

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 11 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

In re: AMERICA'S FRONTLINE
DOCTORS; et al.

AMERICA'S FRONTLINE DOCTORS; et
al.,

Petitioners,

v.

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF
CALIFORNIA, RIVERSIDE,

Respondent,

KIM A. WILCOX, in his official capacity
as Chancellor of the University of California
Riverside; et al.,

Real Parties in Interest.

No. 21-71209

D.C. No.
5:21-cv-01243-JGB-KK
Central District of California,
Riverside

ORDER

Before: SCHROEDER, TASHIMA, and HURWITZ, Circuit Judges.

Petitioners have not demonstrated that this case warrants the intervention of this court by means of the extraordinary remedy of mandamus. *See Bauman v. U.S. Dist. Court*, 557 F.2d 650 (9th Cir. 1977). Accordingly, the petition is denied.

DENIED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **EDCV 21-1243 JGB (KKx)**

Date July 30, 2021

Title *America’s Frontline Doctors, et al. v. Kim A. Wilcox, et al.*

Present: The Honorable **JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE**

MAYNOR GALVEZ

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

Proceedings: Order DENYING Plaintiffs’ Ex Parte Application for Temporary Restraining Order (Dkt. No. 8) (IN CHAMBERS)

Before the Court is an ex parte application for temporary restraining order and order to show cause why a preliminary injunction should not issue filed by Plaintiffs America’s Frontline Doctors, Carly Powell, and Deborah Choi. (“Application,” Dkt. No. 8.) After considering the papers filed in support of and in opposition to the Application, the Court DENIES the Application.

I. BACKGROUND

On July 26, 2021, Plaintiffs America’s Frontline Doctors (“AFD”), Carly Powell, and Deborah Choi filed a complaint against Defendants Kim A. Wilcox, Chancellor of the University of California Riverside (“Wilcox” or “UC Riverside Chancellor”); Howard Gillman, Chancellor of the University of California Irvine (“Gillman” or “UC Irvine Chancellor”); The Regents of the University of California (“Regents”); and Michael V. Drake, President of the University of California. (“Complaint,” Dkt. No. 1.)

The Complaint alleges five causes of action arising from the University of California’s COVID-19 Vaccination Program: (1) declaratory relief for violation of Fourteenth Amendment right to bodily integrity; (2) injunctive relief for violation of Fourteenth Amendment right to bodily integrity; (3) injunctive relief for violation of Fourteenth Amendment right to freedom from state created danger; (4) violation of Unruh Act for discrimination based on medical condition and genetic status; and (5) violation of Cal. Govt. Code § 11135 for discrimination based on medical condition and genetic status. (See Compl.)

Plaintiffs filed the Application on July 27, 2021. In support of the Application, Plaintiffs filed the following declarations:

- Declaration of Angelina Farella, MD (“Farella Declaration,” Dkt. No. 8 at 36);
- Declaration of Lee Merritt, MD (“Merritt Declaration,” Dkt. No. 8 at 45);
- Declaration of Mike Yeadon, PhD (“Yeadon Declaration,” Dkt. No. 8 at 56);
- Declaration of Peter A. McCullough, MD (“McCullough Declaration,” Dkt. No. 8 at 95);
- Declaration of Simone Gold, MD, JD (“Gold Declaration,” Dkt. No. 8 at 304);
- Declaration of Richard Urso, MD (“Urso Declaration,” Dkt. No. 8 at 308);
- Declaration of Carly Powell (“Powell Declaration,” Dkt. No. 8 at 318); and
- Declaration of Deborah Choi (“Choi Declaration,” Dkt. No. 8 at 321).

Defendants filed an opposition on July 28, 2021. (“Opposition,” Dkt. No. 9.) In support of the Opposition, Defendants filed the following declarations:

- Declaration of Bernadette M. Boden-Albala, MPH (“Boden-Albala Declaration,” Dkt. No. 10);
- Declaration of David Lo, MD, PhD (“Lo Declaration,” Dkt. No. 11);
- Declaration of Susan S. Huang, MD, MPH (“Huang Declaration,” Dkt. No. 12); and
- Declaration of Emily T. Kuwahara (“Kuwahara Declaration,” Dkt. No. 13).

II. FACTS

A. The Policy

On July 15, 2021, the University of California (“University” or “UC”) adopted the SARS-CoV-2 (COVID-19) Vaccination Program (“Policy”) “to facilitate the protection of the health and safety of the University community” in the face of the COVID-19 pandemic. (Kuwahara Decl., Ex. 2.) The Policy requires personnel, students, and trainees (“Covered Individuals”)¹ to provide proof of full vaccination or submit a request for exception or deferral as a condition of physical presence at any campus, medical center, or facility operated by the University. (Id. at 5.) Covered Individuals must meet this requirement by two weeks before the first day of instruction. (Id.)

¹ Specifically, Covered Individuals include “anyone designated as Personnel, Students, or Trainees ... who physically access a University Facility or Program in connection with their employment, appointment, or education/training.” (Id. at 2.)

The Policy provides for limited exceptions based on medical exemption, disability, or religious objections. (Id. at 3.) Deferrals are only available based on pregnancy, for the duration of the pregnancy, and until the individual returns to work or instruction. (Id. at 2.)

Individuals who were recently diagnosed with COVID-19 and/or had an antibody test that shows they have natural immunity may be eligible for a temporary medical exemption:

You may be eligible for a temporary Medical Exemption (and, therefore, a temporary Exception), for up to 90 days after your diagnosis and certain treatments. According to the US Food and Drug Administration, however, “a positive result from an antibody test does not mean you have a specific amount of immunity or protection from SARS-CoV-2 infection ... Currently authorized SARS-CoV-2 antibody tests are not validated to evaluate specific immunity or protection from SARS-CoV-2 infection.” For this reason, individuals who have been diagnosed with COVID-19 or had an antibody test are not permanently exempt from vaccination.

(Id. at 11.)

The Policy provides that “[a]lternative remote instructional programming is not expected to be available in most cases and the availability of alternative remote work arrangements will depend on systemwide guidance and any local policies or procedures, as well as the nature of the work to be performed.” (Id. at 5.) Covered Individuals who do not comply with the Policy by presenting proof of vaccination or requesting an applicable exception or deferral “will be barred from Physical Presence at University Facilities and Programs, and may experience consequences as a result of non-Participation, up to and including dismissal from educational programs or employment.” (Id. at 12-13.)

In a letter accompanying the Policy, University President Michael V. Drake, MD, explained that the Policy “is the product of consultation with UC infectious disease experts and ongoing review of evidence from medical studies concerning the dangerousness of COVID-19 and emerging variants of concern, as well as the safety and effectiveness of the vaccines for preventing infection, hospitalizations, and deaths from COVID-19, and for reducing the spread of this deadly disease.” (Kuwahara Decl., Ex. 1.) Drake further asserts that the Policy “was arrived at after reviewing the safety and efficacy of the three vaccines approved by the Food and Drug Administration (FDA) for emergency use, and considering the severe risks presented by a virus that has killed more than 600,000 people in the United States alone, as well as the rise of more transmissible and more virulent variants.” (Id.)

B. Plaintiffs’ Position

Plaintiffs challenge the Policy as it applies to individuals who contracted COVID-19 and recovered. Plaintiff Deborah Choi is a second-year law student at UC Irvine, who is also employed by the school as a research assistant. (Choi Decl. ¶ 2.) Choi contracted COVID-19 in November 2020 and recovered. (Id. ¶ 5.) Plaintiff Carly Powell is a senior at UC Riverside.

(Powell Decl. ¶ 2.) Powell contracted COVID-19 in December 2020 and recovered. (Id. ¶ 3.) Individual Plaintiffs assert that they have not provided their “informed consent” to COVID-19 vaccination. (Choi Decl. ¶ 3; Powell Decl. ¶ 6.) They argue that the Policy does not respect their right to work with their doctors to assess their natural immunity to COVID-19 beyond 90 days. (Choi Decl. ¶ 3; Powell Decl. ¶ 6.) AFD asserts that its member physicians provide care to UC students directly impacted by the Policy, which in turn impairs the physician-patient relationships. (Compl. ¶ 6; Gold Decl. ¶ a.) Plaintiffs seek a temporary restraining order enjoining Defendants from enforcing the Policy rejecting prescreening of natural immunity. (See Appl.)

III. LEGAL STANDARD

A temporary restraining order (“TRO”) preserves the status quo and prevents irreparable harm until a hearing may be held on the propriety of a preliminary injunction. See Reno Air Racing Ass’n, Inc. v. McCord, 452 F.3d 1126, 1131 (9th Cir. 2006). The standard for issuing a TRO is identical to the standard for issuing a preliminary injunction. Lockhead Missile & Space Co. v. Hughes Aircraft Co., 887 F. Supp. 1320, 1323 (N.D. Cal. 1995).

“A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right.” Munaf v. Geren, 553 U.S. 674, 689 (2008) (citations omitted). An injunction is binding only on parties to the action, their officers, agents, servants, employees, and attorneys and those “in active concert or participation” with them. Fed. R. Civ. P. 65(d)(2).

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). In the Ninth Circuit, “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011) (internal quotations omitted).

When seeking a temporary restraining order through an ex parte application, a plaintiff must further show that he is without fault in creating the crisis necessitating the bypass of regular motion procedures. See Mission Power Eng’g Co. v. Cont’l Gas Co., 883 F. Supp. 488, 492–93 (C.D. Cal. 1995). The propriety of a temporary restraining order, in particular, hinges on a significant threat of irreparable injury, Simula, Inc. Autoliv, Inc., 175 F.3d 716, 725 (9th Cir. 1999), that must be imminent in nature, Caribbean Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988). The Ninth Circuit has cautioned that there are very few circumstances justifying the issuance of an ex parte temporary restraining order. Reno Air Racing Assoc., Inc., 452 F.3d at 1131.

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IV. DISCUSSION

Plaintiffs request that the Court enjoin enforcement of the Policy “unnecessarily rushing Covid-19 vaccination upon already immune students without their informed consent and without the opportunity of their doctors to protect them from risk of physical injury and death.” (Appl. at 2.) To succeed, Plaintiffs must show that (1) they are likely to succeed on the merits of their claim; (2) they are likely to suffer irreparable harm in the absence of emergency relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). As detailed below, Plaintiffs do not meet their burden as to any factor.

A. Likelihood of Success

Plaintiffs claim that the Policy infringes on (1) their Fourteenth Amendment right to bodily integrity, (2) their Fourteenth Amendment right to be free from state created dangers, and (3) the prohibition against discrimination on the basis of medical condition and genetic status under the California Unruh Act and Cal. Govt. Code § 11135.

1. Fourteenth Amendment – Violation of Bodily Integrity

a. Standard of Constitutional Scrutiny

The Supreme Court recognizes a “constitutionally protected liberty interest in refusing unwanted medical treatment[.]” Cruzan v. Dir., Missouri Dep’t of Health, 497 U.S. 261, 278 (1990). Plaintiffs argue that the Policy’s restrictions of that right to free and informed consent is subject to strict scrutiny. (Appl. at 6.) Not so. Where an alleged government deprivation infringes on a fundamental right, courts apply strict scrutiny, the most rigorous form of constitutional scrutiny of the government action. Nunez v. City of L.A., 147 F.3d 867, 871 (9th Cir. 1998); Washington v. Glucksberg, 521 U.S. 702, 721 (1997). Under that standard, the Fourteenth Amendment “forbids the government to infringe ... fundamental liberty interests ... unless the infringement is narrowly tailored to serve a compelling state interest.” Glucksberg, 521 U.S. at 721. However, where the infringed liberties are neither fundamental nor based on suspect classification, rational basis review applies. Sylvia Landfield Tr. v. City of L.A., 729 F.3d 1189, 1191 (9th Cir. 2013); Glucksberg, 521 U.S. at 728. Under rational basis review, “legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.” City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985).

None of Plaintiffs’ authorities support their proposition that the right to informed consent is a fundamental right under the Constitution. Rather, Plaintiffs appear to rely on Roman Catholic Diocese of Brooklyn v. Cuomo to support the application of strict scrutiny. 141 S. Ct. 63, 67 (2020). (Appl. at 7-8.) But Cuomo concerned capacity restrictions on religious institutions, which plaintiffs argued were treated less favorably than “essential” businesses. The Court applied strict scrutiny because the law at issue targeted religious practice, and “the

challenged restrictions [we]re not ‘neutral’ and of ‘general applicability[.]’” Cuomo, 141 S. Ct. at 67 (citing Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 546 (1993)). “In addressing the constitutional protection for free exercise of religion,” courts apply strict scrutiny unless the challenged law is neutral and of general applicability. Church of Lukumi, 508 U.S. at 531. However, a law “that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.” Church of Lukumi, 508 U.S. at 531.

Strict scrutiny is not applicable here. First, Plaintiffs make no showing that the Policy targets the free exercise of religion. Even if that were the case, as Defendants point out, the Policy is in fact neutral and of general applicability. More generally, Plaintiffs make no showing that the interest at issue here (bodily autonomy or informed consent) is fundamental under the Constitution so as to require greater scrutiny. Thus, the Court applies rational basis. See Klaassen, 2021 WL 3073926, at *21 (“Government action that infringes on the liberty interest here ... is subject to rational basis review.”). This is consistent with the longstanding application of rational basis review to assess mandatory vaccination measures. Id. at *24 (listing cases).

b. Application

The Policy is “rationally related to a legitimate state interest.” City of Cleburne, 473 U.S. at 440. The Supreme Court has recognized that “[s]temming the spread of COVID-19 is unquestionably a compelling interest.” Cuomo, 141 S. Ct. at 67. At issue is whether the Policy is rationally related to this compelling state interest. The Policy easily meets this test.

Over a century ago, the Supreme Court held that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 27 (1905). California is facing a surge of COVID-19 cases, spurred by the highly contagious Delta variant. (Kuwahara Decl., Exs. 3-7, 12 (recent news report detailing sharp increase in COVID-19 cases and the prevalence of the Delta variant); Lo Decl. ¶ 7.) Extensive data supports vaccination as an effective strategy for preventing severe disease, hospitalization, and death from COVID-19. (Kuwahara Decl., Ex. 8 at 34-36; Huang Decl. ¶¶ 6-7.) The vaccines currently available in the United States were authorized for emergency use after extensive randomized controlled trials, and the U.S. Centers for Disease Control and Prevention (“CDC”) and U.S. Food and Drug Administration (“FDA”) continue to conduct post-authorization safety and monitoring. (Id.)

As stated in the Policy Summary, the Policy’s purpose is “to facilitate protection of the health and safety of the University community.” (Kuwahara Decl., Ex. 2 at 2.) It is “the product of consultation with UC infectious disease experts and ongoing review of evidence from medical studies concerning the dangerousness of COVID-19 and emerging variants of concern, as well as the safety and effectiveness of the vaccines for preventing infection, hospitalizations, and deaths from COVID-19, and for reducing the spread of this deadly disease.” (Id., Ex. 1 at 1.) Susan Huang, MD, MPH, attests that the UC Health infection prevention leadership group was actively consulted regarding the Policy. (Huang Decl. ¶ 5 (endorsing the Policy).) Facing similar

circumstances, several universities resuming on-campus operations have adopted similar policies. (Kuwahara Decl., Exs. 13-21.)

As it pertains to individuals who previously contracted COVID-19, Defendants point to evidence that “ascertainment of prior infection can be unreliable or impractical in some cases, and the duration of protection of prior infection is unknown.” (*Id.*, Ex. 22, at 9-10.²) Data shows that “[v]accination appears to further boost antibody levels in those with past infection and might improve the durability and breadth of protection.” (*Id.*) While this report recognizes that “[i]ndividuals with a history of SARS-CoV-2 may be more likely to experience local and systemic adverse effects (eg, fevers, chills, myalgias, fatigue) after a first vaccine dose[,] ... [t]his is not a contraindication or precaution to a second dose....” (*Id.*)

In fact, in its Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States,³ the CDC has indicated:

Data from clinical trials indicate that the currently authorized COVID-19 vaccines can be given safely to people with evidence of a prior SARS-CoV-2 infection. Viral testing to assess for acute SARS-CoV-2 infection or serologic testing to assess for prior infection is not recommended for the purposes of vaccine decision-making.... While there is no recommended minimum interval between infection and vaccination, current evidence suggests that the risk of SARS-CoV-2 reinfection is low in the months after initial infection but may increase with time due to waning immunity.

Indeed, a recent study suggests that the immunity of individuals who previously had COVID-19 may not be as effective against the surging Delta variant. (Kuwahara Decl., Ex. 24.) Thus, the CDC recommends vaccination for individuals who have already had COVID-19 and recovered. (*Id.*, Ex. 23.)

Plaintiffs, of course, dispute the above evidence, arguing that “emerging data establishes that vaccinating the Covid-19 Recovered causes an immediately higher death rate worldwide for no benefit[.]” (Appl. at 10 (citing Compl. ¶ 27).) But Plaintiffs’ arguments amount to “disputes over the most reliable science,” and the Court will not intervene “as long as [Defendants’] process is rational in trying to achieve public health.” *Klaassen*, 2021 WL 3073926, at *38 (citing *Phillips v. City of New York*, 775 F.3d 538, 542 (2d Cir. 2015) (“[P]laintiffs argue that a growing body of scientific evidence demonstrates that vaccines cause more harm to society than good, but as *Jacobson* made clear, that is a determination for the [policymaker], not the individual

² Kathryn M. Edwards, et al., “COVID-19: Vaccines to prevent SARS-CoV-2 infection,” UpToDate (updated July 26, 2021), <https://www.uptodate.com/contents/covid-19-vaccines-to-prevent-sars-cov-2-infection>.

³ See “People with prior or current SARS-CoV-2 infection,” CDC (updated July 16, 2021) <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html>.

objectors.”)). The Court finds that there is clearly a rational basis for Defendants to institute the Policy requiring vaccination, including for individuals who previously had COVID-19. Plaintiffs’ first claim is unlikely to succeed on the merits.

2. Fourteenth Amendment – State Created Danger

Plaintiffs next argue that Defendants have shown “deliberate indifference to the known and obvious danger of vaccine injury,” which creates and exposes Plaintiffs to health dangers that they would not otherwise face, in contravention of the Fourteenth Amendment. (Appl. at 15-16.) The state-created danger exception applies only where “there is affirmative conduct on the part of the state in placing the plaintiff in danger,” and “the state acts with deliberate indifference to a known or obvious danger.” Patel v. Kent Sch. Dist., 648 F.3d 965, 974 (9th Cir. 2011) (internal quotation marks omitted). Plaintiffs fail to make this showing.

Deliberate indifference is “a stringent standard of fault, requiring proof that [the state] actor disregarded a known or obvious consequence of his action.” Id. The state actor must “recognize an unreasonable risk and actually intend to expose the plaintiff to such risks without regard to the consequences to the plaintiff.” Id. at 975. Here, the record supports the opposite conclusion.

The Policy provides that it was adopted to protect the health and safety of the community. (Kuwahara Decl., Ex. 2 at 2.) It was developed in active consultation with infectious disease experts, including the UC Health infection prevention leadership. (Huang Decl. ¶ 5; see also Kuwahara Decl. Ex. 1 (detailing that the Policy was developed in consultation with UC infectious disease experts and after a review of evidence from medical studies).) These experts endorse the Policy, including its application to individuals who previously contracted COVID-19 and recovered, as a crucial measure to protect the University community (including those individuals). (See Boden-Albala Decl.; Lo Decl.; Huang Decl.)

The Policy explicitly accounts for recent COVID-19 diagnoses by providing a temporary medical exemption. (Kuwahara Decl., Ex. 2.) While Plaintiffs point to a danger of “vaccine injury” for individuals with natural immunity, as noted above, the CDC recommends vaccination for those who have contracted and recovered from COVID-19, citing data from clinical trials. (Id., Ex. 23 (CDC, “Frequently Asked Questions about COVID-19 Vaccination”); n.3 infra). The Policy thus stands in harmony with recommendations by the CDC and FDA, which “strongly believes that the known and potential benefits of COVID-19 vaccination greatly outweigh the known and potential risks of COVID-19.” (Id., Ex. 28 (FDA, COVID-19 Vaccine Safety Surveillance, July 12, 2021); Ex. 27 (CDC, Safety of COVID-19 Vaccines) (noting that “serious safety problems are rare”).) This evidence supports Defendants’ conclusion that requiring vaccination is far from an “unreasonable risk” or a “known and obvious danger.” Plaintiffs are unlikely to prevail on the merits of their second claim.

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3. State Law Claims

Finally, Plaintiffs assert state law claims under the California Unruh Act and Cal. Govt. Code § 11135. However, as Defendants point out, these claims are barred by the Eleventh Amendment. (Opp'n at 18.) The Eleventh Amendment bars suits for damages or injunctive relief against a state, an arm of the state, its instrumentalities, or its agencies. Durning v. Citibank, N.A., 950 F.2d 1419, 1422-23 (9th Cir. 1991). Plaintiffs assert state law claims against The Regents of the University of California, as well as UC President, the UC Riverside Chancellor, and the UC Irvine Chancellor, all in their official capacities. However, the Regents of the University of California “are an arm of the state entitled to Eleventh Amendment immunity.” Feied v. The Regents of the Univ. of California, 188 F. App'x 559, 561 (9th Cir. 2006). The Eleventh Amendment also prohibits actions against state officials in their official capacities. Stivers v. Pierce, 71 F.3d 732, 749 (9th Cir. 1995)

A citizen may sue a state in federal court if the state waives its immunity and consents to suit. Welch v. Tex. Dep't of Highways & Pub. Transp., 483 U.S. 468, 473 (1987). “A State’s consent to suit must be ‘unequivocally expressed’ in the text of the relevant statute.” Sossamon, 563 U.S. at 284. Plaintiffs point to no such statutory waiver. Absent an express and unequivocal waiver of California’s sovereign immunity, Plaintiffs’ state law claims are unlikely to succeed.

B. Irreparable Harm

Next, Plaintiffs must establish that there is a likelihood of irreparable injury absent the Court’s grant of the TRO. Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011). As Plaintiffs point out, “[i]t is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)). But, for the reasons discussed above, Plaintiffs’ constitutional claims are unlikely to succeed. Plaintiffs’ claims that the Policy violates their constitutional rights are thus insufficient to establish irreparable harm.

Plaintiffs further suggest that AFD will suffer irreparable harm because member physicians provide care to UC students impacted by the vaccine mandate, which would irreparably impair their physician-patient relationships. (Appl. at 20 (citing Compl. ¶¶ 6, 11).) In turn, Individual Plaintiffs argue they face “risks of life and limb ... if they are forced to unnecessarily vaccinate[.]” (Appl. at 20.) They add that the vaccine mandate has put them under duress, impaired their ability to exercise informed consent or refusal of the vaccine with physicians of their choice, and imperiled their academic status and livelihood as students. (See Choi Decl.; Powell Decl.) The Court is not persuaded.

First, as Defendants point out, AFD makes no showing that its members are subject to the Policy, or have any role in executing the Policy (such as being required to provide the vaccines to their patients). AFD shows little more than a tenuous connection to the Policy - that some physicians may provide care to UC students who disagree with the Policy. But that is not enough to show harm, much less irreparable harm, to AFD.

Second, Plaintiffs fail to establish that Individual Plaintiffs will be irreparably harmed. Plaintiffs allude to a series of harms resulting from being “forced to unnecessarily vaccinate.” But as Defendants point out, Individual Plaintiffs are not “forced” to vaccinate. Rather, under the Policy, vaccination is a condition of physical presence at the University. All students, including Individual Plaintiffs, have a choice – albeit undoubtedly a difficult one – to get vaccinated, seek an exemption (if applicable), or transfer elsewhere.

It is well established that “[a] delay in collegiate or graduate education isn’t typically irreparable harm.” Klaassen v. Trustees of Indiana Univ., 2021 WL 3073926, at *41 (N.D. Ind. July 18, 2021). Indeed, courts have repeatedly held that delays in education are compensable by monetary damages. See, e.g., Doe v. Princeton Univ., 2020 WL 2097991, at *7 (D.N.J. May 1, 2020) (a delay in plaintiff’s education, analogous to a suspension, can be remedied through monetary compensation); Madej v. Yale Univ., 2020 WL 1614230, at *6–7 (D. Conn. Mar. 31, 2020) (academic withdrawal does not mean plaintiff will never be able to obtain his degree; rather, his ability to do so will be delayed, which can be remedied through monetary compensation; reputational harm assertions are “too speculative to warrant injunctive relief”); Roden v. Floyd, 2018 WL 6816162, at *5 (E.D. Mich. Nov. 13, 2018), report and recommendation adopted, 2018 WL 6815620 (E.D. Mich. Dec. 27, 2018) (delays in education do not constitute irreparable harm); Phillips v. Marsh, 687 F. 2d 620 (2d Cir. 1982) (“We can conceive of no irreparable harm that would accrue to [the plaintiff] in allowing her graduation to await the outcome of the trial on the merits; any damages to her from deferring her career as a military officer in that period of time would surely be compensable by monetary damages.”). Plaintiffs make no showing as to why this case would warrant a different conclusion. The Court finds that Plaintiffs fail to meet their burden to show irreparable harm.

C. Balance of Equities and Public Interest

Finally, the Court finds that the balance of equities and the public interest weighs heavily against the requested relief. Plaintiffs Choi and Powell assert an individual liberty interest in refusing unwanted treatment. (See Appl.) While that is certainly an important liberty interest, “[v]accines address a collective enemy, not just an individual one.” Klaassen, 2021 WL 3073926, at *24. Thus, Plaintiffs’ decision to refuse vaccination does not affect them alone. The UC community includes more than 280,000 students, and more than 227,000 faculty and staff, who are expected to return to its campuses this fall. (Boden-Albala Decl. ¶ 8.) This community includes individuals who may be at higher risk of contracting COVID-19 and/or suffering poor prognostics outcomes for said infection. (Id. ¶ 7.) High vaccine coverage in the community protects the community at large, including those who are particularly vulnerable and those who cannot be vaccinated. (Id.; see also Huang Decl. ¶¶ 6-9; Lo Decl. ¶¶ 6-10.) Facing a sharp surge in COVID-19 cases and the highly contagious Delta variant (Kuwahara Decl., Exs. 3-6), the Policy seeks to “maintain the health and well-being of the campus community and that of the general public” by limiting physical access to the University community to those who are vaccinated (or eligible for limited exemptions). (Kuwahara Decl., Ex. 1.) These public concerns

weigh more heavily than Individual Plaintiffs' interest in refusing unwanted treatment, particularly where they have other options, as discussed above.

Plaintiffs assert that Defendants are “in no way harmed by the issuance of an injunction that prevents the state from enforcing unconstitutional restrictions.” Legends Night Club v. Miller, 637 F.3d 291, 302-03 (4th Cir. 2011). (Appl. at 21.) But Plaintiffs fail to show that they are likely to succeed on the merits of their constitutional claims. Similarly, other than a few references to “State sponsored propaganda,” Plaintiffs fail to address the public interest in the health and safety of the larger community. As several other courts have held, Plaintiffs have failed to establish that the balance of harms or the public's interest favors the extraordinary remedy of a temporary restraining order. Klaassen, 2021 WL 3073926, at *45-46; Carmichael v. Ige, 470 F. Supp. 3d 1133 (D. Haw. 2020).

V. CONCLUSION

For the reasons above, the Court DENIES Plaintiffs' Application.

IT IS SO ORDERED.

Case Number: _____

**UNITED STATES COURT OF APPEALS
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AMERICA’S FRONTLINE DOCTORS; Carly Powell; and Deborah Choi,

Petitioners,

v.

KIM A. WILCOX, in his official capacity as CHANCELLOR OF THE UNIVERSITY OF CALIFORNIA RIVERSIDE; HOWARD GILLMAN, in his official capacity as CHANCELLOR OF THE UNIVERSITY OF CALIFORNIA IRVINE; THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a Corporation; MICHAEL V. DRAKE, in his official capacity as President of the UNIVERSITY OF CALIFORNIA; and John and Jane Does 1-100,

Respondents.

On Petition for a Writ of Mandamus to the United States District Court for the Central District of California, Case No. 5:21-cv-01243-JGB-KKx
Honorable Jesus G. Bernal, United States District Judge
(Fed. R. App. P. 21)

**EXCERPTS OF RECORD – VOLUME 1 OF 1
TO PETITIONERS’ REQUEST FOR WRIT OF MANDAMUS**

Gregory J. Glaser (Cal. Bar No. 226706)

greg@gregglaser.com

Greg Glaser, Attorney at Law

4399 Buckboard Drive #423

Copperopolis, CA 95228

Phone: 925-642-6651

Fax: 209-729-4557

Additional counsel listed on signature
page

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

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Before the Court is an ex parte application for temporary restraining order and order to show cause why a preliminary injunction should not issue filed by Plaintiffs America's Frontline Doctors, Carly Powell, and Deborah Choi. ("Application," Dkt. No. 8.) After considering the papers filed in support of and in opposition to the Application, the Court DENIES the Application.

I. BACKGROUND

On July 26, 2021, Plaintiffs America's Frontline Doctors ("AFD"), Carly Powell, and Deborah Choi filed a complaint against Defendants Kim A. Wilcox, Chancellor of the University of California Riverside ("Wilcox" or "UC Riverside Chancellor"); Howard Gillman, Chancellor of the University of California Irvine ("Gillman" or "UC Irvine Chancellor"); The Regents of the University of California ("Regents"); and Michael V. Drake, President of the University of California. ("Complaint," Dkt. No. 1.)

The Complaint alleges five causes of action arising from the University of California's COVID-19 Vaccination Program: (1) declaratory relief for violation of Fourteenth Amendment right to bodily integrity; (2) injunctive relief for violation of Fourteenth Amendment right to bodily integrity; (3) injunctive relief for violation of Fourteenth Amendment right to freedom from state created danger; (4) violation of Unruh Act for discrimination based on medical condition and genetic status; and (5) violation of Cal. Govt. Code § 11135 for discrimination based on medical condition and genetic status. (See Compl.)

Plaintiffs filed the Application on July 27, 2021. In support of the Application, Plaintiffs filed the following declarations:

- Declaration of Angelina Farella, MD (“Farella Declaration,” Dkt. No. 8 at 36);
- Declaration of Lee Merritt, MD (“Merritt Declaration,” Dkt. No. 8 at 45);
- Declaration of Mike Yeadon, PhD (“Yeadon Declaration,” Dkt. No. 8 at 56);
- Declaration of Peter A. McCullough, MD (“McCullough Declaration,” Dkt. No. 8 at 95);
- Declaration of Simone Gold, MD, JD (“Gold Declaration,” Dkt. No. 8 at 304);
- Declaration of Richard Urso, MD (“Urso Declaration,” Dkt. No. 8 at 308);
- Declaration of Carly Powell (“Powell Declaration,” Dkt. No. 8 at 318); and
- Declaration of Deborah Choi (“Choi Declaration,” Dkt. No. 8 at 321).

Defendants filed an opposition on July 28, 2021. (“Opposition,” Dkt. No. 9.) In support of the Opposition, Defendants filed the following declarations:

- Declaration of Bernadette M. Boden-Albala, MPH (“Boden-Albala Declaration,” Dkt. No. 10);
- Declaration of David Lo, MD, PhD (“Lo Declaration,” Dkt. No. 11);
- Declaration of Susan S. Huang, MD, MPH (“Huang Declaration,” Dkt. No. 12); and
- Declaration of Emily T. Kuwahara (“Kuwahara Declaration,” Dkt. No. 13).

II. FACTS

A. The Policy

On July 15, 2021, the University of California (“University” or “UC”) adopted the SARS-CoV-2 (COVID-19) Vaccination Program (“Policy”) “to facilitate the protection of the health and safety of the University community” in the face of the COVID-19 pandemic. (Kuwahara Decl., Ex. 2.) The Policy requires personnel, students, and trainees (“Covered Individuals”)¹ to provide proof of full vaccination or submit a request for exception or deferral as a condition of physical presence at any campus, medical center, or facility operated by the University. (Id. at 5.) Covered Individuals must meet this requirement by two weeks before the first day of instruction. (Id.)

¹ Specifically, Covered Individuals include “anyone designated as Personnel, Students, or Trainees ... who physically access a University Facility or Program in connection with their employment, appointment, or education/training.” (Id. at 2.)

The Policy provides for limited exceptions based on medical exemption, disability, or religious objections. (Id. at 3.) Deferrals are only available based on pregnancy, for the duration of the pregnancy, and until the individual returns to work or instruction. (Id. at 2.)

Individuals who were recently diagnosed with COVID-19 and/or had an antibody test that shows they have natural immunity may be eligible for a temporary medical exemption:

You may be eligible for a temporary Medical Exemption (and, therefore, a temporary Exception), for up to 90 days after your diagnosis and certain treatments. According to the US Food and Drug Administration, however, “a positive result from an antibody test does not mean you have a specific amount of immunity or protection from SARS-CoV-2 infection ... Currently authorized SARS-CoV-2 antibody tests are not validated to evaluate specific immunity or protection from SARS-CoV-2 infection.” For this reason, individuals who have been diagnosed with COVID-19 or had an antibody test are not permanently exempt from vaccination.

(Id. at 11.)

The Policy provides that “[a]lternative remote instructional programming is not expected to be available in most cases and the availability of alternative remote work arrangements will depend on systemwide guidance and any local policies or procedures, as well as the nature of the work to be performed.” (Id. at 5.) Covered Individuals who do not comply with the Policy by presenting proof of vaccination or requesting an applicable exception or deferral “will be barred from Physical Presence at University Facilities and Programs, and may experience consequences as a result of non-Participation, up to and including dismissal from educational programs or employment.” (Id. at 12-13.)

In a letter accompanying the Policy, University President Michael V. Drake, MD, explained that the Policy “is the product of consultation with UC infectious disease experts and ongoing review of evidence from medical studies concerning the dangerousness of COVID-19 and emerging variants of concern, as well as the safety and effectiveness of the vaccines for preventing infection, hospitalizations, and deaths from COVID-19, and for reducing the spread of this deadly disease.” (Kuwahara Decl., Ex. 1.) Drake further asserts that the Policy “was arrived at after reviewing the safety and efficacy of the three vaccines approved by the Food and Drug Administration (FDA) for emergency use, and considering the severe risks presented by a virus that has killed more than 600,000 people in the United States alone, as well as the rise of more transmissible and more virulent variants.” (Id.)

