

May 12, 2020

## County doesn't enforce closure as Musk reopens Tesla

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Law enforcement agencies appeared not to have enforced Alameda County directives to keep the plant closed. They deferred to one another when asked if they were going to take action.

Tesla did not return requests for comment.

The Alameda County sheriff's office stated enforcement would come from the Fremont Police Department because of uncertainty around a lawsuit Tesla filed against the county over the issue.

The police department referred requests for comment to the county Health Department.

"We have been advised that the county is in communication and working with Tesla directly," department spokesperson Geneva Bosques said in an e-mail.

The Health Department did not return requests for comment. It said in a Saturday statement it "look[s] forward to coming to an agreement on an appropriate safety plan very soon."

But in a tweet Monday, Tesla CEO Elon Musk confirmed, "Tesla is restarting production today against Alameda County rules."

Intensifying an ongoing standoff with local officials over when it will be able to resume production, Tesla sued Alameda County on Saturday in federal court in San Francisco. It calls the continued restrictions a "power grab" by the county since Gov. Gavin Newsom declared last Thursday manufacturers would be allowed to reopen. Tesla's Fremont factory has been closed since March 23. The company has maintained it should be allowed to resume production because of federal guidance that auto manufacturing is a "national critical infrastructure."

The dispute came to a head when Newsom and Alameda County issued conflicting orders on which companies are exempt from closure. The county's order keeps Tesla shut until at least the end of May. *Tesla, Inc. v. Alameda County*, 20-CV-03186 (N.D. Cal., filed May 9, 2020).

Meyers Nave attorney Deborah Fox, who has successfully defended stay-at-home orders in two unrelated lawsuits on behalf of the state, said the lawsuit could be part of a "strategic ploy."

Tesla's complaint seeks a permanent injunction that would allow the Fremont factory to restart production. Fox questioned why Tesla would not rather seek more immediate relief.

"The lawsuits we've seen be brought have all sought temporary restraining orders," she said.

Although this lawsuit challenges the authority of local officials, unlike others against the state, Fox emphasized federal courts have generally recognized the powers of both entities to make regulatory decisions. Tesla faces an uphill battle in showing Alameda County's decision over its shelter-in-place orders was not based on scientific evidence," she said.

"The health data shows that we're not any further along in a vaccine and that the virus is still spreading, and so I don't see any opening that there's any lack of factual support for the use of emergency powers and all they have imposed on businesses," she said.

In announcing the lawsuit, Musk tweeted, "The unelected & ignorant 'Interim Health Officer' of Alameda is acting contrary to the Governor, the President, our Constitutional freedoms & just plain common sense!" He then threatened to abandon the company's Fremont facility "depend[ing] on how Tesla is treated in the future."

Alameda County Health Care Services Agency Director Colleen Chawla did not immediately respond to requests for comment. Speaking on the issue at a Monday media briefing, Newsom said he respected the "right based on local conditions for people to be more strict." He said he expects Tesla to be able to resume operations "as early as next week."

Alameda County Health Care Services Agency Director Colleen Chawla did not immediately respond to requests for comment. Speaking on the issue at a Monday media briefing, Newsom said he respected the "right based on local conditions for people to be more strict." He said he expects Tesla to be able to resume operations "as early as next week."

Public officials in Texas have already started to court Musk to open a factory in the state.

Hidalgo County Superior Court Judge Richard Cortez wrote in an open letter, "Texas is available to immediately accommodate you and Tesla motors." He added, "We have a motivated, pro-business governor."

Quinn, Emanuel, Urquhart & Sullivan LLP partner Alex Spiro, who defended Musk in a defamation case, is again representing Tesla.

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