Fifth Amendment to the United States Constitution speaks for itself.
14 To the extent a response is required, the County admits that the partial quotation is
15 accurate.

16 55. In response to Paragraph 55, that Paragraph includes only legal
17 arguments or conclusions, which do not require a response. The County further
18 asserts that the Fourteenth Amendment to the United States Constitution speaks
19 for itself. To the extent a response is required, the County admits that the partial
20 quotation is accurate.

21 56. In response to Paragraph 56, that Paragraph includes only legal
22 arguments or conclusions, which do not require a response.

23 57. In response to Paragraph 57, that Paragraph includes only legal
24 arguments or conclusions, which do not require a response.

25 58. In response to Paragraph 58, that Paragraph includes only legal
26 arguments or conclusions, which do not require a response.

27 59. In response to Paragraph 59, that Paragraph includes only legal
28 arguments or conclusions, which do not require a response.

1 60. In response to Paragraph 60, that Paragraph includes only legal
2 arguments or conclusions, which do not require a response.

3 61. In response to Paragraph 61, that Paragraph includes only legal
4 arguments or conclusions, which do not require a response.

5 62. In response to Paragraph 62, that Paragraph includes only legal
6 arguments or conclusions, which do not require a response.

7 ***Statutory Background***

8 63. In response to Paragraph 63, that Paragraph includes only legal
9 arguments or conclusions, which do not require a response. The County further
10 asserts that California Penal Code Preliminary Provision 19.4 speaks for itself. To
11 the extent a response is required, the County admits that the quotation is accurate.

12 64. In response to Paragraph 64, that Paragraph includes only legal
13 arguments or conclusions, which do not require a response.

14 65. In response to Paragraph 65, that Paragraph includes only legal
15 arguments or conclusions, which do not require a response.

16 66. In response to Paragraph 66, that Paragraph includes only legal
17 arguments or conclusions, which do not require a response.

18 67. In response to Paragraph 67, that Paragraph includes only legal
19 arguments or conclusions, which do not require a response. The County further
20 asserts that Government Code section 26620 speaks for itself. To the extent a
21 response is required, the County admits that the quotation is accurate.

22 68. In response to Paragraph 68, that Paragraph includes only legal
23 arguments or conclusions, which do not require a response. The County further
24 asserts that Government Code section 41601 speaks for itself. To the extent a
25 response is required, the County admits that the quotation is accurate.

26 69. In response to Paragraph 69, the County denies that Government Code
27 section 101029 exists or provides as quoted. The County asserts that the quoted
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1 language is an accurate quotation of Health and Safety Code section 101029, which
2 speaks for itself.

3 70. In response to Paragraph 70, the County denies that Government Code
4 section 101030 exists or provides as quoted. The County asserts that the quoted
5 language is an accurate quotation of Health and Safety Code section 101030, which
6 speaks for itself.

7 71. In response to Paragraph 71, the County's health orders discussed in
8 that Paragraph speak for themselves. To the extent a response is required, the
9 County admits that the quotation is an accurate quotation of the County's March 31,
10 2020 Order.

11 72. In response to Paragraph 72, that Paragraph includes only legal
12 arguments or conclusions, which require no response. To the extent a response is
13 required, the County denies the allegations in Paragraph 72.

14 ***State Orders and Federal CISA Guidance Background***

15 73. In response to Paragraph 73, the County admits the allegations therein.

16 74. In response to Paragraph 74, the County asserts that the article in
17 footnote 1 speaks for itself. The County lacks knowledge or information regarding
18 the Governor's statements or the accuracy of the article in footnote 1, and on that
19 basis denies the allegations in Paragraph 74.

20 75. In response to Paragraph 75, the County admits that Governor Gavin
21 Newsom signed Executive Order N-33-20. The second clause of the first sentence
22 contains legal arguments or conclusions, which require no response. To the extent a
23 response is required, the County asserts Executive Order N-33-20 speaks for itself
24 and admits that the quotation is accurate. The final sentence of Paragraph 75
25 contains only legal arguments or conclusions, which require no response. To the
26 extent a response is required, the County asserts Executive Order N-33-20 speaks
27 for itself.