B. Plaintiffs’ Position

Plaintiffs challenge the Policy as it applies to individuals who contracted COVID-19 and recovered. Plaintiff Deborah Choi is a second-year law student at UC Irvine, who is also employed by the school as a research assistant. (Choi Decl. ¶ 2.) Choi contracted COVID-19 in November 2020 and recovered. (Id. ¶ 5.) Plaintiff Carly Powell is a senior at UC Riverside.

(Powell Decl. ¶ 2.) Powell contracted COVID-19 in December 2020 and recovered. (Id. ¶ 3.) Individual Plaintiffs assert that they have not provided their “informed consent” to COVID-19 vaccination. (Choi Decl. ¶ 3; Powell Decl. ¶ 6.) They argue that the Policy does not respect their right to work with their doctors to assess their natural immunity to COVID-19 beyond 90 days. (Choi Decl. ¶ 3; Powell Decl. ¶ 6.) AFD asserts that its member physicians provide care to UC students directly impacted by the Policy, which in turn impairs the physician-patient relationships. (Compl. ¶ 6; Gold Decl. ¶ a.) Plaintiffs seek a temporary restraining order enjoining Defendants from enforcing the Policy rejecting prescreening of natural immunity. (See Appl.)

III. LEGAL STANDARD

A temporary restraining order (“TRO”) preserves the status quo and prevents irreparable harm until a hearing may be held on the propriety of a preliminary injunction. See Reno Air Racing Ass’n, Inc. v. McCord, 452 F.3d 1126, 1131 (9th Cir. 2006). The standard for issuing a TRO is identical to the standard for issuing a preliminary injunction. Lockhead Missile & Space Co. v. Hughes Aircraft Co., 887 F. Supp. 1320, 1323 (N.D. Cal. 1995).

“A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right.” Munaf v. Geren, 553 U.S. 674, 689 (2008) (citations omitted). An injunction is binding only on parties to the action, their officers, agents, servants, employees, and attorneys and those “in active concert or participation” with them. Fed. R. Civ. P. 65(d)(2).

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). In the Ninth Circuit, “serious questions going to the merits and a balance of hardships that tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the public interest.” Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011) (internal quotations omitted).

When seeking a temporary restraining order through an ex parte application, a plaintiff must further show that he is without fault in creating the crisis necessitating the bypass of regular motion procedures. See Mission Power Eng’g Co. v. Cont’l Gas Co., 883 F. Supp. 488, 492–93 (C.D. Cal. 1995). The propriety of a temporary restraining order, in particular, hinges on a significant threat of irreparable injury, Simula, Inc. Autoliv, Inc., 175 F.3d 716, 725 (9th Cir. 1999), that must be imminent in nature, Caribbean Marine Serv. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988). The Ninth Circuit has cautioned that there are very few circumstances justifying the issuance of an ex parte temporary restraining order. Reno Air Racing Assoc., Inc., 452 F.3d at 1131.

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IV. DISCUSSION

Plaintiffs request that the Court enjoin enforcement of the Policy “unnecessarily rushing Covid-19 vaccination upon already immune students without their informed consent and without the opportunity of their doctors to protect them from risk of physical injury and death.” (Appl. at 2.) To succeed, Plaintiffs must show that (1) they are likely to succeed on the merits of their claim; (2) they are likely to suffer irreparable harm in the absence of emergency relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). As detailed below, Plaintiffs do not meet their burden as to any factor.

A. Likelihood of Success

Plaintiffs claim that the Policy infringes on (1) their Fourteenth Amendment right to bodily integrity, (2) their Fourteenth Amendment right to be free from state created dangers, and (3) the prohibition against discrimination on the basis of medical condition and genetic status under the California Unruh Act and Cal. Govt. Code § 11135.

1. Fourteenth Amendment – Violation of Bodily Integrity

a. Standard of Constitutional Scrutiny

The Supreme Court recognizes a “constitutionally protected liberty interest in refusing unwanted medical treatment[.]” Cruzan v. Dir., Missouri Dep’t of Health, 497 U.S. 261, 278 (1990). Plaintiffs argue that the Policy’s restrictions of that right to free and informed consent is subject to strict scrutiny. (Appl. at 6.) Not so. Where an alleged government deprivation infringes on a fundamental right, courts apply strict scrutiny, the most rigorous form of constitutional scrutiny of the government action. Nunez v. City of L.A., 147 F.3d 867, 871 (9th Cir. 1998); Washington v. Glucksberg, 521 U.S. 702, 721 (1997). Under that standard, the Fourteenth Amendment “forbids the government to infringe ... fundamental liberty interests ... unless the infringement is narrowly tailored to serve a compelling state interest.” Glucksberg, 521 U.S. at 721. However, where the infringed liberties are neither fundamental nor based on suspect classification, rational basis review applies. Sylvia Landfield Tr. v. City of L.A., 729 F.3d 1189, 1191 (9th Cir. 2013); Glucksberg, 521 U.S. at 728. Under rational basis review, “legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.” City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 440 (1985).

None of Plaintiffs’ authorities support their proposition that the right to informed consent is a fundamental right under the Constitution. Rather, Plaintiffs appear to rely on Roman Catholic Diocese of Brooklyn v. Cuomo to support the application of strict scrutiny. 141 S. Ct. 63, 67 (2020). (Appl. at 7-8.) But Cuomo concerned capacity restrictions on religious institutions, which plaintiffs argued were treated less favorably than “essential” businesses. The Court applied strict scrutiny because the law at issue targeted religious practice, and “the

challenged restrictions [we]re not ‘neutral’ and of ‘general applicability[.]’” Cuomo, 141 S. Ct. at 67 (citing Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520, 546 (1993)). “In addressing the constitutional protection for free exercise of religion,” courts apply strict scrutiny unless the challenged law is neutral and of general applicability. Church of Lukumi, 508 U.S. at 531. However, a law “that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice.” Church of Lukumi, 508 U.S. at 531.

Strict scrutiny is not applicable here. First, Plaintiffs make no showing that the Policy targets the free exercise of religion. Even if that were the case, as Defendants point out, the Policy is in fact neutral and of general applicability. More generally, Plaintiffs make no showing that the interest at issue here (bodily autonomy or informed consent) is fundamental under the Constitution so as to require greater scrutiny. Thus, the Court applies rational basis. See Klaassen, 2021 WL 3073926, at *21 (“Government action that infringes on the liberty interest here ... is subject to rational basis review.”). This is consistent with the longstanding application of rational basis review to assess mandatory vaccination measures. Id. at *24 (listing cases).

b. Application

The Policy is “rationally related to a legitimate state interest.” City of Cleburne, 473 U.S. at 440. The Supreme Court has recognized that “[s]temming the spread of COVID-19 is unquestionably a compelling interest.” Cuomo, 141 S. Ct. at 67. At issue is whether the Policy is rationally related to this compelling state interest. The Policy easily meets this test.

Over a century ago, the Supreme Court held that “a community has the right to protect itself against an epidemic of disease which threatens the safety of its members.” Jacobson v. Commonwealth of Massachusetts, 197 U.S. 11, 27 (1905). California is facing a surge of COVID-19 cases, spurred by the highly contagious Delta variant. (Kuwahara Decl., Exs. 3-7, 12 (recent news report detailing sharp increase in COVID-19 cases and the prevalence of the Delta variant); Lo Decl. ¶ 7.) Extensive data supports vaccination as an effective strategy for preventing severe disease, hospitalization, and death from COVID-19. (Kuwahara Decl., Ex. 8 at 34-36; Huang Decl. ¶¶ 6-7.) The vaccines currently available in the United States were authorized for emergency use after extensive randomized controlled trials, and the U.S. Centers for Disease Control and Prevention (“CDC”) and U.S. Food and Drug Administration (“FDA”) continue to conduct post-authorization safety and monitoring. (Id.)

As stated in the Policy Summary, the Policy’s purpose is “to facilitate protection of the health and safety of the University community.” (Kuwahara Decl., Ex. 2 at 2.) It is “the product of consultation with UC infectious disease experts and ongoing review of evidence from medical studies concerning the dangerousness of COVID-19 and emerging variants of concern, as well as the safety and effectiveness of the vaccines for preventing infection, hospitalizations, and deaths from COVID-19, and for reducing the spread of this deadly disease.” (Id., Ex. 1 at 1.) Susan Huang, MD, MPH, attests that the UC Health infection prevention leadership group was actively consulted regarding the Policy. (Huang Decl. ¶ 5 (endorsing the Policy).) Facing similar

circumstances, several universities resuming on-campus operations have adopted similar policies. (Kuwahara Decl., Exs. 13-21.)

As it pertains to individuals who previously contracted COVID-19, Defendants point to evidence that “ascertainment of prior infection can be unreliable or impractical in some cases, and the duration of protection of prior infection is unknown.” (*Id.*, Ex. 22, at 9-10.²) Data shows that “[v]accination appears to further boost antibody levels in those with past infection and might improve the durability and breadth of protection.” (*Id.*) While this report recognizes that “[i]ndividuals with a history of SARS-CoV-2 may be more likely to experience local and systemic adverse effects (eg, fevers, chills, myalgias, fatigue) after a first vaccine dose[,] ... [t]his is not a contraindication or precaution to a second dose....” (*Id.*)

In fact, in its Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States,³ the CDC has indicated:

Data from clinical trials indicate that the currently authorized COVID-19 vaccines can be given safely to people with evidence of a prior SARS-CoV-2 infection. Viral testing to assess for acute SARS-CoV-2 infection or serologic testing to assess for prior infection is not recommended for the purposes of vaccine decision-making.... While there is no recommended minimum interval between infection and vaccination, current evidence suggests that the risk of SARS-CoV-2 reinfection is low in the months after initial infection but may increase with time due to waning immunity.

Indeed, a recent study suggests that the immunity of individuals who previously had COVID-19 may not be as effective against the surging Delta variant. (Kuwahara Decl., Ex. 24.) Thus, the CDC recommends vaccination for individuals who have already had COVID-19 and recovered. (*Id.*, Ex. 23.)

Plaintiffs, of course, dispute the above evidence, arguing that “emerging data establishes that vaccinating the Covid-19 Recovered causes an immediately higher death rate worldwide for no benefit[.]” (Appl. at 10 (citing Compl. ¶ 27).) But Plaintiffs’ arguments amount to “disputes over the most reliable science,” and the Court will not intervene “as long as [Defendants’] process is rational in trying to achieve public health.” *Klaassen*, 2021 WL 3073926, at *38 (citing *Phillips v. City of New York*, 775 F.3d 538, 542 (2d Cir. 2015) (“[P]laintiffs argue that a growing body of scientific evidence demonstrates that vaccines cause more harm to society than good, but as *Jacobson* made clear, that is a determination for the [policymaker], not the individual

² Kathryn M. Edwards, et al., “COVID-19: Vaccines to prevent SARS-CoV-2 infection,” UpToDate (updated July 26, 2021), <https://www.uptodate.com/contents/covid-19-vaccines-to-prevent-sars-cov-2-infection>.

³ See “People with prior or current SARS-CoV-2 infection,” CDC (updated July 16, 2021) <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html>.

objectors.”)). The Court finds that there is clearly a rational basis for Defendants to institute the Policy requiring vaccination, including for individuals who previously had COVID-19. Plaintiffs’ first claim is unlikely to succeed on the merits.

2. Fourteenth Amendment – State Created Danger

Plaintiffs next argue that Defendants have shown “deliberate indifference to the known and obvious danger of vaccine injury,” which creates and exposes Plaintiffs to health dangers that they would not otherwise face, in contravention of the Fourteenth Amendment. (Appl. at 15-16.) The state-created danger exception applies only where “there is affirmative conduct on the part of the state in placing the plaintiff in danger,” and “the state acts with deliberate indifference to a known or obvious danger.” Patel v. Kent Sch. Dist., 648 F.3d 965, 974 (9th Cir. 2011) (internal quotation marks omitted). Plaintiffs fail to make this showing.

Deliberate indifference is “a stringent standard of fault, requiring proof that [the state] actor disregarded a known or obvious consequence of his action.” Id. The state actor must “recognize an unreasonable risk and actually intend to expose the plaintiff to such risks without regard to the consequences to the plaintiff.” Id. at 975. Here, the record supports the opposite conclusion.

The Policy provides that it was adopted to protect the health and safety of the community. (Kuwahara Decl., Ex. 2 at 2.) It was developed in active consultation with infectious disease experts, including the UC Health infection prevention leadership. (Huang Decl. ¶ 5; see also Kuwahara Decl. Ex. 1 (detailing that the Policy was developed in consultation with UC infectious disease experts and after a review of evidence from medical studies).) These experts endorse the Policy, including its application to individuals who previously contracted COVID-19 and recovered, as a crucial measure to protect the University community (including those individuals). (See Boden-Albala Decl.; Lo Decl.; Huang Decl.)

The Policy explicitly accounts for recent COVID-19 diagnoses by providing a temporary medical exemption. (Kuwahara Decl., Ex. 2.) While Plaintiffs point to a danger of “vaccine injury” for individuals with natural immunity, as noted above, the CDC recommends vaccination for those who have contracted and recovered from COVID-19, citing data from clinical trials. (Id., Ex. 23 (CDC, “Frequently Asked Questions about COVID-19 Vaccination”); n.3 infra). The Policy thus stands in harmony with recommendations by the CDC and FDA, which “strongly believes that the known and potential benefits of COVID-19 vaccination greatly outweigh the known and potential risks of COVID-19.” (Id., Ex. 28 (FDA, COVID-19 Vaccine Safety Surveillance, July 12, 2021); Ex. 27 (CDC, Safety of COVID-19 Vaccines) (noting that “serious safety problems are rare”).) This evidence supports Defendants’ conclusion that requiring vaccination is far from an “unreasonable risk” or a “known and obvious danger.” Plaintiffs are unlikely to prevail on the merits of their second claim.

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3. State Law Claims

Finally, Plaintiffs assert state law claims under the California Unruh Act and Cal. Govt. Code § 11135. However, as Defendants point out, these claims are barred by the Eleventh Amendment. (Opp'n at 18.) The Eleventh Amendment bars suits for damages or injunctive relief against a state, an arm of the state, its instrumentalities, or its agencies. Durning v. Citibank, N.A., 950 F.2d 1419, 1422-23 (9th Cir. 1991). Plaintiffs assert state law claims against The Regents of the University of California, as well as UC President, the UC Riverside Chancellor, and the UC Irvine Chancellor, all in their official capacities. However, the Regents of the University of California “are an arm of the state entitled to Eleventh Amendment immunity.” Feied v. The Regents of the Univ. of California, 188 F. App'x 559, 561 (9th Cir. 2006). The Eleventh Amendment also prohibits actions against state officials in their official capacities. Stivers v. Pierce, 71 F.3d 732, 749 (9th Cir. 1995)

A citizen may sue a state in federal court if the state waives its immunity and consents to suit. Welch v. Tex. Dep't of Highways & Pub. Transp., 483 U.S. 468, 473 (1987). “A State’s consent to suit must be ‘unequivocally expressed’ in the text of the relevant statute.” Sossamon, 563 U.S. at 284. Plaintiffs point to no such statutory waiver. Absent an express and unequivocal waiver of California’s sovereign immunity, Plaintiffs’ state law claims are unlikely to succeed.

B. Irreparable Harm

Next, Plaintiffs must establish that there is a likelihood of irreparable injury absent the Court’s grant of the TRO. Alliance for Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011). As Plaintiffs point out, “[i]t is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’” Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting Elrod v. Burns, 427 U.S. 347, 373 (1976)). But, for the reasons discussed above, Plaintiffs’ constitutional claims are unlikely to succeed. Plaintiffs’ claims that the Policy violates their constitutional rights are thus insufficient to establish irreparable harm.

Plaintiffs further suggest that AFD will suffer irreparable harm because member physicians provide care to UC students impacted by the vaccine mandate, which would irreparably impair their physician-patient relationships. (Appl. at 20 (citing Compl. ¶¶ 6, 11).) In turn, Individual Plaintiffs argue they face “risks of life and limb ... if they are forced to unnecessarily vaccinate[.]” (Appl. at 20.) They add that the vaccine mandate has put them under duress, impaired their ability to exercise informed consent or refusal of the vaccine with physicians of their choice, and imperiled their academic status and livelihood as students. (See Choi Decl.; Powell Decl.) The Court is not persuaded.

First, as Defendants point out, AFD makes no showing that its members are subject to the Policy, or have any role in executing the Policy (such as being required to provide the vaccines to their patients). AFD shows little more than a tenuous connection to the Policy - that some physicians may provide care to UC students who disagree with the Policy. But that is not enough to show harm, much less irreparable harm, to AFD.

Second, Plaintiffs fail to establish that Individual Plaintiffs will be irreparably harmed. Plaintiffs allude to a series of harms resulting from being “forced to unnecessarily vaccinate.” But as Defendants point out, Individual Plaintiffs are not “forced” to vaccinate. Rather, under the Policy, vaccination is a condition of physical presence at the University. All students, including Individual Plaintiffs, have a choice – albeit undoubtedly a difficult one – to get vaccinated, seek an exemption (if applicable), or transfer elsewhere.

It is well established that “[a] delay in collegiate or graduate education isn’t typically irreparable harm.” Klaassen v. Trustees of Indiana Univ., 2021 WL 3073926, at *41 (N.D. Ind. July 18, 2021). Indeed, courts have repeatedly held that delays in education are compensable by monetary damages. See, e.g., Doe v. Princeton Univ., 2020 WL 2097991, at *7 (D.N.J. May 1, 2020) (a delay in plaintiff’s education, analogous to a suspension, can be remedied through monetary compensation); Madej v. Yale Univ., 2020 WL 1614230, at *6–7 (D. Conn. Mar. 31, 2020) (academic withdrawal does not mean plaintiff will never be able to obtain his degree; rather, his ability to do so will be delayed, which can be remedied through monetary compensation; reputational harm assertions are “too speculative to warrant injunctive relief”); Roden v. Floyd, 2018 WL 6816162, at *5 (E.D. Mich. Nov. 13, 2018), report and recommendation adopted, 2018 WL 6815620 (E.D. Mich. Dec. 27, 2018) (delays in education do not constitute irreparable harm); Phillips v. Marsh, 687 F. 2d 620 (2d Cir. 1982) (“We can conceive of no irreparable harm that would accrue to [the plaintiff] in allowing her graduation to await the outcome of the trial on the merits; any damages to her from deferring her career as a military officer in that period of time would surely be compensable by monetary damages.”). Plaintiffs make no showing as to why this case would warrant a different conclusion. The Court finds that Plaintiffs fail to meet their burden to show irreparable harm.

C. Balance of Equities and Public Interest

Finally, the Court finds that the balance of equities and the public interest weighs heavily against the requested relief. Plaintiffs Choi and Powell assert an individual liberty interest in refusing unwanted treatment. (See Appl.) While that is certainly an important liberty interest, “[v]accines address a collective enemy, not just an individual one.” Klaassen, 2021 WL 3073926, at *24. Thus, Plaintiffs’ decision to refuse vaccination does not affect them alone. The UC community includes more than 280,000 students, and more than 227,000 faculty and staff, who are expected to return to its campuses this fall. (Boden-Albala Decl. ¶ 8.) This community includes individuals who may be at higher risk of contracting COVID-19 and/or suffering poor prognostics outcomes for said infection. (Id. ¶ 7.) High vaccine coverage in the community protects the community at large, including those who are particularly vulnerable and those who cannot be vaccinated. (Id.; see also Huang Decl. ¶¶ 6-9; Lo Decl. ¶¶ 6-10.) Facing a sharp surge in COVID-19 cases and the highly contagious Delta variant (Kuwahara Decl., Exs. 3-6), the Policy seeks to “maintain the health and well-being of the campus community and that of the general public” by limiting physical access to the University community to those who are vaccinated (or eligible for limited exemptions). (Kuwahara Decl., Ex. 1.) These public concerns

weigh more heavily than Individual Plaintiffs' interest in refusing unwanted treatment, particularly where they have other options, as discussed above.

Plaintiffs assert that Defendants are “in no way harmed by the issuance of an injunction that prevents the state from enforcing unconstitutional restrictions.” Legends Night Club v. Miller, 637 F.3d 291, 302-03 (4th Cir. 2011). (Appl. at 21.) But Plaintiffs fail to show that they are likely to succeed on the merits of their constitutional claims. Similarly, other than a few references to “State sponsored propaganda,” Plaintiffs fail to address the public interest in the health and safety of the larger community. As several other courts have held, Plaintiffs have failed to establish that the balance of harms or the public's interest favors the extraordinary remedy of a temporary restraining order. Klaassen, 2021 WL 3073926, at *45-46; Carmichael v. Ige, 470 F. Supp. 3d 1133 (D. Haw. 2020).

V. CONCLUSION

For the reasons above, the Court DENIES Plaintiffs' Application.

IT IS SO ORDERED.

1 Emily T. Kuwahara (SBN 252411)
ekuwahara@crowell.com
2 Uri Niv (SBN 307487)
univ@crowell.com
3 CROWELL & MORING LLP
515 South Flower Street, 40th Floor
4 Los Angeles, CA 90071
Telephone: 213.622.4750
5 Facsimile: 213.622.2690

6 Kristin Madigan (SBN 233436)
kmadigan@crowell.com
7 Suzanne Rode (SBN 253830)
srode@crowell.com
8 CROWELL & MORING LLP
3 Embarcadero Center, 26th Floor
9 San Francisco, CA 94111
Telephone: 415.986.2800
10 Facsimile: 415.986.2827

11 Norman J. Hamill (SBN 154272)
Norman.hamill@ucop.edu
12 Katharine Essick (SBN 219426)
katharine.essick@ucop.edu
13 UNIVERSITY OF CALIFORNIA
Office of General Counsel
14 1111 Franklin Street, 8th Floor
Oakland, CA 94607
15 Telephone: 510.987.9800
16 Facsimile: 510.987.9757

17 Attorneys for Defendants
Kim A. Wilcox, Howard Gillman, The Regents of the University of California,
18 Michael V. Drake

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA

21
22 AMERICA'S FRONTLINE
DOCTORS, *et al.*,

23 Plaintiff,

24 v.

25 KIM A. WILCOX, in his official capacity
26 as CHANCELLOR OF THE
UNIVERSITY OF CALIFORNIA
27 RIVERSIDE, *et al.*,

Case No. 5:21-cv-01243-JGB-KK

**DECLARATION OF EMILY T.
KUWAHARA IN OPPOSITION TO
PLAINTIFFS' EX PARTE APPLICATION
FOR TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW CAUSE
WHY A PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

Ctrm.: Riverside, Courtroom 1
Judge: Hon. Jesus G. Bernal

1 I, Emily T. Kuwahara, hereby declare as follows:

2 1. I am a partner with the law firm of Crowell & Moring LLP (“Crowell”), counsel
3 for Kim A. Wilcox, in his official capacity as Chancellor of the University of California
4 Riverside, Howard Gillman, in his official capacity as the Chancellor of the University of
5 California Irvine, The Regents of the University of California, and Michael V. Drake, in his
6 official capacity as President of the University of California. I submit this declaration in
7 opposition to America’s Frontline Doctors, *et al.*’s (“Plaintiffs”) Temporary Restraining Order. I
8 have personal knowledge of the following facts set forth in this declaration, except where stated
9 on information and belief and, if called as a witness, could and would competently testify thereto.

10 2. I received Plaintiffs’ *ex-parte* application and accompanying documents via email
11 at approximately 6:00 P.M. on Tuesday, July 27, 2021.

12 3. Attached hereto as Exhibit 1 is a true and correct copy of the July 15, 2021 letter
13 from the University of California president, Dr. Michael V. Drake, MD, distributing the
14 University of California’s Policy: SARS-CoV-2 (COVID-19) Vaccination Program.

15 4. Attached hereto as Exhibit 2 is a true and correct copy of the University of
16 California’s Policy: SARS-CoV-2 (COVID-19) Vaccination Program, effective July 15, 2021,
17 with the accompanying Frequently Asked Questions, retrieved on July 28, 2021.

18 5. Attached hereto as Exhibit 3 is a true and correct copy of the Los Angeles Times
19 Article, “Hospitalizations increasing as L.A. County reports more than 2,000 new coronavirus
20 cases” dated July 25, 2021, available at
21 <https://www.latimes.com/california/story/2021-07-25/la-county-covid-surge>.

22 6. Attached hereto as Exhibit 4 is a true and correct copy of the Guardian Article,
23 “California sees a sharp increase in Covid cases and a return to masks mandates” dated July 22,
24 2021, available at
25 <https://www.theguardian.com/world/2021/jul/22/california-covid-cases-mask-requirements>

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1 7. Attached hereto as Exhibit 5 is a true and correct copy of the Sacramento Bee
2 Article, “Delta made up 83% of California’s recently sampled COVID cases, matching U.S. rate”
3 dated July 22, 2021, available at
4 <https://www.sacbee.com/news/coronavirus/article252928578.html>.

5 8. Attached hereto as Exhibit 6 is a true and correct copy of the Newsweek Article,
6 “Delta Variant explosion Across U.S. Sees COVID Cases Skyrocket” dated July 26, 2021,
7 available at
8 <https://www.newsweek.com/delta-variant-explosion-across-us-covid-cases-skyrocket-1613071>

9 9. Attached hereto as Exhibit 7 is a true and correct copy of the District Court for the
10 Southern District of Texas, June 4, 2021, order denying plaintiffs’ application of a temporary
11 restraining order in *Bridges v. Houston Methodist Hosp.*, No. CV H-21-1774, (S.D. Tex. June 4,
12 2021).

13 10. Attached hereto as Exhibit 8 is a true and correct copy article, “Multisociety
14 Statement on COVID-19 Vaccination as a Condition of Employment for Healthcare Personnel,”
15 published online by Cambridge University Press on July 13, 2021.

16 11. Attached hereto as Exhibit 9 is a true and correct copy of the Center for Disease
17 Control and Prevention’s (CDC), May 10, 2021, publication, “Ensuring COVID-19 Vaccines
18 Work”, available at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness.html>.

19 12. Attached hereto as Exhibit 10 is a true and correct copy of the CDC’s, April 28,
20 2021, publication, “Effectiveness of Pfizer-BioNTech and Moderna Vaccines Against COVID-19
21 Among Hospitalized Adults Aged ≥65 Years”, available at
22 [https://www.cdc.gov/mmwr/volumes/70/wr/mm7018e1.htm?s_cid=mm7018e1_w#suggestedcit](https://www.cdc.gov/mmwr/volumes/70/wr/mm7018e1.htm?s_cid=mm7018e1_w#suggestedcitation)
23 [ion](https://www.cdc.gov/mmwr/volumes/70/wr/mm7018e1.htm?s_cid=mm7018e1_w#suggestedcitation).

24 13. Attached hereto as Exhibit 11 is a true and correct copy of the CDC’s April 2,
25 2021, publication, “Interim Estimates of Vaccine Effectiveness of BNT162b2 and mRNA-1273
26 COVID-19 Vaccines in Preventing SARS-CoV-2 Infection Among Health Care Personnel, First
27 Responders, and Other Essential and Frontline Workers”, available at
28 https://www.cdc.gov/mmwr/volumes/70/wr/mm7013e3.htm?s_cid=mm7013e3_w.

1 14. Attached hereto as Exhibit 12 is a true and correct copy of the Yale Medicine
2 article, “5 Things To Know About the Delta Variant,” dated July 27, 2021, available at
3 <https://www.yalemedicine.org/news/5-things-to-know-delta-variant-covid>.

4 15. Attached hereto as Exhibit 13 is a true and correct copy of the Johns Hopkins
5 University COVID Vaccination Information, retrieved on July 27, 2021, available at
6 <https://covidinfo.jhu.edu/health-safety/covid-vaccination-information/>.

7 16. Attached hereto as Exhibit 14 is a true and correct copy Georgetown University’s,
8 “COVID-19 Vaccination Requirement,” retrieved on July 28, 2021 and “COVID-19 FAQs,”
9 retrieved on July 27, 2021, available at

10 [https://www.georgetown.edu/coronavirus/covid-19-](https://www.georgetown.edu/coronavirus/covid-19-vaccines/?utm_source=SilverpopMailing&utm_medium=email&utm_campaign=Test%20-%20Fall%202021%20Message&utm_content)
11 [vaccines/?utm_source=SilverpopMailing&utm_medium=email&utm_campaign=Test%20-](https://www.georgetown.edu/coronavirus/covid-19-vaccines/?utm_source=SilverpopMailing&utm_medium=email&utm_campaign=Test%20-%20Fall%202021%20Message&utm_content)
12 [%20Fall%202021%20Message&utm_content](https://www.georgetown.edu/coronavirus/covid-19-vaccines/?utm_source=SilverpopMailing&utm_medium=email&utm_campaign=Test%20-%20Fall%202021%20Message&utm_content) and
13 <https://www.georgetown.edu/coronavirus/frequently-asked-questions/#vaccines>.

14 17. Attached hereto as Exhibit 15 is a true and correct copy of Harvard’s “COVID-19
15 Updates and Vaccination at Harvard” and “COVID-19 Vaccine Requirement FAQs,” retrieved on
16 July 27, 2021, available at

17 <https://www.harvard.edu/president/news/2021/covid-19-update-5-28-21/> and
18 <https://huhs.harvard.edu/covid-19-vaccine-requirement-faqs>.

19 18. Attached hereto as Exhibit 16 is a true and correct copy Morehouse College’s
20 “Message From the President” and “COVID-19 Vaccination Requirements FAQ,” retrieved on
21 July 27, 2021, available at

22 [https://mailchi.mp/734e966b5cef/important-message-from-the-president-regarding-covid-19-](https://mailchi.mp/734e966b5cef/important-message-from-the-president-regarding-covid-19-vaccination-requirements-for-the-fall-2021-semester)
23 [vaccination-requirements-for-the-fall-2021-semester](https://mailchi.mp/734e966b5cef/important-message-from-the-president-regarding-covid-19-vaccination-requirements-for-the-fall-2021-semester) and [https://morehouse.edu/life/covid-](https://morehouse.edu/life/covid-19/vaccination-requirement-faqs/#student)
24 [19/vaccination-requirement-faqs/#student](https://morehouse.edu/life/covid-19/vaccination-requirement-faqs/#student).

25 19. Attached hereto as Exhibit 17 is a true and correct copy of University of
26 Pennsylvania’s article, “An update on Penn’s plans for the fall semester” and “Student FAQs,”
27 retrieved on July 27, 2021, available at [https://penntoday.upenn.edu/announcements/update-](https://penntoday.upenn.edu/announcements/update-penns-plans-fall-semester)

28 [penns-plans-fall-semester](https://penntoday.upenn.edu/announcements/update-penns-plans-fall-semester) and <https://coronavirus.upenn.edu/content/student-faq>.

1 20. Attached hereto as Exhibit 18 is a true and correct copy of University of Virginia’s
2 “Academic Division Employee COVID-19 Vaccine Information,” retrieved on July 27, 2021,
3 available at <https://coronavirus.virginia.edu/vaccinations>.

4 21. Attached hereto as Exhibit 19 is a true and correct copy of Vanderbilt University’s
5 “Health and Safety Protocols,” retrieved on July 27, 2021, available at
6 <https://www.vanderbilt.edu/coronavirus/faqs/student-vaccination-requirement/>.

7 22. Attached hereto as Exhibit 20 is a true and correct copy of Wake Forest
8 University’s “Wake Forest COVID-19 Vaccine Policy,” “COVID-19 Vaccine FAQs,” and
9 “Mandatory Student COVID-19 Vaccine Policy,” retrieved on July 27, 2021, available at
10 <https://ourwayforward.wfu.edu/2021/05/wake-forest-covid-19-vaccine-policy/> and
11 <https://ourwayforward.wfu.edu/faculty-staff/vaccine-faqs/>.

12 23. Attached hereto as Exhibit 21 is a true and correct copies of Yale University’s
13 “Requiring Students to be Vaccinated Against COVID-19,” “COVID-19 Vaccine Exemption
14 Requests,” and “COVID-19 Vaccine FAQ for Yale Students,” retrieved on July 27, 2021,
15 available at
16 <https://covid19.yale.edu/community-messages/requiring-students-be-vaccinated-against-covid-19>,
17 <https://yalehealth.yale.edu/covid-19-vaccine-exemption-requests>, and
18 <https://yalehealth.yale.edu/covid-19-vaccine-faq-yale-students>.

19 24. Attached hereto as Exhibit 22 is a true and correct copy of the UpToDate article,
20 “COVID-19: Vaccines to prevent SARS-CoV-2 infection,” dated June 2021, available at
21 <https://www.uptodate.com/contents/covid-19-vaccines-to-prevent-sars-cov-2-infection>.

22 25. Attached hereto as Exhibit 23 is a true and correct copy of the CDC’s FAQs about
23 COVID-19 Vaccination, dated June 15, 2021. Vaccination, available at
24 <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html>.

25 26. Attached hereto as Exhibit 24 is a true and correct copy of the Nature Medicine
26 article, “Antibody responses to the BNT162b2 mRNA vaccine in individuals previously infected
27 with SARS-CoV-2,” dated April 1, 2021.
28

1 27. Attached hereto as Exhibit 25 is a true and correct copy of the FDA’s Safety
2 Communications, “Antibody Testing Is Not Currently Recommended to Assess Immunity After
3 Covid-19 Vaccination: FDA Safety Communication,” issued May 19, 2021, available at
4 [https://www.fda.gov/medical-devices/safety-communications/antibody-testing-not-currently-](https://www.fda.gov/medical-devices/safety-communications/antibody-testing-not-currently-recommended-assess-immunity-after-covid-19-vaccination-fda-safety)
5 [recommended-assess-immunity-after-covid-19-vaccination-fda-safety](https://www.fda.gov/medical-devices/safety-communications/antibody-testing-not-currently-recommended-assess-immunity-after-covid-19-vaccination-fda-safety).

