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January 21, 2022

Via ECF Filing

Ms. Molly Dwyer
Clerk of the Court
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
95 Seventh Street
San Francisco, CA 94103

Re: *Altman v. County of Santa Clara, et al.*
Ninth Circuit Case No. 21-15602
(Oral Argument Not Yet Scheduled)
Notice of Supplemental Authority Under Rule 28(j)

Dear Ms. Dwyer:

Plaintiffs and appellants Janice Altman, et al. (“Appellants”) respectfully submit this letter pursuant to FRAP 28(j) to inform the Court of the decision issued in *McDougall v. County of Ventura*, --- F.4th ---, 2022 WL 176419 (9th Cir. Jan. 20, 2022), attached hereto. (See also, *Martinez v. Villanueva*, No. 20-56233, Dkt 37-1, Memorandum Opinion (Unpublished) (9th Cir. Jan. 20, 2022), also attached pursuant to FRAP 32.1(b)). The opinion in *McDougall* is directly relevant to Appellants’ arguments here that the district court erred in dismissing their claims as moot.

In *McDougall*, this Court reversed the district court’s order dismissing an action alleging that a county’s COVID-19 public health orders mandating closure of firearm retailers, ammunition vendors and gun ranges violated the plaintiffs’ Second Amendment rights.

On the issue of mootness, *McDougall* specifically held:

In this case, Appellants sought nominal damages, which “provide the necessary redress for a completed violation of a legal right.” *Uzuegbunam v. Preczewski*, 141 S.Ct. 792, 802 (2021). Under *Uzuegbunam*, therefore, the fact that Appellants sought damages precludes a mootness claim. See *id.* But even if Appellants had not sought nominal damages, the Orders provided for perpetual extensions, so it cannot be said that there “is no reasonable expectation . . . that the alleged violation will recur” and “interim relief or events have completely and irrevocably eradicated the effects of the alleged violation.” *Fikre v. FBI*, 904 F.3d 1033, 1037 (9th Cir. 2018) (citation and

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internal quotation marks omitted); *see also Tandon v. Newsom*, 141 S. Ct. 1294, 1297 (2021) (per curiam) (“[E]ven if the government withdraws or modifies a COVID restriction in the course of litigation, that does not necessarily moot the case.”). The mootness exception for wrongs that have been terminated and are unlikely to recur therefore does not apply. *See Fikre*, 904 F.3d at 1037.

McDougall, 2022 WL 176419 at *2, n.1.

This applies with equal force here, where the same two issues concerning nominal damages, and the voluntary cessation doctrine, arise from the district court’s dismissal of the claims as “moot” and the Counties’ defense of that action on appeal.

Very truly yours,

s/ George M. Lee
George M. Lee
Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on January 21, 2022, I electronically filed the foregoing document with the clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ George M. Lee
George M. Lee