1 82. In response to Paragraph 82, the County asserts that the County of
2 Santa Clara's order discussed therein speaks for itself. To the extent further response
3 is required, the County lacks sufficient knowledge or information to admit or deny
4 the allegations in Paragraph 82, and on that basis denies them.

5 83. In response to Paragraph 83, the County admits that the Public Health
6 Department of the County of Santa Clara issued an order. The County asserts that
7 the County of Santa Clara's order speaks for itself.

8 84. In response to Paragraph 84, the County asserts that the County of
9 Santa Clara's order discussed therein speaks for itself. To the extent further response
10 is required, the County lacks sufficient knowledge or information to admit or deny
11 the allegations in Paragraph 84, and on that basis denies them.

12 85. In response to Paragraph 85, the County asserts that the County of
13 Santa Clara's order discussed therein speaks for itself. To the extent further response
14 is required, the County lacks sufficient knowledge or information to admit or deny
15 the allegations in Paragraph 85, and on that basis denies them.

16 86. In response to Paragraph 86, the County asserts that the San Jose
17 Mercury News article discussed therein speaks for itself. To the extent further
18 response is required, the County lacks sufficient knowledge or information to admit
19 or deny the allegations in first sentence of Paragraph 86, and on that basis denies
20 them. The second sentence contains only legal arguments and conclusions, which
21 require no response.

22 87. In response to Paragraph 87, the first sentence contains only legal
23 arguments and conclusions, which require no response. To the extent a response is
24 required, the County lacks sufficient knowledge or information to admit or deny the
25 allegations in Paragraph 87, and on that basis denies them.

26 88. In response to Paragraph 88, the County lacks sufficient knowledge or
27 information to admit or deny the allegations in that Paragraph, and on that basis
28 denies them.

1 89. In response to Paragraph 89, the County lacks sufficient knowledge or
2 information to admit or deny the allegations in that Paragraph, and on that basis
3 denies them.

4 90. In response to Paragraph 90, the County lacks sufficient knowledge or
5 information to admit or deny the allegations in that Paragraph, and on that basis
6 denies them.

7 91. In response to Paragraph 91, the County lacks sufficient knowledge or
8 information to admit or deny the allegations in that Paragraph, and on that basis
9 denies them.

10 92. In response to Paragraph 92, that Paragraph contains only legal
11 arguments or conclusions, which require no response.

12 ***Alameda County Background***

13 93. In response to Paragraph 93, the County admits that on or about March
14 16, 2020 the Public Health Department of the County of Alameda issued an order
15 (“March 16 Order”). The County asserts that the March 16 Order speaks for itself.

16 94. In response to Paragraph 94, that Paragraph contains only legal
17 arguments or conclusions, which require no response. To the extent a response is
18 required, the County asserts that the March 16 Order speaks for itself.

19 95. In response to Paragraph 95, the County admits that Sheriff Ahern and
20 all chiefs of police in the County were tasked with enforcement of the provisions in
21 the March 16 Order.

22 96. In response to Paragraph 96, the County admits that on or about March
23 31, 2020, the Public Health Department of the County of Alameda issued an
24 additional order superseding the March 16 Order (“March 31 Order”). The County
25 asserts that the March 31 Order speaks for itself.

26 97. In response to Paragraph 97, that Paragraph contains only legal
27 arguments and conclusions, which require no response. To the extent a response is
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1 required, the County asserts that the March 31 Order speaks for itself. The County
2 further asserts that the March 31 Order is no longer operative.

3 98. In response to Paragraph 98, the County asserts that the March 31
4 Order discussed therein speaks for itself. To the extent a response is required, the
5 County admits that the quotation is accurate.

6 99. In response to Paragraph 99, the County admits that the County
7 previously enforced the March 16 Order and the March 31 Order. The County denies
8 that the County is now actively enforcing the March 31 Order, as that Order has
9 been superseded. The County asserts that the remainder of Paragraph 99 contains
10 only legal arguments and conclusions, which require no response. To the extent a
11 response is required, the County denies any remaining allegations in Paragraph 99.