6 28. Attached hereto as Exhibit 26 is a true and correct copy the Vaccine Adverse
7 Event Reporting System’s FAQs, retrieved on July 28, 2021, available at
8 <https://vaers.hhs.gov/faq.html>.

9 29. Attached hereto as Exhibit 27 is a true and correct copy the CDC’s July 20, 2021
10 publication, “Safety of COVID-19 Vaccines,” available at
11 <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html>.

12 30. Attached hereto as Exhibit 28 is a true and correct copy of the FDA’s Safety
13 Communications, “COVID-19 Vaccine Safety Surveillance,” dated July 12, 2021, available at
14 [https://www.fda.gov/vaccines-blood-biologics/safety-availability-biologics/covid-19-vaccine-](https://www.fda.gov/vaccines-blood-biologics/safety-availability-biologics/covid-19-vaccine-safety-surveillance)
15 [safety-surveillance](https://www.fda.gov/vaccines-blood-biologics/safety-availability-biologics/covid-19-vaccine-safety-surveillance).

16 31. Attached hereto as Exhibit 29 is a true and correct copy of Appendix A to
17 University of California’s Policy: SARS-CoV-2 (COVID-19) Vaccination Program, titled Fall
18 2021 Recommendations: COVID-19 Prevention Strategies, retrieved on July 28, 2021, available
19 at [https://ucop.edu/uc-health/ files/fall-2021-covid-19-prevention-strategies-july.pdf](https://ucop.edu/uc-health/files/fall-2021-covid-19-prevention-strategies-july.pdf).

20
21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23
24 Executed this 28th day of July, 2021 at Los Angeles, California.

25
26 */s/ Emily T. Kuwahara*

27 _____
Emily T. Kuwahara

1 Emily T. Kuwahara (SBN 252411)
ekuwahara@crowell.com
2 Uri Niv (SBN 307487)
univ@crowell.com
3 CROWELL & MORING LLP
515 South Flower Street, 40th Floor
4 Los Angeles, CA 90071
Telephone: 213.622.4750
5 Facsimile: 213.622.2690

6 Kristin Madigan (SBN 233436)
kmadigan@crowell.com
7 Suzanne Rode (SBN 253830)
srode@crowell.com
8 CROWELL & MORING LLP
3 Embarcadero Center, 26th Floor
9 San Francisco, CA 94111
Telephone: 415.986.2800
10 Facsimile: 415.986.2827

11 Norman J. Hamill (SBN 154272)
Norman.hamill@ucop.edu
12 Katharine Essick (SBN 219426)
katharine.essick@ucop.edu
13 UNIVERSITY OF CALIFORNIA
Office of General Counsel
14 1111 Franklin Street, 8th Floor
Oakland, CA 94607
15 Telephone: 510.987.9800
16 Facsimile: 510.987.9757

17 Attorneys for Defendants
18 Kim A. Wilcox, Howard Gillman, The Regents
of the University of California and Michael V.
Drake

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 EASTERN DIVISION

22 AMERICA'S FRONTLINE
23 DOCTORS, et al.,

24 Plaintiff,

25 v.

26 KIM A. WILCOX, in his official
capacity as CHANCELLOR OF THE
27 UNIVERSITY OF CALIFORNIA
RIVERSIDE, et al.,

Case No. 5:21-cv-01243-JGB-KK

**DECLARATION OF SUSAN S.
HUANG, M.D., M.P.H. IN
SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS'
EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND TO SET HEARING
ON A PRELIMINARY
INJUNCTION**

Date: ***

1 I, Susan S. Huang, M.D., M.P.H., declare as follows:

2 1. I provide this declaration in support of Defendants Chancellors of
3 University of California Irvine (“UCI”) and University of California Riverside
4 (“UCR”), President Michael V. Drake, and The Regents of the University of
5 California’s (“Defendants”) Opposition to Plaintiffs’ Application for Temporary
6 Restraining Order. I base this declaration on my expertise as outlined below and
7 facts within my personal knowledge, to which I could and would testify
8 competently if called upon to do so.

9 2. I am a tenured Professor of Infectious Diseases and the Medical
10 Director of Epidemiology & Infection Prevention at UC Irvine Health. My research
11 focuses on the clinical epidemiology of pathogen spread within and across
12 healthcare facilities, including estimating the risk for infection and assessing
13 practical means for prevention.

14 3. I received my B.S. in Neuroscience from Brown University, *magna*
15 *cum laude*, my M.D. from Johns Hopkins School of Medicine, first in class rank,
16 and my Masters in Public Health (Quantitative Methods) from Harvard School of
17 Public Health. I completed a residency in Internal Medicine at the University of
18 California, San Francisco, and I completed a fellowship in Infectious Diseases at
19 Brigham & Women’s Hospital and Massachusetts General Hospital. A true and
20 correct copy of my curriculum vitae is attached as **Exhibit A**.

21 4. Since January 2020, I have actively participated in the UC Vice
22 Chancellor Health Affairs COVID-19 Advisory Committee, and the UC Office of
23 the President Health Care Executive Committee.

24 5. I have reviewed the final UC Policy requiring that members of the UC
25 community, including students, must be vaccinated against COVID-19 as a
26 condition of their physical access to campus facilities (“UC Policy”), issued on July
27 15, 2021, that is the subject of this action. The UC Health infection prevention
28 leadership group, of which I am an active part, was actively consulted regarding the

1 UC Policy and I strongly endorse the Policy, including that it should apply to
2 individuals who have previously been diagnosed with COVID-19, but are recovered
3 from the disease.

4 6. As Professor in the Division of Infectious Diseases in the UC Irvine
5 School of Medicine, and the Medical Director of Epidemiology & Infection
6 Prevention at UC Irvine Health, I am in full support of the critical value and
7 essential need for the UC COVID-19 Vaccine Policy. As the medical lead for
8 COVID-19 infection prevention policies and protocols at UCI Health, and the
9 medical lead for the Orange County Nursing Home COVID-19 Prevention Team, I
10 can attest that vaccination is the cornerstone for disease prevention and the gateway
11 to not only the end of this pandemic, but to assure a safe campus and workplace for
12 UC's many thousands of workers, students, volunteers, and healthcare
13 professionals.

14 7. The toll that this pandemic has taken on human life and quality of life
15 cannot be over-emphasized. We have several outstanding vaccines that have
16 received emergency authorization in the U.S. after extensive vetting by the FDA for
17 safety and efficacy, and, to-date, nearly three-quarters of a *billion doses* of Pfizer or
18 Moderna mRNA vaccine have been given across the globe (330 million in the US).
19 Nearly 24 million doses of J&J have been given globally. These vaccines have
20 remarkable safety profiles for any prevention agent, and their value is
21 incontrovertible when their protective benefits are compared to the disease impact
22 that COVID-19 causes.

23 8. UC's workplaces, areas of learnings, and places that we seek
24 healthcare should provide maximum protections to keep society active. People's
25 lives, learning, and economic livelihood are at stake. The SARS-CoV-2 virus not
26 only produces severe pneumonia and sepsis that leads to hospitalization and death,
27 but it also produces persistent symptoms in sizeable fraction of people who are
28 affected. Recent studies show that 13% of adults (Sudre CH et al.

1 medrxiv.org/content/10.1101/2020.10.19.20214494v1.full.pdf) and 57% of children
2 (Buonsenso D et al. medrxiv.org/content/10.1101/2021.01.23.21250375v1.full.pdf)
3 have symptoms for more than a month. These symptoms include sleeplessness,
4 respiratory issues, fatigue, joint/muscle pain, and difficulty concentration – all of
5 which adversely affect the learning and livelihood environments that the UC system
6 provides to society.

7 9. The SARS-CoV-2 virus is highly contagious, and the delta variant that
8 is dominant across the globe is even more so. As a contagion, the illness of one
9 person can ostensibly affect another in a harmful way. It is UC's responsibility to
10 ensure that its system avails itself of all available proven prevention measures to
11 keep UC's workers, students, and patients safe. Vaccination is the cornerstone to do
12 this, supplemented by masking and other prevention measures. Specifically,
13 vaccination is the only available effective prevention to stop disease and disease
14 spread after someone is exposed to the virus.

15 I declare under penalty of perjury under the laws of the United States of
16 America that the foregoing is true and correct.

17 Executed this 28 day of July, 2021 at Irvine, California.

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28


Susan S. Huang, M.D., M.P.H.

1 Emily T. Kuwahara (SBN 252411)
ekuwahara@crowell.com
2 Uri Niv (SBN 307487)
univ@crowell.com
3 CROWELL & MORING LLP
515 South Flower Street, 40th Floor
4 Los Angeles, CA 90071
Telephone: 213.622.4750
5 Facsimile: 213.622.2690

6 Kristin Madigan (SBN 233436)
kmadigan@crowell.com
7 Suzanne Rode (SBN 253830)
srode@crowell.com
8 CROWELL & MORING LLP
3 Embarcadero Center, 26th Floor
9 San Francisco, CA 94111
Telephone: 415.986.2800
10 Facsimile: 415.986.2827

11 Norman J. Hamill (SBN 154272)
norman.hamill@ucop.edu
12 Katharine Essick (SBN 219426)
katharine.essick@ucop.edu
13 UNIVERSITY OF CALIFORNIA
Office of General Counsel
14 1111 Franklin Street, 8th Floor
15 Oakland, CA 94607
Telephone: 510.987.9800
16 Facsimile: 510.987.9757

17 Attorneys for Defendants
Kim A. Wilcox, Howard Gillman, The Regents
18 of the University of California and Michael V.
Drake

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 EASTERN DIVISION

22 AMERICA'S FRONTLINE
23 DOCTORS, et al.,

24 Plaintiff,

25 v.

26 KIM A. WILCOX, in his official
27 capacity as CHANCELLOR OF THE

Case No. 5:21-cv-01243-JGB-KK

**DECLARATION OF DAVID LO,
M.D., PH.D. IN SUPPORT OF
DEFENDANTS' OPPOSITION
TO PLAINTIFFS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND TO SET HEARING
ON A PRELIMINARY
INJUNCTION**

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1 Emily T. Kuwahara (SBN 252411)
ekuwahara@crowell.com
2 Uri Niv (SBN 307487)
univ@crowell.com
3 CROWELL & MORING LLP
515 South Flower Street, 40th Floor
4 Los Angeles, CA 90071
Telephone: 213.622.4750
5 Facsimile: 213.622.2690

6 Kristin Madigan (SBN 233436)
kmadigan@crowell.com
7 Suzanne Rode (SBN 253830)
srode@crowell.com
8 CROWELL & MORING LLP
3 Embarcadero Center, 26th Floor
9 San Francisco, CA 94111
Telephone: 415.986.2800
10 Facsimile: 415.986.2827

11 Norman Hamill (SBN 154272)
norman.hamill@ucop.edu
12 Katharine Essick (SBN 219426)
katharine.essick@ucop.edu
13 UNIVERSITY OF CALIFORNIA
Office of General Counsel
14 1111 Franklin Street, 8th Floor
Oakland, CA 94607
15 Telephone: 510.987.9800
16 Facsimile: 510.987.9757

Attorneys for Defendants
17 Kim A. Wilcox, Howard Gillman, The Regents
of the University of California and Michael V.
18 Drake

19 UNITED STATES DISTRICT COURT
20 CENTRAL DISTRICT OF CALIFORNIA
21 EASTERN DIVISION

22 AMERICA'S FRONTLINE
23 DOCTORS, et al.,

Plaintiff,

24 v.

25 KIM A. WILCOX, in his official
26 capacity as CHANCELLOR OF THE
27 UNIVERSITY OF CALIFORNIA
RIVERSIDE, UNIVERSITY OF

Case No. 5:21-cv-01243-JGB-KK

**DECLARATION OF BERNADETTE
M. BODEN-ALBALA, M.P.H.,
DR.PH. IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND TO
SET HEARING ON A
PRELIMINARY INJUNCTION**

1 I, Bernadette M. Boden-Albala, M.P.H., Dr.Ph., declare as follows:

2 1. I provide this declaration in support of Defendants Chancellors of
3 University of California Irvine (“UCI”) and University of California Riverside
4 (“UCR”), President Michael V. Drake, and The Regents of the University of
5 California’s (“Defendants”) Opposition to Plaintiffs’ Motion for Temporary
6 Restraining Order. I base this declaration on my expertise as outlined below and
7 facts within my personal knowledge, to which I could and would testify
8 competently if called upon to do so.

9 2. I received my B.A. in Biochemistry from Queens College, CUNY, and
10 my Masters in Public Health (Tropical Medicine Epidemiology) and Dr.Ph.
11 (Sociomedical Science) from Columbia University, School of Public Health.

12 3. I am a tenured Professor of Epidemiology, Health Society and
13 Behavior, and Population Health and Disease Prevention and I am the
14 Director/Founding Dean of the Program in Public Health at UC Irvine (“UCI”). I
15 have been in this position for the last year. Prior to that I was the Senior Associate
16 Dean for Research and Program Development, Interim Chair of the Department of
17 Epidemiology and Professor of Epidemiology, Global Health and Neurology at the
18 School of Global Public Health at New York University. I have been trained in the
19 social sciences, epidemiology and tropical medicine. I am a social epidemiologist
20 whose work focuses on understanding the etiology of disease with an emphasis on
21 societal impact of disease trajectory. Most of my work has been on understanding
22 and intervening on the social determinants of disease in chronic diseases and I am
23 an international expert on Stroke disparities. In the past few years because of my
24 expanded administrative position, I have gotten involved in training and research on
25 emerging diseases including Ebola, Polio, West Nile and now COVID-19. I taught
26 the infectious disease epidemiology course at UCI in Winter 2020. A true and
27 correct copy of my curriculum vitae is attached as **Exhibit A**.

28

1 4. Since late January 2020, I have been involved in the Chancellor’s
2 leadership team as part of the ongoing response to COVID-19 on campus. I am a
3 member of the Vice Chancellor of Health’s COVID-19 advisory committee, and the
4 UC Public Health COVID Advisory Committee. I initiated and oversee the
5 COVID-19 Contract Tracing Initiative on the UCI campus. I am the Principal
6 Investigator of the Orange County COVID-19 Antibody Surveillance Study and I
7 continue to publish research on COVID-19.

8 5. I have reviewed the final UC Policy requiring that members of the UC
9 community must be vaccinated against COVID-19 as a condition of their physical
10 access to campus facilities (“UC Policy”), issued on July 15, 2021, that is the
11 subject of this action.

12 6. I am in support of the UC Policy and believe that it should apply to
13 individuals who have previously been diagnosed with COVID-19 but are no longer
14 receiving treatment and no longer test positive for the disease. Today, COVID-19
15 infection rates in California appear to be in the early stages of another surge, due to
16 the highly contagious Delta variant, with unvaccinated individuals being at
17 particularly high-risk. The research and underlying data regarding any natural
18 immunity today for individuals who had COVID-19 previously, particularly in light
19 of the new and highly transmissible Delta variant, is too preliminary to justify
20 permitting individuals in this group to unilaterally opt out of the COVID-19 vaccine
21 and put the greater UC community at risk.

22 7. Public Health is first and foremost about promoting the health and
23 wellbeing of the community. We can define community in many ways but with
24 regard to the UC Policy we can define the community as the individual UC
25 campuses including students, faculty and staff. These communities are heavily
26 interdependent with frequent contact between faculty, students and staff. These
27 campus communities are comprised of individuals who may be at more or less risk

1 of acquiring infections such as COVID-19, and may have more or less risk for poor
2 prognostics outcomes from said infections including hospitalizations, ICU care and
3 death. In response to existing and emerging infections, vaccines are the most
4 important tool public health can utilize to promote health and keep the community
5 from increased morbidity and mortality associated with these infections. Vaccines
6 work by initiating an immune response in the individual which then decreases or
7 eliminates the presentation of the disease. Vaccines protect individuals from
8 infection and, as importantly, high vaccine coverage in a community protects the
9 community at large.

10 8. The UC Policy for COVID-19 vaccine on college campuses is
11 especially important this year because the University of California system is
12 preparing for more than 280,000 students and more than 227,000 faculty and staff
13 to return to campuses and other locations this fall. Vaccination is by far the most
14 effective way to prevent severe disease and death after exposure to COVID-19.
15 Suspending enforcement of the UC Policy could lead to devastating surges of
16 COVID-19 infection rates across UC campuses and surrounding communities, as
17 hundreds of thousands of people from all over the world return to live, work, and
18 learn in person in the University of California campus communities.

19 Executed in Irvine, California, on this 28th day of July 2021.

20 

21 _____
22 Bernadette M. Boden-Albala

1 Emily T. Kuwahara (SBN 252411)
ekuwahara@crowell.com
2 Uri Niv (SBN 307487)
univ@crowell.com
3 CROWELL & MORING LLP
515 South Flower Street, 40th Floor
4 Los Angeles, CA 90071
Telephone: 213.622.4750
5 Facsimile: 213.622.2690

6 Kristin Madigan (SBN 233436)
kmadigan@crowell.com
7 Suzanne Rode (SBN 253830)
srode@crowell.com
8 CROWELL & MORING LLP
3 Embarcadero Center, 26th Floor
9 San Francisco, CA 94111
Telephone: 415.986.2800
10 Facsimile: 415.986.2827

11 Norman J. Hamill (SBN 154272)
Norman.hamill@ucop.edu
12 Katharine Essick (SBN 219426)
katharine.essick@ucop.edu
13 UNIVERSITY OF CALIFORNIA
Office of General Counsel
14 1111 Franklin Street, 8th Floor
Oakland, CA 94607
15 Telephone: 510.987.9800
16 Facsimile: 510.987.9757

Attorneys for Defendants
17 Kim A. Wilcox, Howard Gillman, The Regents
of the University of California, Michael V. Drake
18

19 UNITED STATES DISTRICT COURT
20 FOR THE CENTRAL DISTRICT OF CALIFORNIA
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22 AMERICA'S FRONTLINE
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26 capacity as CHANCELLOR OF THE
UNIVERSITY OF CALIFORNIA
27 RIVERSIDE, *et al.*,

Case No. 5:21-cv-01243-JGB-KK

**OPPOSITION TO PLAINTIFFS'
EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

28 Ctrm.: Riverside, Courtroom 1
Judge: Hon. Jesus G. Bernal
Date Action Filed: July 26, 2021

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1 **I. INTRODUCTION**

2 Facing an unprecedented and deadly pandemic, on July 15, 2021, the
3 University of California (“UC”) issued its final policy (“Policy”) requiring that,
4 with limited exceptions, students and employees must provide proof they have been
5 vaccinated against SARS-CoV-19—the novel coronavirus which causes the deadly
6 disease COVID-19—as a condition of their physical access to campus facilities.
7 After consultation with the UC community and review of the scientific evidence,
8 UC issued the Policy to facilitate a safe return to school and work. The purpose of
9 the Policy is to maintain the public health and well-being of UC’s ten campus
10 communities, five medical centers, one national laboratory, and numerous other UC
11 locations throughout California, as well as the public health and well-being of
12 surrounding communities. Plaintiffs have brought suit against the Chancellors of
13 University of California Irvine (“UCI”) and University of California Riverside
14 (“UCR”), President Drake, and The Regents of the University of California, and
15 request an injunction—now in the form of a TRO—against this Policy.

16 The potential harm to the UC community if this requirement is paused, just
17 as the university is preparing for an in-person return of hundreds of thousands of
18 students, faculty, and staff this fall, cannot be overstated. The plan to fully and
19 safely return to normal operations for UC campuses in fall 2021 was made in the
20 context of three COVID-19 vaccines becoming widely available in California.
21 Today, despite the continuing availability of the vaccines as California has re-
22 opened, COVID-19 infection rates in California are rising again, with the
23 circulation of the highly contagious Delta variant threatening to outpace the lagging
24 rate of vaccination. In this latest stage of the pandemic, unvaccinated individuals
25 are at particularly high risk for severe outcomes, driving up hospitalization rates
26 and in some locations, prompting a return to indoor masking requirements.
27 Masking, and other non-pharmaceutical interventions, have some efficacy in
28 preventing exposure to this deadly virus; but once an individual is exposed to the

1 virus, vaccination is by far the most effective way to prevent severe disease and
2 death from COVID-19. A TRO that prevents the Policy's enforcement could result
3 in devastating consequences to members of the UC community and surrounding
4 communities (including where UC medical centers are located) as people convene
5 from all over the world to start the fall quarter or semester, now that vaccines are
6 widely available.

7 Plaintiffs' application for a temporary restraining order should be denied for
8 the following reasons.

9 *First*, Plaintiffs have failed to show they will be irreparably harmed if the
10 Court does not grant a TRO. UC is not coercing the student Plaintiffs to be
11 vaccinated. As with the existing Student Immunization Policy, the new UC
12 COVID-19 Vaccination Policy is a condition of their attending classes and any
13 other in-person access to UC. The student Plaintiffs may make the individual choice
14 whether to meet UC's condition or not, and choose to continue attending classes at
15 UC or not. The organizational Plaintiff is of course not an individual student or
16 employee of UC who is subject to the Policy's conditions for physical access to
17 UC. None of the three Plaintiffs have demonstrated any irreparable harm that would
18 support the granting of emergency relief.

19 *Second*, granting the application for TRO would result in greater harm to the
20 public interest than denying this emergency relief to Plaintiffs. UC issued the
21 Policy to protect the health and safety of the entire UC community consisting of
22 hundreds of thousands of individuals and the larger general public where UC
23 operates, and any injunction against the COVID-19 vaccine Policy, especially in
24 light of the current surge in the Delta variant, would put the health and safety of
25 these communities at great risk of increased infections and adverse outcomes.

26 *Third*, Plaintiffs cannot show a high likelihood of success on the merits of
27 their claims. With respect to Plaintiffs' first and second causes of action, alleging a
28 Fourteenth Amendment violation of bodily integrity, Plaintiffs will be unable to

1 show a constitutional violation. In light of the overwhelming scientific evidence of
2 the efficacy of the COVID-19 vaccines, the Policy requiring vaccination is
3 rationally related to UC's compelling interest of stemming the spread of COVID-19
4 on its campuses and surrounding communities, as well as a surge in hospitalizations
5 and severe outcomes in the UC and surrounding communities. With respect to
6 Plaintiffs' third cause of action, alleging a Fourteenth Amendment violation of
7 freedom from state-created danger, Plaintiff cannot prove that UC Defendants acted
8 with "deliberate indifference" to Plaintiffs' safety. Rather, the only evidence is that
9 UC issued the Policy with deliberate and serious consideration for the student
10 Plaintiffs' safety, as members of the UC community. Finally, with respect to
11 Plaintiffs' fourth and fifth causes of action brought under the California state laws,
12 the Eleventh Amendment bars state law claims against state actors in federal court
13 and forecloses those claims.¹

14 Finally, the requested injunctive relief reaches far beyond what is necessary
15 to address any alleged harm or concerns of the Plaintiffs, and is inappropriately
16 broad. If any restraining order is granted (which Defendants do not concede is
17 appropriate), it should be strictly limited to providing the two student Plaintiffs, at
18 two specific locations (UCI Law and UCR undergraduate), the equivalent of a
19 temporary exemption under the Policy, subject to masking and testing
20 requirements, only while the motion for preliminary injunction is pending.

21 Accordingly, UC Defendants respectfully request the Court deny this TRO in

22 ¹ In addition, all claims against "The Regents of the University of California" are
23 foreclosed by the Eleventh Amendment and should be dismissed. *Feied v. The*
24 *Regents of the Univ. of California*, 188 F. App'x 559, 561 (9th Cir. 2006) ("This
25 Court has repeatedly held that the Regents are an arm of the state entitled
26 to Eleventh Amendment immunity"). And, Plaintiff America's Frontline Doctors
27 lacks Article III standing to bring these causes of action, as the Policy does not
28 require anything with respect to America's Frontline Doctors. *Hajro v. U.S.*
Citizenship & Immigr. Servs., 811 F.3d 1086, 1102 (9th Cir. 2016) (to establish
injury in fact, a party must show it suffered an invasion of a legally protected
interest. "Where a party seeks injunctive relief, he must allege a sufficient
likelihood that he will be subjected in the future to the allegedly illegal
policy.") (citing *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983)) (emphasis
added).

1 its entirety. Defendants further request that the Court set the motion for a
2 preliminary injunction for hearing on a regularly noticed motion schedule to be
3 heard on August 30, 2021, such that UC Defendants may be given the opportunity
4 to fully present its evidence in opposition, including declarations from scientific
5 and medical experts.

6 **II. BACKGROUND**

7 The COVID-19 vaccine Policy is the “product of consultation with UC
8 infectious disease experts and ongoing review of the evidence from medical studies
9 concerning the dangerousness of COVID-19 and emerging variants of concern, as
10 well as the safety and effectiveness of the vaccines for preventing infection,
11 hospitalizations, and deaths from COVID-19, and for reducing the spread of this
12 deadly disease.” Declaration of Emily Kuwahara (“Kuwahara Decl.”), Ex. 1
13 (President’s Cover Letter to Policy). In arriving at this Policy, UC reviewed “the
14 safety and efficacy of the three vaccines approved by the Food and Drug
15 Administration (FDA) for emergency use, and considered the severe risks presented
16 by a virus that has killed more than 600,000 people in the United States alone, as
17 well as the rise of more transmissible and more virulent variants.” *Id.* The Policy
18 provides for covered individuals to seek exceptions based on medical
19 contraindications or precautions, disability, or religion, and to request a deferral of
20 vaccination during pregnancy. *Id.*, Ex. 2, (Policy).

21 Plaintiffs are America’s Frontline Doctors, Deborah Choi, a student at
22 University of California Irvine School of Law, and Carly Powell, a student at
23 University of California Riverside. Mses. Choi and Powell allege that this
24 mandatory vaccination policy violates their Constitutional rights because the
25 vaccine is allegedly “experimental, ineffective, and dangerous,” presumably due to
26 their prior infection of COVID-19 that allegedly puts them at higher risk in taking
27 the vaccine.

28 As relevant here, the Policy’s Frequently Asked Questions (“FAQ”) directly

1 address the particular circumstance in which someone has been either “recently
2 diagnosed with COVID-19 and/or [] had an antibody test that shows that [they]
3 have natural immunity.” Kuwahara Decl., Ex. 2, (FAQ No. 9). The FAQ clarifies
4 that such individuals can apply for a Medical Exemption for up to 90 days after
5 diagnosis and certain treatment. Individuals are not, however, permanently exempt.
6 As explained in the FAQ: “According to the US Food and Drug Administration,² . .
7 . ‘a positive result from an antibody test does not mean you have a specific amount
8 of immunity or protection from SARS-CoV-2 infection. . . . Currently authorized
9 SAR-CoV-2 antibody tests are not validated to evaluate specific immunity or
10 protection from SARS-CoV-2 infection.’ For this reason, individuals who have
11 been diagnosed with COVID-19 or had an antibody test are not permanently
12 exempt from vaccination.” *Id.*

13 **III. ARGUMENT**

14 **A. Legal Standard**

15 “A plaintiff seeking a preliminary injunction must establish that he is likely
16 to succeed on the merits, that he is likely to suffer irreparable harm in the absence
17 of preliminary relief, that the balance of equities tips in his favor, and that an
18 injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555
19 U.S. 7, 20 (2008). “Where the government is the opposing party, balancing of the
20 harm and the public interest merge.” *Harvest Rock Church, Inc. v. Newsom*, Case
21 No. EDCV 20-6414, 2020 WL 7639584 (C.D. Cal. Dec. 21, 2020) (citing *Nken v.*
22 *Holder*, 556 U.S. 418, 435 (2009)).

23 A preliminary injunction requires “substantial proof” and “[i]t frequently is
24 observed that a preliminary injunction is an extraordinary and drastic remedy, one
25 that should not be granted unless the movant, by a clear showing, carries the burden

26 ² The Policy links to a May 19, 2021, FDA Safety Communication, Antibody
27 Testing Is Not Currently Recommended to Assess Immunity After COVID-19
28 Vaccination: FDA, available at <https://www.fda.gov/medical-devices/safety-communications/antibody-testing-not-currently-recommended-assess-immunity-after-covid-19-vaccination-fda-safety>, also attached as Kuwahara Decl., Ex. 25.

1 of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in
2 original). The elements of a TRO and of a preliminary injunction are substantially
3 identical. *See Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839
4 n.7 (9th Cir. 2001).

5 **B. Plaintiffs fail to show that they are entitled to this extraordinary**
6 **relief because they will not be irreparably harmed if this TRO is**
7 **denied.**

8 The Plaintiffs have not shown irreparable harm in the absence of preliminary
9 relief. The organizational Plaintiff is not a member of the UC community subject to
10 the Policy, and the student Plaintiffs do have choices that allow them to avoid the
11 injury they allege they will suffer: they could choose to comply with the vaccine
12 Policy, or they can choose not to attend classes at UC. At no time are Plaintiffs
13 required to be vaccinated, in alleged violation of their rights, whether that is
14 characterized as bodily integrity or need for informed consent. Though Plaintiffs
15 may have to forego the opportunity to take classes at UC or apply to transfer
16 elsewhere, “[a] delay in collegiate or graduate education isn’t typically irreparable
17 harm.” *Klaassen v. Trustees of Indiana University*, ___ F. Supp. 3d ___, No. 1:21-
18 CV-238, 2021 WL 3073926, at 41 (N.D. Ind. July 18, 2021) (denying motion for
19 preliminary injunction to enjoin Indiana University’s mandatory COVID-19
20 vaccine requirement). “Though the student may have to forego a semester of school
21 or transfer somewhere else—certainly a difficult and inconvenient choice, and not
22 one lightly tossed aside—they have options.” *Id.* at *43.

23 Indeed, Ms. Choi and Powell’s declarations plainly acknowledge that they
24 have choices to make and are simply struggling with their decisions. Ms. Choi
25 states the Policy “forces me to decide between not attending classes this fall and
26 giving up my constitutional right to make medical decisions about my own body.
27 This mandate also puts me under duress by requiring an immediate decision within
28 the next week.” Declaration of Deborah Choi, ¶ 6 (Dkt. No. 8, at p. 323). Ms.
Powell states that she “is scrambling this month to plan my academic, financial and

1 work situation as classes resume next quarter” and is “forced into a whirlwind.”
2 Declaration of Carly Powell, ¶¶ 7, 9, filed July 27, 2021 (Dkt No. 8, at p. 320). This
3 is not irreparable harm.³

4 There also is no evidence of any *emergent* irreparable harm such as might
5 justify a TRO. Although the student Plaintiffs suggest they are struggling with an
6 “immediate” choice or “scrambling,” they both assert they contracted COVID-19 in
7 late 2020 and for that reason they do not wish to take the available vaccines—not
8 previously, not now, not in future. Yet UC issued its draft Policy requiring
9 vaccination as a condition of physical access, with limited exceptions not including
10 an exemption for individuals who have contracted COVID-19, back in April 2021.
11 As stated in the student declarations, the student Plaintiffs were aware that UC was
12 planning to require vaccinations when the final approval of the vaccine was
13 available. Choi Decl. ¶ 3; Powell Decl. ¶ 5. Thus, at all times, the students were
14 aware that their instruction would be interrupted by their opposition to taking the
15 vaccine. Plaintiffs do not explain why they could not have taken steps earlier to
16 seek to transfer to another school with different conditions of access. Regardless, a
17 delay in an individual’s collegiate education does not amount to irreparable harm.

18 Thus, Plaintiffs’ request for a TRO should be denied as they will suffer no
19 irreparable injury while the motion for a preliminary injunction is decided.

20 **C. Greater injury to the public interest would result from granting**
21 **the TRO than in denying it.**

22 As individuals, Plaintiffs’ focus is on their individual choices and the effect
23 of the Policy on them alone. By necessity, UC’s concerns are broader. The
24 vaccination requirement seeks “to maintain the health and well-being of the campus
25 community and that of the general public.” Kuwahara Decl., Ex. 1 (President’s

26 ³ The TRO papers refer to the loss of student healthcare as a potential harm. Having
27 health insurance is a condition of attending UC, and thus, UC provides student
28 health insurance, which students may waive. See UC, Student Health Insurance
Plan. See <https://www.ucop.edu/ucship/waivers/index.html>. In the event they
cannot obtain health insurance through UC, they are free to obtain coverage
elsewhere.

1 cover letter). Enjoining the enforcement of the Policy would put thousands of
2 students, faculty and staff at a higher risk of COVID-19 infection and greater
3 danger. These communities are heavily interdependent with frequent contact
4 between faculty, students and staff. Declaration of Bernadette M. Boden-Albala in
5 Support of Defendants’ Opposition (“Boden-Albala Decl.”) ¶ 7, filed concurrently.
6 These campus communities are comprised of individuals who may be at more or
7 less risk of acquiring infections such as COVID-19, and may have more or less risk
8 for poor prognostics outcomes from said infections including hospitalizations, ICU
9 care and death. *Id.* The Policy seeks to protect not only the vaccinated but also
10 those who cannot be vaccinated, who are amongst the most vulnerable. Vaccines
11 protect individuals from infection and, as importantly, high vaccine coverage in a
12 community protects the community at large. *Id.*; *see also* Declaration of Susan S.
13 Huang in Support of Defendants’ Opposition (“Huang Decl.”) ¶¶ 6-9; Declaration
14 of David Lo in Support of Defendants’ Opposition (“Lo Decl.”) ¶¶ 6-10.

15 Many courts faced with challenges to COVID-19 restrictions and vaccine
16 requirements have similarly concluded that the public interest in the community’s
17 health and safety weighed heavily in favor of denying such challenges and requests
18 for injunctions. *Klaassen v. Trustees of Indiana Univ.*, No. 1:21-CV-238 DRL,
19 2021 WL 3073926, at *45–46 (N.D. Ind. July 18, 2021) (denying plaintiffs’ motion
20 for a preliminary injunction and upholding university’s COVID-19 vaccine
21 mandate, “the Fourteenth Amendment permits Indiana University to pursue a
22 reasonable and due process of vaccination in the legitimate interest of public health
23 for its students, faculty, and staff,” and “the students here haven't established ...
24 that the balance of harms or the public's interest favors the extraordinary remedy of
25 a preliminary injunction”); *Bridges v. Houston Methodist Hosp.*, No. CV H-21-
26 1774, 2021 WL 2399994, at *2 (S.D. Tex. June 12, 2021) (dismissing motion to
27 block policy requiring employees be vaccinated against COVID-19, defendant’s
28 policy “is a choice made to keep staff, patients, and their families safer”);

1 *Carmichael v. Ige*, 470 F. Supp. 3d 1133, 1150 (D. Haw. 2020) (denying plaintiffs’
2 motion for a preliminary injunction and upholding the constitutionality of Hawaii’s
3 COVID-19 restrictions, “the desires of a few cannot override the community’s
4 interest in preserving its health and well-being”); *Bannister v. Ige*, No. CV 20-
5 00305 JAO-RT, 2020 WL 4209225, at *9 (D. Haw. July 22, 2020) (same,
6 “Plaintiff’s desire to obtain preferential treatment for himself and his family cannot
7 override the community’s interest in preserving its health and well-being”).

8 Moreover, after over a year of operating remotely, the UC Policy for
9 COVID-19 vaccine on colleges campuses is especially important this year because
10 the University of California system is preparing for more than 280,000 students and
11 more than 227,000 faculty and staff to return to campuses and other locations this
12 fall. *See* Boden-Albala Decl. ¶ 8. Meanwhile, every day, numerous media outlets
13 are reporting on sharply increasing numbers of COVID-19 cases and the rise of the
14 Delta variant, especially amongst those who are unvaccinated. Kuwahara Decl., Ex.
15 3-6. To pause the Policy right now in the midst of preparations for a safe return to
16 school, while members of the UC community are in the process of obtaining their
17 vaccinations or requesting allowable exceptions, would sow confusion and interfere
18 with UC’s interest and the public interest in protecting the health and safety of
19 UC’s community from potentially devastating surges of COVID-19 infection rates
20 across UC campuses and surrounding communities. *See* Boden-Albala Decl. ¶ 8.
21 The Policy is a linchpin element of UC’s long-planned efforts for a safe and healthy
22 return this fall. Temporarily pausing the Policy would result in irreparable harm to
23 UC’s safe reopening plans, with a cascading negative effect on public health.

24 In contrast, Plaintiffs do not even seriously consider the public interest in
25 their analysis, arguing only in passing that the Ninth Circuit’s sliding scale
26 approach allows them to show less with respect to one element if another element
27 has a stronger showing. TRO brief, at p. 23. Plaintiff cannot prevail by ignoring the
28 weighty public interest at stake.

1 On balance, the public interest in protecting hundreds of thousands of people
2 far outweighs the alleged burden that would be borne by two individual Plaintiffs—
3 who again, are not being forced to take the vaccine against their will--such that the
4 Court should deny this application for a TRO. *See Bridges v. Houston Methodist*
5 *Hosp.*, No. CV H-21-1774, (S.D. Tex. June 4, 2021) (denying TRO sought against
6 hospital policy requiring employees be vaccinated against COVID-19, in part, due
7 to the weighty public interest: “The plaintiffs are not just jeopardizing their own
8 health; they are jeopardizing the health of doctors, nurses, support staff, patients,
9 and their families.”), attached as Kuwahara Decl. Ex. 7.

10 **D. Plaintiffs have not shown a likelihood of success on the merits.**

11 **1. Plaintiffs are not likely to prevail on their Fourteenth**
12 **Amendment claim of violation of bodily integrity because**
13 **the Policy is rationally related to UC’s interest in health and**
14 **safety.**

15 With respect to Plaintiffs’ allegations that the Policy violates their Fourteenth
16 Amendment right to bodily integrity, they will not be able to show any
17 constitutional violation. The threat that COVID-19 poses to the UC community is
18 apparent. UC’s compelling interest in requiring its students and employees to be
19 vaccinated as a condition of physical access, with only limited exceptions, is best
20 illustrated by the fact that, by the time vaccines became available in early 2021,
21 approximately 600,000 people in the U.S. had died of COVID-19 in the past year.

22 UC’s Policy is rationally related to this compelling state interest of
23 preventing the spread of COVID-19 and its severe health effects, including
24 hospitalizations and deaths.

25 *First*, the Policy is one of general applicability, and thus it is well-settled that
26 it must be rationally related to a legitimate state interest. *See Klaassen*, 2021 WL
27 3073926, at *17-26 (analyzing case law and holding that a vaccine mandate of
28 general applicability is subject to rational basis review). The Supreme Court has
recognized that “[s]temming the spread of COVID-19 is unquestionably a

1 compelling interest.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. ___,
2 141 S. Ct. 63, 67 (2020). Mandatory vaccination is within the State’s police power.
3 *Phillips v. City of New York*, 775 F.3d 538, 453 (2d Cir. 2016) (citing *Jacobson v.*
4 *Commonwealth of Massachusetts*, 197 U.S. 11, 25-27 (1905) and *Zucht v. King*,
5 260 U.S. 174, 176 (1922)). Cases cited by Plaintiffs applying strict scrutiny review
6 are inapposite. For example, in the *Cuomo* case, the Supreme Court held that the
7 challenged restrictions were not neutral and of general applicability; rather, the
8 restrictions “single out houses of worship for especially harsh treatment,” which
9 triggered strict scrutiny review. *Cuomo*, 141 S. Ct. at 66. Here, the Policy includes a
10 religious exemption, and none of the concerns necessitating strict scrutiny in
11 *Cuomo* exist.

12 Thus, the question before this Court is whether the Policy is rationally related
13 to UC’s legitimate and compelling interest. The overwhelming evidence of efficacy
14 and safety of the available vaccines establishes that the Policy is rationally related
15 to this compelling interest.⁴ *See Klaassen*, 2021 WL 307326, at *26-38, 45
16 (denying preliminary injunction seeking to enjoin Indiana University’s COVID-19
17 vaccine requirement). The three vaccines currently available in the United States
18 were authorized after randomized controlled trials that were as large, or larger, than
19 those undertaken for prior vaccines and demonstrated their efficacy and safety.
20 Kuwahara Decl., Ex. 8 at p. 8 (Multisociety Statement on COVID-19 Vaccination
21 as a Condition of Employment for Healthcare Personnel). The FDA and the U.S.
22 Centers for Disease Control and Prevention (CDC) continue to conduct extensive
23 post-authorization safety and monitoring of those who received the vaccine. *Id.*,
24 Ex. 8 at p. 9. Currently, the evidence is overwhelming that the COVID-19 vaccine
25 is effective in stemming the spread of COVID-19. *See Kuwahara Decl.*, Exs. at pp.
26 8-11. The Delta variant has recently emerged as a highly contagious and more

27 ⁴ In opposition to any motion for preliminary injunction, UC Defendants intend to
28 submit to the Court evidence supporting the UC COVID-19 vaccination policy,
including evidence from medical and public health experts.

1 virulent version of the coronavirus that causes COVID-19, which appears to be
2 causing another surge of COVID-19 cases in California. *Id.*, Ex. 12. Against this
3 surge, the data supports that vaccination remains an effective —perhaps the single
4 most effective—strategy for preventing severe disease, hospitalization, and death
5 from COVID-19. *Id.*, Ex. 8 at pp. 34-36, Table 1: Vaccine Efficacy and Real-World
6 Effectiveness (Multisociety Statement on COVID-19 Vaccination). Indeed, UC is
7 not the only university to implement such a policy, in an effort to keep their
8 communities safe during the pandemic, while still resuming on-campus operations
9 and classes. *See* Kuwahara Decl., Exs. 13 - 21 (attaching policies from Johns
10 Hopkins University, Georgetown University, Harvard University, Morehouse
11 College, University of Pennsylvania, University of Virginia, Vanderbilt University,
12 Wake Forest University, and Yale University).

13 *Second*, UC’s decision not to permanently exempt individuals who have
14 previously had COVID-19 is also rational in light of the currently available
15 scientific evidence. Though not entirely clear from the Complaint, the student
16 Plaintiffs appear to challenge the Policy because it does not allow for prescreening
17 for a previous coronavirus infection, *see* Compl. ¶ 51, and they appear to demand
18 prescreening as a form of an exemption for previously infected individuals. Compl.
19 ¶ 33. As explained in an article by infectious disease experts Drs. Edwards and
20 Orenstein, though reinfection appears uncommon amongst previously infected
21 individuals, “ascertainment of prior infection can be unreliable or impractical in
22 some cases, and the duration of protection of prior infection is unknown.
23 Vaccination appears to further boost antibody levels in those with past infection and
24 might improve the durability and breadth of protection.” Kuwahara Decl., Ex. 22,
25 pp. 9-10 (Orenstein article). For these same reasons, the CDC also recommends
26 vaccination for individual who have already had COVID-19. *Id.*, Ex. 23 (CDC
27 FAQs about COVID-19 Vaccination). Another study suggests that the immunity of
28 individuals who previously had COVID-19 may not be as effective against the new

1 and surging Delta variant. *Id.*, Ex. 24, (*Nature* article).

2 Plaintiffs dispute this science, but because their arguments “amount to
3 disputes over the most reliable science,” the court should not “intervene so long as
4 the university’s process is rational in trying to achieve public health.” *Klaassen*,
5 2012 WL, at *38 (citing *Phillips*, 75 F.3d at 542). Moreover, while there is
6 substantial scientific evidence supporting the efficacy of vaccines in preventing
7 severe outcomes once the individual is exposed to the virus, no similar scientific
8 support exists for the efficacy of antibody tests in detecting levels of immunity, let
9 alone preventing severe outcomes for one who is infected.⁵ For example, the FDA,
10 as cited in the FAQs to the Policy, cautions that antibody tests should not be used to
11 evaluate a person’s level of immunity or protection from COVID-19, as more
12 research is needed to understand the meaning of a positive or negative antibody
13 tests. Kuwahara Decl., Ex. 25 (FDA Safety Communication). Plaintiffs’ skepticism
14 of CDC and FDA guidance does not dictate a different result.

15 Accordingly, Plaintiffs are not likely to prevail on the merits, and this
16 application for TRO should be denied.

17 **2. Plaintiffs are not likely to prevail on their Fourteenth**
18 **Amendment claim of state danger because there is no**
19 **evidence that UC affirmatively placed Plaintiffs in danger,**
20 **or acted with deliberate indifference toward Plaintiffs.**

21 With respect to Plaintiff’s third cause of action, alleging a Fourteenth
22 Amendment violation of freedom from state created danger, they cannot prove any
23 of the elements of the claim. To prevail, Plaintiffs must prove “affirmative conduct
24 on the part of the state in placing the plaintiff in danger” and that the state “acts
25 with ‘deliberate indifference’ to a ‘known or obvious danger.’” *Patel v. Kenti*, 648
26 F.3d 965, 974 (9th Cir. 2011).

27 *First*, the issuance of the UC Policy is a far cry from “deliberate
28 indifference.” Deliberate indifference is a “stringent standard of fault” and requires

⁵ Plaintiffs cite to a declaration by Joseph A. Ladapo in their papers speaking to natural immunity, but appear not to have filed any such declaration with the Court.

1 that defendant “recognize an unreasonable risk and actually intend to expose the
2 plaintiff to such risks without regard to the consequences to the plaintiff.” *Id.* at 975
3 (brackets omitted). But the UC Policy, accompanying FAQs, and President Drake’s
4 letter introducing the Policy, on their face demonstrate that UC deliberately issued
5 the Policy in an effort to protect the health and safety of the UC community against
6 the COVID-19 pandemic. Kuwahara Decl., Ex. 2 (Policy). Indeed, the FAQ directly
7 addresses the issue raised by Plaintiffs, whether and to what extent a prior COVID
8 infection should be a basis of a permanent exemption, and cites to a recent FDA
9 Safety Communication. *Id.*

10 *Second*, the scientific evidence overwhelmingly supports the conclusion that
11 requiring vaccination is protective in nature, and quite the opposite of a “known or
12 obvious danger.” Plaintiffs argue that the vaccination requirement puts them in
13 danger because they have been previously infected and point to the Vaccine
14 Adverse Event Reporting System (VAERS) reports as evidence of potential harm.
15 VAERS is system that is co-managed by the CDC and the FDA, which accepts and
16 encourages reports of potential adverse events from anyone, even if “it is not clear
17 that the vaccine caused the adverse event.” Kuwahara Decl. 26 (VAERS FAQ,
18 “Who can report to VAERS?”). VAERS cannot detect if a vaccine caused an
19 adverse event but can identify unusual or unexpected trends. *Id.* (“What is
20 VAERS?”) Certainly reports of adverse events associated with the COVID-19
21 vaccine exist. But, as of July 19, over 338 million doses of COVID-19 vaccine have
22 been given in the United States, and as the CDC states, “serious safety problems are
23 rare” and long-term health problems are “extremely unlikely.” *Id.*, Ex. 27 (CDC,
24 Safety of COVID-19 vaccines). FDA continues to conduct “intensive monitoring”
25 of COVID-19 vaccine safety as the shots are administered, and “strongly believes
26 that the known and potential benefits of COVID-19 vaccination greatly outweigh
27 the known and potential risks of COVID-19.” *Id.*, Ex. 28 (FDA, COVID-19
28 Vaccine Safety Surveillance, July 12, 2021).

1 In light of the overwhelming evidence supporting the efficacy and safety of
2 vaccination, and the availability of the medical exemption, Plaintiffs cannot prevail
3 on their claim that the UC defendants placed them in the path of a “known or
4 obvious danger.”

5 **3. Plaintiffs’ state law claims are barred by the Eleventh**
6 **Amendment, which forecloses state law claims against state**
7 **actors in federal court.**

8 With respect to Plaintiff’s Fourth and Fifth causes of action brought under
9 California state law claims, the Eleventh Amendment forecloses those claims. The
10 Eleventh Amendment bars state law claims against state actors in federal court.
11 *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 101-02 (1984). This
12 Court also lacks jurisdiction to issue any TRO against The Regents as an entity.
13 *Feied v. The Regents of the Univ. of California*, 188 F. App’x 559, 561 (9th Cir.
14 2006) (“This Court has repeatedly held that the Regents are an arm of the state
15 entitled to Eleventh Amendment immunity”). These claims should be dismissed,
16 and Plaintiffs cannot show that they will prevail.

17 In sum, Plaintiffs have failed to meet all of the requirements for obtaining
18 extraordinary relief in the form of a TRO.

19 **E. The scope of the injunction sought by Plaintiffs is inappropriately**
20 **broad and is not narrowly tailored to the alleged harm.**

21 The injunctive relief as requested reaches far beyond what is necessary to
22 address any alleged harm or concerns of these particular Plaintiffs. This suit is
23 brought by two individual student Plaintiffs (and an entity with no standing and that
24 has alleged no harm, *see* Declaration of Simone Gold (Dkt No. 8, at p. 305)), who
25 have very individualized concerns about UC’s Policy. If any injunctive relief is
26 granted (which Defendants do not concede is appropriate), that relief must be
27 narrowly tailored to remedy the specific harm shown to these Plaintiffs, and not
28 directed to other parties who are not before this court. *Stormans, Inc. v. Selecky*, 586
F.3d 1109, 1140 (9th Cir. 2009) (holding that district court abused its discretion in

1 failing to tailor the injunction to remedy the specific harm alleged by the parties).
2 This is particularly so in the context of a preliminary injunction or TRO, where the
3 court has not yet resolved the merits of the dispute, and a far-reaching TRO that
4 prevents the entire Policy from moving forward could have devastating impacts on
5 hundreds of thousands of people.

6 If any restraining order is imposed, it should be limited to addressing the
7 concerns of these two students, at two specific locations (UCI Law and UCR
8 undergraduate). The alleged harm could be addressed by the equivalent of an
9 exemption under the Policy, for the two student Plaintiffs while the motion for
10 preliminary injunction is pending. Under any such order, these two students must
11 be required to follow the requirements of masking and testing, as laid out in the
12 Policy for unvaccinated students who receive exemptions. *See* Kuwahara Decl., Ex.
13 29, Appendix A to Policy, available at [https://ucop.edu/uc-health/_files/fall-2021-](https://ucop.edu/uc-health/_files/fall-2021-covid-19-prevention-strategies-july.pdf)
14 [covid-19-prevention-strategies-july.pdf](https://ucop.edu/uc-health/_files/fall-2021-covid-19-prevention-strategies-july.pdf). For Plaintiff Powell in particular, while the
15 compliance deadline is August 16, her classes at UCR for undergraduates do not
16 begin until September 23, and thus she would not miss any instruction during the
17 pendency of the motion in any event.

18 **IV. CONCLUSION**

19 For the foregoing reasons, UC Defendants respectfully request that this Court
20 deny this request for a temporary restraining order in its entirety and to set a hearing
21 on a motion for preliminary injunction on the ordinary motion schedule, to be heard
22 on August 30, such that UC Defendants may have the opportunity to fully present
23 its evidence to support its opposition.⁶

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27 ⁶ In their proposed order, Plaintiffs requested that Defendants be ordered to provide
28 an additional 14-days for student compliance, as well as an expedited opposition,
due within 10-days, but provide no basis or rationale for these requests.

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Dated: July 28, 2021

CROWELL & MORING LLP

By: /s/ Emily T. Kuwahara

Emily T. Kuwahara
Kristin Madigan
Suzanne Rode
Uri Niv

Attorneys for Defendants
Kim A. Wilcox, Howard Gillman,
The Regents of the University of
California, and Michael V. Drake

1 Christina Gilbertson (California Bar No. 236877)
2 christina@jfnvlaw.com
3 Jennings & Fulton, LTD
4 2580 Sorrel Street
5 Las Vegas, NV 89146
6 Phone: 702-979-3565

7 Gregory J. Glaser (California Bar No. 226706)
8 greg@gregglaser.com
9 Greg Glaser, Attorney at Law
10 4399 Buckboard Drive #423
11 Copperopolis, CA 95228
12 Phone: 925-642-6651

13 Joseph S. Gilbert (Nevada Bar No. 9033)
14 joey@joeygilbertlaw.com
15 Joey Gilbert & Associates
16 405 Marsh Avenue
17 Reno, NV 89509
18 Phone: 775-284-7700
19 (Subject to pro hac vice admission)

20 Attorneys for Plaintiffs

21 **UNITED STATES DISTRICT COURT**
22 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

23 AMERICA'S FRONTLINE
24 DOCTORS, *et al.*,

25 *Plaintiffs,*

26 v.

27 KIM A. WILCOX, in his official
28 capacity as CHANCELLOR OF
THE UNIVERSITY OF
CALIFORNIA RIVERSIDE, *et al.*,

Defendants.

**[proposed] ORDER GRANTING
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

1 This matter is before the Court on Plaintiffs’ Ex Parte Application for
2 Temporary Restraining Order and Order to Show Cause Why A Preliminary
3 Injunction Should Not Issue. Having considered the application, including
4 Plaintiffs’ Memorandum of Law, supporting evidence, and Defendants’
5 opposition thereto, and having further considered: (1) the likelihood that
6 Plaintiffs will succeed on the merits of their claims; (2) the likelihood that
7 Plaintiffs will suffer irreparable injury absent injunctive relief; (3) the balance of
8 equities and whether injunctive relief would substantially harm Defendants; and
9 (4) whether the public interest would be furthered by an injunction, this Court
10 concludes that Plaintiffs’ are entitled to preliminary injunctive relief. The Court
11 finds that Plaintiffs have satisfied all of the above elements of proof.

12 THEREFORE, Plaintiffs’ Request for Temporary Restraining Order and
13 Order to Show Cause is GRANTED.

14 The Court finds that Plaintiffs are likely to prevail on the merits of their
15 claims that:

- 16 • Defendants’ Covid-19 vaccine mandate originally published July
17 15, 2021, and as republished by individual campuses (collectively “7/15
18 Mandate”) contains an arbitrary and unscientific rejection of natural
19 immunity in regards to a student’s exemption from the 7/15 Mandate.
- 20 • Covid-19 vaccination is genetic medical intervention that carries
21 both known and unknown risk of harm to the UC student plaintiffs and
22 others, such as serious illness and death.
- 23 • The 7/15 Mandate imminently threatens the health of the plaintiff
24 UC students, and other students, and segregates them based on their
25 Covid-19 recovered medical condition and natural mRNA genetic status,
26 which is an unlawful infringement by Defendants upon constitutional and
27 statutory rights that places Plaintiffs’ lives and public health in jeopardy.
- 28 • Every FDA fact sheet for a Covid-19 vaccine states the same

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disclaimer, “It is your choice to receive or not receive the [Pfizer-
BioNTech, Moderna, Janssen] COVID-19 Vaccine. Should you decide not
to receive it, it will not change your standard medical care.” As the
plaintiff UC students in this case decline the vaccine, Defendants are
threatening to disenroll them and remove their standard healthcare offered
through UC Student Health Services. Therefore, the 7/15 Mandate is
immediately in conflict with Federal Law (in a field preempted by Federal
law).

The Court finds that Defendants shall provide an additional 14-days for
student compliance with the 7/15 Mandate, to allow students time to consult their
healthcare providers of choice regarding proof of natural immunity as a valid
exception to the 7/15 Mandate.

The Court hereby issues an order to show cause to Defendants, shifting the
burden to Defendants to prove within 10-days that a Preliminary Injunction
should not issue in this case. For purposes of such burden of proof, Plaintiffs’
TRO application and evidence in support shall be treated as Plaintiffs’ Motion
for Preliminary Injunction, with further hearing to be noticed by the Court.

This Order is valid for 14-days after entry.
DONE AND ORDERED this ___ day of _____, 2021,

Hon.
UNITED STATES DISTRICT JUDGE

1 Christina Gilbertson (California Bar No. 236877)
2 christina@jfnvlaw.com
3 Jennings & Fulton, LTD
4 2580 Sorrel Street
5 Las Vegas, NV 89146
6 Phone: 702-979-3565

7 Gregory J. Glaser (California Bar No. 226706)
8 greg@gregglaser.com
9 Greg Glaser, Attorney at Law
10 4399 Buckboard Drive #423
11 Copperopolis, CA 95228
12 Phone: 925-642-6651

13 Joseph S. Gilbert (Nevada Bar No. 9033)
14 joey@joeygilbertlaw.com
15 Joey Gilbert & Associates
16 405 Marsh Avenue
17 Reno, NV 89509
18 Phone: 775-284-7700
19 (Subject to pro hac vice admission)

20 Attorneys for Plaintiffs

21 **UNITED STATES DISTRICT COURT**
22 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

23 AMERICA'S FRONTLINE
24 DOCTORS, *et al.*,

25 *Plaintiffs,*

26 v.

27 KIM A. WILCOX, in his official
28 capacity as CHANCELLOR OF
THE UNIVERSITY OF
CALIFORNIA RIVERSIDE, *et al.*,

Defendants.

Case Number: 5:21-cv-01243

**PLAINTIFFS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

1 Plaintiffs America’s Frontline Doctors and UC Students with natural
2 immunity to Covid-19 (collectively “Doctors & Immune Students”) hereby apply
3 *ex parte* to the Court pursuant to Federal Rule of Civil Procedure 65 and Local
4 Rule 65-1 for a Temporary Restraining Order temporarily enjoining Defendants
5 (“College Parties”) from enforcing College Parties’ July 15, 2021 policy (“7/15
6 Policy”) unnecessarily rushing Covid-19 vaccination upon the already immune
7 students.

8 If not preliminarily enjoined, College Parties will irreversibly place the
9 Immune Student plaintiffs at risk of imminent physical injury and death.
10 Such Temporary Restraining Order should issue with an Order to Show Cause
11 Why a Preliminary Injunction Should Not Issue.

12 As described in the concurrently filed notice to counsel, Plaintiffs’
13 Counsel has advised Defendants’ Counsel of the date and substance of this
14 Application by telephone and by written notice on July 27, 2021. Defendants’
15 counsel stipulated to accept service and informed Plaintiffs’ counsel that
16 Defendants anticipate opposing this Application by written opposition.

17 This application is made on the grounds set forth in the accompanying
18 Memorandum in Support; Expert Declarations and Exhibits in Support; all
19 pleadings and papers filed in this action; the argument of counsel; and further
20 evidence as the Court may consider at or before a hearing regarding this
21 Application or the hearing regarding the Order to Show Cause and preliminary
22 injunction requested herein.

23 Dated this July 27, 2021

24 /s/ Christina Gilbertson
25 Christina Gilbertson (California Bar No. 236877)
26 christina@jfnvlaw.com
27 Jennings & Fulton, LTD
28 2580 Sorrel Street, Las Vegas, NV 89146
Phone: 702-979-3565
Attorneys for Plaintiffs

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2
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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of Plaintiffs' Application for Temporary Restraining Order and Order to Show Cause, including supporting memoranda, exhibits, and proposed order, to be served via e-mail to the following counsel for Defendants, who agreed by stipulation to accept service on behalf of Defendants:

Norman J. Hamill
Norman.hamill@ucop.edu
UNIVERSITY OF CALIFORNIA
Office of General Counsel
1111 Franklin Street, 8th Floor
Oakland, CA 94607-5200

Emily Kuwahara
EKuwahara@crowell.com
Crowell & Moring, LLP
515 South Flower St., 40th Floor
Los Angeles, CA 90071-2201

* Pursuant to stipulation, an electronic copy was also emailed to the following person with UC Legal: Robert Harvey, Robert.Harvey@ucop.edu.

Dated this July 27, 2021

/s/ Christina Gilbertson
Christina Gilbertson (California Bar No. 236877)
christina@jfnvlaw.com
Jennings & Fulton, LTD
2580 Sorrel Street
Las Vegas, NV 89146
Phone: 702-979-3565

1 Christina Gilbertson (California Bar No. 236877)
2 christina@jfnvlaw.com
3 Jennings & Fulton, LTD
4 2580 Sorrel Street
5 Las Vegas, NV 89146
6 Phone: 702-979-3565

7 Gregory J. Glaser (California Bar No. 226706)
8 greg@gregglaser.com
9 Greg Glaser, Attorney at Law
10 4399 Buckboard Drive #423
11 Copperopolis, CA 95228
12 Phone: 925-642-6651

13 Joseph S. Gilbert (Nevada Bar No. 9033)
14 joey@joeygilbertlaw.com
15 Joey Gilbert & Associates
16 405 Marsh Avenue
17 Reno, NV 89509
18 Phone: 775-284-7700
19 (Subject to pro hac vice admission)

20 Attorneys for Plaintiffs

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Defendants.

Case Number: 5:21-cv-01243

**PLAINTIFFS' MEMORANDUM
IN SUPPORT OF EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
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1 **URGENCIES JUSTIFYING RELIEF BY AUGUST 2, 2021**

2 Plaintiffs need immediate relief from Defendants’ newly published (July
3 15) Covid-19 vaccine mandate **by August 2** because Plaintiffs face the
4 unconscionable and unconstitutional choice by August 3 of quickly injecting
5 themselves unnecessarily with new genetic material (an mRNA or adenovirus
6 vector vaccine) presenting an emerging risk of injury and death, or else forfeiting
7 their livelihood instantly.

8 If not preliminarily enjoined, Defendants (“College Parties”) will
9 irreversibly place the already immune student plaintiffs at risk of imminent
10 physical injury and death, without their doctors’ ability to protect them.

11 **INTRODUCTION**

12 The first independent grounds for granting this TRO is basic informed
13 consent law. In medicine, we do not give unnecessary vaccinations to healthy
14 patients, even during emergencies. Rather, for hundreds of years it has been the
15 established medical standard of care to screen patients for natural immunity as
16 part of their informed consent/refusal process. See, Expert Declarations in
17 Support.

18 This TRO application is not about debatable issues. For example, doctors
19 are currently debating whether to describe Covid-19 vaccination as
20 “experimental” to patients, and debating the robustness and duration of natural
21 immunity to coronaviruses and variants. Those issues will be relevant at trial and
22 even provide useful context now, but they are not the basis for this TRO
23 application.

24 Rather, this TRO is focused upon undeniable scientific consensus, as
25 confirmed by the Defendant UC’s own Joseph A. Ladapo, MD, PhD, associate
26 professor with UCLA School of Medicine, whose supporting declaration *for*
27 *Plaintiffs in this case* states, “The indisputable scientific facts are that natural
28 immunity exists and is not arbitrarily limited to 90-days, and current COVID-19

1 vaccines are a medical intervention that carry both known and unknown risks of
2 injury”. It is upon such clear, focused scientific consensus that this TRO
3 application is respectfully submitted to this Court.

4 Plaintiffs’ experts urge the Court to avoid falling prey to the recent and
5 widely debunked State-sponsored propaganda claiming Covid-19 is “a pandemic
6 of the unvaccinated”. For the truth based on actual data, Plaintiffs refer this Court
7 to their supporting declarations from top US doctors, especially the declaration
8 of Peter McCullough, MD, MPH. It will be a recurring theme in this case that
9 Plaintiffs ask the Court to make decisions based on data rather than deference.

10 A temporary restraining order is necessary to prevent Defendant College
11 Parties’ from enforcing College Parties’ July 15, 2021 mandate (“7/15 Mandate”)
12 unnecessarily rushing Covid-19 vaccination upon already immune students
13 without their informed consent and without the opportunity of their doctors to
14 protect them from risk of physical injury and death.

15 Indeed, the supporting declaration of Dr. Ladapo emphasizes that even
16 Defendants’ own top doctors are criticizing the 7/15 Mandate as scientifically
17 incorrect and arbitrary:

18 “Based on our communications with other University of
19 California faculty, it is our impression that many agree that
20 mandating vaccination for individuals who have recovered from
21 COVID-19 is unlikely to be beneficial, but they are reluctant to
22 express this publicly due to concerns about employment security,
23 academic promotion, or other repercussions.... Mandating
24 indiscriminate vaccination of persons already naturally immune
25 or recently infected is neither rational nor safe. Arbitrarily stating
26 that antibodies are not ‘valid’ after 89 days is factually incorrect.”

27 It is also indisputable that informed consent is the established law across
28 America (and the entire world for that matter). In order to preserve the status quo

1 here, Plaintiff Doctors & Immune Students apply to this Court for protection
2 from Defendant College Parties' attempt to coerce the free and informed consent
3 of the Immune Students. Such coercion unnaturally creates a false choice to
4 either quickly inject themselves unnecessarily with new genetic material (a
5 Covid-19 vaccine) presenting an emerging risk of injury and death, or else forfeit
6 their livelihood instantly.

7 It is the undisputed scientific consensus among doctors that placing
8 patients under duress is a discredited and unlawful tool of coercion. By contrast,
9 doctors do debate whether different forms of vaccine mandate coercion (i.e.,
10 denial of access to public services such as a UC education) rises to "duress" or
11 whether it is actually "lawful coercion". Therefore, this TRO application is
12 intentionally drafted narrowly to avoid such factual questions of "duress" until
13 trial, and therefore this TRO focuses solely on the scientific consensus point:
14 students' free and informed consent is abridged by the 7/15 Mandate. Regardless
15 of whether such abridgment does or does not constitute "duress", this Court must
16 still recognize the 7/15 Mandate fails strict scrutiny on its face because it
17 arbitrarily sets an unscientific 90-day rule that disregards thousands of years of
18 experience with natural immunity. There is no compelling State interest to ignore
19 natural immunity (and ignore Defendants' own top doctors), for the purpose of
20 limiting a student's exercise of a fundamental right (informed consent). Nor
21 would such purpose be narrowly tailored by conditioning the student's entire
22 livelihood upon unnecessary injection of a new genetic medical intervention.

23 The second (also independent) grounds for granting this TRO is
24 procedural: every FDA fact sheet for a Covid-19 vaccine states the same
25 disclaimer, "It is your choice to receive or not receive the [Pfizer-BioNTech,
26 Moderna, Janssen] COVID-19 Vaccine. Should you decide not to receive it, it
27 will not change your standard medical care." And yet, as the UC students in this
28 case decline the vaccine, College Parties are now threatening to disenroll them

1 and remove their standard healthcare offered through Student Health Services.
2 Therefore, Defendant College Parties are openly violating Federal Law (in a field
3 preempted by Federal law)¹ in their zeal to rush a vaccine mandate.

4 This Court must protect the status quo: informed consent.

5 **BACKGROUND**

6 In 2021, Defendant College Parties flip-flopped on their proposed
7 vaccination policies (i.e., whether to mandate Covid-19 vaccines *before* or *after*
8 FDA-approval), and then finally settled on July 15, 2021 with their written
9 policy to mandate Covid-19 vaccines upon all UC students *before* any FDA-
10 approval.² This policy flip-flop by College Parties had the effect of baiting UC
11 students all summerlong, including baiting Plaintiffs, into a false sense of
12 security with regard to their informed consent, and disrupting their doctor-patient
13 relationships. See student plaintiff declarations in support.

14 Defendant College Parties' arbitrary deadline for compliance is imminent
15 (August 3 in the case of Defendant UC Irvine), and is already hindering students
16 such as Plaintiffs from scheduling classes, fulfilling living arrangements, paying
17 debts, and securing their livelihoods for both present and future.

18 For this TRO Application, the most relevant sections of College Parties'
19 7/15 Mandate are:

20
21
22 ¹ <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/emergency-use-authorization-medical-products-and-related-authorities#preemption>

23
24 ² Compare interim Policy
25 (<https://universityofcalifornia.edu/sites/default/files/review-draft-sars-cov-2-vaccination-program-participation-policy-04212021.pdf> "Enforcement of the
26 mandate will be delayed until full FDA licensure (approval) and widespread
27 availability of at least one vaccine.") to final Policy
28 (<https://policy.ucop.edu/doc/5000695/SARS-Cov-2> "The deadline for initial
implementation of the Program, which is two (2) weeks before the first day of
instruction at any University campus or school for the Fall 2021.")

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“[FAQ #9] I was recently diagnosed with COVID-19, and/or I had an antibody test that shows that I have natural immunity. Does this support a Medical Exemption?”

You may be eligible for a temporary Medical Exemption (and, therefore, a temporary Exception), for up to 90 days after your diagnosis and certain treatments. According to the US Food and Drug Administration, however, “a positive result from an antibody test does not mean you have a specific amount of immunity or protection from SARS-CoV-2 infection ... Currently authorized SARS-CoV-2 antibody tests are not validated to evaluate specific immunity or protection from SARS-CoV-2 infection.” For this reason, individuals who have been diagnosed with COVID-19 or had an antibody test are not permanently exempt from vaccination.