12 100. In response to Paragraph 100, the County admits that the March 16 and
13 March 31 Orders and lists of essential businesses were issued by the Public Health
14 Department. The remainder of Paragraph 100 contains only legal arguments or
15 conclusions, which require no response. To the extent additional response is
16 required, the County denies any remaining allegations in Paragraph 100.

17 101. In response to Paragraph 101, the County lacks sufficient knowledge or
18 information to admit or deny the allegations in the first three sentences of that
19 Paragraph, and on that basis denies them. The remainder of Paragraph 101 contains
20 only legal arguments or conclusions, which require no response. To the extent further
21 response is required, the County lacks sufficient knowledge or information to admit
22 or deny the allegations in the remainder of Paragraph 101.

23 102. In response to Paragraph 102, that Paragraph contains only legal
24 argument or conclusions, which require no response. To the extent a response is
25 required, the County denies the allegations in Paragraph 102.

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San Mateo County Background

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2 103. In response to Paragraph 103, the County admits that the Public Health
3 Department of the County of San Mateo issued an order. The County asserts that
4 the County of San Mateo's order speaks for itself.

5 104. In response to Paragraph 104, the County asserts that the County of San
6 Mateo's order discussed therein speaks for itself. To the extent further response is
7 required, the County lacks sufficient knowledge or information to admit or deny the
8 allegations in Paragraph 104, and on that basis denies them.

9 105. In response to Paragraph 105, the County asserts that the County of San
10 Mateo's order discussed therein speaks for itself. To the extent further response is
11 required, the County lacks sufficient knowledge or information to admit or deny the
12 allegations in Paragraph 105, and on that basis denies them.

13 106. In response to Paragraph 106, the County admits that the Public Health
14 Department of the County of San Mateo issued an order. The County asserts that
15 the County of San Mateo's order speaks for itself.

16 107. In response to Paragraph 107, the County asserts that the County of San
17 Mateo's order discussed therein speaks for itself. To the extent further response is
18 required, the County lacks sufficient knowledge or information to admit or deny the
19 allegations in Paragraph 107, and on that basis denies them.

20 108. In response to Paragraph 108, the County asserts that the County of San
21 Mateo's order discussed therein speaks for itself. To the extent further response is
22 required, the County lacks sufficient knowledge or information to admit or deny the
23 allegations in Paragraph 108, and on that basis denies them.

24 109. In response to Paragraph 109, the County lacks sufficient knowledge or
25 information to admit or deny the allegations in that Paragraph, and on that basis
26 denies them.

1 110. In response to Paragraph 110, the County lacks sufficient knowledge or
2 information to admit or deny the allegations in that Paragraph, and on that basis
3 denies them.

4 111. In response to Paragraph 111, the County lacks sufficient knowledge or
5 information to admit or deny the allegations in that Paragraph, and on that basis
6 denies them.

7 112. In response to Paragraph 112, the County lacks sufficient knowledge or
8 information to admit or deny the allegations in that Paragraph, and on that basis
9 denies them.

10 113. In response to Paragraph 113, that Paragraph contains only legal
11 arguments or conclusions, which require no response.

12 ***Contra Costa County Background***

13 114. In response to Paragraph 114, the County admits that the Public Health
14 Department of the County of Contra Costa issued an order. The County asserts that
15 the County of Contra Costa's order speaks for itself.

16 115. In response to Paragraph 115, the County asserts that the County of
17 Contra Costa's order discussed therein speaks for itself. To the extent further
18 response is required, the County lacks sufficient knowledge or information to admit
19 or deny the allegations in Paragraph 115, and on that basis denies them.

20 116. In response to Paragraph 116, the County asserts that the County of
21 Contra Costa's order discussed therein speaks for itself. To the extent further
22 response is required, the County lacks sufficient knowledge or information to admit
23 or deny the allegations in Paragraph 116, and on that basis denies them.

24 117. In response to Paragraph 117, the County admits that the Public Health
25 Department of the County of Contra Costa issued an order. The County asserts that
26 the County of Contra Costa's order speaks for itself.