...
“Those Covered Individuals who fail to Participate by being Vaccinated or requesting an Exception or Deferral on or before the Implementation Date will be barred from Physical Presence at University Facilities and Programs, and may experience consequences as a result of non-Participation, up to and including dismissal from educational programs or employment.”

College Parties decreed the above arbitrary 90-day rule that violates the medical standard of care. 90-days unscientifically disrespects natural immunity.

LEGAL ARGUMENT

If not preliminarily enjoined, College Parties will irreversibly place the Immune Student plaintiffs at risk of imminent physical injury and death, without their doctors’ ability to protect them.

A. Legal Standard for Temporary Restraining Order

1 To obtain a TRO and preliminary injunction, plaintiffs must show they are
2 likely to succeed on the merits, they will suffer irreparable harm absent
3 injunctive relief, the balance of the equities tips in their favor, and the public
4 interest favors injunctive relief. *Pom Wonderful LLC v. Hubbard*, 775 F.3d 1118,
5 1124 (9th Cir. 2014) (citing *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S.
6 7, 20 (2008)). Here, all four conditions are met and support the preliminary
7 relief requested by Plaintiff Doctors and Immune Students.³

8 **B. Plaintiff Doctors & Immune Students Are Likely To Succeed on**
9 **the Merits.**

10 **1. The Indisputable Right of Free and Informed Consent**

11 It is indisputable that Plaintiffs are entitled to informed consent/refusal of
12 Covid-19 vaccination. See e.g., College Parties' 7/15 Mandate "Vaccine
13 Information Statement... BY SIGNING BELOW, YOU CERTIFY THAT YOU
14 HAVE BEEN INFORMED OF THE RISKS" and Pfizer Covid-19 Vaccine
15 Information Statement, "It is your choice to receive or not receive the Pfizer-
16 BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not
17 change your standard medical care."⁴

18 In *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 278-
19 79 (1990) the Supreme Court held the "principle that a competent person has a
20 constitutionally protected liberty interest in refusing unwanted medical treatment
21 may be inferred from our prior decisions" and "It cannot be disputed that the Due
22 Process Clause protects an interest in life as well as an interest in refusing life-

23 _____
24 ³ "In deciding whether to grant a motion for temporary restraining order (TRO),
25 courts look to substantially the same factors that apply to a court's decision on
26 whether to issue a preliminary injunction." *Suzie's Brewery Co. v. Anheuser-
27 Busch Cos., LLC*, No. 3:21-cv-178-SI, 2021 U.S. Dist. LEXIS 24650, at *1 (D.
28 Or. Feb. 9, 2021). TROs "preserve the status quo pending a hearing." *Hoffman v.
Int'l Longshoremen's & Warehousemen's Union, Local No. 10*, 492 F.2d 929,
933 (9th Cir. 1974), *aff'd sub nom. Muniz v. Hoffman*, 422 U.S. 454 (1975).

⁴ <https://www.fda.gov/media/144414/download>

1 sustaining medical treatment.” See also *Anderson v. City of Taylor*, 2005 U.S.
2 Dist. Lexis 44706 (E.D. Mich. August 11, 2005) (mandatory blood draws for a
3 firemen's "wellness program" under FEMA auspices was invalidated as a Fourth
4 Amendment seizure because the blood draws were mandatory and the firemen
5 were subject to punishment for not agreeing).

6 All respectable doctors agree that placing patients under duress is a
7 discredited and unlawful tool of coercion. By contrast, doctors debate whether
8 different forms of vaccine mandate coercion (i.e., denial of access to public
9 services) constitutes “duress”. Therefore, this TRO application is drafted
10 specifically to avoid such “duress” issue until trial, and therefore focus solely on
11 the scientific consensus point: students’ free informed consent is abridged by the
12 7/15 Mandate. Regardless of whether such abridgement is ruled “duress”⁵, this
13 Court must apply strict scrutiny to the 7/15 Mandate that abridges a fundamental
14 right.

15 Courts in similar circumstances have ruled for plaintiffs. For example, in
16 *Doe v. Rumsfeld*, 341 F. Supp. 2d 1, 19 (2004) the court rejected solitary
17 confinement and dishonorable discharge, stating they were unlawful
18 consequences of refusal of the EUA anthrax vaccine. That court ruled that
19 coercion eviscerating informed consent violates federal law.⁶

20 ⁵ *Leeper v. Beltrami*, 53 Cal. 2d 195, 203 (1959) (“Under modern law duress is
21 not limited to threats against the person. It may also consist of threats to business
22 or property interests.”)

23 ⁶ Coercion, both physical and psychological, is also prohibited from being used
24 to obtain consent in search and seizure law generally. See *United States v.*
25 *Hernandez*, 2015 U.S. Dist. LEXIS 114979, *11 (W.D.N.C. July 28, 2015)
26 (“Coercion may be actual or implied, and ‘no matter how subtly the coercion was
27 applied, the resulting ‘consent’ would be no more than a pretext for unjustified
28 police intrusion against which the Fourth Amendment is directed.’ [T]he
government must prove that ‘an individual freely and intelligently [gave] ...
unequivocal and specific consent to search, uncontaminated by any duress or
coercion, actual or implied.”) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218,
228 (1973); *U.S. v. Morrow*, 731 F.2d 233, 235-36 (4th Cir 1984)).

1 For context, this Court can also consider the famous 2006 UN Universal
2 Declaration on Bioethics and Human Rights⁷, upholding free and informed
3 consent:

4 “Article 6, section 1: Any preventive, diagnostic and therapeutic
5 medical intervention is only to be carried out with **the prior, free**
6 **and informed consent** of the person concerned, based on
7 adequate information. The consent should, where appropriate, be
8 express and may be withdrawn by the person concerned at any
9 time and for any reason without disadvantage or prejudice....

10 “Article 6, section 3: **In no case should a collective community**
11 **agreement** or the consent of a community leader or other
12 authority **substitute for an individual's informed consent.**”

13 [emphasis added]

14 The police power is not a rubber stamp. This is confirmed in the most
15 recent of United States Supreme Court cases, as well as historic cases. For
16 example, consider the recently decided United States Supreme Court case *Roman*
17 *Catholic Diocese v. Cuomo*, No. 20A87, 592 U.S. ___, 141 S. Ct. 63, 208 L. Ed.
18 2d 206, 211 (Nov. 25, 2020) (granting injunction against Governor Cuomo’s
19 public health restrictions on religious services because the restrictions were not
20

21 ⁷ <https://unesdoc.unesco.org/ark:/48223/pf0000146180>. Parts of the Nuremberg
22 Code have been incorporated into California Health & Safety Code section
23 24170 *et seq.*, but undersigned counsel are not aware of any court orders yet
24 applying the medical experimentation law to Covid-19 vaccination. Still, the
25 clear import of California law and experience is to respect informed consent in
26 all circumstances possible. Interpreting the Nuremberg Code regarding the right
27 to informed consent, the Second Circuit acknowledged that “[t]he universal and
28 fundamental rights of human beings identified by Nuremberg — rights against
genocide, enslavement, and other inhumane acts ... — are the direct ancestors of
the universal and fundamental norms recognized as *jus cogens*,” meaning that a
state may not derogate from such rights under any circumstances. *Abdullahi v.*
Pfizer, Inc., 562 F.3d 163, 179 (2d Cir. 2009) (internal citations omitted).

1 actually serving public health in a manner consistent with the Constitution; and
2 especially Justice Gorsuch concurring, “Why have some mistaken this Court’s
3 modest decision in *Jacobson* for a towering authority that overshadows the
4 Constitution during a pandemic? In the end, I can only surmise that much of the
5 answer lies in a particular judicial impulse to stay out of the way in times of
6 crisis. But if that impulse may be understandable or even admirable in other
7 circumstances, we may not shelter in place when the Constitution is under attack.
8 Things never go well when we do.”) *Id.* at 214.⁸

9 While there is much discussion of the case *Jacobson v. Massachusetts*, it is
10 not necessary for purposes of this TRO Application to rule on its application. It
11 shall suffice to acknowledge the excellent analysis of *Jacobson* in *Cnty. of Butler*
12 *v. Wolf*, 486 F. Supp. 3d 883, 897 (W.D. Pa. 2020):

13 “There is no question, therefore, that even under the plain
14 language of *Jacobson*, a public health measure may violate the
15 Constitution. *Jacobson* was decided over a century ago. Since
16 that time, there has been substantial development of federal
17 constitutional law in the area of civil liberties. As a general
18 matter, this development has seen a jurisprudential shift whereby
19 federal courts have given greater deference to considerations of
20 individual liberties, as weighed against the exercise of state
21 police powers. That century of development has seen the creation
22 of tiered levels of scrutiny for constitutional claims. They did not
23 exist when *Jacobson* was decided. While *Jacobson* has been

24 ⁸ See also *Jew Ho v. Williamson*, 103 F. 10 (C.C. N.D. Cal. 1900), where the
25 court properly invalidated the quarantine of a San Francisco district that was
26 inhabited primarily by Chinese immigrants; the measure purportedly to control
27 the spread of bubonic plague was found to increase the risk of spreading the
28 disease. This case emphasizes that public health authorities sometimes do things
that harm public health, and it is the job of the court to remedy the constitutional
violation in the name of individual and public health.

1 cited by some modern courts as ongoing support for a broad,
2 hands-off deference to state authorities in matters of health and
3 safety, other courts and commentators have questioned whether it
4 remains instructive in light of the intervening jurisprudential
5 developments.”

6 See also, *Aguayo v. Richardson*, 473 F.2d 1090 (2d Cir. 1973) (granting
7 mandamus to welfare parents and children, such that the sanction of an otherwise
8 mandatory health and safety program was temporarily stayed).

9 There are many new cases recently filed and on appeal that have addressed
10 Covid-19 vaccination, some upholding constitutional rights and some deferring
11 to state powers. One such case deferring to state powers and currently being
12 appealed is *Klaassen v. Trs. of Ind. Univ.*, No. 1:21-CV-238 DRL, 2021 U.S.
13 Dist. LEXIS 133300 (N.D. Ind. July 18, 2021).

14 And indeed, many excerpts in *Klaassen* (especially footnote 80) appear to
15 be directly in conflict with the evidence cited in this case, such as:

16 “Emphasizing the importance of shifting the proof of safety
17 burden to the State, emerging data establishes that vaccinating
18 the Covid-19 Recovered causes an immediately higher death rate
19 worldwide for no benefit⁹, as there is a much stronger (10-20x)¹⁰
20 antibody response to the Covid-19 vaccine, overwhelming the
21 immune system, if a person has previously had the virus.
22 Scientists and clinicians observing patients in real time are
23 reporting the same phenomenon all over the world, as this
24 representative example highlights: “People with prior COVID-19
25 illness appear to experience significantly increased incidence and

26 ⁹ <https://ourworldindata.org/explorers/coronavirus-data-explorer>
27 <https://authorea.com/doi/full/10.22541/au.162136772.22862058>
28 <https://www.medrxiv.org/content/10.1101/2021.04.20.21255670v1>
¹⁰ <https://www.medrxiv.org/content/10.1101/2021.04.15.21252192v1>

1 severity of side effects after receiving the COVID-19 vaccine”¹¹
2 Some of these increased side effects include: blood clots,
3 hemorrhage, thrombocytopenia, heart attack, and strokes;
4 reproductive issues, including menstrual irregularities, reduced
5 fertility, miscarriages; transmission of spike protein from
6 vaccinated individuals, such as through breast milk and
7 associated risk in neonates and infants; neurological disorders,
8 including Guillain-Barré syndrome, Bell’s Palsy, transverse
9 myelitis and unspecified neurologic damage.” Complaint, para.
10 27; see also Plaintiffs’ Supporting Expert Declarations.

11 ...
12 “Early evidence supports that natural immunity with SARS-CoV-
13 2 in the unvaccinated will be lifelong. In still more emerging
14 data, The Cleveland Clinic found the following: “Individuals who
15 have had SARS-CoV-2 infection are unlikely to benefit from
16 COVID-19 vaccination.”¹² And no evidence about SARS-CoV-2
17 exists that suggests a deviation from the accepted science of
18 natural immunity, let alone a radical departure from same.
19 Natural immunity is routinely demonstrated by antibody testing
20 as well as humoral immunity (i.e., T-cell, plasma). Evidence
21 includes prior infection¹³ with SARS-CoV-1¹⁴ (approximately 18
22 years ago¹⁵), which is approximately 78% identical to SARS-
23 Cov-2, whereby natural immunity is still robust against current
24

25 ¹¹ <https://www.medrxiv.org/content/10.1101/2021.02.26.21252096v1>

26 ¹² <https://www.medrxiv.org/content/10.1101/2021.06.01.21258176v3>

27 ¹³ <https://www.bmj.com/content/370/bmj.m3563>

28 ¹⁴ <https://pubmed.ncbi.nlm.nih.gov/32668444/>

¹⁵ <https://newsroom.uw.edu/news/antibody-neutralizes-sars-and-covid-19-coronaviruses>

1 SARS-CoV-2. There is no evidence to support the argument that
2 the Covid-19 Recovered lose their immunity. In fact, there is
3 evidence of the opposite. Lifetime immunity¹⁶ is anticipated. In a
4 top scientific journal, the Lancet, we read about the well-powered
5 SIREN study: “The findings of the authors suggest that infection
6 and the development of an antibody response provides protection
7 similar to or even better than currently used SARS-CoV-2
8 vaccines. ... The SIREN study adds to a growing number of
9 studies which demonstrate that infection does protect against
10 reinfection.”¹⁷ Defendants can cite to no statistically significant
11 evidence that Covid-19 Recovered persons are at any risk
12 whatsoever of reinfection or transmission, let alone greater risk
13 than Covid-19 vaccinated persons.” Complaint, para. 30; see also
14 Plaintiffs’ Supporting Expert Declarations.

15 As cases navigate their way through the appeals process, it helps to
16 remember that this subject matter (mandatory Covid-19 vaccines for students) is
17 a new issue expected to evolve in the courts the same way that mandatory Covid-
18 19 restrictions evolved -- in the beginning of Covid-19 in Spring 2020, PI
19 motions and OSCs were denied right and left. But then case law from November
20 and December 2020 showed that public health orders were no longer ‘sacred
21 texts’ but started to get overruled by judges, especially as Governors Cuomo and
22 Newsom were losing cases.¹⁸

23 _____
24 ¹⁶ <https://www.nature.com/articles/d41586-021-01442-9>

25 ¹⁷ [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00782-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00782-0/fulltext)

26 ¹⁸ See e.g., *S. Bay United Pentecostal Church v. Newsom*, No. 20-55533, 981
27 F.3d 765-66 (9th Cir. Dec. 8, 2020) (“In light of the Supreme Court's orders in
Harvest Rock Church, Inc. v. Newsom, No. 20A94, 592 U.S. ___, 2020 U.S.
28 LEXIS 5709 (Dec. 3, 2020) and *Roman Catholic Diocese v. Cuomo*, No. 20A87,
592 U.S. ___, 141 S. Ct. 63, 208 L. Ed. 2d 206 (Nov. 25, 2020), we VACATE

1 Plaintiff Doctors and Immune Students urge this court to critically
2 examine the evidence with strict scrutiny. A mask can be put on and then taken
3 off, but it is impossible to reverse a vaccine injection (especially a genetic
4 medical intervention vaccine).

5 2. Emergency Use Authorization Status

6 Presently all Covid-19 vaccines are authorized only for emergency use.
7 And the Federal law governing such authorization, 21 U.S.C. § 360bbb-
8 3(e)(1)(A)(ii)(I-III), grants the patient explicitly “the option to accept or refuse
9 administration of the [EUA] product”.

10 The FDA’s classification of Covid-19 vaccination (as emergency use) is
11 certainly relevant at this TRO stage even though at trial it will not be
12 determinative of the experimental status of the vaccination, as, for example, with
13 the complete absence of any long-term safety data and the novel status of mRNA

14 _____
15 the district court's October 15, 2020 order denying the motion for injunctive
16 relief filed by South Bay United Pentecostal Church (South Bay), and
17 **REMAND** to the district court for further consideration of this matter.” *Calvary*
18 *Chapel Dayton Valley v. Sisolak*, No. 20-16169, 2020 U.S. App. LEXIS 39266,
19 at *2, 11 (9th Cir. Dec. 15, 2020) (“The district court denied the church's request
20 for a preliminary injunction barring enforcement of the Directive against houses
21 of worship. We reverse ... the district court, instruct the district court to employ
22 strict scrutiny review to its analysis of the Directive, and preliminarily enjoin the
23 State from imposing attendance limitations on in-person services in houses of
24 worship....”); *Mark’s Engine Company No. 28 Restaurant LLC v. County of Los*
25 *Angeles, et al.*, Case Number 20STCV45134 (Superior Court of California,
26 County of Los Angeles) (Minute Order December 8, 2020) (granting plaintiff’s
27 request for Order because “the County [defendant] has no basis for the outdoor
28 dining portion of the order and it must be enjoined until the risk-benefit analysis
is performed for outdoor dining.”); *Midway Venture LLC v. County of San Diego*,
Case Number 37-2020-00038194-CU-CR-CTL (Superior Court of California,
County of San Diego) (Minute Order dated December 16, 2020) (granting
plaintiffs’ request for Order to Show Cause and enjoining Governor Newsom
from shutting down strip club businesses because they “do not present any risk,
much less a greater risk than before Governor Newsom issued his [stay at home
order]. Since the County [defendant] could have produced ‘stronger evidence’,
the Court discounts the County’s ‘weaker evidence’.”

1 and adenovirus vaccines in humans.

2 Every FDA fact sheet for a Covid-19 vaccine states the same disclaimer,
3 “It is your choice to receive or not receive the [Pfizer-BioNTech, Moderna,
4 Janssen] COVID-19 Vaccine. Should you decide not to receive it, it will not
5 change your standard medical care.” And yet, as the UC students in this case
6 decline the vaccine, College Parties are now threatening to disenroll them and
7 remove their standard healthcare offered through Student Health Services.¹⁹
8 Therefore, Defendant College Parties are openly violating Federal Law (in a field
9 preempted by Federal law) in their zeal to rush a vaccine mandate.

10 For purposes of this TRO Application, it should be noted that prominent
11 health law scholars reject the view that “consequences” for refusal of an EUA
12 product permits reprisal. Efthimios Parasidis & Aaron S. Kesselheim, Assessing
13 The Legality Of Mandates For Vaccines Authorized Via An Emergency Use
14 Authorization, HEALTH AFFAIRS (Feb. 16, 2021).²⁰

15 The context in which the EUA statute was first used regarding anthrax

16 ¹⁹ See e.g., “Student Health Insurance Plan (SHIP). All registered UCR students
17 are automatically enrolled in the SHIP, a comprehensive and affordable
18 insurance plan that is covered by financial aid.... All UCR students have access
19 to SHS [Student Health Services], even if you aren’t covered by SHIP.”
20 [https://studentdocs.ucr.edu/studenthealth/uc-riverside_student-health_services-
brochure.pdf](https://studentdocs.ucr.edu/studenthealth/uc-riverside_student-health_services-brochure.pdf)

21 ²⁰ <https://www.healthaffairs.org/doi/10.1377/hblog20210212.410237/full/>.
22 Scholars Parasidis and Kesselheim suggest that the term “consequences” must be
23 defined “in ordinary terms within the context of the statute” as Congress failed to
24 define it in the statute. *Id.* at 3. They argue that if the phrase regarding
25 “consequences” permits adverse consequences related to work, education, use of
26 public transportation and other public accommodations, then the right “to accept
27 or refuse” in the first phrase is meaningless. *Id.* at 4. They state: “Under canons
28 of statutory interpretation, one segment of [a] statute should not be interpreted to
obstruct another. Rather, provision should be interpreted in a way that makes
them compatible, no contradictory.” *Ibid.* They conclude that the most plausible
interpretation is that “consequences” refers exclusively to health risks of
accepting or refusing an EUA product during a public health emergency – not
coercive measures related to refusal. *Ibid.*

1 vaccines in the military supports this interpretation disallowing coercion or
2 adverse consequences for refusal. See *Doe v. Rumsfeld, supra*, 341 F. Supp. 2d at
3 19, where the court rejected solitary confinement and dishonorable discharge as
4 lawful consequences of refusal of the EUA anthrax vaccine, although the
5 Department of Defense had imposed such harsh sanctions. That court ruled that
6 coercion eviscerating informed consent violates federal law.

7 **3. Plaintiffs’ Meaningful Causes of Action**

8 Plaintiff Doctors & Immune Students plead their case with meaningful
9 causes of action, including:

10 • **14th Amendment Bodily Integrity.** This is the product of
11 Plaintiff’s analysis above regarding informed consent. In summary, “Plaintiffs
12 have fundamental constitutional rights to bodily integrity, including, especially,
13 to be free from human medical experimentation.... Plaintiffs are the only
14 competent persons able to provide consent/refusal to the injection of Covid-19
15 vaccines into themselves. Neither Defendants nor third parties (such as the
16 FDA) are able to provide such consent/refusal on behalf of Plaintiffs, nor can
17 Defendants or third parties waive Plaintiffs’ rights to informed consent/refusal of
18 Covid-19 vaccines. Because Defendants have indicated that consent to injection
19 of a Covid-19 vaccine is an imminent condition of their ongoing college
20 participation (and, hence, future livelihood), Plaintiffs fundamental rights are in
21 jeopardy, and, so, Plaintiffs seek declaratory relief to clarify their rights, and to,
22 thereby, prevent immediate harm.” Complaint, paras. 41 and 43.

23 • **14th Amendment Freedom from State Created Danger.**
24 “Defendants’ deliberate indifference to the known and obvious danger of vaccine
25 injury (including but not limited to Defendants’ inability to quantify the risks of
26 the medical procedure they mandate) creates and exposes Plaintiffs to health
27 dangers, the intensity of which Plaintiffs would not have otherwise faced.
28

1 Defendants’ rejection of science makes Plaintiffs more vulnerable to vaccine
2 injury.” Complaint, para. 63.

3 • **Unruh Act and Cal. Gov. Code section 11135.** These California
4 civil rights laws prohibit government and establishments conducting business
5 (including the UC) from unlawfully discriminating on the basis of medical
6 condition and genetic status. “Defendants’ decision to mandate experimental
7 gene therapy upon Plaintiffs is a direct violation of the Unruh Civil Rights Act,
8 because it denies Plaintiffs full and equal access to their UC campuses on the
9 basis of Plaintiffs’ medical conditions and genetic information.” Complaint, para.
10 68.

11 The facts lay bare that Defendant College Parties are utilizing the
12 discredited tools of coercion and segregation of natural/unvaccinated peoples in
13 violation of Federal and State law. Defendants’ unscientific one-size-fits-all
14 vaccine mandate rejects scientifically accepted Prescreening, and, therefore,
15 College Parties place Plaintiffs’ lives and public health in jeopardy.

16 This is supported by Plaintiffs’ supporting expert declarations:

17 • *Joseph A. Ladapo, MD, PhD* (associate professor with UCLA
18 School of Medicine), “In immunology, the most robust immunity is generally
19 considered to be from natural infection, and the available evidence indicates this
20 has been again shown to be the case. The SARS-CoV-2 causes an infection in
21 humans that results in robust and durable immunity,¹ and that is comparable to if
22 not superior to vaccine immunity². This is particularly true in young persons.”

23 • *Michael Yeadon, PhD* (former Vice President and Chief Scientific
24 Officer at Pfizer), “[A]cquired immunity lasts for years and in many cases, for
25 life, after a single exposure fight and successful fight with a defined viral
26 pathogen. There are numerous examples of this (chickenpox, measles, mumps,
27 mononucleosis, hepatitis A, hepatitis B, etc.)... This breadth of immunity which
28 follows natural infection can never be bettered by a vaccine.... It is simply

1 inaccurate to use blood levels of antibodies in any way to determine the immune
2 protection possessed by an individual and literally absurd to pretend that, for
3 example, 90 days is an amount of time for which immunity is retained.... If an
4 individual is already immune to a particular respiratory virus, it is neither
5 sensible nor safe to vaccinate them. The reasons for this are obvious: the system
6 is now already primed to respond with vigor to the reappearance of that pathogen
7 or related pathogens.”

8 • *Peter McCullough, MD, MPH* (professor at Texas A&M University
9 School of Medicine; top published physician on Covid-19), “I urge the Court to
10 avoid falling prey to the recent and premeditated asymmetric reporting of cases
11 as ‘unvaccinated’ and further claiming Covid-19 is a ‘pandemic of the
12 unvaccinated’.”

13 • *Richard Urso, MD* (former clinical professor and current board
14 certified ophthalmologist, treated over 450 Covid-19 recovered persons),
15 “COVID recovered patients are at extremely high risk to a vaccine.”

16 • *Angelina Farella, MD* (former Pediatric Chief Resident with
17 University of Texas Medical Branch), “Covid-19 has survivability of 99.8%
18 globally and 99.97% under age 70 (Ioannidis, Stanford).”

19 • *Lee Merritt, MD* (former Chief of Staff of regional medical center,
20 US Navy veteran, current clinician), “The following is a sample of an informed
21 consent that I would find acceptable for COVID-19 vaccines: ... The COVID-19
22 vaccines are experimental and only authorized under an Emergency Use
23 Authorization. This means that this particular vaccine has not been fully studied
24 and we cannot be certain of all of the impacts it could have on you....”

25 Across the world, Covid-19 vaccine rollouts are correlated to sharp spikes
26 in new Covid-19 cases. Consider Iceland, one of the most heavily vaccinated
27 countries in the world, with vaccination rates around 80-90% of the population.
28 As government data shows, about 80-90% of the new cases in Iceland’s sharp

1 spike are within the Covid-19 vaccinated group. <https://www.covid.is/data>. The
2 same pattern repeats in other countries, such as Israel and Singapore.²¹

3 And it is happening in the US too. As explained by Plaintiffs' expert Dr.
4 McCullough (i.e., interview with Fox News), US doctors who actually treat
5 Covid-19 patients are seeing about 50% of their Covid-19 cases are in Covid-19
6 vaccinated people, and the other 50% in Covid-19 unvaccinated people. And
7 given that the Covid-19 vaccination rate in America itself is around 50%, this is
8 more evidence the Covid-19 vaccine is failing the public.

9 Because counting Covid-19 cases is itself an openly flawed system (i.e.,
10 faulty PCR tests recently denounced by the CDC, questionable diagnoses),
11 medical professionals and the public are learning to be less interested in testing
12 and more interested in simply observing the injury and death rate **from any**
13 **health cause** among the Covid-19 vaccinated. In other words, top doctors and
14 the public want to compare the short-term and long-term health of Covid-19
15 vaccinated people to Covid-19 unvaccinated people. The CDC does not want to
16 do such basic science though; the CDC wants to vaccinate everyone, as they
17 never cease to declare publicly to the point that public health propaganda is
18 palpable.²²

19 _____
20 ²¹ https://www.moh.gov.sg/news-highlights/details/updates-on-local-covid-19-situation_20_July_2021

21 ²² Some of the government propaganda is even pathetic. To provide one example,
22 it was reported that 49 fully vaccinated New Jersey residents died with COVID-
23 19. Not wanting to admit the vaccines are harmful, the NJ health department
24 quickly put its own unique spin on the news, claiming that the 49 deaths occurred
25 among 4.8 million vaccinated residents, making the known death rate slightly
26 greater than one in 100,000 fully vaccinated people. *"That means vaccines are*
27 *about 99.999 percent effective in preventing deaths due to COVID-19,"* said Dr.
28 Ed Lifshitz, medical director of the department's Communicable Disease
Service. <https://www.nj.com/coronavirus/2021/07/49-people-who-were-fully-vaccinated-have-died-of-covid-in-nj-heres-what-we-know.html>. This public
official claimed, in all seriousness, that if they didn't get the vaccine, the
remaining 4.8 million people had a 100% chance of dying of COVID-19. The

1 To conceal the failure of the Covid-19 vaccine, the CDC awkwardly began
2 asymmetrical reporting in May 2021 through the present, where the CDC is now
3 only reporting Covid-19 cases in the unvaccinated, and is intentionally not
4 counting Covid-19 cases in the vaccinated. <https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html>. And the CDC is further
5
6 downplaying vaccine injuries among the Covid-19 vaccinated, which has been
7 thoroughly exposed by underreporting to VAERS.

8 Accordingly, it is obvious propaganda when the media or even a
9 government official falsely claims that Covid-19 is a “pandemic of the
10 unvaccinated”. In reality, Covid-19 vaccine injury is the pandemic. And this
11 should be no surprise. mRNA technology has repeatedly failed in drug
12 development trials. For example, before 2021 no mRNA drug had even made it
13 to the Phase III stage of clinical testing (out of four stages total).

14 **C. Students and Public Health Are Likely to Suffer Irreparable Harm**
15 **in the Absence of Preliminary Relief.**

16 “[C]onstitutional violations cannot be adequately remedied through
17 damages and therefore generally constitute irreparable harm.” *Nelson v. NASA*,
18 530 F.3d 865, 882 (9th Cir. 2008).²³

19 _____
20 fact that senior government officials resort to logical gymnastics that COVID-19
21 somehow kills 100% of non-vaccinated people, simply underscores that public
22 health propaganda is dangerous and must not be treated as ‘sacred text’ by any
23 court of law.

24 ²³ Irreparable harm is traditionally defined as harm for which there is no adequate
25 legal remedy, such as an award of damages. See *Rent-A-Ctr., Inc. v. Canyon*
26 *Television & Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991). Because
27 intangible injuries generally lack an adequate legal remedy, “intangible injuries
28 [may] qualify as irreparable harm.” *Id. Ariz. Dream Act Coalition v. Brewer*, 757
F.3d 1053, 1068 (9th Cir. 2014). Moreover, to support injunctive relief, harm
must not only be irreparable, it must be imminent; establishing a threat of
irreparable harm in the indefinite future is not enough. Rather, “a plaintiff must
demonstrate immediate threatened injury as a prerequisite to preliminary
injunctive relief.” *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668,

1 The Plaintiff Declarations attached to this TRO Application explain in
2 detail the ways that the Immune Students are likely to suffer irreparable harm.²⁴

3 Similarly, the expert declarations attached to this TRO Application explain
4 the harrowing risks of life and limb that face the Immune Students if they are
5 forced to unnecessarily vaccinate with the genetic medical intervention injection.

6 **D. In the Balance of Equities, Preliminary Relief Will Not Impose an**
7 **Undue Burden on College Parties.**

8
9 _____
10 674 (9th Cir. 1988).

11 ²⁴ See e.g., “AFLDS member physicians provide care to UC students [] directly
12 impacted by the UC’s Covid-19 vaccine mandate, which is impairing physician-
13 patient relationships, and the ability of the patients to exercise informed
14 consent/refusal without duress caused by the UC....The types of harm the
15 AFLDS member physicians are inevitably subjected to by the UC’s mandate to
16 inject young people with the experimental COVID-19 vaccine is truly irreparable.
Such harm strikes at the moral and ethical underpinnings of their calling as a
physician and drives irreparable wedges into the sacred doctor-patient
relationship that cannot be healed and certainly cannot be addressed with
monetary damages.” See Complaint, paras 6, 11; Dr. Gold Declaration in
Support.

17 “UC Riverside’s implementation of the UC’s Covid-19 vaccine mandate has put
18 [plaintiff student] under duress and impaired her ability to exercise informed
19 consent/refusal of the Covid-19 vaccine with physicians of her choice.” See
Complaint, paras 12-14; UC student Plaintiff Declarations in Support.

20 “Plaintiffs have experienced concrete and particularized injuries-in-fact that are
21 both actual and imminent, including, but not limited to the following: (a)
22 Defendants are unconstitutionally coercing and segregating Plaintiffs without
23 scientific justification because Plaintiffs are exercising their Constitutional, and
24 federal and state statutory, rights to decline involuntary injection of harmful
25 experimental drugs; (b) Defendants are engaged in unmitigated coercion to
26 subvert Plaintiffs’ absolute right to refuse to serve as subjects to unnecessary
27 medical experiments which are known to be dangerous, and even life-threatening,
and to be free of discrimination for exercising this right; and (c) Plaintiffs
experience certain and palpable threat of mandatory vaccination as Defendants
push unscientific fear (rather than mathematical and clinical facts) upon
Plaintiffs, and upon the public at large.” See Complaint, para. 21; UC student
Plaintiff Declarations in Support.

1 Natural immunity has served humanity for time immemorial, solidifying
2 our status as the undisputed strongest species on the planet. By contrast, the
3 experimental mRNA and adenovirus vector vaccines mandated by College
4 Parties have been around for about a year, and are already being investigated
5 worldwide for causing excessive death and serious injury.

6 The balance of equities favor Plaintiff Doctors & Immune Students.

7 To qualify for injunctive relief, Petitioners must establish that "the balance
8 of equities tips in [their] favor." *Winter, supra*, 555 U.S. at 20. In assessing
9 whether the Petitioners have met this burden, the district court has a "duty . . . to
10 balance the interests of all parties and weigh the damage to each." *L.A. Mem'l*
11 *Coliseum Comm'n v. Nat'l Football League*, 634 F.2d 1197, 1203 (9th Cir.
12 1980).²⁵ The State "is in no way harmed by the issuance of an injunction that
13 prevents the state from enforcing unconstitutional restrictions." *Legend Night*
14 *Club v. Miller*, 637 F.3d 291, 302–03 (4th Cir. 2011).

15 College Parties' unscientific discrimination against unvaccinated Covid-19
16 recovered students with superior immunity is part of a pattern and practice that
17 Defendants tweak rapidly and dictate forcefully:

- 18 • Dictating that Covid-19 vaccinated students may breathe freely, but
19 unvaccinated Covid-19 recovered students with superior immunity can
20 only breathe as the UC and Chancellor authorize.
- 21 • Dictating that Covid-19 vaccinated students are presumed healthy, but

22
23 ²⁵ Even "serious questions going to the merits and a balance of hardships that tips
24 sharply towards the plaintiff can support issuance of a preliminary injunction, so
25 long as the plaintiff also shows that there is a likelihood of irreparable injury and
26 that the injunction is in the public interest." *All. For The Wild Rockies v. Cottrell*,
27 632 F.3d 1127, 1135 (9th Cir. 2011). The public interest and the balance of the
28 equities factors merge when the government stands as a party. See *Drakes Bay*
Oyster Co. v. Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*,
556 U.S. 418, 435 (2009)); *Rosebud Sioux Tribe v. Trump*, 2020 U.S. Dist.
LEXIS 192328, *10 (D. Mont. Oct. 16, 2020).

1 unvaccinated Covid-19 recovered students with superior immunity must
2 submit to PCR genetic testing (performed by forceful penetration of the
3 student's nasal cavity creating risk of serious harm) and miscellaneous
4 health examinations intruding student medical privacy.

- 5 • Dictating that Covid-19 vaccinated students may physically access classes
6 on campus, but unvaccinated Covid-19 recovered students with superior
7 immunity are denied access to the education (and the rights and services
8 that come with it, including healthcare) for which they have prepaid and
9 invested their livelihoods.
- 10 • Dictating Covid-19 vaccinated students may congregate normally, but
11 unvaccinated Covid-19 recovered students with superior immunity must
12 maintain 6-foot distancing from others, and be subjected to various
13 physical barriers.
- 14 • Distributing gifts, prizes, and incentives to Covid-19 vaccinated persons,
15 but isolating unvaccinated Covid-19 recovered students with superior
16 immunity.

17 All of the above techniques create an educational environment that is
18 separate, unequal, and discriminatory based on medical condition and genetic
19 status.

20 Only in the Orwellian world of 2021 (i.e., 'wear a mask, actually two
21 masks, actually masks don't work, wait now they work again') could informed
22 consent be categorized by the State as not being in the public interest, and that
23 government clamoring to inject everyone with experimental mRNA in their
24 bodies is immediately a so-called 'complete success' and 'not genetic
25 manipulation'. The State sponsored propaganda is palpable.

26 In the balance of equities, this Court can at least maintain the status quo
27 until additional expert perspective can be brought to light on the proven virtues
28 of natural immunity.

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E. Preliminary Relief Advances the Public Interest.

Courts in the Ninth Circuit apply a sliding scale approach to preliminary relief. *See All. for the Wild Rockies v. Cottrell*, 632 F.3d at 1131. The reviewing court must balance the elements "so that a stronger showing of one element may offset a weaker showing of another." *Id.*

The Supreme Court held, in *Roman Catholic Diocese*, that “even in a pandemic, the Constitution cannot be put away and forgotten [... and] it has not been shown that granting the applications will harm the public.” 141 S. Ct. at 68

Defendant College Parties’ unscientific decision to reject Prescreening will increase the short-term and long-term vaccine injury rate thereby making UC campuses less safe from SARS-CoV-2, and other pathogens. Defendants’ direct attack, under color of law, on Plaintiffs’ bodily integrity is an unconstitutional abuse of power that is harming public health, not advancing it.

F. This Court Should Issue The Order to Show Cause.

Burden shifting is a recognized pre-trial function of district courts. *See, e.g., McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801 (1973) (after plaintiff makes a prima facie showing of discrimination, the burden shifts to the defendant to show a lawful reason for defendant’s conduct).

The seriousness of the allegations in the Complaint, together with the weighty expert declarations in support of this motion, warrant an Order to Defendant College Parties to show cause why a preliminary junction should not issue. It is expected that Defendant College Parties will attempt to rewrite history by denying the success of natural immunity. Indeed, many scientists have taken that bait without evidence.

Defendant College Parties’ novel theories for the novel coronavirus and its experimental vaccine are expressly based on conjecture that fails strict scrutiny when applied as a healthcare mandate, as College Parties *suggest* without confirmed data, for example:

1 a. Covid-19 vaccines ‘could’ ‘may’ ‘possibly’ ‘ideally’ create a larger
2 immune response²⁶ and therefore perhaps hypothetically create superior
3 immunity that just hasn’t been observed yet but might be observed in the
4 unknown future by some unknown institution.

5 b. Sars-Cov-2 ‘could’ ‘may’ ‘possibly’ be more likely to mutate in the
6 bodies of unvaccinated persons rather than vaccinated persons²⁷, even
7 though that too hasn’t been observed yet but only might be observed in the
8 unknown future by some unknown institution.

9 Defendant College Parties’ pattern and practice of unsubstantiated
10 conjecture has already been authoritatively rebutted by overwhelming scientific
11 evidence, and therefore the CDC will (or *should*) correct its guidance
12 imminently.²⁸

13 _____
14 ²⁶ [https://mediasources.ucr.edu/articles/2021/03/03/what-uc-riverside-scientists-
15 have-say-about-vaccines-variants-and-antibodies](https://mediasources.ucr.edu/articles/2021/03/03/what-uc-riverside-scientists-have-say-about-vaccines-variants-and-antibodies) (“ideally”);
16 [https://campusreturn.ucr.edu/sites/g/files/rcwecm4671/files/2021-04/COVID-
17 19%20Vaccine%20education%20slide%20deck_UCLA_UCR%20%281%29.pdf](https://campusreturn.ucr.edu/sites/g/files/rcwecm4671/files/2021-04/COVID-19%20Vaccine%20education%20slide%20deck_UCLA_UCR%20%281%29.pdf)
18 , page 31 (“There is not enough information” “suggests”));

17 <https://uci.edu/coronavirus/testing-response/covid-19-vaccine.php> (“usually”)

18 ²⁷ <https://www.universityofcalifornia.edu/news/are-we-stuck-covid-19-forever>
19 (“may be”)

20 ²⁸ See, [https://www.icandecide.org/wp-content/uploads/2021/06/Letter-to-CDC-
21 re-recovered-superior-to-vaccinated_2021_05_28.pdf](https://www.icandecide.org/wp-content/uploads/2021/06/Letter-to-CDC-re-recovered-superior-to-vaccinated_2021_05_28.pdf). Also, in fashioning
22 preliminary injunctive relief, another factor this Court may elect to consider is a
23 pending bill in the California legislature: AB327. Per the Legislative Counsel’s
24 Digest, “*This bill would prohibit state agencies, local governments, and any
25 other state governmental authority from adopting or enforcing any order,
26 ordinance, policy, regulation, rule, or similar measure that requires an
27 individual to provide, as a condition of receiving any service or entering any
28 place, documentation regarding the individual’s vaccination status for any
COVID-19 vaccine administered under an emergency use authorization.*”)
[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220A
B327](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB327). If plaintiffs are forced to get a vaccine before school starts, and AB 327
passes, they have an irreparable injury that cannot be undone which would not
have incurred had UC system waited for a vote on AB 327. While the UC system
is not required to wait for a vote, the UC’s rush to vaccinate is still relevant to the

1 So Defendant College Parties' position is novel and radical. Scientifically
2 accepted virology and immunology precepts²⁹ hold that immunity from natural
3 infection is the best, most robust, and longest lasting way to deal with problems
4 such as Covid-19. Defendants' statements to the contrary are categorically false,
5 and courts must not defer to false statements simply because some government
6 scientists argue for them, but, rather, courts must apply strict scrutiny.

7 CONCLUSION

8 Robust and durable natural immunity is a fact, and it is impossible to
9 reverse a genetic vaccine injection. Plaintiff Doctors & Immune Students
10 respectfully request that this Court issue a temporary restraining order enjoining
11 Defendant College Parties from enforcing their 7/15 Covid-19 vaccine mandate
12 that rejects scientifically accepted Prescreening. Plaintiffs further request an
13 Order to Show Cause Why a Preliminary Injunction Should Not Issue against
14 College Parties.

15 Dated this July 27, 2021

16 */s/ Christina Gilbertson*

17 Christina Gilbertson (California Bar No. 236877)

18 christina@jfnvlaw.com

19 Jennings & Fulton, LTD

20 2580 Sorrel St.

21 Las Vegas, NV 89146

22 Phone: 702-979-3565

23 Attorneys for Plaintiffs

24
25
26 _____
27 UC not even attempting to narrowly tailor its program to a compelling state
28 interest.

²⁹ <https://www.wiley.com/en-us/Roitt%27s+Essential+Immunology%2C+13th+Edition-p-9781118415771>

1 Christina Gilbertson (California Bar No. 236877)
christina@jfnvlaw.com
2 Jennings & Fulton, LTD
3 2580 Sorrel Street
4 Las Vegas, NV 89146
Phone: 702-979-3565

5 Gregory J. Glaser (California Bar No. 226706)
6 greg@gregglaser.com
7 Greg Glaser, Attorney at Law
4399 Buckboard Drive #423
8 Copperopolis, CA 95228
9 Phone: 925-642-6651

10 Joseph S. Gilbert (Nevada Bar No. 9033)
11 joey@joeygilbertlaw.com
12 Joey Gilbert & Associates
405 Marsh Avenue
13 Reno, NV 89509
14 Phone: 775-284-7700
(Subject to pro hac vice admission)

15 Attorneys for Plaintiffs

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 AMERICA'S FRONTLINE
20 DOCTORS, *et al.*,

21 *Plaintiffs,*

22 v.

23 KIM A. WILCOX, in his official
24 capacity as CHANCELLOR OF
25 THE UNIVERSITY OF
CALIFORNIA RIVERSIDE, *et al.*,

26 *Defendants.*

**DECLARATION OF EXPERT
ANGELINA FARELLA, MD IN
SUPPORT OF PLAINTIFFS' EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

DECLARATION OF ANGELINA FARELLA, MD

Pursuant to 28 U.S.C. §1746, I, Angelina Farella, MD, declare under the penalty of perjury of the laws of the United States of America, and state upon personal knowledge that:

1. I am an adult of sound mind and make this statement voluntarily, based upon my personal knowledge, education, facts or data, and experience, and under penalty of perjury of the laws of the United States of America.
2. I am competent to testify as a medical expert to the facts and matters set forth herein. The facts and matters set forth herein are the types of facts and matters medical experts rely upon to reach expert conclusions. A true and accurate copy of my curriculum vitae is attached hereto as **Exhibit A**.
3. I am a pediatrician currently practicing in the State of Texas and have been in solo private practice for over 25 years.
4. As a pediatrician, I have vaccinated in excess of 10,000 patients in my career. However, the Covid-19 injections are not vaccines. The Covid-19 injections are experimental biological agents whose harms are well documented and growing

rapidly. I do not support the use of these agents, nor using America's children as guinea pigs.

5. I am working on this case Pro Bono.

6. I have read the Complaint and Motion for Preliminary Injunction in the above captioned matter, specifically the allegations related to children and adolescents. I agree with the allegations contained in the Complaint and Motion for Preliminary Injunction.

7. The Emergency Use Authorization for adolescents aged 12-15 is inappropriate. Covid-19 has survivability of 99.8% globally and 99.97% under age 70 (Ioannidis, Stanford). For people under age 20 survivability is 99.997%, which is statistically zero!

8. There are 104 children aged 0-17 who died from Covid-19 and 287 from Covid + Influenza out of roughly 72 million children in America. This equals ZERO risk. There is NO public interest in subjecting children to experimental vaccination programs, to protect them from a disease that simply does not threaten them.

9. Vaccines take years to safely test. It's not only the number of people tested but the length of time that is important when creating new vaccines. Emergency Use Authorization was granted prematurely for adolescents, before ANY trials

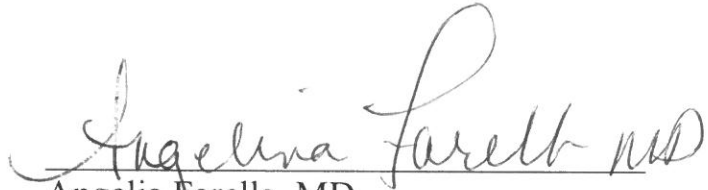
were completed. Moderna is scheduled to complete trials on October 31, 2022, and Pfizer is scheduled to complete trials on April 27, 2023.

10. There were no trial patients under the age of 18. The FDA and these pharma companies are currently allowing children 12 years old to receive this shot, when they were never studied in the trials. **Never before in history have we given medications that were not FDA approved to people who were not initially studied in the trial.**

11. We don't know the outcome of these trials, and we cannot risk America's children whose birthright is decades of healthy life.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 24, 2021.


Angelina Farella, MD

1 Christina Gilbertson (California Bar No. 236877)
christina@jfnvlaw.com
2 Jennings & Fulton, LTD
3 2580 Sorrel Street
4 Las Vegas, NV 89146
Phone: 702-979-3565

5 Gregory J. Glaser (California Bar No. 226706)
6 greg@gregglaser.com
7 Greg Glaser, Attorney at Law
4399 Buckboard Drive #423
8 Copperopolis, CA 95228
9 Phone: 925-642-6651

10 Joseph S. Gilbert (Nevada Bar No. 9033)
11 joey@joeygilbertlaw.com
12 Joey Gilbert & Associates
405 Marsh Avenue
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17 **UNITED STATES DISTRICT COURT**
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19 AMERICA'S FRONTLINE
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23 KIM A. WILCOX, in his official
24 capacity as CHANCELLOR OF
THE UNIVERSITY OF
25 CALIFORNIA RIVERSIDE, *et al.*,

26 *Defendants.*

**DECLARATION OF EXPERT
LEE MERRITT, MD IN SUPPORT
OF PLAINTIFFS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

DECLARATION OF LEE MERRITT, MD

Pursuant to 28 U.S.C. §1746, I, Lee Merritt, MD, declare under the penalty of perjury of the laws of the United States of America, and state upon personal knowledge that:

1. I am an adult of sound mind and make this statement voluntarily, based upon my personal knowledge, education, facts or data, and experience, and under penalty of perjury of the laws of the United States of America.

2. I am competent to testify as a medical expert to the facts and matters set forth herein. The

facts and matters set forth herein are the types of facts and matters medical experts rely upon

to reach expert conclusions. A true and accurate copy of my curriculum vitae is attached hereto

as **Exhibit A.**

3. I practiced as a board certified Orthopedic and Spinal Surgeon for over 35 years, including ten years of active duty in the United States Navy. I am currently licensed in Iowa and Nebraska where I currently practice.

4. I am working on this case Pro Bono.

5. I have read the Complaint and Motion for Preliminary Injunction in the above captioned matter, specifically the allegations related to informed consent. I agree with the informed consent allegations contained in the Complaint and Motion for Preliminary Injunction.

6. In addition to standard surgical practice, I served as Chief of Staff, Chief of Surgery and Chief of Credentialing at a regional medical center and as such, participated in formal education pertaining to various aspects of medical administration. This training encompassed hospital and operating room risk management which included understanding the legal and ethical requirements of “informed consent”.

7. As an example of the blatant disregard for informed consent with respect to the Covid shots, I recently saw an NBC news clip about California McDonalds locations serving up “burgers and shakes with a side of Pfizer.¹” In the clip, a 12-year-old girl tells the news reporter:

"This [shot] was really quick and easy there wasn't a line whatsoever. You just walk in [to McDonalds] get it and walk out. It was really fun."

"So, I think it was pretty easy. I think other people like me with anxiety it's much easier."

¹ <https://www.nbcbayarea.com/news/local/some-bay-area-mcdonalds-locations-serving-up-covid-19-vaccines/2578684/> (Published June 24, 2021)

8. The following is a sample of an Informed Consent that I would find acceptable for COVID-19 vaccines:

The COVID-19 vaccines are experimental and only authorized under an Emergency Use Authorization. This means that this particular vaccine has not been fully studied and we cannot be certain of all of the impacts it could have on you.

Risks of the COVID vaccination include but are not limited to: death, failure to prevent the disease being vaccinated against, risk of anaphylaxis, irritation at the injection site, muscle soreness, tingling in the hand and/ or arm, bleeding from the injection site, other bleeding that may be life-threatening such as brain hemorrhage, internal bleeding, bleeding into the eye, gastrointestinal bleeding, neurologic complications including paralysis that may or may not completely resolve, focal paralysis such as Bell's palsy, transverse myelitis, Amyotrophic Lateral Sclerosis (Lou Gehrig's disease), headaches, dizziness, narcolepsy (inability to remain awake), thrombocytopenia (lack of platelets that prevent bleeding, pancytopenia (lack of all blood elements such as red and white blood cells, infection, miscarriage, blood clots, etc.

Additionally, problems may arise even years after vaccinations. These issues may include antibody dependent enhancement and pathologic priming, in which case the vaccination may cause increased risk of severe or fatal worsening of COVID or other similar diseases and influenza like illnesses. Also, the risk of infertility, birth defects, and cancer is unknown, as is the late onset of neurologic disorders and autoimmune disease.

There have been reports of passage of the vaccine in breast milk that caused fatal bleeding in a nursing baby.

Taking this vaccine has not been demonstrated (in the studies for Emergency Use Authorization) to stop transmission of COVID. In independent analysis, this absolute risk reduction (prevention of disease) has therefore been estimated to be less than 1%. The potential to lessen the severity of symptoms--if you do contract COVID after being vaccinated-- has similarly been estimated to be less than or equal to 30%.

Please sign here if you consent to this injection.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 24, 2021.



Lee Merritt, MD

1 Christina Gilbertson (California Bar No. 236877)
christina@jfnvlaw.com
2 Jennings & Fulton, LTD
3 2580 Sorrel Street
4 Las Vegas, NV 89146
Phone: 702-979-3565

5 Gregory J. Glaser (California Bar No. 226706)
6 greg@gregglaser.com
7 Greg Glaser, Attorney at Law
4399 Buckboard Drive #423
8 Copperopolis, CA 95228
9 Phone: 925-642-6651

10 Joseph S. Gilbert (Nevada Bar No. 9033)
11 joey@joeygilbertlaw.com
12 Joey Gilbert & Associates
405 Marsh Avenue
13 Reno, NV 89509
14 Phone: 775-284-7700
(Subject to pro hac vice admission)

15 Attorneys for Plaintiffs

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 AMERICA'S FRONTLINE
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23 KIM A. WILCOX, in his official
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25 THE UNIVERSITY OF
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26 *Defendants.*

**DECLARATION OF EXPERT
MIKE YEADON, PHD IN
SUPPORT OF PLAINTIFFS' EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

DECLARATION OF MIKE YEADON, Ph.D.

Pursuant to 28 U.S.C. §1746, I, Mike Yeadon, Ph.D., declare under the penalty of perjury of the laws of the United States of America, and state upon personal knowledge that:

I am fully competent to make this declaration and make this statement voluntarily, based on my personal knowledge, education, facts or data, and experience, and under penalty of perjury of the laws of the United States of America

I am competent to testify as an expert to the facts and matters set forth herein. A true and accurate copy of my curriculum vitae is attached hereto as **Exhibit A** and a copy of my bibliography is attached as **Exhibit B**.

I am an independent life sciences researcher, with high-level expertise in multiple disciplines essential to new drug discovery and clinical development, particularly immunology, inflammation, and airway pharmacology. I am internationally recognized as a leading expert in allergic, inflammatory, and immunological disease processes in the lungs and skin.

I founded and led a biotechnology company as CEO, creating over \$300M value over 5 years. My company, Ziarco, was acquired by Novartis, then the world's largest pharmaceutical company, in 2017. Over the last decade, I have advised 30 start-up biotechnology companies including one (Apellis Pharmaceuticals) which now has a marketed product and a \$5B market capitalization. Many other venture-financed clients are advancing compounds through the R&D phase.

Previously, I spent 23 years in the pharmaceutical corporate sector, reaching Vice President at Pfizer, where I headed worldwide respiratory research as their Chief Scientific Officer. I led project teams seeking new pharmacological treatments for asthma and COPD. My work while at Pfizer was instrumental in the formation of the Pfizer/Boehringer 'Spiriva Alliance', a product that became the world's leading treatment for chronic obstructive pulmonary disease. I also championed inhalation technologies at Pfizer, from which emerged a commercial inhaler device marketed by Mylan, Inc. A substantial portfolio of experimental medicines flowed from the laboratories I supervised including the candidate later advanced within Ziarco.

I obtained a research-based Ph.D. in respiratory pharmacology and have a 1st class joint honors degree in biochemistry & toxicology, which he finished as leader in my year. I have had Government security clearance and worked placements at top-secret facilities at Porton Down (Chemical Defence Establishment) and Aldermaston (Forensic Science Service HQ).

I have over 40 peer-reviewed journal articles and have presented over 60 times at international research meetings. I have also contributed chapters to textbooks and edited a major textbook on new drugs for asthma.

Immunity after respiratory virus infection is robust and durable.

The human immune system is perhaps the most complex, most incredibly intricate, most powerfully lethal, most exquisitely controlled machinery ever described. It is hard to encapsulate in words quite how stunning are its capabilities.¹ It protects its owner from before birth to the last breath when often it is the fading senescence of that protection that attends death itself.

¹ <https://www.livescience.com/40712-immune-system-surprising-facts.html>

And in between, it must distinguish self from non-self, the latter potentially dangerous intruders, of many very different kinds. These range from sub-microscopic viruses, which hijack our cellular machinery to make copies of themselves; through bacteria, which can be not too different in size from our own cells, components of which it is thought once were ancient bacteria; to fungi, which can be larger than our own cells; to protozoa and even multi-cellular parasites. At all times, the immune system stands ready to mete out extreme violence at a molecular level yet to do so with the precision of a champion boxer, capable of both delicate acts and great power.

A system like this has multiple components, and these can be mysterious to the layperson. It is capable of responding to anything it does not recognize as self without training. We call this the innate immune system and it brings about very rapid responses to defend us.²

Every healthy person has pattern recognition receptors that respond to features common to those invaders. This first-line defense

² <https://jamanetwork.com/journals/jama/fullarticle/2279715>

buys the host time, to counter the invader and limit the damage it can do.

The most astonishing part of the immune defense system, called acquired immunity, takes a little longer to perfectly counter the threat. When we speak of immunity, this is what we mean: acquired immunity. But first to the conclusion: what does it mean to have acquired immunity to some pathogen in our environment? In brief, acquired immunity is generally regarded as both robust and durable.

By **robust**, we mean that an individual with immunity to a particular pathogen, a virus, for example, will **never again be rendered ill by that same pathogen**. Low-level infection is possible, but not clinically important infection or disease. Acquired immunity offers a bonus. If the host encounters a related virus, something only slightly related, our acquired immunity softens the threat that this new attack represents, and this comes about because of the way immunity is acquired (more later).

By **durable**, here is perhaps the most surprising aspect. The general rule of thumb is that **acquired immunity lasts for years and in many cases, for life**, after a single exposure fight and successful fight

with a defined viral pathogen. There are numerous examples of this (chickenpox, measles, mumps, mononucleosis, hepatitis A, hepatitis B, etc.) While there are exceptions outside the respiratory tract, for stable respiratory viruses, this is broadly the expectation. The most remarkable demonstration of this durability comes from a study of elderly individuals who, as children, had been infected by the influenza virus which is thought to have caused the 1918 Spanish Flu pandemic. Blood drawn from such subjects showed unequivocal evidence of maintained immunity to the same subtypes of influenza virus, some 80 and more years later.³

With reference specifically to respiratory viruses, there is much confusion in the lay mind, understandably. We are familiar with getting infections mostly in the upper respiratory tract reasonably often, and we call that constellation of symptoms the common cold. Because we get several common colds in our lives, it is understandable that lay people think we do not acquire immunity to such viruses. However, that is not correct, we do. There are at least 200 and probably many more different

³ <https://www.cidrap.umn.edu/news-perspective/2008/08/researchers-find-long-lived-immunity-1918-pandemic-virus>

viruses are capable of infecting the human respiratory system and causing these common cold symptoms.⁴ With rare exceptions, it is a different virus each time that causes each common cold, because the host is left with robust & durable immunity to each of the common cold viruses they have previously defeated.

Earlier, I mentioned that there are multiple different aspects of the acquired immune system. It **comes as a surprise to almost all lay people that, for respiratory viruses, antibodies are not the most important component!** That title belongs to the cellular immune system, specifically cytotoxic T-lymphocytes, most often referred to as T-cells.⁵ It is very important to appreciate something about respiratory viruses which, when understood, often leads to a quite different understanding of the host immune response.

Respiratory viruses are very small and by design, they make it their business to get inside our host cells, such as those cells lining the respiratory tract, as quickly as possible. They are designed to do this

⁴ <https://www.nih.gov/news-events/nih-research-matters/understanding-common-cold-virus>

⁵ <https://www.bbc.com/future/article/20200716-the-people-with-hidden-protection-from-covid-19>

because viruses are incapable of reproducing themselves. To do that, they enter and take over the manufacturing capabilities of our cells.

In contrast to these tiny viruses, antibodies, which are proteins made by our immune system to bind to and direct attacks upon an invading infectious agent, are very large, are mainly excluded from the inside of our cells. While there are rare exceptions, the vital role antibodies play in host defense takes place outside our cells, in the blood, or in the (extravascular) spaces between our cells. It is obvious that with the virus being inside the cell, and antibodies being outside the cell, circulating antibodies only play an ancillary in respiratory virus host immunity. This cannot be emphasized enough.

The number of antibodies which can be measured in blood test cells is not a reliable measure of the extent to which the patient possesses acquired immunity. However, because it is simple to obtain a blood test and to measure antibodies to a virus in that blood, levels of antibodies have erroneously become regarded as a good test of immunity to a respiratory virus. THIS IS NOT CORRECT.

Consider a common cold virus, or influenza virus, or coronavirus. If made ill by such a virus, a person will develop antibodies to that

pathogen. These antibodies circulate in the blood. Once the respiratory virus infection has been cleared from our tissues, mostly as a result of the action of T-cells,⁶ these antibody levels begin to decline and unless re-infected, eventually those antibodies will fall away to very low, perhaps undetectable levels. This is exactly as expected and is highly desirable. If that did not happen, over the years, our blood would become a mixture of superfluous antibodies!

But our bodies have acquired immune memory in those T-cells. Once their work is done, even most of those begin to fall away but, crucially, some of them are retained for decades, quiescent for life. If the same or a related virus infects us again, it is those memory T-cells that orchestrate a rapid & multifactorial response and successfully defend the host, usually without them ever even being aware of it.

To recap: acquired immunity to stable respiratory viruses is robustly protective against clinical illness, is generally extremely long-lasting, and is mediated by T-cells, not antibodies. It is simply inaccurate to use blood levels of antibodies in any way to determine the

⁶ <https://www.immunology.org/public-information/bitesized-immunology/pathogens-and-disease/immune-responses-viruses>

immune protection possessed by an individual and literally absurd to pretend that, for example, 90 days is an amount of time for which immunity is retained.

Classical Vaccines vs. COVID-19 Vaccines.

Immunity to an infectious agent can often, but not always, be conferred by exposure to a well-designed vaccine. Classical vaccines trace their modern era origins to the work of Edward Jenner, who noticed that milkmaids had smooth skin because unlike most others centuries ago, had never been made ill by smallpox. (*Ibid. 1*) Jenner hypothesized that this was because the milkmaids were uniformly infected by the clinically much milder cowpox, a related but different virus. His famous experiment, where he successfully protected a boy by deliberately infecting him first to cowpox and, weeks later, to smallpox, marked the start of the field of vaccination (from *vacca*, a cow).

Classical vaccines, as in Jenner's experiment, take an infective agent and after basic formulation, inject it into the host. Refinements have included giving the person a killed or weakened form of the pathogen, to avoid producing the disease itself. The essential idea, however, is to present to the human immune system the entire

infectious agent. This is crucial if the breadth of the acquired immunity conferred is to be maximized.

This is very important. Earlier, I mentioned that immunity is acquired in a complex and remarkable manner. Once the host identifies that there is a non-self, foreign invader, so-called ‘professional antigen-presenting cells’ take up some of the virus particles and dismember them within subcellular compartments. This process cuts the virus up into scores of small pieces of various sizes and displays one piece on the surface of the cell. Then there follows what can be described as a molecular identity parade. Each cut-up piece of virus protein is shown to the T-cells (also the B-cells, which manufacture antibodies) of the immune system and a perfect match is almost always found. That this feat is so often successful is the miracle which is the human immune system. Before we were even born, through a molecular shuffling of the genes that encode the antigen-binding site in each of our billions of T- and B-cells, a huge and varied repertoire of cells, capable of recognizing everything to which our bodies will ever be exposed, was formed.

It is to this very large library of T-cells that the cells bearing the cut-up pieces of the invading respiratory virus are shown. The process

takes a few days to complete, but once it is done, a few dozen, perfectly matched T-cells (and B-cells) have been identified and these are instructed to multiply, making many copies of themselves. While this is simplified, it's correct in its fundamentals, in that highly specifically targeted immune cells are now at large in the host and these set about clearing the viral infection, wherever it is.

If this repertoire is formed as a result of natural infection, immunity to every part of the invader is acquired.⁷ **This breadth of immunity which follows natural infection can never be bettered by a vaccine.** At best, it might be matched by a very well-designed vaccine. Not every vaccine even gets close to conferring the full breadth of immune protection obtained by infection. The covid-19 vaccines are case in point. Though all the commercially available vaccines utilise new technology (either DNA with a virus vector, like the AZ and JNJ products) or encapsulated mRNA, like the Moderna and Pfizer/BioNTech products) every one of them encodes ONLY a small portion of the SARS-CoV-2 virus, the so-called spike protein. **This means that they can only bring about an acquired immune response to**

⁷ <https://immunology.sciencemag.org/content/6/58/eabf7550.full>

one small part of the virus which causes covid-19. By contrast, immunological studies of those who have recovered from infection show that T-cell immunity to all components of the virus has been acquired. (*Ibid* 7). That this happens indicates clearly that optimum host protection requires an immune response to all of the virus. It is therefore beyond any question that the extent of the immunity conferred by covid-19 vaccines is limited.

One of the consequences of cutting the virus up into many pieces and then assembling a repertoire of immune cells capable of responding to dozens of such pieces is the adaptability of this acquired immune response. Termed multi-locus immunity, means that if a virus with only partial identity to SARS-CoV-2 was to infect the host, the fact that it was a new virus does not mean that we are susceptible. On the contrary, many of the small pieces into which the virus is cut are identical between different, but related, viruses and as a result, the host is immune to that virus also, notwithstanding that the host had never seen this new virus before. This will not be possible with the covid-19 vaccines we have available.

The most impressive demonstration of this comes in the results of some experiments conducted in 2020 on volunteers who had survived infection by the original SARS virus in 2003. There were two, striking findings: first, all those infected in 2003 had retained vigorous immunity 17 years later. When presented in a lab with pieces of the original SARS virus, blood T-cells from the volunteers demonstrated prompt and profound responses, confirming immune memory was robust & durable. More remarkably, through the process described above, all the volunteers T-cells also showed vigorous immune responses to SARS-CoV-2, a virus to which they'd never been exposed.⁸ The explanation is that these two viruses are approximately 78% identical, and this meant that several of the T-cells which comprised the volunteers' immune repertoire recognise identical pieces of both viruses.

If Natural Immunity is Robust & Durable, Why do we Need Annual Influenza Vaccines?

A frequent question asked is why do we need annual vaccination against influenza if natural infection gives rise to robust and durable immunity? There was a clause in the robust and durable statement, and

⁸ <https://www.nature.com/articles/s41586-020-2550-z>

that is that it applies only to stable respiratory viruses. The majority of viruses that infect the human respiratory tract are stable, in that their genetic sequence is broadly unchanged from year to year. All respiratory viruses do make the occasional ‘typographical error’ when replicating inside our cells, but this is very slight. For example, it may be a surprise to learn, given the huge and wholly inappropriate attention given to ‘variants’ of SARS-CoV-2, that the total drift of the gene sequence of the virus is less than 0.3% in over 18 months (Dr. Sin Lee, personal communication). This classifies as stable in any system. By contrast and it is unique among the respiratory viruses in this regard, influenza viruses can exchange large amounts of genetic information while replicating. This process of ‘recombination’ permits influenza to change almost completely within a single year and thereby to present as a new pathogen annually. Many people have wholly confused genetic variation in influenza viruses, which requires a revised vaccine annually, and the extremely stable genetics of SARS-CoV-2, which most assuredly do NOT require boosters or amended vaccines of any kind.⁹

⁹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8249675/>

CONCLUSION

Naturally acquired immunity to stable respiratory virus infection is to the entire infective agent. This acquired immunity is robust and durable, typically lifelong. By contrast, the immunity conferred by the current covid-19 vaccines is limited only to one small component of the SARS-CoV-2 virus (the spike protein) and is accordingly likely to offer a lesser standard of clinical protection. The fact that the genetically unstable influenza virus does require a revised vaccine annually is an exception to the rule of stable respiratory viruses such as the SARS-CoV-2 virus, and it is perplexing and troubling that we are being given incorrect information on that front.


If an individual is already immune to a particular respiratory virus, it is neither sensible nor safe to vaccinate them. The reasons for this are obvious: the system is now already primed to respond with vigor to the reappearance of that pathogen or related pathogens. Vaccination mimics that reappearance and it is the persistence of the apparent infection that risks triggering a serious, autoimmune type of disorder, which can be serious and even life-threatening. For this

reason, it is simply indefensible to order vaccinations that do not take account of the prior immune status of the individual involved.

It is a falsehood to state or imply that Covid-19 infections are a result of the unvaccinated.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 26, 2021.


Michael Yeadon (Jul 26, 2021 18:41 MDT)
Mike Yeadon, PhD

1 Christina Gilbertson (California Bar No. 236877)
christina@jfnvlaw.com
2 Jennings & Fulton, LTD
3 2580 Sorrel Street
4 Las Vegas, NV 89146
Phone: 702-979-3565

5 Gregory J. Glaser (California Bar No. 226706)
6 greg@gregglaser.com
7 Greg Glaser, Attorney at Law
4399 Buckboard Drive #423
8 Copperopolis, CA 95228
9 Phone: 925-642-6651

10 Joseph S. Gilbert (Nevada Bar No. 9033)
11 joey@joeygilbertlaw.com
12 Joey Gilbert & Associates
405 Marsh Avenue
13 Reno, NV 89509
14 Phone: 775-284-7700
(Subject to pro hac vice admission)

15 Attorneys for Plaintiffs

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 AMERICA'S FRONTLINE
20 DOCTORS, *et al.*,

21 *Plaintiffs,*

22 v.