27 118. In response to Paragraph 118, the County asserts that the County of
28 Contra Costa's order discussed therein speaks for itself. To the extent further

1 response is required, the County lacks sufficient knowledge or information to admit
2 or deny the allegations in Paragraph 118, and on that basis denies them

3 119. In response to Paragraph 119, the County asserts that the County of
4 Contra Costa's order discussed therein speaks for itself. To the extent further
5 response is required, the County lacks sufficient knowledge or information to admit
6 or deny the allegations in Paragraph 119, and on that basis denies them

7 120. In response to Paragraph 120, the County lacks sufficient knowledge or
8 information to admit or deny the allegations in that Paragraph, and on that basis
9 denies them.

10 121. In response to Paragraph 121, the County lacks sufficient knowledge or
11 information to admit or deny the allegations in that Paragraph, and on that basis
12 denies them.

13 122. In response to Paragraph 122, the County lacks sufficient knowledge or
14 information to admit or deny the allegations in that Paragraph, and on that basis
15 denies them.

16 123. In response to Paragraph 123, the County lacks sufficient knowledge or
17 information to admit or deny the allegations in that Paragraph, and on that basis
18 denies them.

19 124. In response to Paragraph 124, the County lacks sufficient knowledge or
20 information to admit or deny the allegations in that Paragraph, and on that basis
21 denies them.

22 125. In response to Paragraph 125, the County lacks sufficient knowledge or
23 information to admit or deny the allegations in that Paragraph, and on that basis
24 denies them.

25 126. In response to Paragraph 126, that Paragraph contains only legal
26 arguments or conclusions, which require no response.

COUNT ONE

RIGHT TO KEEP AND BEAR ARMS

U.S. CONST., AMENDS. II AND XIV; 42 U.S.C. § 1983

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4 127. In response to Paragraph 127, the County incorporates by reference the
5 foregoing paragraphs as if fully set forth here.

6 128. In response to Paragraph 128, that Paragraph contains only legal
7 argument or conclusions, which require no response. To the extent a response is
8 required, the County denies the allegations in Paragraph 128.

9 129. In response to Paragraph 129, that Paragraph contains only legal
10 argument or conclusions, which require no response. To the extent a response is
11 required, the County denies the allegations in Paragraph 129.

12 130. In response to Paragraph 130, that Paragraph contains only legal
13 argument or conclusions, which require no response. To the extent a response is
14 required, the County denies the allegations in Paragraph 130.

15 131. In response to Paragraph 131, the County lacks sufficient knowledge or
16 information to admit or deny the allegations in that Paragraph, and on that basis
17 denies them.

18 132. In response to Paragraph 132, that Paragraph contains only legal
19 argument or conclusions, which require no response. To the extent a response is
20 required, the County denies the allegations in Paragraph 132.

21 133. In response to Paragraph 133, that Paragraph contains only legal
22 argument or conclusions, which require no response. To the extent a response is
23 required, the County denies the allegations in Paragraph 133.

24 134. In response to Paragraph 134, that Paragraph contains only legal
25 argument or conclusions, which require no response. To the extent a response is
26 required, the County denies the allegations in Paragraph 134.

27 135. In response to Paragraph 135, that Paragraph contains only legal
28 argument or conclusions, which require no response. The County further asserts that

1 the County's various health orders speak for themselves. To the extent a response is
2 required, the County admits only that the quotations are accurate quotations of the
3 County's March 31 Order.

4 136. In response to Paragraph 136, that Paragraph contains only legal
5 argument or conclusions, which require no response.

6 137. In response to Paragraph 137, that Paragraph contains only legal
7 argument or conclusions, which require no response.

8 138. In response to Paragraph 138, that Paragraph contains only legal
9 argument or conclusions, which require no response. To the extent a response is
10 required, the County denies the allegations in Paragraph 138.

11 139. In response to Paragraph 139, that Paragraph contains only legal
12 argument or conclusions, which require no response. To the extent a response is
13 required, the County denies the allegations in Paragraph 139.

14 140. In response to Paragraph 140, that Paragraph contains only legal
15 argument or conclusions, which require no response. To the extent a response is
16 required, the County denies the allegations in Paragraph 140.