23 KIM A. WILCOX, in his official
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CALIFORNIA RIVERSIDE, *et al.*,

26 *Defendants.*

**DECLARATION OF EXPERT
PETER A. MCCULLOUGH, MD,
MPH IN SUPPORT OF
PLAINTIFFS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

DECLARATION OF PETER A. MCCULLOUGH, MD, MPH

Pursuant to 28 U.S.C. §1746, I, Peter A. McCullough, MD, MPH, declare under the penalty of perjury of the laws of the United States of America, and state upon personal knowledge that:

I am fully competent to make this declaration and make this statement voluntarily, based on my personal knowledge, education, facts or data, and experience, and under penalty of perjury of the laws of the United States of America

I am competent to testify as a medical expert to the facts and matters set forth herein. The facts and matters set forth herein are the types of facts and matters medical experts rely upon to reach expert conclusions.

Attached to this document as **Exhibit B** and made a part herein by reference, is a Declaration signed by me on July 18, 2021, consisting of 31 pages. A true and accurate copy of my curriculum vitae is also appended to the end of Exhibit B.

The declarations in **Exhibit B** apply to this case entirely. As declared in **Exhibit B**, it is my clinical opinion that it is not good research or clinical practice to widely utilize novel biologic therapy


(mRNA, adenoviral DNA COVID-19 vaccines) in populations where there is no information generated from the registrational trials with the FDA, specifically, children and adolescents, COVID-19 survivors, suspected COVID-recovered, pregnant or women who could become pregnant at any time after investigational vaccines. In my expert medical opinion, the risks associated with the investigational COVID-19 vaccines, especially those more prevalent among children and adolescents far outweighs any theoretical benefits, are not minor or unserious, and many of those risks are unknown or have not been adequately quantified nor has the duration of their consequences been evaluated or is calculable. Therefore, in my expert medical opinion, the Emergency Use Authorization for COVID vaccines for children and adolescents aged 12-15 creates an unethical, unreasonable, clinically unjustified, and unnecessary risk to the children of the United States of America.

Furthermore, I urge the Court to avoid falling prey to the recent and premeditated asymmetric reporting of cases as "unvaccinated" and further claiming Covid-19 is a pandemic of the unvaccinated". For the

truth based on actual data, I refer this Court to my supporting declaration (**Exhibit B**).

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 27, 2021.



Peter A. McCoullough, MD, MPH

1 Christina Gilbertson (California Bar No. 236877)
christina@jfnvlaw.com
2 Jennings & Fulton, LTD
3 2580 Sorrel Street
4 Las Vegas, NV 89146
Phone: 702-979-3565

5 Gregory J. Glaser (California Bar No. 226706)
6 greg@gregglaser.com
7 Greg Glaser, Attorney at Law
4399 Buckboard Drive #423
8 Copperopolis, CA 95228
9 Phone: 925-642-6651

10 Joseph S. Gilbert (Nevada Bar No. 9033)
11 joey@joeygilbertlaw.com
12 Joey Gilbert & Associates
405 Marsh Avenue
13 Reno, NV 89509
14 Phone: 775-284-7700
(Subject to pro hac vice admission)

15 Attorneys for Plaintiffs

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**DECLARATION OF SIMONE
GOLD, MD, JD IN SUPPORT OF
PLAINTIFFS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

DECLARATION OF SIMONE GOLD, MD, JD, FABEM

Pursuant to 28 U.S.C. §1746, I, Simone Gold, MD, JD, FABEM, declare under the penalty of perjury of the laws of the United States of America, and state upon personal knowledge that:

I am Founder of America's Frontline Doctors and am fully competent to make this declaration. I make this statement voluntarily, based on my personal knowledge, education, facts or data, and experience, and under penalty of perjury of the laws of the United States of America.

I have reviewed the Complaint for Declaratory and Injunctive Relief filed in this action.

- a. The references to America's Frontline Doctors are accurate.
- b. The scientific presentation of the complaint is compelling and reasonable. In particular, the section entitled Covid-19 Vaccination Risk and Prescreening is well articulated to emphasize accepted virology and immunology precepts favor the Plaintiffs' position.

- c. Plaintiffs and the UC community are likely to suffer irreparable harm by Defendants' unscientific policies that reject prescreening prior to C19 vaccination.
- d. The public interest favors Plaintiffs' position. Good public health requires respect for natural immunity, especially today with a novel coronavirus, and a new experimental vaccine that is actually gene therapy and is already showing unprecedented high rates of serious injury and death in the short-term. Long-term injury rates are unknown in both the clinical trial data and in the public that is the subject of this ongoing medical experiment upon the American people, including UC students. It is understandable if the Court is unsure about the state of natural immunity science today around Covid-19 vaccination. At a minimum, given the high stakes here for constitutional rights and doctor-patient relationships, I believe it would be prudent for the Court to shift the burden to the Defendants. This would serve the public interest by requiring the State to prove the science with data rather than simply dictate science by conjecture.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 27, 2021.

Simone Gold, MD, JD

Simone Gold, MD, JD (Jul 27, 2021 13:23 CDT)

Simone Gold, MD, JD, FABEM

1 Christina Gilbertson (California Bar No. 236877)
christina@jfnvlaw.com
2 Jennings & Fulton, LTD
3 2580 Sorrel Street
4 Las Vegas, NV 89146
Phone: 702-979-3565

5 Gregory J. Glaser (California Bar No. 226706)
6 greg@gregglaser.com
7 Greg Glaser, Attorney at Law
4399 Buckboard Drive #423
8 Copperopolis, CA 95228
9 Phone: 925-642-6651

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11 joey@joeygilbertlaw.com
12 Joey Gilbert & Associates
405 Marsh Avenue
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**DECLARATION OF EXPERT
RICHARD URSO, MD IN
SUPPORT OF PLAINTIFFS' EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

DECLARATION OF RICHARD URSO, MD

Pursuant to 28 U.S.C. §1746, I, Richard Urso, MD, declare under the penalty of perjury of the laws of the United States of America, and state upon personal knowledge that:

1. I am an adult of sound mind and make this statement voluntarily, based upon my personal knowledge, education, facts or data, and experience, and under penalty of perjury of the laws of the United States of America.

2. I am competent to testify as a medical expert to the facts and matters set forth herein. The facts and matters set forth herein are the types of facts and matters medical experts rely upon to reach expert conclusions. A true and accurate copy of my curriculum vitae is attached hereto as **Exhibit A**.

3. After receiving a bachelor's degree from University of Connecticut, I completed my medical degree at University of Texas Medical School at Houston. I went on to complete my internship at Parkland Memorial Hospital in Dallas, Texas, my residency at University of Texas Southwestern in Dallas, Texas, and a fellowship at University of Texas Medical Branch in Galveston, Texas. I am board

certified by the American Board of Ophthalmology. I currently practice medicine in the State of Texas.

4. I am working on this case Pro Bono.

5. I have treated over 300,000 patients in my career, including over 450 COVID recovered patients. COVID recovered patients are at extremely high risk to a vaccine. They retain an antigenic fingerprint of natural infection in their tissues. They have all the requisite components of immune memory. Vaccination may activate a hyperimmune response leading to a significant tissue injury and possibly death.

6. I have read the Complaint and Motion for Preliminary Injunction in the above captioned matter, specifically the allegations related to the dangers to members of the population who have already had Covid-19. I agree with the allegations contained in the Complaint and Motion for Preliminary Injunction.

I affirm under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 15, 2021.



Richard Urso, MD

1 Christina Gilbertson (California Bar No. 236877)
christina@jfnvlaw.com
2 Jennings & Fulton, LTD
3 2580 Sorrel Street
4 Las Vegas, NV 89146
Phone: 702-979-3565

5 Gregory J. Glaser (California Bar No. 226706)
6 greg@gregglaser.com
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**DECLARATION OF PLAINTIFF
CARLY POWELL IN SUPPORT
OF PLAINTIFFS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

1 I, Carly Powell, hereby declare:

2 1. I am one of the plaintiffs in the above-entitled action. I have
3 personal knowledge of the matters discussed herein, and if called as a witness
4 could and would testify competently thereto.

5 2. I'm a senior at UC Riverside majoring in European History. I live in
6 a campus apartment in Riverside. After graduation, my plan is to continue my
7 education in graduate school.

8 3. I agree with my paragraph in the Complaint:

9 "Plaintiff Carly Powell ("Carly") is enrolled as an undergraduate student at
10 University of California, Riverside campus. She lives in a campus apartment in
11 Riverside. Carly is a Covid-19 Recovered person, having contracted the virus in
12 December 2020. Carly has joined her local chapter of AFLDS as a non-physician
13 Citizen Corps member. UC Riverside's implementation of the UC's Covid-19
14 vaccine mandate has put Carly under duress and impaired her ability to exercise
15 informed consent/refusal of the Covid-19 vaccine with physicians of her choice."

16 4. I've lived in California my whole life. I am 21 years old and
17 consider myself to be in good health.

18 5. UCR just published a Covid-19 vaccine mandate that deviates from
19 their prior interim policy. The new mandate forces students like myself to ignore
20 natural immunity and quickly take an emergency use authorization ("EUA")
21 Covid-19 vaccine, whereas the prior/interim policy specified that vaccination
22 would not be mandated for EUA vaccines. The UC's policy flip flop on the
23 EUA issue came as a surprise to me and other UC students, especially because
24 the enforcement deadline on the new vaccine mandate is immediate.

25 6. I have not provided my informed consent to Covid-19 vaccination. I
26 am a plaintiff in this case because I want the right to work with my physicians of
27 choice to assess my natural immunity beyond the UC's arbitrary 90-day rule.
28 This is covered in the Complaint in this case.

1 Christina Gilbertson (California Bar No. 236877)
christina@jfnvlaw.com
2 Jennings & Fulton, LTD
3 2580 Sorrel Street
4 Las Vegas, NV 89146
Phone: 702-979-3565

5 Gregory J. Glaser (California Bar No. 226706)
6 greg@gregglaser.com
7 Greg Glaser, Attorney at Law
4399 Buckboard Drive #423
8 Copperopolis, CA 95228
9 Phone: 925-642-6651

10 Joseph S. Gilbert (Nevada Bar No. 9033)
11 joey@joeygilbertlaw.com
12 Joey Gilbert & Associates
405 Marsh Avenue
13 Reno, NV 89509
14 Phone: 775-284-7700
(Subject to pro hac vice admission)

15 Attorneys for Plaintiffs

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 AMERICA'S FRONTLINE
20 DOCTORS, *et al.*,

21 *Plaintiffs,*

22 v.

23 KIM A. WILCOX, in his official
24 capacity as CHANCELLOR OF
25 THE UNIVERSITY OF
CALIFORNIA RIVERSIDE, *et al.*,

26 *Defendants.*

**DECLARATION OF PLAINTIFF
DEBORAH CHOI IN SUPPORT
OF PLAINTIFFS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE WHY A PRELIMINARY
INJUNCTION SHOULD NOT
ISSUE**

1 I, Deborah Choi, hereby declare:

- 2 1. I am one of the plaintiffs in the above-entitled action. I have personal
3 knowledge of the matters discussed herein, and if called as a witness could
4 and would testify competently thereto.
- 5 2. I am a second-year law student with UC Irvine and am also employed by
6 the school as a research assistant. I receive an annual scholarship from the
7 UC Irvine School of Law. I am a resident of Irvine, California.
- 8 3. I was surprised to hear of the UC's July 15 mandate requiring all students
9 to receive the Covid-19 vaccine earlier than the UC's had originally
10 announced (according to the interim policy from April that suggested EUA
11 vaccines were not going to be mandated). While the UC mandate has
12 many issues, the main practical one for me personally is that the UC
13 mandate does not respect my right to work with my doctor to assess my
14 natural immunity to Covid-19 beyond 90 days. I am young and healthy.
15 The UC's outright rejection of natural immunity is currently interfering
16 with my doctor-patient relationship, my ability to exercise informed
17 consent/refusal, and my status and livelihood as a student.
- 18 4. The enforcement deadline of the new vaccine mandate is immediate for
19 me, August 3, 2021.
- 20 5. I agree with the statements made about me in the Complaint:

21 Deborah is a Covid-19 Recovered person, having contracted the virus
22 in November 2020. Deborah has joined her local chapter of AFLDS
23 as a non-physician Citizen Corps member. UC Irvine's
24 implementation of the UC's Covid-19 vaccine mandate has put
25 Deborah under duress and impaired her ability to exercise informed
26 consent/refusal of the Covid-19 vaccine with physicians of her
27 choice.

28

1 6. This vaccine mandate is a direct threat to my academic status and future
2 legal career, as it forces me to decide between not attending classes this
3 fall and giving up my constitutional right to make medical decisions about
4 my own body. This mandate also puts me under duress by requiring an
5 immediate decision within the next week. It presents me with an
6 ultimatum between accepting this novel genetic medical intervention (the
7 Covid-19 vaccine) and standing to lose everything I have worked for at
8 UCI--my scholarship, my connections to the UCI community, mentorship
9 relationships with professors, leadership opportunities this fall, financial
10 stability, and even my very academic enrollment.

11 7. I genuinely want to do the right thing for my body and my community in
12 light of these complex and difficult circumstances, but this UC vaccine
13 mandate seeks unilateral compliance under duress and does not respect my
14 constitutional right to make an informed decision. This mandate, if
15 enforced, will have a highly negative impact on physical, academic,
16 emotional, and social aspects of my life.

17 8. I ask the Court to please enjoin this unconstitutional mandate, which seeks
18 to force a controversial and inadequately tested medical treatment upon
19 tens of thousands of young students, depriving them of their constitutional
20 right to make informed medical decisions.

21 I declare under threat of penalty of perjury under the laws of the United States of
22 America that the foregoing is true and correct, and that this declaration was
23 executed on the date and location set forth below.

24  7/25/2021

25 _____
26 Deborah Choi Date
27 Irvine, California

28

1 Christina Gilbertson (California Bar No. 236877)
2 christina@jfnvlaw.com
3 Jennings & Fulton, LTD
4 2580 Sorrel Street
5 Las Vegas, NV 89146
6 Phone: 702-979-3565

6 Gregory J. Glaser (California Bar No. 226706)
7 greg@gregglaser.com
8 Greg Glaser, Attorney at Law
9 4399 Buckboard Drive #423
10 Copperopolis, CA 95228
11 Phone: 925-642-6651

11 Joseph S. Gilbert (Nevada Bar No. 9033)
12 joey@joeygilbertlaw.com
13 Joey Gilbert & Associates
14 405 Marsh Avenue
15 Reno, NV 89509
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17 (Subject to pro hac vice admission)

18 Attorneys for Plaintiffs

19 **UNITED STATES DISTRICT COURT**
20 **FOR THE CENTRAL DISTRICT CALIFORNIA**

21 AMERICA'S FRONTLINE
22 DOCTORS; Carly Powell; and
23 Deborah Choi,

24 *Plaintiffs,*

25 v.

26
27 KIM A. WILCOX, in his official
28 capacity as CHANCELLOR OF
THE UNIVERSITY OF

**Complaint for Declaratory and
Injunctive Relief**

1 CALIFORNIA RIVERSIDE;
2 HOWARD GILLMAN, in his
3 official capacity as
4 CHANCELLOR OF THE
5 UNIVERSITY OF CALIFORNIA
6 IRVINE; THE REGENTS OF
7 THE UNIVERSITY OF
8 CALIFORNIA, a Corporation;
9 MICHAEL V. DRAKE, in his
10 official capacity as President of the
11 UNIVERSITY OF CALIFORNIA;
12 and John and Jane Does 1-100,

Defendants.

Federal Jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, and 1343(a).

INTRODUCTION

14 Plaintiffs are students enrolled with the University of California (“UC”),
15 which recently mandated Covid-19 vaccination upon them (even though
16 Plaintiffs have already recovered swiftly from Covid-19 with natural immunity),
17 and upon all other students attending UC this Autumn. Plaintiffs continue to
18 have robust natural immunity superior to the vaccine-induced immunological
19 response now mandated by State Defendants.

20 Plaintiffs, and others similarly situated, can work with their healthcare
21 providers to prove their natural immunity through accepted clinical definition
22 and laboratory testing where indicated (“Prescreening”), including, but not
23 limited to, patient history, or a T-cell test.

24 Covid-19 vaccination is classified as genetic medical intervention.¹ It

25 _____
26 ¹ For clarity of reference, Plaintiffs are using the names given to the medical
27 products by their manufacturers and Defendants. However, Plaintiffs reject the
28 highly misleading use of the term "vaccine" to describe these medical products,
since they are not vaccines within the settled meaning of the term and, instead,
are more precisely described as a form of experimental genetic manipulation.

1 carries both known and unknown risk of harm to Plaintiffs and others, such as
2 serious illness and death.

3 Plaintiffs seek the issuance of an order to show cause, shifting the burden
4 to Defendants to prove that Defendants' decision to reject scientifically accepted
5 Prescreening methods meets a compelling State interest, and that such decision
6 to reject accepted Prescreening science is narrowly tailored to avoid unnecessary
7 infringement upon Plaintiffs' Constitutional rights.

8 Plaintiffs further seek declaratory relief that Defendants' unscientific
9 decision to reject Prescreening science, in order to unscientifically propagate
10 Defendants' one-size-fits-all vaccine mandate, imminently threatens the lives of
11 Plaintiffs, and others, and unlawfully segregates them based on their Covid-19
12 Recovered medical condition and natural mRNA genetic status, which is an
13 unlawful infringement by Defendants upon Plaintiffs' constitutional rights that
14 places Plaintiffs' lives and public health in jeopardy.

15 Plaintiffs seek an injunction to restrain Defendants' from utilizing the
16 discredited tools of coercion and segregation of natural peoples in violation of
17 Federal and State law, including, but not limited to, Defendants' unscientific
18 one-size-fits-all vaccine mandate where Defendants reject scientifically accepted
19 Prescreening methods, and, therefore, place Plaintiffs' lives and public health in
20 jeopardy.

21 **JURISDICTION AND VENUE**

22 **1.** This action asserts federal claims pursuant to 42 U.S.C. § 1983. This
23 Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1337, and
24 1343(a). The Court has additional remedial authority under 28 U.S.C. §§ 2201(a)
25 and 2202.

26 **2.** Venue of this civil action in the Judicial District for the Central
27 District of California is proper pursuant to 28 U.S.C. § 1391 (b) (1) and (2).
28 Plaintiffs reside and attend higher education with the UC in this District.

1 Defendants maintain offices, exercise their authority in their official capacities,
2 and have taken the actions at issue in this matter in the Judicial District for the
3 Central District of California.

4 **3.** This Court has jurisdiction over the claims asserting violations of
5 the laws and Constitution of the State of California through its supplemental
6 jurisdiction under 28 U.S.C. section 1367(a), as those claims are so closely
7 related to the Plaintiffs’ federal question and Section 1983 claims that they form
8 part of the same case or controversy under Article III of the United States
9 Constitution.

10 **PARTIES**

11 **4.** Plaintiff AMERICA’S FRONTLINE DOCTORS (“AFLDS”) is a
12 non-partisan, not-for-profit organization of hundreds of member physicians that
13 come from across the country (including California), representing a range of
14 medical disciplines and practical experience on the front lines of medicine.
15 AFLDS’ programs focus on a number of critical issues including:

- 16 • Providing Americans with science-based facts about COVID-19;
- 17 • Protecting physician independence from government overreach;
- 18 • Combating the “pandemic” using evidence-based approaches
19 without compromising Constitutional freedoms;
- 20 • Fighting medical cancel culture and media censorship;
- 21 • Advancing healthcare policies that protect the physician-patient
22 relationship;
- 23 • Expanding COVID-19 treatment options for all Americans who
24 need them; and
- 25 • Strengthening the voices of front-line doctors in the national
26 healthcare conversation.

27 **5.** AFLDS’ core beliefs, shared by each of its member health care
28 professionals, include the following:

- 1 • That the American people have the right to accurate information
- 2 using trusted data derived from decades of practical experience, not
- 3 politicized science and Big Tech-filtered public health information.
- 4 • That critical public health decision-making should take place away
- 5 from Washington and closer to local communities and the
- 6 physicians that serve them. They are steadfastly committed to
- 7 protecting the physician-patient relationship.
- 8 • That front-line and actively practicing physicians should be
- 9 incorporated into the nation’s healthcare policy conversation.
- 10 • That safe and effective, over-the-counter COVID preventative and
- 11 early treatment options should be made available to all Americans
- 12 who need them. They reject mandatory government lockdowns and
- 13 restrictions not supported by scientific evidence. They support
- 14 focused care for the nation’s at-risk population, including seniors
- 15 and the immune-compromised.

16 **6.** AFLDS, through its member physicians, is deeply committed to

17 maintaining the physician-patient relationship in the face of government

18 encroachment. AFLDS member physicians provide care to UC students

19 (including for example in Riverside County) directly impacted by the UC’s

20 Covid-19 vaccine mandate, which is impairing physician-patient relationships,

21 and the ability of the patients to exercise informed consent/refusal without duress

22 caused by the UC.

23 **7.** Each of AFLDS’ member physicians is also deeply committed to

24 the guiding principle of medicine, “FIRST, DO NO HARM”. They take gravely

25 their ethical obligations to their patients. It is axiomatic that a physician’s duty is

26 to his or her patient.

27 **8.** AFLDS has recommended that the experimental Covid-19 vaccines

28 be prohibited for use in the under-20 age category, and strongly discouraged for

1 use in the healthy population above the age of 20 through the age of 69. These
2 recommendations have sound and broadly scientific foundations upon which
3 they are based.

4 **9.** AFLDS holds sacrosanct the relationship between doctor and patient
5 where truly informed decisions are to be made, taking into consideration all of
6 the factors relating to the patients' health, risks, co-morbidities and
7 circumstances.

8 **10.** It is critical to point out that for AFLDS member physicians, the
9 practice of medicine is not simply a job. Neither is it merely a career. Rather, it is
10 a sacred trust. It is a true high calling that often requires a decade or more of
11 highly focused sacrificial dedication to achieve.

12 **11.** The types of harm the AFLDS member physicians are inevitably
13 subjected to by the UC's mandate to inject young people with the experimental
14 COVID-19 vaccine is truly irreparable. Such harm strikes at the moral and
15 ethical underpinnings of their calling as a physician and drives irreparable
16 wedges into the sacred doctor-patient relationship that cannot be healed and
17 certainly cannot be addressed with monetary damages.

18 **12.** Plaintiff Carly Powell ("Carly") is enrolled as an undergraduate
19 student at University of California, Riverside campus. She lives in a campus
20 apartment in Riverside. Carly is a Covid-19 Recovered person, having contracted
21 the virus in December 2020. Carly has joined her local chapter of AFLDS as a
22 non-physician Citizen Corps member. UC Riverside's implementation of the
23 UC's Covid-19 vaccine mandate has put Carly under duress and impaired her
24 ability to exercise informed consent/refusal of the Covid-19 vaccine with
25 physicians of her choice.

26 **13.** Plaintiff Deborah Choi ("Deborah") is enrolled as a law student at
27 University of California, Irvine campus. Deborah resides in Irvine, California,
28 which is located in Orange County. Deborah is a Covid-19 Recovered person,

1 having contracted the virus in November 2020. Deborah has joined her local
2 chapter of AFLDS as a non-physician Citizen Corps member. UC Irvine’s
3 implementation of the UC’s Covid-19 vaccine mandate has put Deborah under
4 duress and impaired her ability to exercise informed consent/refusal of the
5 Covid-19 vaccine with physicians of her choice.

6 **14.** Plaintiffs plead for relief, to be freed from Defendants’ tactics of
7 coercion and discrimination amounting to duress as a consequence of their
8 choice *not* to submit to the myriad risks of Covid-19 vaccine injury that
9 Defendants are unable to quantify.

10 **15.** Defendant Kim A. Wilcox (“Wilcox”) is the Chancellor of
11 University of California Riverside campus. Wilcox implements the Covid-19
12 vaccine mandate of the UC at the Riverside campus, including also Wilcox’s
13 approved coercion policies that he targets to the UC Riverside community. He is
14 being sued in his official capacity.

15 **16.** Defendant Howard Gillman (“Gillman”) is the Chancellor of
16 University of California Irvine campus. Gillman implements the Covid-19
17 vaccine mandate of the UC at the Irvine campus, including also Gillman’s
18 approved coercion policies that he targets to the UC Irvine community. He is
19 being sued in his official capacity.

20 **17.** Defendant The Regents of the University of California (“UC”) is a
21 public legal entity, operating as a public university system in California with 10
22 campuses and more than 280,000 students. UC is a state-created, state-financed,
23 and state-run public trust education system, and, as such, it is subject to the
24 Fourteenth Amendment of the United States Constitution and Article IX, Section
25 9 of the California Constitution.

26 **18.** Defendant Michael V. Drake (“Drake”) is the President of the
27 University of California. He is being sued in his official capacity.

28 **19.** Defendants John and Jane Does 1-100 are, as yet, unknown persons.

DEFENDANTS HARM PLAINTIFFS

1
2 **20.** Defendants' vaccination mandates, as referenced herein, constitutes
3 state action taken under color of law. Defendants' inability to quantify the
4 myriad risks of Covid-19 vaccine injury is not evidence of safety, but, rather, is
5 evidence of human medical experiment.

6 **21.** Plaintiffs have experienced concrete and particularized injuries-in-
7 fact that are both actual and imminent, including, but not limited to the
8 following: (a) Defendants are unconstitutionally coercing and segregating
9 Plaintiffs without scientific justification because Plaintiffs are exercising their
10 Constitutional, and federal and state statutory, rights to decline involuntary
11 injection of harmful experimental drugs; (b) Defendants are engaged in
12 unmitigated coercion to subvert Plaintiffs' absolute right to refuse to serve as
13 subjects to unnecessary medical experiments which are known to be dangerous,
14 and even life-threatening, and to be free of discrimination for exercising this
15 right; and (c) Plaintiffs experience certain and palpable threat of mandatory
16 vaccination as Defendants push unscientific fear (rather than mathematical and
17 clinical facts) upon Plaintiffs, and upon the public at large.

18 **22.** Defendants' unscientific discrimination against unvaccinated Covid-
19 19 recovered students with superior immunity foreseeably places such students,
20 including Plaintiffs, under duress with respect to their exercise of informed
21 consent/refusal of Covid-19 vaccination. Among the duress techniques utilized
22 by Defendants are the following examples, which techniques are a pattern and
23 practice that Defendants tweak rapidly and dictate forcefully:

- 24 • Dictating that Covid-19 vaccinated students may breathe freely, but
25 unvaccinated Covid-19 recovered students with superior immunity can
26 only breathe as the UC and Chancellor authorize.
- 27 • Dictating that Covid-19 vaccinated students are presumed healthy, but
28 unvaccinated Covid-19 recovered students with superior immunity must

1 submit to PCR genetic testing (performed by forceful penetration of the
2 student's nasal cavity creating risk of serious harm) and miscellaneous
3 health examinations intruding student medical privacy.

- 4 • Dictating that Covid-19 vaccinated students may physically access classes
5 on campus, but unvaccinated Covid-19 recovered students with superior
6 immunity are denied access to the education (and the rights and services
7 that come with it, including healthcare) for which they have prepaid and
8 invested their livelihoods.
- 9 • Dictating Covid-19 vaccinated students may congregate normally, but
10 unvaccinated Covid-19 recovered students with superior immunity must
11 maintain 6-foot distancing from others, and be subjected to various
12 physical barriers.
- 13 • Distributing gifts, prizes, and incentives to Covid-19 vaccinated persons,
14 but isolating unvaccinated Covid-19 recovered students with superior
15 immunity.

16 All of the above techniques create an educational environment that is
17 separate, unequal, and discriminatory based on medical condition and genetic
18 status.

19 **23.** The unscientific rapid tweaking of Defendants' vaccine mandates
20 also causes direct and unnecessary disruption of Plaintiffs' doctor-patient
21 relationships, bodily integrity, education, and livelihood.

22 **COVID-19 VACCINATION RISK AND PRESCREENING**

23 **24.** The typical timeline of so-called 'successful' vaccine trials is 10-15
24 years, and most fail, such as an AIDS vaccine that unsuccessfully took about 35
25 years.² That is not all 'red tape'; rather, there are sequential steps that are
26 performed, including, for example, long term animal testing, fertility testing,
27 teratogenicity testing, and monitoring post-release. The first three datapoints

28 ² <https://www.niaid.nih.gov/diseases-conditions/hiv-vaccine-research-history>

1 (listed immediately above) are not even known yet for the new vaccines, but the
2 post-release monitoring in the CDC database, the Vaccine Adverse Event
3 Reporting System (“VAERS”) already shows an exponential increase in vaccine-
4 related deaths over the previous year.³ Plaintiffs highlight this to emphasize that,
5 in the strict scrutiny balancing test, the burden of proof must belong on the party
6 calling for the medical intervention, or the deviation from the normal process,
7 and all the more so if the medical intervention is brand new and still in medical
8 trials (such as the 3 main Covid vaccines are).

9 **25.** Those individuals who have had, and, knowingly or unknowingly,
10 recovered from the SARS-CoV-2 virus, or those individuals who currently have
11 the virus, are herein collectively referred to as the “Covid-19 Recovered”. The
12 medical trials for the Pfizer⁴, Moderna⁵, and Johnson & Johnson⁶ Covid-19
13 vaccines excluded the Covid-19 Recovered and many top publishing physicians⁷

14 ³ <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/vaers.html>

15 ⁴ <https://www.fda.gov/media/144412/download>

16 <https://www.fda.gov/media/144246/download>

17 <https://www.fda.gov/media/144245/download>

18 <https://www.fda.gov/media/144245/download>

19 <https://www.fda.gov/media/144413/download>

20 <https://www.fda.gov/media/148542/download>

21 https://cdn.pfizer.com/pfizercom/2020-11/C4591001_Clinical_Protocol_Nov2020.pdf

22 ⁵ <https://www.fda.gov/media/144434/download>

23 <https://www.fda.gov/media/144452/download>

24 <https://www.cdc.gov/vaccines/acip/recs/grade/covid-19-moderna-vaccine.html>

25 https://www.modernatx.com/sites/default/files/content_documents/Final%20mRNA-1273-P301%20Protocol%20Amendment%206%20-%2023Dec2020.pdf

26 ⁶ <https://www.fda.gov/media/146217/download>

27 <https://www.fda.gov/media/146338/download>

28 <https://www.fda.gov/media/146303/download>

<https://www.fda.gov/media/146219/download>

⁷ <https://pubmed.ncbi.nlm.nih.gov/?term=Hooman+Noorchashm>

<https://pubmed.ncbi.nlm.nih.gov/?term=+McCullough+PA>

https://www.icandecide.org/wp-content/uploads/2021/06/Letter-to-CDC-recovered-superior-to-vaccinated_2021_05_28.pdf

1 are proactively Prescreening patients to protect them if they are Covid 19
2 Recovered. See, e.g., from Pfizer trial:

3 “5.2. Exclusion Criteria Participants are excluded from
4 the study if any of the following criteria apply: ...
5 Previous clinical (based on COVID-19 symptoms/signs
6 alone, if a SARS-CoV-2 NAAT result was not available)
7 or microbiological (based on COVID-19 symptoms/signs
8 and a positive SARS-CoV-2 NAAT result) diagnosis of
9 COVID-19.”

10 **26.** Emphasizing the importance of shifting the proof of safety burden to
11 the State, emerging data establishes that vaccinating the Covid-19 Recovered
12 causes an immediately higher death rate worldwide for no benefit⁸, as there is a
13 much stronger (10-20x)⁹ antibody response to the Covid-19 vaccine,
14 overwhelming the immune system, if a person has previously had the virus.
15 Scientists and clinicians observing patients in real time are reporting the same
16 phenomenon all over the world, as this representative example highlights:
17 “People with prior COVID-19 illness appear to experience significantly
18 increased incidence and severity of side effects after receiving the COVID-19
19 vaccine”¹⁰ Some of these increased side effects include: blood clots,
20 hemorrhage, thrombocytopenia, heart attack, and strokes; reproductive issues,
21 including menstrual irregularities, reduced fertility, miscarriages; transmission of
22 spike protein from vaccinated individuals, such as through breast milk and
23 associated risk in neonates and infants; neurological disorders, including
24 Guillain-Barré syndrome, Bell’s Palsy, transverse myelitis and unspecified

25 _____
26 ⁸ <https://ourworldindata.org/explorers/coronavirus-data-explorer>

<https://authorea.com/doi/full/10.22541/au.162136772.22862058>

27 <https://www.medrxiv.org/content/10.1101/2021.04.20.21255670v1>

28 ⁹ <https://www.medrxiv.org/content/10.1101/2021.04.15.21252192v1>

¹⁰ <https://www.medrxiv.org/content/10.1101/2021.02.26.21252096v1>

1 neurologic damage.

2 **27.** Despite the foregoing, Defendants issued an unscientific statewide
3 UC mandate of Covid-19 vaccination without any accommodation for
4 Prescreening. Defendants’ dogmatic reliance upon ‘CDC recommendations’ is
5 not based on real time data, or on actual numbers. This explains why scientists
6 and clinicians monitoring patients in real time are achieving superior health
7 outcomes than CDC recommendations, utilizing therapeutic protocols (such as
8 Ivermectin), and emphasizing the robustness of natural immunity. An example of
9 this came recently from Dr. Marty Makary, a professor at the Bloomberg School
10 of Public Health, who stated publicly that because “half the country” likely
11 already have natural lifelong immunity to Covid-19, “I never thought I’d say
12 this, but please ignore the CDC guidance.”¹¹

13 **28.** Whilst Defendants behave unscientifically (pretending that ‘science
14 is settled’ because the CDC ‘always knows best’), real scientists in this country,
15 as well as in other countries, are achieving consistently superior health outcomes
16 for patients by doing the opposite of the one-size-fits-all approach mandated by
17 Defendants. Indeed, Defendants’ position is novel and radical. Scientifically
18 accepted virology and immunology precepts¹² hold that immunity from natural
19 infection is the best, most robust, and longest lasting way to deal with epidemics
20 such as Covid 19. **Defendants’ statements to the contrary are categorically**
21 **false**, and courts must not defer to false statements simply because some
22 government scientists argue for them, but, rather, courts must apply strict
23 scrutiny. See e.g., *Roman Catholic Diocese v. Cuomo*, No. 20A87, 2020 U.S.