17 141. In response to Paragraph 141, that Paragraph contains only legal
18 argument or conclusions, which require no response. To the extent a response is
19 required, the County denies the allegations in Paragraph 141.

20 142. In response to Paragraph 142, the County lacks sufficient knowledge or
21 information to admit or deny the allegations in that Paragraph, and on that basis
22 denies them.

23 143. In response to Paragraph 143, the County lacks sufficient knowledge or
24 information to admit or deny the allegations in that Paragraph, and on that basis
25 denies them.

26 144. In response to Paragraph 144, that Paragraph contains only legal
27 argument or conclusions, which require no response. To the extent a response is
28 required, the County denies the allegations in Paragraph 144.

1 145. In response to Paragraph 145, that Paragraph contains only legal
2 argument or conclusions, which require no response. To the extent a response is
3 required, the County denies the allegations in Paragraph 145.

4 146. In response to Paragraph 146, that Paragraph contains only legal
5 argument or conclusions, which require no response. To the extent a response is
6 required, the County denies the allegations in Paragraph 146.

7 **COUNT TWO**

8 **DUE PROCESS**

9 **U.S. CONST., AMENDS. V AND XIV; 42 U.S.C. § 1983**

10 147. On November 30, 2020, this Court granted the County's motion to
11 dismiss Count 2. The Court granted the motion with leave to amend and instructed
12 that "[a]ny amended complaint must be filed within 21 days of the date of this order.
13 Failure to timely file an amended complaint will result in dismissal of the due process
14 claim with prejudice." Dkt. 80 at 11:15-17. The time to file an amended complaint
15 expired on December 21, 2020. Accordingly, Count 2 has been dismissed with
16 prejudice. Paragraphs 147 to 155 require no response.

17 **AFFIRMATIVE DEFENSES**

18 The County asserts the following affirmative defenses:

19 **FIRST AFFIRMATIVE DEFENSE**

20 **(Failure to State a Claim)**

21 Plaintiffs' First Amended Complaint fails in whole or in part to state claims
22 upon which relief can be granted and should be dismissed pursuant to Rule 12(c) of
23 the Federal Rules of Civil Procedure.

24 **SECOND AFFIRMATIVE DEFENSE**

25 **(Mootness)**

26 Plaintiffs' alleged cause of action under the Second Amendment of the United
27 States Constitution is moot.

1 **THIRD AFFIRMATIVE DEFENSE**

2 **(Standing)**

3 Plaintiffs lack standing because they have not incurred an (1) injury in fact (2)
4 that is fairly traceable to the County's conduct and (3) that is likely to be redressed
5 by a favorable decision.

6 **FOURTH AFFIRMATIVE DEFENSE**

7 **(Necessity)**

8 Plaintiffs' alleged cause of action fails because the County issued its various
9 health orders pursuant to its authority to act under circumstances of public
10 emergency caused by the ongoing COVID-19 pandemic. The County's conduct was
11 fully justified and in good faith.

12 **FIFTH AFFIRMATIVE DEFENSE**

13 **(Reservation of Right to Raise Additional Defenses)**

14 The County reserves the right to amend should any further defenses become
15 apparent in the course of this action.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, the County prays for judgment as follows:

- 18 1. That the Court deny Plaintiffs' request for declaratory relief;
- 19 2. That the Court deny Plaintiffs' request for injunctive relief;
- 20 3. That the Court deny Plaintiffs' request for nominal damages;
- 21 4. That the Court deny Plaintiffs' request for attorneys' fees;
- 22 5. That the Court deny Plaintiffs' request for costs of suit;
- 23 6. That Plaintiffs take nothing by this suit;
- 24 7. That the County be awarded its costs of suit incurred in defense of this
25 action; and
- 26 8. That the Court grant the County such further relief as the Court may
27 deem proper.

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DATED: January 19, 2021

SHUTE, MIHALY & WEINBERGER LLP

By: /s/Matthew D. Zinn

MATTHEW D. ZINN
ANDREW P. MILLER

Attorneys for Defendants
COUNTY OF ALAMEDA, GREGORY J.
AHERN, and NICHOLAS MOSS

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