24 ¹¹ [https://www.theblaze.com/news/johns-hopkins-professor-ignore-cdc-natural-](https://www.theblaze.com/news/johns-hopkins-professor-ignore-cdc-natural-immunity-works)
25 [immunity-works](https://www.theblaze.com/news/johns-hopkins-professor-ignore-cdc-natural-immunity-works) (Dr. Makary emphasized “Natural immunity works... We’ve
26 got to start respecting individuals who choose not to get the vaccine, instead of
27 demonizing them. There is more data on natural immunity than there is on
28 vaccinated immunity, because natural immunity has been around longer.”)

¹² [https://www.wiley.com/en-](https://www.wiley.com/en-us/Roitt%27s+Essential+Immunology%2C+13th+Edition-p-9781118415771)
[us/Roitt%27s+Essential+Immunology%2C+13th+Edition-p-9781118415771](https://www.wiley.com/en-us/Roitt%27s+Essential+Immunology%2C+13th+Edition-p-9781118415771)

1 LEXIS 5708, at *16 (Nov. 25, 2020) (Justice Gorsuch concurring, “Why have
2 some mistaken this Court’s modest decision in *Jacobson* for a towering authority
3 that overshadows the Constitution during a pandemic? In the end, I can only
4 surmise that much of the answer lies in a particular judicial impulse to stay out of
5 the way in times of crisis. But if that impulse may be understandable or even
6 admirable in other circumstances, we may not shelter in place when the
7 Constitution is under attack. Things never go well when we do.”) Plaintiffs’
8 constitutional rights are not subject to the luxury and disposal of the gaggle of
9 government scientists who have proven unable to actually follow the scientific
10 method requiring genuine study of unvaccinated control groups.

11 **29.** Early evidence supports that natural immunity with SARS-CoV-2 in
12 the unvaccinated will be lifelong. In still more emerging data, The Cleveland
13 Clinic found the following: “Individuals who have had SARS-CoV-2 infection
14 are unlikely to benefit from COVID-19 vaccination.”¹³ And no evidence about
15 SARS-CoV-2 exists that suggests a deviation from the accepted science of
16 natural immunity, let alone a radical departure from same. Natural immunity is
17 routinely demonstrated by antibody testing as well as humoral immunity (i.e., T-
18 cell, plasma). Evidence includes prior infection¹⁴ with SARS-CoV-1¹⁵
19 (approximately 18 years ago¹⁶), which is approximately 78% identical to SARS-
20 Cov-2, whereby natural immunity is still robust against current SARS-CoV-2.
21 There is **NO** evidence to support the argument that the Covid-19 Recovered lose
22 their immunity. In fact, there is evidence of the opposite. Lifetime immunity¹⁷ is
23 anticipated. In a top scientific journal, the Lancet, we read about the well-

24
25 ¹³ <https://www.medrxiv.org/content/10.1101/2021.06.01.21258176v3>

26 ¹⁴ <https://www.bmj.com/content/370/bmj.m3563>

27 ¹⁵ <https://pubmed.ncbi.nlm.nih.gov/32668444/>

28 ¹⁶ <https://newsroom.uw.edu/news/antibody-neutralizes-sars-and-covid-19-coronaviruses>

¹⁷ <https://www.nature.com/articles/d41586-021-01442-9>

1 powered SIREN study: “The findings of the authors suggest that infection and
2 the development of an antibody response provides protection similar to or even
3 better than currently used SARS-CoV-2 vaccines. ... The SIREN study adds to a
4 growing number of studies which demonstrate that infection does protect against
5 reinfection.”¹⁸ Defendants can cite to no statistically significant evidence that
6 Covid-19 Recovered persons are at any risk whatsoever of reinfection or
7 transmission, let alone greater risk than Covid-19 vaccinated persons.

8 **30.** Public health has always acknowledged this basic fact of
9 immunology¹⁹ - that immunity from natural infection is the best, most robust, and
10 longest lasting - by screening for prior immunity, the Covid 19 Recovered will
11 be protected from the medical harm caused by unnecessary vaccinations.
12 Examples of this include measles, mumps, rubella, hepatitis B, hepatitis A,
13 chickenpox, and others. If a prior immunity exists, then no shot is indicated,
14 because risk without reward is not good medicine. Medical practice in general
15 prescreens to determine risk versus reward. Medicine does not (or should not)
16 push one-size-fits-all with drugs, such that any attempt to force one-size-fits-all
17 vaccination upon Plaintiffs does not satisfy logic, proper medical procedures, or
18 constitutional strict scrutiny.

19 **31.** Once natural immunity is present, artificial immunity (vaccination)
20 is not indicated because it poses risk to vaccinate the immune. Besides being
21 unduly taxing on the body, there is the potential to dangerously induce Antibody
22 Dependent Enhancement (ADE).²⁰ Defendants’ one-size-fits-all vaccine mandate
23 completely ignores this accepted science that protects Plaintiffs.²¹

24 ¹⁸ [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00782-
25 0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00782-0/fulltext)

26 ¹⁹ [https://www.wiley.com/en-
27 us/Roitt%27s+Essential+Immunology%2C+13th+Edition-p-9781118415771](https://www.wiley.com/en-us/Roitt%27s+Essential+Immunology%2C+13th+Edition-p-9781118415771)

28 ²⁰ <https://pubmed.ncbi.nlm.nih.gov/7811870/>

²¹ For example, antibodies to a specific portion of a pathogenic complex can be enhanced and activated when exposed in high concentration in the future. This

1 **32.** Because vaccinating the immune is well known to be both
2 unnecessary and potentially dangerous, public health vaccination programs have
3 always included a standardized prescreening process. This same process should
4 be all the more indicated with the new Covid-19 vaccines, which have, in
5 addition to the above general risks, definite and specific heightened risk,
6 including death, as stated above for Recovered Covid 19 individuals.

7 **33.** Prescreening must be instituted at once. Because there is evidence
8 of severe higher risk, and because Covid-19 vaccination is a new agent,
9 prescreening must be as robust as possible, including ruling out: current
10 infection, recent past infection (i.e., antibody testing), and older past infection
11 (i.e., T-detect, humoral immunity). This is accomplished by doctors in all the
12 traditional ways, such as taking a thorough patient history, and blood testing
13 where indicated. The Journal Nature²² states: “A detrimental effect linked to pre-
14 existing immunity is eminently testable and would be revealed by the same
15 COVID-19 cohort and vaccine studies proposed above.”

16 **UC RIVERSIDE COVID-19 VACCINE MANDATE**

17 **34.** Defendant Wilcox regularly publishes the Covid-19 vaccine policies
18 that he enforces at UC Riverside. See e.g.,
19 [https://insideucr.ucr.edu/announcements/2021/06/23/campus-and-workplace-](https://insideucr.ucr.edu/announcements/2021/06/23/campus-and-workplace-covid-update)
20 [covid-update](https://insideucr.ucr.edu/announcements/2021/06/23/campus-and-workplace-covid-update) and [https://news.ucr.edu/articles/2021/07/20/deadline-provide-](https://news.ucr.edu/articles/2021/07/20/deadline-provide-vaccination-proof-aug-16)
21 [vaccination-proof-aug-16](https://news.ucr.edu/articles/2021/07/20/deadline-provide-vaccination-proof-aug-16) (“Deadline to provide vaccination proof is Aug. 16”).
22 Such policies and their enforcement constitute a pattern and practice of UC
23 Riverside discriminating against unvaccinated persons who are Covid-19

24 phenomenon is common in such infections as Dengue, HIV, SARS, and Ebola.
25 In the case of human coronaviruses, the worst-case scenario, immunologically,
26 would be when cross-reactive memory antibodies to related coronaviruses would
27 not only be non-protective but would worsen the infection and the clinical
28 course. Such a phenomenon of antibody dependent enhancement (ADE) has
already been described in several viral infections.

²² <https://www.nature.com/articles/s41577-020-0389-z>

1 recovered compared to persons who are Covid-19 vaccinated.

2 UC IRVINE COVID-19 VACCINE MANDATE

3 35. Defendant Gillman regularly publishes the Covid-19 vaccine
4 policies that he enforces at UC Irvine. See e.g.,
5 <https://uci.edu/coronavirus/testing-response/covid-19-vaccine.php> and
6 <https://uci.edu/coronavirus/messages/210716-uc-covid19-vaccine-policy.php>
7 (“For UCI, the compliance dates are...School of Law - Aug. 3...Main campus -
8 Sept. 6”). Such policies and their enforcement constitute a pattern and practice of
9 UC Irvine discriminating against unvaccinated persons who are Covid-19
10 recovered compared to persons who are Covid-19 vaccinated.

11 UC STATEWIDE POLICY

12 36. On or about July 15, 2021, Defendants UC and Drake published a
13 policy (republished by the other Defendants) to mandate Covid-19 vaccination
14 for all UC students, as follows:

15 “The deadline for initial implementation of the Program, which
16 is two (2) weeks before the first day of instruction at any
17 University campus or school for the Fall 2021.

18 ...

19 “**Exception:** An approved exception to COVID-19 vaccination
20 based on a Medical Exemption, Disability, or Religious
21 Objection.

22 ...

23 “**Non-Pharmaceutical Intervention (NPI):** An action, other
24 than getting vaccinated or taking medicine, that members of the
25 University community can take to help prevent or slow the
26 spread of COVID-19 and other contagious illnesses. NPIs
27 include, for example, staying home, especially when a person is
28 sick or when a member of the person’s family or household is

1 sick; quarantining when an unvaccinated person has been
2 exposed to someone else with the illness; avoiding large
3 gatherings; physical/social distancing; wearing personal
4 protective equipment or face coverings; frequent handwashing
5 and cleaning; and asymptomatic (surveillance) and
6 symptomatic testing.

7 ...

8 “As a condition of Physical Presence at a Location or in a
9 University Program, all Covered Individuals must Participate in
10 the COVID-19 Vaccination Program by providing proof of Full
11 Vaccination or submitting a request for Exception or Deferral
12 no later than the Implementation Date. This requirement will be
13 subject to implementation guidelines and any local procedures
14 for enforcement. Alternative remote instructional programming
15 is not expected to be available in most cases and the availability
16 of alternative remote work arrangements will depend on
17 systemwide guidance and any local policies or procedures, as
18 well as the nature of the work to be performed.

19 ...

20 “Students who fail to provide proof of vaccination or apply for
21 an Exception or Deferral by the Implementation Date may,
22 therefore, be subject to a registration hold.

23 ...

24 “Each campus is responsible for: (i) assuring any necessary
25 updates are made to its local Infectious Diseases/Infection
26 Prevention and Control Programs; (ii) establishing deadlines for
27 COVID-19 Vaccination Program Participation on an annual or
28 ongoing basis, in consultation with epidemiology and infection

1 prevention experts and occupational health representatives as
2 applicable and consistent with any supply limitations; and (iii)
3 assuring implementation of the COVID-19 Vaccination
4 Program at all sites.... Chancellors, Laboratory Directors, and
5 the Vice President ANR are responsible for implementing this
6 policy.

7 ...

8 *“[FAQ #9] I was recently diagnosed with COVID-19, and/or I*
9 *had an antibody test that shows that I have natural immunity.*
10 *Does this support a Medical Exemption?*

11 You may be eligible for a temporary Medical Exemption (and,
12 therefore, a temporary Exception), for up to 90 days after your
13 diagnosis and certain treatments. According to the US Food and
14 Drug Administration, however, “a positive result from an
15 antibody test does not mean you have a specific amount of
16 immunity or protection from SARS-CoV-2 infection ...

17 Currently authorized SARS-CoV-2 antibody tests are not
18 validated to evaluate specific immunity or protection from
19 SARS-CoV-2 infection.” For this reason, individuals who have
20 been diagnosed with COVID-19 or had an antibody test are not
21 permanently exempt from vaccination.

22 ...

23 “Those Covered Individuals who fail to Participate by being
24 Vaccinated or requesting an Exception or Deferral on or before
25 the Implementation Date will be barred from Physical Presence
26 at University Facilities and Programs, and may experience
27 consequences as a result of non-Participation, up to and
28

1 including dismissal from educational programs or
2 employment.”

3 And Appendix A to the UC Policy contains a medical exemption form that
4 requires a healthcare provider to certify: “I certify that one or more of the
5 Contraindications or Precautions recognized by the CDC or by the vaccines’
6 manufacturers for each of the currently available COVID19 vaccines applies to
7 the patient listed above. For that reason, COVID-19 vaccination using any of the
8 currently available COVID-19 vaccines is inadvisable for this patient in my
9 professional opinion.”

10 **37.** The UC policy refers to the CDC webpage entitled, “Interim
11 Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in
12 the United States”, which contains the following excerpt:

13 “People should be offered vaccination regardless of their
14 history of symptomatic or asymptomatic SARS-CoV-2
15 infection; this includes people with prolonged post-COVID-19
16 symptoms. Data from clinical trials indicate that the currently
17 authorized COVID-19 vaccines can be given safely to people
18 with evidence of a prior SARS-CoV-2 infection. Viral testing to
19 assess for acute SARS-CoV-2 infection or serologic testing to
20 assess for prior infection is not recommended for the purposes
21 of vaccine decision-making.

22 “Vaccination of people with known current SARS-CoV-2
23 infection should be deferred until the person has recovered from
24 the acute illness (if the person had symptoms) and they have
25 met criteria to discontinue isolation. This recommendation
26 applies to people who experience SARS-CoV-2 infection
27 before receiving any vaccine dose and those who experience
28

1 SARS-CoV-2 infection after the first dose of an mRNA vaccine
2 but before receipt of the second dose.

3 “While there is no recommended minimum interval between
4 infection and vaccination, current evidence suggests that the
5 risk of SARS-CoV-2 reinfection is low in the months after
6 initial infection but may increase with time due to waning
7 immunity.”

8 [https://www.cdc.gov/vaccines/covid-19/clinical-
9 considerations/covid-19-vaccines-us.html](https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html)

10 Moreover, on such CDC webpage for the moment, a person’s previous
11 history of SARS-CoV-2 infection is not a contraindication or precaution to
12 Covid-19 vaccination.

13 **38.** Defendants also publish policies that treat Covid-19 recovered
14 students as if their natural immunity is insufficient, such that these unvaccinated
15 Covid-19 recovered students are threatened with unnecessary medical procedures
16 and interventions without their consent (i.e., PCR testing).

17 **39.** Defendants’ novel theories for the novel coronavirus and its
18 experimental vaccine are expressly based on conjecture that fails strict scrutiny
19 when applied as a healthcare mandate, as Defendants *suggest* without confirmed
20 data, for example:

- 21 a. Covid-19 vaccines ‘could’ ‘may’ ‘possibly’ ‘ideally’ create a
22 larger immune response²³ and therefore perhaps hypothetically
23 create superior immunity that just hasn’t been observed yet but
24

25 ²³ [https://mediasources.ucr.edu/articles/2021/03/03/what-uc-riverside-scientists-
26 have-say-about-vaccines-variants-and-antibodies](https://mediasources.ucr.edu/articles/2021/03/03/what-uc-riverside-scientists-have-say-about-vaccines-variants-and-antibodies) (“ideally”);
27 [https://campusreturn.ucr.edu/sites/g/files/rcwecm4671/files/2021-04/COVID-
28 19%20Vaccine%20education%20slide%20deck_UCLA_UCR%20%281%29.pdf](https://campusreturn.ucr.edu/sites/g/files/rcwecm4671/files/2021-04/COVID-19%20Vaccine%20education%20slide%20deck_UCLA_UCR%20%281%29.pdf)
, page 31 (“There is not enough information” “suggests”));
<https://uci.edu/coronavirus/testing-response/covid-19-vaccine.php> (“usually”)

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might be observed in the unknown future by some unknown institution.

b. Sars-Cov-2 ‘could’ ‘may’ ‘possibly’ be more likely to mutate in the bodies of unvaccinated persons rather than vaccinated persons²⁴, even though that too hasn’t been observed yet but only might be observed in the unknown future by some unknown institution.

Defendants’ pattern and practice of unsubstantiated conjecture has already been authoritatively rebutted by overwhelming scientific evidence, and therefore the CDC will (or *should*) correct its guidance imminently. See, https://www.icandecide.org/wp-content/uploads/2021/06/Letter-to-CDC-re-recovered-superior-to-vaccinated_2021_05_28.pdf.

**FIRST CAUSE OF ACTION AGAINST DEFENDANTS
Declaratory Relief Under 28 U.S.C. § 2201
United States Constitution 14th Amendment Bodily Integrity**

40. Plaintiffs incorporate by reference the paragraphs above as if set forth in full herein.

41. Plaintiffs have fundamental constitutional rights to bodily integrity, including, especially, to be free from human medical experimentation. The FDA’s classification of Covid-19 vaccination (as emergency use or approved) is not determinative of the experimental status of the vaccination, as, for example, with the complete absence of any long-term safety data and the novel status of mRNA and adenovirus vaccines in humans.

42. The Constitutional Right to Bodily Integrity is well settled in law and ethics:

A. “It cannot be disputed that the Due Process Clause protects

²⁴ <https://www.universityofcalifornia.edu/news/are-we-stuck-covid-19-forever> (“may be”)

1 an interest in life as well as an interest in refusing [] medical treatment.”
2 *Cruzan v Director, Missouri Dept of Health (1990) 497 US 261, 279.*

3 **B.** “Informed consent to medical treatment is fundamental in
4 both ethics and law. Patients have the right to receive information and ask
5 questions about recommended treatments so that they can make well-
6 considered decisions about care. Successful communication in the patient-
7 physician relationship fosters trust and supports shared decision making.”
8 Citation: American Medical Association (2020). AMA Principles of
9 Medical Ethics: I, II, V, VIII. Informed Consent. [https://www.ama-](https://www.ama-assn.org/delivering-care/ethics/informed-consent)
10 [assn.org/delivering-care/ethics/informed-consent](https://www.ama-assn.org/delivering-care/ethics/informed-consent).

11 **C.** As with all forms of medical therapy, informed consent must
12 precede vaccination administration.” Citation: The American College of
13 Obstetricians and Gynecologists, Committee on Ethics, Ethical Issues
14 With Vaccination for the Obstetrician–Gynecologist, Committee Opinion
15 Number 564, May 2013, (*Reaffirmed 2016*)
16 [https://www.acog.org/Clinical-Guidance-and-Publications/Committee-](https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Ethical-Issues-With-Vaccination-for-the-Obstetrician-Gynecologist)
17 [Opinions/Committee-on-Ethics/Ethical-Issues-With-Vaccination-for-the-](https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Ethical-Issues-With-Vaccination-for-the-Obstetrician-Gynecologist)
18 [Obstetrician-Gynecologist](https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Ethics/Ethical-Issues-With-Vaccination-for-the-Obstetrician-Gynecologist).

19 **D.** ‘Coerced consent to a medical procedure violates the medical
20 ethics of informed consent and informed refusal, as for example where an
21 individual who has been coerced to consent to injection of biotechnology,
22 due to governmental threat of loss of access to basic necessities of life
23 such as food and medical care, cannot be presumed to have provided
24 lawful informed consent to the injection.’ Citation: Bi, S. and Klusty, T
25 (2015). Forced Sterilizations of HIV-Positive Women: A Global Ethics
26 and Policy Failure. *AMA J Ethics* 17(10):952-957.
27 doi:10.1001/journalofethics. 2015.17.10.pfor2-1510.
28 <https://journalofethics.ama-assn.org/article/forced-sterilizations-hiv->

1 positive-women-global-ethics-and-policy-failure/2015-10.

2 **43.** Plaintiffs are the only competent persons able to provide
3 consent/refusal to the injection of Covid-19 vaccines into themselves. Neither
4 Defendants nor third parties (such as the FDA) are able to provide such
5 consent/refusal on behalf of Plaintiffs, nor can Defendants or third parties waive
6 Plaintiffs' rights to informed consent/refusal of Covid-19 vaccines. Because
7 Defendants have indicated that consent to injection of a Covid-19 vaccine is an
8 imminent condition of their ongoing college participation (and, hence, future
9 livelihood), Plaintiffs fundamental rights are in jeopardy, and, so, Plaintiffs seek
10 declaratory relief to clarify their rights, and to, thereby, prevent immediate
11 harm.

12 **44.** This real and concrete controversy exists between Plaintiffs and
13 Defendants, in that Defendants contend that they have the right, the power, and
14 the authority to require Plaintiffs' coerced vaccination as a condition of
15 continuing participation at the public college (and hence control over Plaintiffs'
16 future livelihoods), and Plaintiffs maintain that such coercion is duress, because
17 they have the fundamental constitutional and statutory right to refuse vaccination
18 without disruption of their education and future livelihoods.

19 **45.** Plaintiffs seek declaratory relief that Defendants' vaccine mandate
20 rejecting Prescreening is an unscientific infringement upon Plaintiffs'
21 constitutional rights.

22 **46.** This actual controversy between Defendants and Plaintiffs centers
23 upon the lives and health of Covid-19 recovered persons.

24 **47.** Defendants have asserted in published documents that there is no
25 need to screen individuals before receiving the various vaccines, as Defendants
26 claim the vaccines are safe for administration to such people, despite the lack of
27 any testing of said individuals as part of the various trials regarding the various
28 vaccines.

1 **48.** Defendants' policy is a gross departure from its own long-standing
2 vaccination policy to reduce life-threatening harm by prescreening.

3 **49.** Prescreening can be accomplished in exactly the same way as for all
4 other viruses, by clinical definition, and by blood immunity test where indicated.
5 (It is to be noted that physician members of Congress specifically endorse such
6 immunity testing as lifesaving.)

7 **50.** Abundant scientific medical evidence exists showing that the
8 vaccination of individuals who have had the virus and have recovered, or who
9 currently have the virus, will result in serious health issues, including death to
10 certain individuals and that due process considerations require allowance for
11 prescreening, in order to protect the lives and health of said individuals.

12 **51.** Defendants' vaccine mandate that unscientifically rejects
13 Prescreening is the direct cause for the immediate and unnecessary threat of
14 injury and death to Plaintiffs.

15 **52.** Defendants' unscientific decision to reject Prescreening will
16 increase the short-term and long-term vaccine injury rate thereby making UC
17 campuses less safe from SARS-CoV-2, and other pathogens. Defendants' direct
18 attack, under color of law, on Plaintiffs' bodily integrity is an unconstitutional
19 abuse of power that is harming public health, not advancing it.

20 **53.** Defendants are engaged in a pattern and practice of downplaying
21 and suppressing information that Covid-19 vaccination is experimental, does not
22 prevent SARS-CoV-2 transmission, and that Covid-19 vaccine injury is
23 widespread and harming public health. Defendants' propaganda has become so
24 extreme as to irrationally disregard data and scientists exposing the propaganda.
25 The hallmark of Defendants' propaganda is Defendants' failure to cite credible
26 data in support of the propaganda, but rather to rely upon a 'quasi pyramid
27 scheme' or 'echo chamber' of continual deference to authority that also fails to
28 cite credible data in support of the propaganda.

1 **SECOND CAUSE OF ACTION AGAINST DEFENDANTS**
2 **Injunctive Relief Under 42 U.S.C. § 1983**
3 **United States Constitution 14th Amendment Bodily Integrity**

4 **54.** Plaintiffs incorporate by reference the paragraphs above as if set
5 forth in full herein.

6 **55.** For Plaintiffs, COVID-19 vaccination is experimental, ineffective,
7 and dangerous.

8 **56.** Plaintiffs cannot lawfully be coerced under duress to participate in
9 the human medical experiment that is Operation Warp Speed, that Defendants
10 have piggybacked their vaccine mandate on. Plaintiffs' protected right to bodily
11 integrity is secured by the Due Process Clause of the United States Constitution,
12 allowing Plaintiffs to navigate the UC campuses free from forced medical
13 experimentation and segregation based on medical condition and genetic status.

14 **57.** Defendants are state actors, and have instituted or imminently intend
15 to institute the Covid-19 vaccine mandate under color of law.

16 **58.** The forcible administration of the COVID-19 vaccines, on penalty
17 of exclusion from campus, would deprive Plaintiffs of their substantive due
18 process rights as described herein.

19 **59.** The harm to Plaintiffs cannot be adequately redressed in the event
20 that the Covid-19 vaccination mandate is carried out.

21 **60.** Unless Defendants are enjoined, Plaintiffs will be irreparably
22 harmed, which harm includes, but not by way of limitation, death, or other
23 serious illness, and the loss of fundamental State and Federal constitutionally
24 protected rights.

25 **THIRD CAUSE OF ACTION AGAINST DEFENDANTS**
26 **Injunctive Relief Under 42 U.S.C. § 1983**
27 **United States Constitution 14th Amendment Freedom from State Created**
28 **Danger**

61. Plaintiffs incorporate by reference the paragraphs above as if set

1 forth in full herein.

2 **62.** Plaintiffs have the 14th Amendment Due Process right to be free
3 from Defendants placing Plaintiffs in a situation of involuntary vaccination, a
4 position of actual, particularized danger based upon the deliberate indifference of
5 Defendants to a known and obvious danger of Covid-19 vaccine injury.

6 **63.** Defendants' deliberate indifference to the known and obvious
7 danger of vaccine injury (including but not limited to Defendants' inability to
8 quantify the risks of the medical procedure they mandate) creates and exposes
9 Plaintiffs to health dangers, the intensity of which Plaintiffs would not have
10 otherwise faced. Defendants' rejection of science makes Plaintiffs more
11 vulnerable to vaccine injury.

12 **64.** Plaintiffs' current and future injuries as herein stated are reasonably
13 foreseeable to Defendants.

14 **65.** Plaintiffs are in a special relationship with Defendants, in that
15 Plaintiffs are students enrolled at UC campuses.

16 **FOURTH CAUSE OF ACTION AGAINST DEFENDANTS**
17 **Unruh Act – Prohibiting Discrimination Based on Medical Condition and**
18 **Genetic Status**

19 **66.** Plaintiffs incorporate by reference the paragraphs above as if set
20 forth in full herein.

21 **67.** Plaintiffs invoke the Court's supplemental jurisdiction to find that
22 Defendants' actions violate the Unruh Civil Rights Act, California Civil Code
23 Section 51 *et seq.*, which provides in part:

24 "All persons within the jurisdiction of this state are free
25 and equal, and no matter what their [] medical condition
26 [and] genetic information [] are entitled to the full and
27 equal accommodations, advantages, facilities, privileges,
28

1 or services in all business establishments of every kind
2 whatsoever....

3 “‘Genetic information’ includes any request for, or
4 receipt of, genetic services, or participation in clinical
5 research that includes genetic services, by an individual
6 or any family member of the individual....

7 “‘Medical condition’ means [] Genetic characteristics.
8 For purposes of this section, “genetic characteristics”
9 means [] Any scientifically or medically identifiable gene
10 or chromosome, or combination or alteration thereof, that
11 is known to be a cause of a disease or disorder in a
12 person or that person’s offspring, or that is determined to
13 be associated with a statistically increased risk of
14 development of a disease or disorder, and that is
15 presently not associated with any symptoms of any
16 disease or disorder.”

17 **68.** Defendants’ decision to mandate experimental gene therapy upon
18 Plaintiffs is a direct violation of the Unruh Civil Rights Act, because it denies
19 Plaintiffs full and equal access to their UC campuses on the basis of Plaintiffs’
20 medical conditions and genetic information.

21 **69.** The UC System, and each Defendant UC campus individually, is a
22 business establishment within the meaning of Cal. Civ. Code section 51, *et seq.*
23 within the jurisdiction of this filing Court. For example, Defendant UC is one of
24 the largest employers in the State of California, receiving approximately \$1.7B
25 annually in revenue from Auxiliary Businesses, and includes campus services
26 that charge fees for goods and services and therefore are self-supporting, such as
27 housing, meals and bookstores, all three of which affect Plaintiffs Carly and
28 Deborah. As the UC states on its website, “Besides world-class classrooms and

1 labs, UC has dozens of museums, concert halls, art galleries, botanical gardens,
2 observatories and marine centers — academic resources, but also exciting
3 gathering places for the community.”

4 **70.** Defendants allow Covid-19 vaccinated persons the right to access
5 the UC campuses, but make no such accommodation to Covid-19 recovered
6 persons, who, to protect themselves from serious injury, or death, refuse to be
7 vaccinated.

8 **71.** Defendants’ violations of the Unruh Civil Rights Act must be
9 enjoined. These violations are imminent and ongoing. Defendants’ failure and
10 refusal to correct constitutes intentional discrimination against Plaintiffs and
11 those similarly situated.

12 **72.** Defendants’ violations of the Unruh Civil Rights Act have harmed
13 and will continue to harm Plaintiffs.

14 **73.** Because Defendants’ discriminatory conduct is ongoing, declaratory
15 and injunctive relief are appropriate remedies.

16 **74.** Plaintiffs are entitled to declaratory and injunctive relief as well as
17 reasonable attorneys’ fees and costs incurred in bringing this action, together
18 with statutory damages.

19 **FIFTH CAUSE OF ACTION AGAINST DEFENDANTS**
20 **Cal. Gov. Code section 11135 – Prohibiting Discrimination Based on**
21 **Medical Condition and Genetic Status**

22 **75.** Plaintiffs incorporate by reference the paragraphs above as if set
23 forth in full herein.

24 **76.** California Government Code Section 11135 is California’s civil
25 rights analogue to Title VI of the Federal Civil Rights Act. Section 11135 states
26 that:

27 “[n]o person in the State of California shall, on the basis
28

1 of [] genetic information [] be unlawfully denied full and
2 equal access to the benefits of, or be unlawfully subjected
3 to discrimination under, any program or activity that . . .
4 is funded directly by the state, or receives any financial
5 assistance from the state[.]”

6 Cal. Gov. Code. § 11135(a).

7 **77.** Section 11139 provides a private right of action for enforcement,
8 stating: “This article and regulations adopted pursuant to this article may be
9 enforced by a civil action for equitable relief, which shall be independent of any
10 other rights and remedies.”

11 **78.** Section 11139 also prohibits the statute from being “interpreted in a
12 manner that would frustrate its purpose.”

13 **79.** Defendants’ vaccination mandate is the product of Defendants’
14 intentional pattern and practice to unlawfully deny full and equal access to UC
15 campuses on the basis of genetic information.

16 **80.** Defendants have and continue to violate section 11135, by
17 unlawfully denying Plaintiffs the benefits of, and unlawfully subjecting Plaintiffs
18 to discrimination under, Defendants’ vaccination mandate for the reasons set
19 forth above.

20 **81.** Defendants have refused and failed to provide Plaintiffs with full
21 and equal access to its facilities, programs, services and activities as required by
22 section 11135, et seq.

23 **82.** Defendants’ violations of section 11135 have harmed and will
24 continue to harm Plaintiffs.

25 **83.** Because Defendants’ discriminatory conduct is ongoing, declaratory
26 and injunctive relief are appropriate remedies.

27 **84.** Plaintiffs are entitled to declaratory and injunctive relief as well as
28 reasonable attorneys’ fees and costs incurred in bringing this action.

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REQUEST FOR JURY TRIAL

85.Plaintiffs request a jury trial on factual matters.

REQUEST FOR RELIEF

86.Plaintiffs request the Court grant the following relief:

A. Issue an order to show cause shifting the burden to Defendants to prove that Defendants’ decision to reject scientifically accepted Prescreening meets a compelling State interest, and that such decision to reject accepted Prescreening science is narrowly tailored to avoid unnecessary infringement upon Plaintiffs’ Constitutional rights

B. Issue a declaratory judgment that Defendants’ unscientific decision to reject Prescreening science, in order to unscientifically propagate Defendants’ one-size-fits-all vaccine mandate, imminently threatens the lives of Plaintiffs, and others, and unlawfully segregates them based on their Covid-19 Recovered medical condition and natural genetic status, which is an unlawful infringement by Defendants upon Plaintiffs’ constitutional rights, that places Plaintiffs’ lives and public health in jeopardy.

C. Issue a temporary restraining order, and a preliminary injunction to restrain Defendants’ from utilizing the discredited tools of coercion and segregation of natural/unvaccinated peoples in violation of Federal and State law, including but not limited to Defendants’ unscientific one-size-fits-all vaccine mandate, where Defendants reject scientifically accepted Prescreening, and, therefore, place Plaintiffs’ lives and public health in jeopardy.

D. Issue a permanent injunction to restrain Defendants’ from utilizing the discredited tools of coercion and segregation of natural/unvaccinated peoples in violation of Federal and State law, including but not limited to Defendants’ unscientific one-size-fits-all vaccine mandate where Defendants reject scientifically accepted Prescreening and therefore place Plaintiffs’ lives and public health in jeopardy.

1 E. Issue an order awarding Plaintiffs statutory damages, costs of suit,
2 and reasonable attorneys' fees and expenses.

3 F. Issue such other and further relief as this Court deems equitable,
4 just, and proper.

5 Dated this July 26, 2021

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7 /s/ Christina Gilbertson
8 Christina Gilbertson (California Bar No. 236877)
9 christina@jfnvlaw.com
10 Jennings & Fulton, LTD
11 2580 Sorrel Street
12 Las Vegas, NV 89146
13 Phone: 702-979-3565

14 Gregory J. Glaser (California Bar No. 226706)
15 greg@gregglaser.com
16 Greg Glaser, Attorney at Law
17 4399 Buckboard Drive #423
18 Copperopolis, CA 95228
19 Phone: 925-642-6651

20 Joseph S. Gilbert (Nevada Bar No. 9033)
21 joey@joeygilbertlaw.com
22 Joey Gilbert & Associates
23 405 Marsh Avenue
24 Reno, NV 89509
25 Phone: 775-284-7700
26 (Subject to pro hac vice admission)

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28 Attorneys for Plaintiffs